



Wake Forest Board of Commissioners Work Session
Meeting Agenda
August 06, 2024 at 6:00 PM

1. Presentations

- 1.1. Presentation of an Ordinance Amending the Code of Ordinances Chapter 8, Article I, Section 8-1 – Fire Limits
[Summary - Fire Limits.pdf](#)
[Attachment A Proposed Chapter 8.pdf](#)
[Attachment B Adopted Chapter 8.pdf](#)
[Attachment C 160D-1128.pdf](#)
[Attachment D Proposed Fire Limits.pdf](#)
[Attachment E Adopted Primary Limits.pdf](#)
[DraftOrdinance 2024-XX_Amending Chapter 8_Buildings&BuildingRegs_Aug2024.docx](#)
- 1.2. Historic Preservation Internship Presentations
[Agenda Summary_BoC - HP Summer Intern Presentations.pdf](#)
- 1.3. Review of a Design Build Contract (AIA Document 141) for Fire Station 6
[Agenda Summary Fire Station 6.pdf](#)
[Attachment A Wake Forest Fire Station #6 DB Contract 7.19.24.pdf](#)
[Attachment B Fire Station6 RequestforQualifications.pdf](#)
[Attachment C Resolution Authorizing the Town Manager to execute on behalf of the Town of Wake Forest the DB Contract for Fire Station 6.docx](#)
- 1.4. Wake Forest Mobility Hub Project Update Presentation
[Agenda Summary.pdf](#)
- 1.5. Presentation of Advisory Board Ordinance Amendment
[Advisory_Boards-summary8.6.2024.docx](#)
[AdvisoryBoardUpdate_8.6.2024.pptx](#)

2. Discussion of Monthly Financial Report

- 2.1. Financial Update
[Financial Update_summary.pdf](#)

3. Review of Draft Agenda for Upcoming Regular Meeting

- 3.1. Review of Draft Agenda for Upcoming Regular Meeting
[DraftBOCAgenda_Aug202420.pdf](#)

4. Other Business

- 4.1. Consideration of approval of Resolution Making Certain Findings and Determinations and Ratifying the Filing of an Application with the Local Government Commission for the Proposed Issuance of Parks and Recreation Bonds
[Two-thirds Bonds Resolution_Summary.pdf](#)
[Preliminary Resolution-Wake Forest 2024 G.O. \(Two-Thirds\) \(4890-2804-7823.1\).doc](#)
[Sworn Statement of Debt-Wake Forest 2024 G.O. \(Two-Thirds\) \(4882-5177-4671.1\).doc](#)
[Statement of Disclosures - Wake Forest 2024 GO Bonds \(Two-Thirds\) \(4888-4737-9153.1\).doc](#)

5. Commissioner Reports

6. Adjournment



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-227-

Submitted by: Terry Savary

Submitting Department: Inspections

Meeting Date: August 6, 2024

SUBJECT

Presentation of an Ordinance Amending the Code of Ordinances Chapter 8, Article I, Section 8-1 – Fire Limits

Recommendation:

Item Summary:

ATTACHMENTS

- [Summary - Fire Limits.pdf](#)
- [Attachment A Proposed Chapter 8.pdf](#)
- [Attachment B Adopted Chapter 8.pdf](#)
- [Attachment C 160D-1128.pdf](#)
- [Attachment D Proposed Fire Limits.pdf](#)
- [Attachment E Adopted Primary Limits.pdf](#)
- [DraftOrdinance 2024-XX_Amending Chapter 8_Buildings&BuildingRegs_Aug2024.docx](#)

Agenda Item: Presentation of an Ordinance Amending the Code of Ordinances
Chapter 8, Article I, Section 8-1 – Fire Limits

Summary: The current Fire Limits Ordinance was adopted in 1985 and it includes the area of downtown that extends from the intersection of North Street (extended) and White Street, 150 feet from the center thereof on either side to the intersection of White and Elm Streets. The proposed amendment will better align the Primary Fire Limits to be more consistent with the intent of the General Statutes and the North Carolina Building Codes. Specifically, this amendment will:

- Better align the boundaries of the Primary Fire Limits to be more consistent with the downtown primary business area.
- Correct the reference to the new updated General Statutes.

Attachments: Attachment A – Proposed Chapter 8 Article I
Attachment B – Adopted Chapter 8 Article I
Attachment C – G.S. 160D-1128
Attachment D – Proposed Primary Fire Limit Map
Attachment E – Adopted Primary Fire Limit Map
Draft Ordinance Amending Code of Ordinance Chapter 8, Article 1,
Section 8-1 – Fire Limits

ARTICLE I. IN GENERAL

Sec. 8-1. Fire limits.

The following fire limits are established:

Beginning at the intersection of White Street and Roosevelt Avenue, 150 feet from the center thereof on either side to the intersection of White and Elm Streets.

(Code 1985, § 4-1)

Cross reference(s)—Fire prevention and protection, Ch. 16.

State law reference(s)—Fire limits, G.S. 160D-1128.

Sec. 8-2. Building code.

The state building code, as amended, is adopted as the official building code of the town.

(Code 1985, § 4-3)

State law reference(s)—State building code, G.S. 143-138.

Sec. 8-3. Permit fee schedule.

The board of commissioners shall establish building permit fees as it may deem best, a schedule of which is on file in the office of the town clerk.

(Code 1985, § 4-2)

State law reference(s)—Appointment of building inspector, G.S. 160A-411; building permits required, G.S. 160A-417.

Sec. 8-4. Plumbers' license, etc.

- (a) No person shall engage in any plumbing, electrical, heating, air conditioning or other construction work within the town unless such person has been licensed by the state licensing board for general contractors, the state board of examiners of electrical contractors or the state board of plumbing, heating and fire sprinkler contractors. However, a person may perform such construction work if he is not licensed by the state board if such unlicensed person works for and under the supervision of a licensed contractor.
- (b) The required privilege license tax of the town shall be paid before any permit for such construction work is issued.

(Code 1985, § 4-4)

Secs. 8-5—8-35. Reserved.

ARTICLE I. IN GENERAL

Sec. 8-1. Fire limits.

The following fire limits are established:

Beginning at the intersection of North Street (extended) and White Street, 150 feet from the center thereof on either side to the intersection of White and Elm Streets.

(Code 1985, § 4-1)

Cross reference(s)—Fire prevention and protection, ch. 16.

State law reference(s)—Fire limits, G.S. 160A-435—160A-438.

Sec. 8-2. Building code.

The state building code, as amended, is adopted as the official building code of the town.

(Code 1985, § 4-3)

State law reference(s)—State building code, G.S. 143-138.

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- (b) The required privilege license tax of the town shall be paid before any permit for such construction work is issued.

(Code 1985, § 4-4)

Secs. 8-5—8-35. Reserved.

§ 160D-1128. Fire limits.

(a) County Fire Limits. – A county may by ordinance establish and define fire limits in any area within the county and not within a city. The limits may include only business and industrial areas. Within any fire limits, no frame or wooden building or addition thereto may be erected, altered, repaired, or moved, either into the fire limits or from one place to another within the limits, except upon the permit of the inspection department and approval of the State Fire Marshal. The governing board may make additional regulations necessary for the prevention, extinguishment, or mitigation of fires within the fire limits.

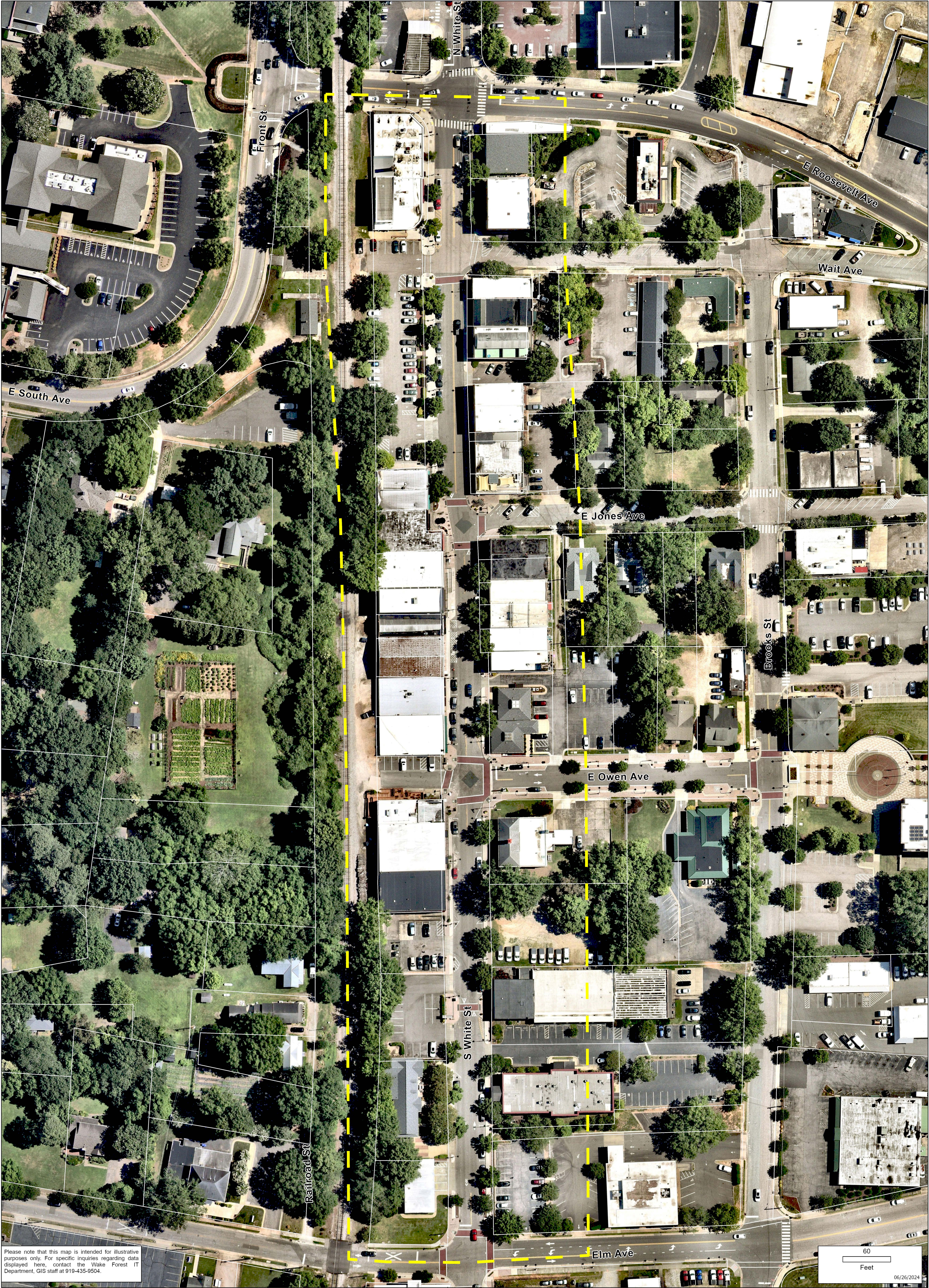
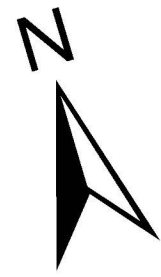
(b) Municipal Fire Limits. – The governing board of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the governing board may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits.

(c) Restrictions Within Municipal Primary Fire Limits. – Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved, either into the limits or from one place to another within the limits, except upon the permit of the local inspection department approved by the governing board and by the State Fire Marshal or the State Fire Marshal's designee. The governing board may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits.

(d) Restrictions Within Municipal Secondary Fire Limits. – Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved, except in accordance with any rules and regulations established by ordinance of the areas.

(e) Failure to Establish Municipal Primary Fire Limits. – If the governing board of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Fire Marshal, the State Fire Marshal shall have the power to establish the limits upon making a determination that they are necessary and in the public interest. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2023-151, s. 11.90.)

Proposed Primary Fire District Limits



Please note that this map is intended for illustrative purposes only. For specific inquiries regarding data displayed here, contact the Wake Forest IT Department, GIS staff at 919-435-9504.



Primary Fire District

● Address Points



Primary Fire District

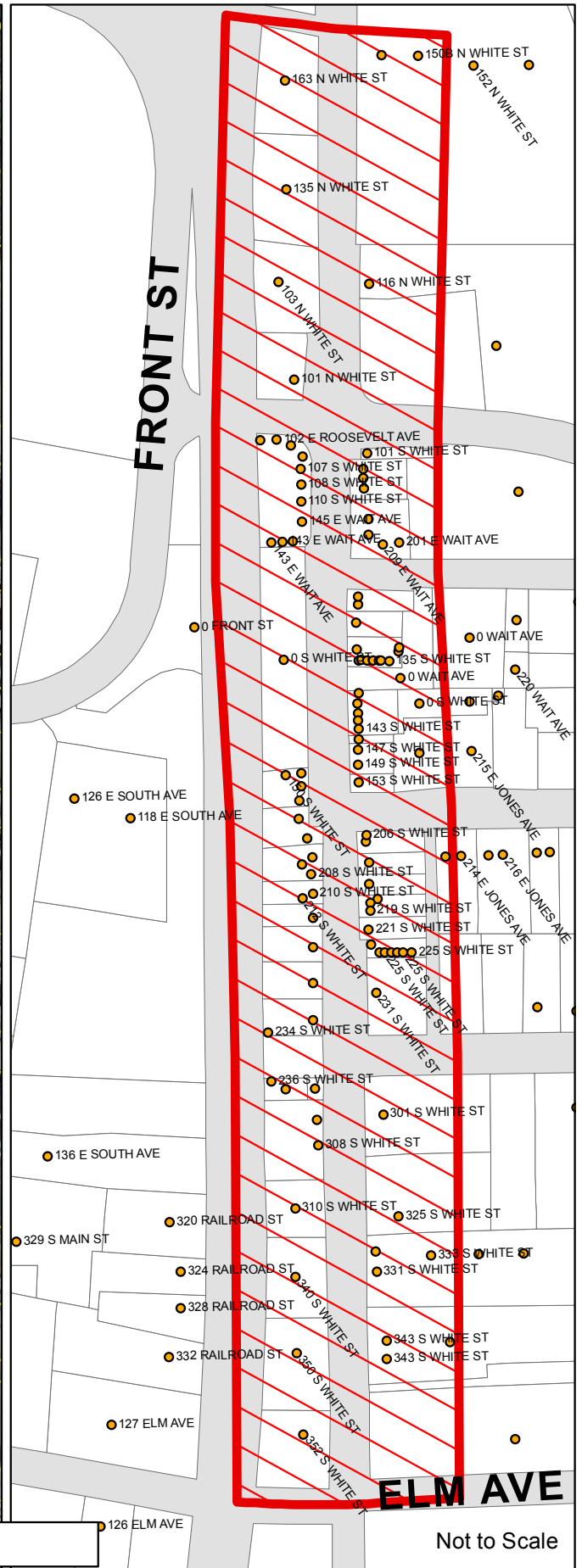
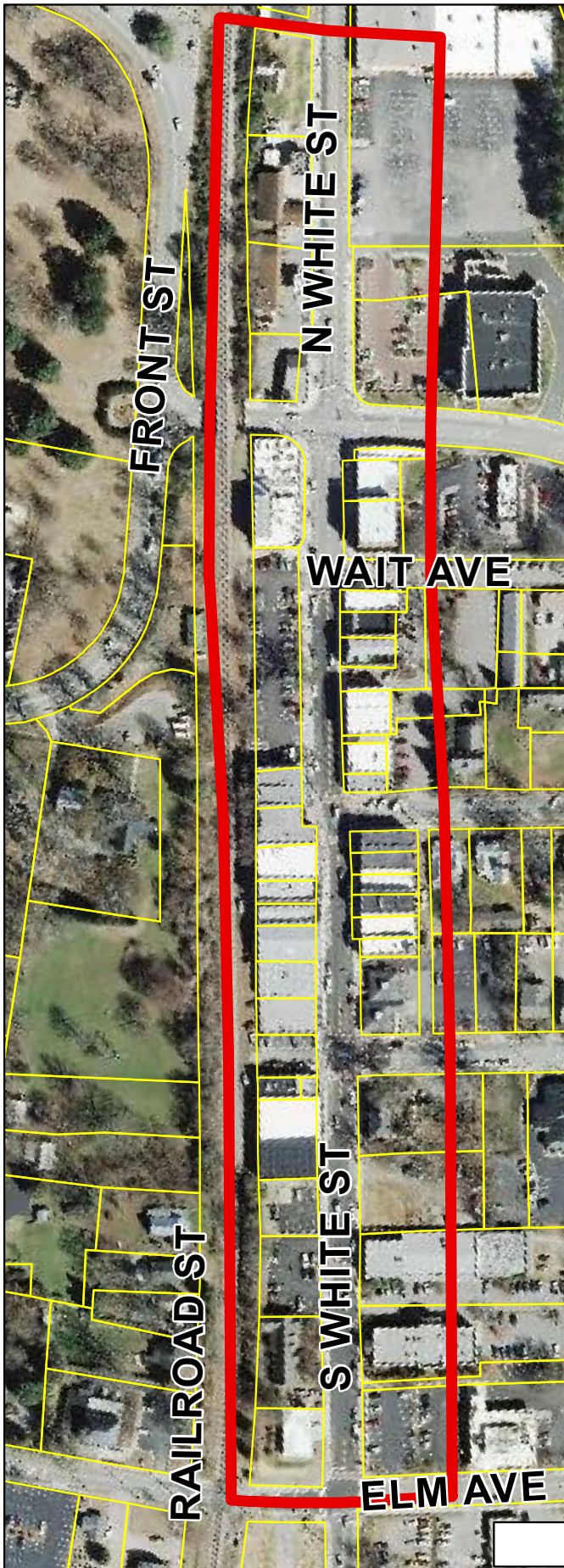


Property

2013 Orthophotography



TOWN of
WAKE FOREST



Not to Scale

ORDINANCE 2024-XX

ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE TOWN OF WAKE FOREST AMENDING PART II – CODE OF ORDINANCES, CHAPTER 8 – BUILDINGS AND BUILDING REGULATIONS, ARTICLE I. IN GENERAL

WHEREAS, the Board of Commissioners adopted the Code of Ordinances Chapter 8 in 1985 and adopted updates in 2013, 2022 and;

WHEREAS, the current ordinance is not consistent with Building Code definitions for Primary Fire Limits and has been updated to better align with current definitions, outline restrictions for Primary Fire Limits construction materials.

WHEREAS, the Board of Commissioners has reviewed the updated Chapter 8 of the Code of Ordinances; and

NOW THEREFORE, BE IT ORDAINED by the Wake Forest Board of Commissioners that the updates to Chapter 8 of the Code of Ordinances are approved and adopted and the changes will be effective August 20, 2024.

Duly adopted this 20th day of August 2024.

Vivian A. Jones
Mayor

ATTEST:

APPROVED AS TO FORM:

Theresa Savary
Town Clerk

Hassan Kingsberry
Town Attorney



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-229-
Submitted by: Michelle Michael
Submitting Department: Planning
Meeting Date: August 6, 2024

SUBJECT

Historic Preservation Internship Presentations

Recommendation:

Item Summary:

ATTACHMENTS

- [Agenda Summary_BoC - HP Summer Intern Presentations.pdf](#)

Agenda Item: Historic Preservation Internship Presentations

Summary: The Historic Preservation Plan (2022) recommends continuing to fund a summer internship annually to strengthen the Historic Preservation Program. The Summer of 2024 brought two summer interns to the Town of Wake Forest.

Catherine “Elise” Newhouse is pursuing a master’s in history degree at NC State University. Elise is conducting research on the history of the Wake Forest Police Department. Miracle Johnson, graduated in May from NC State University with a master’s in public history and will begin pursuing a second master’s in library science in the fall at NC Central University. Miracle is conducting research in the Northeast Community and assessing the significance of the neighborhood for community development and social history. They will provide brief presentations on their research findings.

Attachments: None



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-231-

Submitted by: Allison Snyder

Submitting Department: Administration

Meeting Date: August 6, 2024

SUBJECT

Review of a Design Build Contract (AIA Document 141) for Fire Station 6

Recommendation:

Item Summary:

ATTACHMENTS

- [Agenda Summary Fire Station 6.pdf](#)
- [Attachment A Wake Forest Fire Station #6 DB Contract 7.19.24.pdf](#)
- [Attachment B Fire Station6 RequestforQualifications.pdf](#)
- [Attachment C Resolution Authorizing the Town Manager to execute on behalf of the Town of Wake Forest the DB Contract for Fire Station 6.docx](#)

Agenda Item: Consideration of a Resolution authorizing the Town Manager to execute, on behalf of the Town of Wake Forest, a Design Build Contract (AIA Document 141) for Fire Station 6

Summary: A Request for Proposals, RFP #2023-0001, was issued on January 22, 2024, and the Town received six responses by the published deadline of February 28, 2024. Based on the review of the RFP responses, and interviews of three final firms, the Town selected the highest ranked firm, Edifice LLC. Staff met with Edifice LLC and their partners to develop programming and design needs and is recommending that we engage with Edifice LLC to perform design, engineering and construction services related to Fire Station 6. Staff are requesting the Board to authorize the Town Manager to enter into a contract.

Attachments:

Agenda Summary

Attachment A Wake Forest Fire Station #6 DB Contract 7.19.24

Attachment B Fire Station 6 Request for Qualifications

Attachment C Resolution Authorizing the Town Manager to execute on behalf of the Town of Wake Forest, the Design Build Contract for Fire Station 6 Provided by Edifice LLC.



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 20th day of **August** in the year **2024**
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

The Town of Wake Forest, North Carolina
301 South Brooks St.
Wake Forest, NC 27587-2901
Telephone: 919-435-9400

and the Design-Builder:
(Name, legal status, address and other information)

Edifice, LLC
4111 South Boulevard (28209)
Post Office Box 36349
Charlotte, North Carolina 28236
Telephone Number: 704.332.0900
Fax Number: 704.332.0901
North Carolina General Contracting License #10514

for the following Project:
(Name, location and detailed description)

New Wake Forest Fire Station No.6
1621 and 1701 Wait Avenue (near the intersection of Wait Avenue and Old Murray
Drive in eastern Wake Forest). The Wake County PIN numbers are 1850578617 and
1850670578.

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

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B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1 **and its subparts**.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

The Owner and Design-Build firms, collectively the Project Team, will develop a program and scope of work as part of the initial phase of design that best fits the interests and needs of the Town of Wake Forest. The preliminary program and scope of work includes the design and preconstruction services for a new Fire

Init.

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Station facility with Conex burn building. The project team will develop as much program and scope as possible while maintaining the Town's project budget.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Any necessary Town of Wake Forest standards or requirements must be identified by the Owner and then implemented and checked by the Project Team. All standards and/or requirements must be in effect prior to the contract date of this project unless the information is conveyed to the Project Team during one of the design phases and implemented into the construction documents.

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The physical characteristics will be developed and worked on by the Project Team as the design progresses to Construction Documents. This will be developed for the needs of the new Fire Station and with the project budget in mind.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

The Project Team will incorporate sustainability elements where possible in the design phase. Not heavy, but practical options if possible. No LEED, Green Globes, or other certifications.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not applicable to this project.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

The Owner's budget shall be developed from the Study, Programming, and initial design elements of the project by the Project Team.

§ 1.1.7 The Owner's design and construction milestone dates: The Design and Construction Milestones will be developed as the project progresses into the further stages of Design (Target the Schematic Design Phase). Time is of the essence, so the Design-Build Firms and the Owner will work together to create a program, design, budget, and schedule that gets the Owner into a new Facility as quickly and responsibly as possible.

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.1 Design phase milestone dates:

This shall be developed as part of an overall design and construction schedule agreed upon by the Project Team.

.2 Submission of Design-Builder Proposal:

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The Parties agree that this contract together with its' Exhibits shall together constitute the proposal.

.3 Phased completion dates:

This shall be developed as part of an overall design and construction schedule agreed upon by the Project Team and incorporated into this contract once agreed upon in writing.

.4 Substantial Completion date:

This shall be developed as part of an overall design and construction schedule agreed upon by the Project Team, and incorporated into this contract once agreed upon in writing.

.5 Other milestone dates:

This shall be developed as part of an overall design and construction schedule agreed upon by the Project Team and incorporated into this contract once agreed upon in writing.

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

**ADW Architects, p.a.
Six Coliseum Centre
2815 Coliseum Centre Drive, Suite 500
Charlotte, NC 28217
704-379-1919
Keith Carlyon, kcarlyon@adwarchitects.com**

.2 Consultants

**Structural Engineering:
Stewart Engineering
223 S West St Suite 1100
Raleigh, NC 27603
919-380-8750
Charley Lewis, P.E., Clewis@stewartinc.com
Mechanical, Electrical, Plumbing, Fire Sprinkler, & IT Engineering
Optima Engineering
150 Fayetteville Street
Raleigh, NC 27601
919-929-2200
John Mathews, P.E., JMathews@optimapa.com**

**Site/Civil Engineering & Landscape Design
TIMMONS Group
5410 Trinity Rd Unit 102
Raleigh NC, 27307
919-866-4951
Blake Hall, blake.hall@timmons.com**

Others may be added if necessary

.3 Contractors

Init.

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This shall be determined by the Project Team.

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

The Owner does not identify any further criteria at this time. However, the Parties agree that additional criteria can be agreed upon and added by the Project Team throughout the construction process.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Mickey Rochelle

Email: Mrochelle@wakeforestnc.gov

Allison Snyder– Assistant Town Manager

Email: asnyder@wakeforestnc.gov

The Town of Wake Forest, North Carolina

301 South Brooks St

Wake Forest, NC 27587-2901

Telephone: 919-435-9412

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

On execution of this contract, the owner does not require additional entities or individuals whose review shall be required for the Design-Builder. However, the owner may appoint other representatives, either individuals or legal entities, throughout this contract at any point. When appointing other representatives, the Owner must notify in writing all members of the Project Team set forth herein.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

Geo Technical Site Investigations and Analysis Consultant

Surveying – initial topo and boundary

Asbestos Abatement Reports, Testing, and Services if required

Construction Materials Testing Consultant

Special Inspections Consultant

Wetland Consultant if necessary

Geotechnical Services

Plus any other consultants deemed necessary for the project on notice to the Owner and Owner's approval there of Edifice-ADW will help the Town retain these services

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Tim Bender – Project Executive
Edifice, LLC
4111 South Boulevard
Charlotte, North Carolina 28209
Email: tbender@edificeinc.com
Telephone: 704.332.0900

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 14.4
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Design and Preconstruction Services: Includes the Design Milestones of Schematic Design, Design Development, Construction Documents, and the Bid Phase. Does not include initial Boundary Surveys, Site Analysis/Testing, Environmental Studies or Design, Construction Materials Testing, Special Inspections, or Commissioning. The Design Services and Preconstruction Fee are \$1,456,305 pursuant to the attached Design & Preconstruction Services Fee (Exhibit C).

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

The rates shall be determined and incorporated into this contract once agreed upon by the Project Team.

Individual or Position	Rate
Hourly Rates for Architectural, Engineering and General Contractor services will be mutually agreed upon on a case-by-case need. Reference the A141A for unit rates.	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

.1

(Paragraphs deleted)

Fees paid for securing approval of authorities having jurisdiction over the Project;

.2 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;

(Paragraph deleted)

.3 Other Project-related expenditures, if authorized in advance by the Owner ; and

.4 **Ground penetrating radar services.**

Edifice has included an allowance of \$10,000 in our Preconstruction Services cost to cover any of these services if needed.

(Paragraph deleted)

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1

(Paragraphs deleted)

Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of **four** years following execution of the Design-Build Amendment. **If contract is terminated, records for four years from original execution.**

(Paragraph deleted)

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 **Design-Builder's work force report;**
- .2 **Equipment utilization report; and**
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** The Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. **The warranty period of two (2) years from the date of substantial completion and acceptance of the project will cover the building envelope. The warranty period of one (1) year starts from the date of substantial completion and acceptance of the project that allows for the Owner to move into the building for all other items.**

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas; **and**
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget; **and**
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the

(Paragraphs deleted)
Owner.

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1

(Paragraphs deleted)

The Design-Build Team will perform a high-level analysis and program for the project. The Project Team will take the findings of the analysis and agree upon the next steps to move the project forward into the Schematic Design Phase.

§ 4.3.2 The Owner shall review **high-level analysis** and, if acceptable, provide the Design-Builder with written consent to proceed to development of the **Schematic Design and subsequent Design Phases**.

§ 4.3.3 The Design-Builder shall perform the following services at the following Design Milestones that lead to producing a **Guaranteed Maximum Price (GMP)** as part of the Design process:

- .1 Schematic Design Documents
- .2 Design Development Documents
- .3 Construction Documents
- .4 Bid Phase Services

Budget updates will be provided at all of the above-mentioned Design Milestones and the GMP will be produced after the competitive bid process is complete. The GMP will be produced as part of the Design-Build Amendment to the contract. The Owner shall provide approval at the end of each Design Milestone prior to the Design-Builder commencing to the next phase.

§ 4.4 Design-Builder's GMP Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, **Contractors and suppliers**; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare a **final set of** Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for **overhead, profit, bonds, insurance, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances;** and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs

and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection. **Design-Builder acknowledges the requirements of NCGS § 64-25, et seq., and shall comply with the E-Verify work authorization requirements of Article 2 of Chapter 64 of North Carolina General Statutes; Design-Builder further acknowledges that to the best of its knowledge, any Contractors or suppliers with whom it contracts are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. Design-Builder further certifies that as of the effective date of this Agreement, it is not on the Final Divestment List as created by the State Treasurer pursuant to NCGS § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and NCGS §147-86.59. Design-Builder shall not utilize any Contractor or vendor that is identified on the Final Divestment List.**

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be

unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner

shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods **to be determined by the Town and Design-Builder**:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of

such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written

request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time **and Cost** shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner **within three weeks of presentation**, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. **The application for payment shall be for work performed on a monthly basis and shall include the timeframe of the first of the month to the last day of the month. Provided that an Application for Payment is received by the Owner not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Design-Builder not later than the 25th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.**

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or

entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record

copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be

responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of **the specific defective condition**. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty, **unless the specific defective condition was hidden or the Town was otherwise unable to discover the defect until after the passing of one year from the date of Substantial Completion of the Work. If the defective condition was hidden or unable to be discovered by the Town within one year from the date of Substantial Completion of the work, then the Owner shall issue notice to the Design-Builder of the defective condition within six years from the date of Substantial Completion in accordance with the North Carolina statute of repose.** If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. **The Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of the Instruments of Service acknowledge that the Instruments of Service could become a public record pursuant to the North Carolina Public Records Act.**

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the **Town utilizes the contract documents for their own purposes after the dismissal of the Design-Build firm, then the Town will indemnify the Design-Build firm if and when it utilizes the contract documents for their own purposes after dismissal.**

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a

limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such **alterations**. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. **Provided, however, that any payment amounts rightfully disputed by Owner in accordance with the terms of this Agreement shall not be considered substantial nonperformance or cause for termination or suspension.** If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished. **If termination occurs for another reason not listed, the Design-Builder may be entitled to further payment for work that has been completed up until contract termination.**

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

(Paragraph deleted)

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
- .4 Exhibit C - **Design-Build Scope of Services & Fees**
- .5

(Paragraphs deleted)

Exhibit D – Preconstruction Services Fee Breakdown

This Agreement entered into as of the day and year first written above.

THE TOWN OF WAKE FOREST, NORTH CAROLINA

EDIFICE, LLC

OWNER (Signature)

(Printed name and title)

Date:

DESIGN-BUILDER (Signature)

Michael A. Carlisto, Executive Vice President

(Printed name and title)

Date:



AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the **20th** day of **August** in the year **2024** (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

New Wake Forest Fire Station No. 6
1621 and 1701 Wait Avenue (near the intersection of Wait Avenue and Old Murray Drive in eastern Wake Forest. The Wake County PIN numbers are 1850578617 and 1850670578

THE OWNER:

(Name, legal status and address)

The Town of Wake Forest, North Carolina
301 South Brooks St.
Wake Forest, NC 27587-2901
Telephone: 919-435-9400

THE DESIGN-BUILDER:

(Name, legal status and address)

Edifice, LLC
4111 South Boulevard (28209)
Post Office Box 36349
Charlotte, North Carolina 28236
North Carolina General Contracting License #10514

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM**
- A.2 CONTRACT TIME**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**
- A.5 COST OF THE WORK**

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

- [] Stipulated Sum, in accordance with Section A.1.2 below
- [] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- [X] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

Five percent (5%) of the Cost of Work

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed **to be determined at completion of the Design and Bid Phases (\$ TBD)**, subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

The initial contract sum (see A.2.1.1 of the A141) for the Design-Build contract includes the cost of Design and Preconstruction Services. See attached Exhibit C for a breakdown of these costs. Construction services GMP shall be added to the contract after the Design and Bid Phases are completed.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

If the "Total Cost of the Work", which equals the Cost of the Work as defined in Article 5 plus the Contractor's Fee, is less than the value of the Guaranteed Maximum Price (GMP), then the difference between the Total Cost of the Work and the GMP shall be split as follows: 60 % shall be distributed to the Owner 40 % shall be distributed to the Design Builder. This savings includes any savings from the Construction contingency and the project but does not include any savings from the Owner's Contingency. Separate Contingencies will be set up within the guaranteed maximum price, including a Construction Contingency for use by the Design-Builder and an Owner's Contingency for use by the Owner.

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

To be put together later in the Design-Build Proposal as part of the Design-Build GMP Amendment.

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

To be put together later in the Design-Build Proposal as part of the Design-Build GMP Amendment.

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Init.

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User Notes:

(1848598837)

Item**Units and Limitations****Price per Unit (\$0.00)****To be determined.**

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

To be put together later in the Design-Build Proposal as part of the Design-Build GMP Amendment.

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the **twenty-fifth (25th)** day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the **twenty-five (25th)** day of the **following** month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than **thirty (30)** days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit **payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other** evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraphs deleted)

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 **During Construction, add the Design-Builder's Fee, less retainage of five percent (5 %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion. When the project is fifty percent (50%) complete the retainage percentage withheld on the Contractor by the Owner will be reduced to two and one-half percent (2.5%) and remain at two and one-half percent (2.5%) until Substantial Completion. Upon achieving Substantial Completion, the Owner will withhold one hundred fifty percent (150%) of the cost of outstanding punch list items and release the balance of retainage to the Contractor;**
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Design-Builder self-performs; **retainage will not be figured on any Design or Preconstruction Services.**
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than **to be determined in the Design-Build Proposal as part of the Design-Build Amendment (TBD)** days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

The Design-Builder shall pay to the Town one thousand dollars and no/100 (\$1,000.00) in liquidated damages relating to the failure to achieve Substantial Completion by the agreed upon deadlines in the Design-Build Amendment. This payment will occur daily until substantial completion is met.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:
(Either list the specifications here or refer to an exhibit attached to this Amendment.)

The parties shall determine this in the Design-Build Proposal as part of the Design-Build Amendment.

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

The parties shall determine this in the Design-Build Proposal as part of the Design-Build Amendment

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Design-Builder’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Other identifying information:

The parties shall determine this as necessary in the Design-Build Proposal as part of the Design-Build Amendment.

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

To be put together later in the Design-Build Proposal as part of the Design-Build Amendment

.2 Contingencies

Separate project Contingencies will be set up within the GMP. A Construction Contingency (max 4%) for use by the Construction Manager and an Owner's Contingency for use by the Owner (max 4% but can be revised at the request of the owner). Any unused Owners contingency will be returned to the owner in full. Any unused Construction Contingency will be split 60 percent (owner) /40 percent (Design Builder) between the owner and Design Builder. Construction Contingency will be used for various uses during the construction phase of the project which includes but not limited to scope gaps in the bidding of the project, correction of unknown deficient work, defaulting subcontractors, unforeseen items, acceleration, and other items that the project team deems appropriate for the project. Construction contingency requests will be submitted accordingly for approval by the owner prior to commitment.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

To be put together later in the Design-Build Proposal as part of the Design-Build Amendment

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

To be put together later in the Design-Build Proposal as part of the Design-Build Amendment

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

To be put together later in the Design-Build Proposal as part of the Design-Build Amendment

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, SUB-CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

The parties shall determine this in the Design-Build Proposal as part of the Design-Build Amendment.

.2 Project Manager

The parties shall determine this in the Design-Build Proposal as part of the Design-Build Amendment.

.3 Others

The parties shall determine this in the Design-Build Proposal as part of the Design-Build Amendment.

§ A.4.2 The Design-Builder shall retain the following Consultants, Sub-Contractors and suppliers, identified below:

Init.

/

(List name, discipline, address and other information.)

Architecture:

ADW Architects, p.a.
2815 Coliseum Drive, Suite 500, Charlotte, NC 28217 704-379-1919

Structural Engineering:

Stewart Engineering
223 S West St Suite 1100
Raleigh, NC 27603
919-380-8750
Charley Lewis, P.E., Clewis@stewartinc.com

Mechanical, Electrical, Plumbing, Fire Sprinkler, & IT Engineering

Optima Engineering
150 Fayetteville Street
Raleigh, NC 27601
919-929-2200
John Mathews, P.E., JMathews@optimapa.com

Site/Civil Engineering & Landscape Design

TIMMONS Group
5410 Trinity Rd Unit 102
Raleigh NC, 27307
919-866-4951
Blake Hall, blake.hall@timmons.com

Others may be added if necessary

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

(Table deleted)

The following personnel's cost shall be included in the Cost of the Work at the following rates:

Project Executive	\$ 1,500/week
Construction Manager	\$ 1,200/week
Project Manager	\$ 4,584/week
Assistant Project Manager	\$ 2,865/week
Superintendent	\$ 4,584/week
Area Superintendent	\$ 4,012/week
Assistant Superintendent	\$ 2,865/week
Quality Control Manager	\$ 2,865/week
Project Assistant	\$ 662/week

Cost shall commence approximately two (2) weeks prior to the start of construction and conclude upon Final Completion. The above stated rates include each person's base salary and burdens described in Article 5.1.1.4.

§ **A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ **A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1. **Costs of this Article 5.1.1.4 for those personnel identified in Article 5.1.1.2 are included in the stated rates. Costs as noted in this Article 5.1.1.4 for those personnel associated with Article 5.1.1.1 are to be considered actual Cost of the Work at the reimbursable rate of 49%.**

§ **A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ **A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, **Sub-Contractors** and suppliers in accordance with the requirements of their subcontracts.

§ **A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ **A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ **A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ **A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ **A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, **temporary utilities**, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ **A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ **A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ **A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, **telephones, internet, cell phones for those personnel identified in Article 5.1.12**, extranets and reasonable petty cash expenses of the site office.

§ **A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ **A.5.1.4.6** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, including but not limited to: vehicles and fuel for Superintendents and Project Managers and the meals and living expenses of those personnel identified in Article 5.1.1.2.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

General Liability Insurance	0.90% of the Cost of Work
Builder's Risk Insurance	0.35% of the Cost of Work
Design-Builder Payment and Performance Bonds	1.25% of the Cost of Work
Professional Liability & Pollution Insurance	0.10% of the Cost of Work
Subcontractor's Default Insurance	1.25% of the Cost of Work

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work. **To be considered cost at the reimbursable rate of 0.25% of Cost of Work.**

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure

to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ 5.1.6.4 The costs for Preconstruction Services, as shown in Exhibit C and the Preconstruction Services Fee breakdown, are included as a cost of work as detailed in the attached breakdown of preconstruction service costs. This cost serves as the initial cost of the contract with all construction related costs to be added to the contract as part of the GMP Amendment and/or change orders later.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work; **and**
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract; **and**
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the

Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

THE TOWN OF WAKE FOREST, NORTH CAROLINA

EDIFICE, LLC

OWNER *(Signature)*

DESIGN-BUILDER *(Signature)*

(Printed name and title)

(Printed name and title)



AIA® Document A141® – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

New Wake Forest Fire Station No. 6

1621 and 1701 Wait Avenue (near the intersection of Wait Avenue and Old Murray Drive in eastern Wake Forest. The Wake County PIN numbers are 1850578617 and 1850670578.

THE OWNER:

(Name, legal status and address)

The Town of Wake Forest, North Carolina

301 South Brooks St

Wake Forest, NC 27587-2901

Tel: 919-435-9400

THE DESIGN-BUILDER:

(Name, legal status and address)

Edifice, LLC

4111 South Boulevard (28209)

Post Office Box 36349

Charlotte, North Carolina 28236

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the ____ day of ____ in the year ____.

(In words, indicate day, month and year.)

TABLE OF ARTICLES

B.1 GENERAL

B.2 DESIGN BUILDER'S INSURANCE AND BONDS

B.3 OWNER'S INSURANCE

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ **B.2.1.1** Commercial General Liability with policy limits of not less than **One Million Dollars (\$ 1,000,000.00)** for each occurrence and **One Million Dollars (\$ 1,000,000.00)** in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ **B.2.1.2** Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than **One Million Dollars (\$ 1,000,000.00)** per claim and **One Million Dollars (\$ 1,000,000.00)** in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ **B.2.1.3** The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ **B.2.1.4** Workers' Compensation at statutory limits.

§ **B.2.1.5** Employers' Liability with policy limits as provided below:

Not less than One Million Dollars (1,000,000.00) each accident and One Million Dollars (1,000,000.00) each employee.

§ **B.2.1.6** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than **One Million Dollars (\$ 1,000,000.00)** per claim and **One Million Dollars (\$ 1,000,000.00)** in the aggregate.

§ **B.2.1.7** Pollution Liability covering performance of the Work, with policy limits of not less than **Two Hundred and Fifty Thousand Dollars (\$ 250,000.00)** per claim and **One Million Dollars (\$ 1,000,000.00)** in the aggregate.

§ **B.2.1.7.1** The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than **One Million Dollars (\$ 1,000,000.00)** per claim and **One Million Dollars (\$ 1,000,000.00)** in the aggregate.

§ **B.2.1.8** The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ **B.2.1.9 Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Design-Build Performance & Payment Bonds	

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and

Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



TOWN of
WAKE FOREST

EXHIBIT C

Town of Wake Forest Fire Station 6

Design-Build Services Fee Schedule for Design & Preconstruction Services

	Design Services	Construction Admin Breakout	Total Fees
Architecture - ADW Architects	\$1,145,630	\$281,770	\$1,427,400
Site Design/Civil Engineering - Timmons Group	\$202,470	\$40,494	\$242,964
Structural Engineering - Stewart Engineering	inc in ADW line	inc in ADW line	
MEP & FS - Optima Engineering	inc in ADW line	inc in ADW line	
Preconstruction Services - Edifice	\$108,205	GMP TBD	\$108,205
TOTAL FOR DESIGN SERVICE FEE	\$1,456,305	\$322,264	\$1,778,569
	Value of initial contract	Add in as part of Construction Services	

Additional Design Fees that MAY be required or requested by the owner but not included in the Fees Noted Above:

Site/Civil Options:

1 Optional Desktop Cultural Resource & SHPO Consultation:	Add	\$1,500
2 Optional Wetland/Stream Delineation:	Add	\$2,925
3 Optional Wetland/Stream Confirmatino & Buffer Determination	Add	\$3,675

Structrual Optional:

1 Optional Deep Foundation Design Should geotech report require:	Add	\$TBD
2 Optional Early Drawings 100% Check set	Add	\$TBD

Plumbing, Mechanical & Electrical:

1 Optional if Power Company Lease Site Lighting Design	Add	\$6,000
2 Optional if Owners Vendors Don't Design Technology Deisgn	Add	\$45,500
3 Minimum code required building commissioning (NCECC Section 408)	Add	\$TBD
4 Optional Energy Modeling by Enginner	Add	\$TBD
5 Optional Utility Rebate Calculations/Assistance	Add	\$TBD

Furniture

1 Furniture Design/Selection Assist	Add	125 per hour
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**The Town of Wake Forest
Fire Station # 6
Design & Preconstruction Scope of Services
June 25th, 2024**

DESIGN-BUILD SERVICES

Phase I – Design & Preconstruction Services (From July 2024 to July 2025):

Scope of services will include but not be limited to the following activities:

- Architectural and Engineering Basic Services per the AIA Standard Form of Agreement B-143-2014:
 - Architectural services and design coordination by ADW Architects
 - Civil-Site Engineering and Landscape Architecture by Timmons Group
 - Structural Engineering by Stewart Engineering
 - Mechanical, Electrical, and Plumbing Engineering by Optima Engineering
 - Add options for IT/Telecom & Data, Security, and Audio Visual
- Preconstruction Services by Edifice
- This fee is based on the design of a two story, 3 Bay, +/- 19,000 square foot Fire Station along with its associated on-site site improvements and a 2,400 square foot training building, drafting pit and coordination, footing design and site work for the two owner provided training props.
- Additional Design Fees that WILL be required and included are:
 - Right of way dedication plat
 - Annexation plat and Description
 - Hydrant Flow Test
 - Offsite Sanitary Sewer Survey
 - Annexation and Rezoning
 - Offsite water and sewer main design and permitting
 - TIA
 - NC-98 Emergency Hybrid Beacon Design
 - Roadway Improvement design/administration
 - PCN for nationwide permit, water quality certification and buffer authorization
 - 401/404 and Riparian buffer permit process (not to exceed \$6,000.00)
 - Geotechnical Report, field exploration and laboratory testing
 - Water system hydraulic analysis
 - Downstream Sewer Study

Project Kickoff

- Establish a meeting schedule to provide updates on project progress and needs
 - Update Meetings will be held at least once or twice monthly as a means of regular, periodic communication throughout design and construction
 - i.e., 1st and 3rd or 2nd and 4th weeks of the month
- Establish project goals, needs, timeframes
- Establish the Project Team – Owner, End-Users, Designers, & Builder
- Establish project collaborative platform for the project team to utilize and share information



Program & Concept Verification

- Verify the Town's space needs study and concept plans
- Verify if the 14,500 square feet meets the Town's needs, compare to the program
- Develop a project schedule with design milestones, budget milestones, authorities having jurisdiction review and approvals, owner activities, and high-level construction activities and milestones
 - Project team signs off on the baseline schedule and start monthly updates with team input
- Town directs the team to move forward with Schematic Design Documents

Schematic Design

- Provide a custom design for the Town of Wake Forest based on the findings of the Program Verification Phase
- Apply known and latest (at time of design) Town Standards and Ordinances
 - Project team will rely on the Town of Wake Forest to verify and make sure all standards and ordinances are discussed and verified during plan reviews that need to be included in the documents
- Refine the selected plan diagram into preliminary floor plans at the space level
- Precedent study of aesthetic options for the facade
- Exterior renderings of the design from multiple angles
- Design narratives from each consultant describing the anticipated systems
- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
- Schematic design estimate
 - Quantity takeoff and unit cost pricing
 - Limited subcontractor input
 - Cost savings review and workshop with owner and designer
- High level constructability review
- Schedule updates
- Town directs the team to move forward with Design Development Documents

Design Development

- Final floor plan and ceiling plan design
- Precedent study of interior finishes
- Visioning of interior spaces
- Consultant coordination of building infrastructure and systems
- Refinement of building exterior and sections
- Preliminary reviews with the relevant AHJs
- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
- Detailed and comprehensive constructability review
- Product and system analysis with recommendations
- Solicit key trades for current market pricing
- Design development estimate
 - Quantity takeoff and verification in comparison to the Schematic Estimate

- Subcontractor input
- Cost savings review and workshop with owner and designer
 - Analyze products and building systems and make recommendations
- Facilitate estimate review meeting and refine the estimate based on team comments
- Town directs the team to move forward with Construction Documents

Construction Documents

- Conduct any necessary prequalification of subcontractors and suppliers
 - Create, discuss, and finalize a list of Formal and Informal Trade Packages
- Final resolution of construction details
- Final selection of interior finishes
- Specific locations of devices (outlets, data, AV, etc.)
- Site utility coordination
- Submit construction documents for review and approval by all applicable Authorities Having Jurisdiction (AHJs)
- Update and coordination meetings with owner and design team – Bi-Weekly or as needed
- Constructability review and verification of Design Development Constructability review items
- Design quality control and/or VE workshop with owner and designer
- Phasing and site logistics plan
- Milestone construction schedule
- Provide cost estimate based on construction documents that will be submitted to AHJs for permit(s) approval(s)
 - Cost savings review and workshop with owner and designer
 - Verify that agreed upon cost saving items have been included in the documents
 - Perform quality control review of construction documents
 - Conduct estimate review meeting and refine cost estimate based on feedback
 - Constructability review and verification of Design Development Constructability review items
- Town directs the team to move forward with bidding and the GMP process

Prequalification of Trade Contractors

- Establish a Prequalification Committee to review, approve, and finalize prequalified trade contractors
- Establish a prequalification process to ensure that all Town policies are adhered to and project-specific criteria is included
- Invite Trade Contractors, Minority, Local, and others to participate in the Prequalification process
- Tailor bid packages for the benefit of the project in terms of available resources and funding
- Advertise trade package opportunities for those interested in prequalifying to bid the project
 - Occurs at end of Design Development and/or beginning of Construction Documents
- Edifice will work with the Town of Wake Forest on the Prequalification process making sure all Town policies are followed and project specific criteria is included
- Outreach Sessions will be held to help advertise and promote interest in the project
 - Describe prequalification process at Outreach Sessions



- The Town of Wake Forest and Edifice will work together to develop the list of Prequalified Trade Contractors in concert with the North Carolina bidding standards
- All Town of Wake Forest requirements for MWBE or HUB participation will be followed
- Get approval from Town of Wake Forest for recommended prequalified bidders
- Only allow prequalified trade contractors to bid the project

Public Bid Process

- Advertise the project for bid to all prequalified trade contractors
- Create a Bid Package Manual outlining scopes of work for each trade package and instructions to bidders applicable to the Communications & Emergency Management Building project
- Conduct an open, competitive public bid process for all trade packages
- Offer and provide MWBE and/or HUB firms assistance during the bidding phase
- Provide feedback to any unsuccessful bidders
- Notify Prequalified Bidders of pre-bid meeting and bid date
- Conduct Pre-Bid meeting
- Hold the bid opening in a public location at a Town appointed facility.
- Edifice-ADW will work in concert with the Town of Wake Forest and the Designers on all the necessary requirements related to the bid opening
- G.S. 143-129 Procedure for Letting of Public Contracts will be followed
- All Town of Wake Forest requirements for MWBE and/or HUB participation will be followed
- Post Bid meetings with all apparent low, responsive, responsible trade contractors will be held to determine the authenticity and accuracy of bids
- Award 1st Tier Contracts
- Report Actual MWBE and/or HUB participation vs. Goals

Guaranteed Maximum Price

- Once Post Bid Meetings are finalized and apparent low bidders are determined, a Guaranteed Maximum Price (GMP) Proposal will be put together

Contract

- AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- The value of Design and Preconstruction Services will be the initial contract value. Construction services will be added via the A141 Exhibit A, when the Guaranteed Maximum Price is determined.

Schedule Milestones

- TBD once the schedule is presented to the team and approved by the team



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Construction Services to be added later and will include all construction management and administrative services by the Design-Build Team

- The budget has yet to be finalized or determined for this project. If scope or additional services are need to capture the increased scope of this project Edifice would ask that the Town of Wake Forest negotiate any reasonably necessary further services.

Design and Preconstruction Services Fees – See Attached Exhibit of Design Fees

- **We propose a lump sum Design-Build Services fee for tasks outlined above, to cover only Design and Preconstruction activities of One Million, Four Hundred Fifty-Six Thousand and Three Hundred and Five Dollars (\$1,456,305.00).**
 - Construction Administration will be added to the contract as part of the Construction GMP
 - Those fees are estimated to be \$332,264.00
- Additional Services will be billed out at mutually agreeable rates agreed upon by the Town of Wake Forest and Edifice. Time for additional design and preconstruction services will be estimated based on the rates agreed to between Edifice and their designers which will ultimately be approved by the Town. Edifice's Preconstruction rates are shown in the attached breakdown of Preconstruction Services.

Clarifications

- Services **not** included in the Design, Preconstruction, and eventually Construction, will be costs over and above what is projected as the cost of Design and Construction and will be by the Town or others are as follows:
 - Additional Site Surveying – Topographic, boundary, or otherwise needs already purchased from the Town directly from The Timmons Group
 - All work related to offsite permanent and temporary easements or rights of way
 - Regulatory application fees or filing fees.
 - Permitting fees are by allowance and to be included in the Construction GMP
 - Life Cycle Cost Analysis and/or Energy Modeling
 - LEED or Green Globes or certified sustainable design, accreditations, or certifications
 - No early design or bid packages unless agreed upon by the team later
 - Environmental Engineering, Environmental Assessments, and impact statements
 - Hazardous materials identification and abatement
 - Flood studies
 - Wetlands investigations and permitting
 - Construction Materials Testing and Special Inspections
 - Minimum Commissioning required by the North Carolina Building Code
 - Edifice-ADW can provide this if requested
 - Design and furnishing of Furniture, Fixtures, and Equipment (see add services per hour rate)
 - Owner Contingency
 - Re-design or re-building or improvements to any existing storm retention or detention systems.
 - Thought is that existing systems will be tied into and adequate for the project



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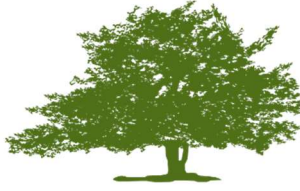
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- Off Site sewer design IS included in the base design. Costs associated with bringing additional utilities to the site other than sewer are not included.
 - We are planning to design and construct utilities (power, water, gas, cable, etc...) from mains that presently run to or near the site.
- IT/Data/Structured Cabling, Audio Visual, Cable TV, CCTV, Security Systems, Card Access, and Radio Alerting Systems will be designed, provided, and installed by the Town of Wake Forest.
 - Edifice-ADW will coordinate with the Towns staff and vendors in the implementation of this work into the design and construction.
 - All Design for special systems, including Audio Visual, Voice Reinforcement, Security, Telecommunications, CCTV, Station Alerting System, etc. beyond locating and specifying J boxes and conduit to above ceiling. (for future inclusion of cabling and equipment by the Owner's Vendors)
- Fire Flow testing for the Fire Sprinkler System has already been completed by the Timmons group.
 - Fire pump design has not been included. This will need to be added if the water pressure is not sufficient for a designed fire sprinkler system
- Plan Review and Permitting Fees will be included as an allowance in the Construction GMP
- Tap, Impact, or Development Fees are expected to be paid for by the Town
- LEED or Green Building Design and Certifications are not included
- Graphic Design or Graphics packages
- Fueling systems design or engineering has not been included.
- The Fee includes Structural Engineering Services for standard spread footing foundations. If existing soil conditions require a more extensive foundation design, the Structural Engineering to provide these Services would be considered an Additional Service. Please note that the Structural Engineer must rely on the Geotechnical Report of the Subsurface conditions provided by the Owner for their Structural Design.
- Irrigation system will be included in the budget as an allowance. This system will be Design-Build by the Irrigation/Landscape Subcontractor
- Construction Management and Supervision by Edifice and Construction Administration by ADW and their consultants are a part of the cost of work and will be included in the Guaranteed Maximum Price (GMP) for construction services

Exhibit D – Preconstruction Services Fee Breakdown

Preconstruction Services Fee Estimate				25-Jun-24	
New Fire Station #6			Start Date		Jul-24
Town of Wake Forest Fire Station 6			Completion Date		Jul-24
			Project Budget		\$16,000,000
Personnel Activates					
Programming & Concept		Man-hours		Rate Labor	
Preconstruction Manager		50	\$	110.00	\$ 5,500
Project Executive		35	\$	133.00	\$ 4,655
Subtotal		85		\$	10,155
Schematic Design		Man-hours		Rate Labor	
VP of Preconstruction		20	\$	150.00	\$ 3,000
Preconstruction Manager		80	\$	110.00	\$ 8,800
Project Executive		30	\$	133.00	\$ 3,990
Subtotal		130		\$	15,790
Design Development		Man-hours		Rate Labor	
Project Executive		35	\$	133.00	\$ 4,655
VP of Preconstruction		10	\$	150.00	\$ 1,500
Preconstruction Manager		85	\$	110.00	\$ 9,350
Superintendent		15	\$	103.00	\$ 1,545
Project Manager		40	\$	111.00	\$ 4,440
Subtotal		185		\$	21,490
Complete CD's		Man-hours		Rate Labor	
Project Executive		35	\$	133.00	\$ 4,655
Preconstruction Manager		90	\$	110.00	\$ 9,900
Preconstruction Assistant		45	\$	65.00	\$ 2,925
Superintendent		20	\$	103.00	\$ 2,060
Construction Manager		40	\$	125.00	\$ 5,000
Project Manager		45	\$	111.00	\$ 4,995
Subtotal		275		\$	29,535
Bid Documents and Bidding		Man-hours		Rate Labor	
Project Executive		30	\$	133.00	\$ 3,990
Preconstruction Manager		45	\$	110.00	\$ 4,950
Preconstruction Assistant		45	\$	65.00	\$ 2,925
Construction Manager		35	\$	125.00	\$ 4,375
Project Manager		45	\$	111.00	\$ 4,995
Subtotal		200		\$	21,235
Services Cost Recap					
Personnel Activity Summary		Man-hours		Days Labor	
Programmming & Concept		85		10.625	\$ 10,155
Schematic Design		130		16	\$ 15,790
Design Development		185		23	\$ 21,490
Complete CD's		275		34	\$ 29,535
Bid Documents and Bidding		200		25	\$ 21,235
Subtotal		790		99	\$ 98,205
Pre-construction Summary					
Total Labor				\$	98,205
Reimbursement Allowance - Preconstruction Site Investigations or Testing				\$	10,000
Total Pre-Construction Services Fee				\$108,205	



TOWN *of* WAKE FOREST

REQUEST FOR QUALIFICATIONS # 23-0001

DESIGN, ENGINEERING AND CONSTRUCTION SERVICES **FOR WAKE FOREST FIRE STATION #6**

DATE ISSUED

Monday, January 22, 2024

PRE-SUBMITTAL CONFERENCE

**Friday, February 2, 2024
9:00 a.m.**

QUESTIONS AND CLARIFICATIONS DUE DATE

**Monday, February 12, 2024
1:00 p.m.**

DUE DATE

**Wednesday, February 28, 2024
1:00 p.m.**

Email Address Submittal (required)

mrochelle@wakeforestnc.gov

Physical Acceptance Location (also required)

**Wake Forest Town Hall
Attn: Mickey Rochelle
300 South Brooks St
Wake Forest, NC 27587-2901**

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Notice

Pursuant to NCGS 143-128.1(A), the Facilities Department of the Town of Wake Forest will be soliciting Statements of Qualifications from qualified Design-Build teams interested in providing professional design and construction services for the new Fire Station 6 facility for the Wake Forest Fire Department.

All respondents are subject to the instructions communicated in this document and are cautioned to thoroughly review the entire document and follow instructions carefully.

I. Project Site

1621 and 1701 Wait Avenue (near the intersection of Wait Avenue and Old Murray Drive in eastern Wake Forest. The Wake County PIN numbers are 1850578617 and 1850670578. The Town will not provide workspace for the Firm/Team.

II. Project Description and Scope

The new fire station facility will provide proper fire department response times in support of the rapid growth of residential development in the northern and eastern quadrants of Town. The Town currently has an ISO rating of 1 and is committed to maintaining this level of service as it relates to response times and life safety.

This facility will include a program comprised of an approximately 14,500+/- square foot, two story, 3-bay building with apartment accommodations, a weight room, office, toilet rooms and showers, dining room and kitchen and other support facilities. The site will also contain the install of an Indy System training Center created from Conex containers with a footprint of 3,600+/- square feet and 2,400+/- square feet climate-controlled workshop. Construction on the new facility is slated to begin in the fall of 2024.

The lead Design-Builder will be expected to provide concurrent design and construction turnkey activities for this project resulting in a finished, fully usable facility that satisfies all project requirements and contract terms. The Design-Builder as the sole responsible source for total project compliance and construction related performance will hold all design professionals, testing services, trade contractors and trade supplier contracts.

The Design-Builder's scope of work will include:

1. Site Inventory and Evaluation of Owner's Criteria Confirmation
 - a. Site investigations including review of owner's surveys, Phase 1 and Phase 2 environmental reports.
 - b. Preliminary evaluation of proposed site use, material selection, building systems and equipment and provide recommendations on constructability, time, labor and scheduling factors related to project costs.
 - c. Conduct a workshop with Town staff to confirm and finalize staff amenities listed in [Appendix C](#).
2. Schematic/Preliminary Design
 - a. Pre-construction project planning including assistance in the preparation of a schedule, preliminary cost estimates and value engineering measures.
 - b. Prepare special use permit and annexation application to include site, architectural, structural, mechanical, plumbing and electrical schematic design plans for Town staff consideration. Special Use Permit application checklist is shown in [Appendix E](#).
 - c. Prepare preliminary design report following pre-application meeting confirming design criteria, agreed upon program elements, alternative schemes, recommended scheme with construction phasing options and cost model.
 - d. Develop Design-Builder's proposal detailing contract sum, estimated trade costs, proposed date of substantial completion and list of key Design-Build personnel and suppliers.
 - e. Conduct regular weekly design meetings.
 - f. Update the design schedule.
 - g. Present requires department agencies/for review; responsible for all state, county, and Town permit applications and approvals.
3. Design Development
 - a. Based on the approved schematic design, satisfactorily resolve all review comments from prior design phases and further refine the design to include:
 - i. Site Design: Currently there are no existing sewer services onsite, and the new fire station construction will require a sewer extension/connection to the subject site which may also require land easements. In addition, site design will require demolition and clearing plans, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, elevations and sections, construction details, lighting and signage, landscape, plantings and details.
 - ii. Building Design: building plan configuration and elevation elements including exterior building skin materials and colors, foundation, structural and roof systems, building fenestration and openings, overall dimensions, materials testing requirements, Mechanical, Electrical and Plumbing (MEP) design including systems, equipment and calculations, energy and performance modeling, systems review, coordination and integration to include all utilities and controls, assess for LEED criteria.
 - b. Expand outline specifications to design development level and integrate systems, controls, products and procedures for architectural, civil and landscape.
 - c. Documents produced in digital format- AutoCAD preferred.
 - d. Conduct regular weekly meetings.
 - e. Review and confirm budget from schematic design phase. Review any updates and reconcile.
 - f. Review, update and confirm project schedule.

- g. Attend owner and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.
- 4. Permitting, Reviews and Approvals
 - a. Review and/or present design concepts to the Town of Wake Forest Planning and Building Inspections Departments and any other regulatory agencies whose approval is necessary for the development of the site.
 - b. Submit plans and application to regulatory agencies.
 - c. Secure approvals from all other local and state agencies as required for the site development.
 - d. Coordinate the construction or relocation of utilities.
 - e. Attend meetings as necessary for all approvals. Provide response and modifications to regulatory comments.
- 5. Construction Documents
 - a. Based on the approved design development, satisfactorily resolve all review comments from prior design phases and prepare and finalize all construction drawings and specifications to minimally include all elements from our checklist listed in [Appendix E](#).
 - b. Documents produced in a digital format: AutoCAD preferred.
 - c. Prepare a construction level cost estimate and updated project schedule; reconcile cost estimate with construction estimate.
 - d. Incorporate bid alternates as necessitated by the project budget.
 - e. Conduct regular design meetings.
- 6. Construction Administration
 - a. Project manual that includes Project Procedures, Bid Forms, General Conditions, and Detailed Specifications
 - b. Provide construction administration and observation associated with the site improvements including a preconstruction conference, weekly site observation and meetings for processing pay requests.
 - c. Provide interpretations of prepared drawings and specifications, shop drawing review and approval as well as preparation of change orders and construction change directives.
- 7. Construction
 - a. All site work to include but not limited to clearing and rough grading, tree protection, erosion control measures, site utilizes, site lighting, paving, walkways, landscaping and stormwater water management.
 - b. Building construction to include but not limited to foundations, exterior, roofing, insulation, systems, interior finishes, toilet and bath fixtures, locker room fixtures, special equipment, signage, and MEP systems and controls.
- 8. Post Construction Phase and Deliverables
 - a. Acquire certification of occupancy and certification of completion
 - b. Prepare as-built documents based on information received from the contractor in AutoCAD.
 - c. Prepare a facility maintenance plan.
 - d. Assist in project closeout, establishment of warranties and guarantees.
 - e. Present to required departments for review. Responsible for all state, county and town permit applications and approvals.

The scope of work may be modified during contract negotiations with the selected Design-Builder team.

III. Goals

- The Town of Wake Forest intends to utilize best commercial practices to accomplish the goals of this project, expects the Design-Builder to proactively address risks and challenges in the process and participate in improvement activities to achieve project success.
- The Town also expects to work with the Design-Builder to devise and implement appropriate processes for this project that maximize the efficiency, overall quality, cost savings and efficiencies. Other goals include:
- Reach substantial completion prior to ISO inspection anticipated in May of 2026.
- Complete the project in a timely fashion without undue delays and within the Town's funding resources available for the project.
- Incorporate high performance, energy efficient HVAC, plumbing, electrical, exhaust, mechanical, security and fire alarm systems and controls that allow staff to work in a safe, comfortable, operational facility.
- Design a facility that takes into consideration energy efficiency/conservation, energy management, life cycle cost savings while adhering to Wake Forest Community Plan standards for community buildings.

IV. Anticipated Project Budget

The Facilities Department estimates an approximate budget of \$12 million dollars for completion of this project including all costs and fees.

V. Schedule

The following schedule contains Town's desired major milestones and may be adjusted as a result of proposals and contract negotiations.

Anticipated Project Schedule	Date
Issue RFQ	January 22, 2024
Town conducts pre-submittal conference. Location: Town Hall, 301 S. Brooks St, Wake Forest, NC 27587. Conference Room A-B	February 2, 2024
Design-Builder Team Registration Due	February 9, 2024
Deadline for written questions and clarifications	February 12, 2024
Deadline for submission of Statement of Qualifications	February 28, 2024

Optional interviews of short-listed firms	March, 2024
Notify selected Design-Build firm, begin contract negotiations	March, 2024
Board of Commissioners award of contract	May, 2024
Notice to Proceed	June, 2024
Project Completion	May, 2026

VI. Pre-Construction Project Planning

The Design-Builder, as part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project including guidance and assistance in the preparation of a schedule and a reliable, preliminary cost estimate along with evaluations of any value engineering measures.

VII. Proposal Evaluation

Each submitter will be evaluated and short-listed based on their Statement of Qualifications score as determined through a qualification review process and scoring criteria notes below:

1. Design- Build Team Expertise and Team Organization – 25%
2. Project Vision – 15%
3. Submission Quality- Creativity of Design, Schedule, Safety Control – 20%
4. Design References – 25%
5. Legal History – 15%

The three most highly qualified firms/teams will be shortlisted and may be asked to interview with an evaluation team made up of Town employees to help determine final ranking before the final selection.

VIII. Pre-Submittal Conference

There will be a pre-submittal conference for interested firms on **Friday, February 2, 2024, at 9:00 a.m. at Wake Forest Town Hall, 301 S. Brooks Street, Wake Forest, NC, Ground Level A/B Conference Room. Attendance at the pre-submittal meeting is required.** The Facilities Director will present details about the project, provide an overview of needs and be available to answer questions.

IX. Content and Format of Proposal Package

The submission shall be a maximum of 50 pages front and back or 100 pages single-sided.

Design-Build Team Expertise and Team Organization:

- The submission shall include a general description of the firm and its background as it relates to this project.
- Specific information regarding the firm and staff shall also be submitted and include: Identify their Team's experience with public or privately bid emergency response design-build projects and specifically describe those projects that best characterize the Design-Builders team capabilities.
- Include work quality of cost control measures.
- Completed public sector projects and experience.
- Additionally, response should include understanding of the Town of Wake Forest's permit and planning process, evidence of incorporating environmentally responsible building practices, and effectively provide contract and construction administration services.
- A description and organizational chart showing the structure of the Design-Builders team, inter-relationships, areas of responsibility and the names and current professional licenses of key personnel assigned to the project along with their areas of responsibility.
- Information on the current and projected workload of key staff to be assigned to this project, including level and magnitude of involvement.
- The firm and staff qualification information for each sub-consultant, a description of the services the firm performed, as well as related projects and references, if a sub-consultant is part of the team.

Project Vision

- Statement of detailed proposed project approach.
- Recommended scope of work prior to beginning design.
- Timeline for completion of design and construction.

Submission Quality

- Examples on the ability to foresee and address potential issues and concerns.
- Creativity in design and layout.
- Ability to work with Town staff.

Design References

- Provide five references with emergency response design-build being preferred. A minimum of one must be included as a reference.
- Each reference shall include an owner contact.
- List team members involved in the project including firm members, engineers, landscape architects, or interior designers.

Legal History

- Include a history of litigation and disputes including any pending litigation, arbitration, and disputes. Include results of past litigation, disputes, and arbitration.

X. Questions and Clarifications

All questions shall be submitted to Mickey Rochelle, Facilities Director, via email (mrochelle@wakeforestnc.gov), no later than **1:00 p.m. on Monday, February 12, 2024**. Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be published on the Town website by **5:00 p.m. on Wednesday, February 14, 2023**.

XI. Proposal Submittal

The deadline for firms submitting proposals is **1:00 p.m. on Wednesday, February 28, 2024**. No submissions or supporting documents will be accepted after this deadline. Submittals should be emailed to mrochelle@wakeforestnc.gov. One digital copy via email, and one hard copy is required of each submission. Hard copies should be delivered to The Town of Wake Forest, 301 South Brooks Street Wake Forest, NC 27587, Attention: Mickey Rochelle.

The Town of Wake Forest reserves the right to reject any or all submittals. This RFQ does no obligate the Town to pay for any cost incurred by respondents in the preparation and submission of a response nor does it obligate the Town to accept or contract for any expressed or implied services.

The selected design-build team will be required to adhere to Wake Forest's Community Plan standards which lists a vision of a highly desirable community that preserves its small-town charm while fostering new growth opportunities. Smart, sustainable growth strategies and sufficient infrastructure. In addition, the lead Design-Builder should encourage embracing community character, promise and incorporate sustainable building practices and explore green infrastructure options that beautify spaces like bioswales and planters.

APPENDIX A- GENERAL TERMS**I. General Contract Terms and Conditions**

- The selected firm will report directly to the Town of Wake Forest. The selected firm is to administer the contract and to ensure that all work is performed in accordance with the contract requirements. The selected firm will be responsible for providing engineers, technicians, and sub-consultants with the appropriate skills and qualifications to ensure contract compliance. The firm will be directly responsible for oversight of the project for the Town.
- The selected firm will be notified by the Town and will enter contract negotiations for receiving this work. A professional services agreement will be negotiated with the selected contractor based on the proposed scope of work outlined in their proposal.

II. Conflict of Interest Statement:

It is the policy of the Town of Wake Forest that the conduct of officers, directors, project managers, or and all other persons acting as its representatives should be at all times in the best interests of the Town, its members and the general public. In performing their duties, Town representatives should not be influenced by desire for personal gain. Conflict of interest is defined as a situation in which professional judgment or behavior concerning a primary interest (in this case the integrity of the Town) has been improperly influenced by a different interest (such as for financial gain). The prompt disclosure of possible conflicts of interest or of those situations where such a perception could reasonably be anticipated to arise helps to avoid injury to an agreed upon primary interest.

Firm(s) selected for these advertised services shall become aware of and comply with state laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. 14-234, N.C.G.S. 133-1, and N.C.G.S. 133-2.

Firm(s) selected for Planning Services by the Town will be required to disclose any conflicts of interest for 18 months prior to the submission of the Proposal package to the Town.

If a conflict of interest is not disclosed by the contractor and a conflict of interest is determined by the Town of Wake Forest to exist at a later time, the contractor will not be compensated for their prior work and will be required to reimburse the Town of Wake Forest for any payments received. The Contractor would be immediately dismissed from the contract.

III. Changes in Personnel:

Changes to personnel on project team(s), particularly a project manager, are to be avoided wherever possible. The selected firm must request in writing to the Town for all changes to project team members. The Town will consider requests and may accept the new personnel changes, or may deny the request and consequently, the selected firm may no longer be considered for Planning and Design Services with the Town.

IV. Americans with Disabilities Act (ADA) Compliance:

The Town of Wake Forest will comply with the Americans with Disabilities Act (ADA) which prohibits discrimination on the basis of a disability. The Town of Wake Forest will make reasonable accommodations in all programs to enable participation by an individual with a

disability who meets essential eligibility requirements. Town of Wake Forest programs will be available in the most integrated setting for each individual. If any accommodations are necessary for participation in any program or services, participants are encouraged to notify Town staff.

V. Minority/Women/Small Business Enterprise:

It shall be the practice of the Town of Wake Forest Government to provide minority-owned, women-owned, and small business enterprises (collectively “M/W/SBE”) as well as other responsible vendors with fair and reasonable opportunity to participate in Town of Wake Forest’s business opportunities including but not limited to employment, construction development projects, and material/services, consistent with the laws of the State of North Carolina. The Town of Wake Forest’s minority participation goal is **10%** of the total project cost.

VI. Nondiscrimination Policy:

The policy of the Town of Wake Forest prohibits discrimination against any person or business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran’s status. It is further the policy of the Town of Wake Forest to conduct its contracting and procurement programs so as to prevent such discrimination and to resolve any and all claims of such discrimination.

VII. Design-Build Team Minimum Qualifications:

Firm’s Designer(s) of Record must have a current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work. Copy of license(s) is to be included in submission.

VIII. Insurance and Indemnity Requirements:

To the extent permitted by law, the Consultant agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Wake Forest, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, fault, actual liabilities, assertions of liability, expenses, suits, or losses, including all costs connected therewith, which may be asserted, claimed, or recovered against or from the Town of Wake Forest, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the Consultant.

The Consultant further agrees to purchase and maintain during the life of any contracts entered into with the Town the following insurance with an insurance company acceptable to the Town of Wake Forest and authorized to do business in the State of North Carolina:

- **Automobile:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 each person/\$1,000,000 each occurrence.
- **Comprehensive General Liability:** Bodily injury and property damage liability insurance shall protect the Consultant from claim of bodily injury or property damage which arises from operations of this contract. The amounts of such insurance shall not be less than \$1,000,000 bodily injury and property damage liability each occurrence/aggregate. This

insurance shall include coverage for product/completed operations and contractual liability assumed under the indemnity provision of this contract. The Town of Wake Forest shall be listed as an "Additional Insured".

- Consultant's Professional Liability: In a limit of not less than \$1,000,000.
- Workers' Compensation and Occupational Disease Insurance:
 - Coverage A – Worker's Compensation: Meeting the statutory requirements of the State of North Carolina.
 - Coverage B – Employer's Liability: \$1,000,000 each accident / \$1,000,000 disease – each employee / \$1,000,000 disease – policy limits.

Certificates of such insurance will be furnished to the Town of Wake Forest Purchasing Manager and shall contain the provision that the Town of Wake Forest be given thirty (30) days written notice of any intent to amend or terminate by either the Consultant or the insuring company. Additionally, the Town of Wake Forest shall be listed as Certificate Holder on COI.

IX. Notifications:

Public Records Notice:

Records received by the Town of Wake Forest in response to a bid solicitation or a request for proposal/qualifications are public records and subject to public inspection and copying. Some bid records are public as soon as received by the Town, others become public at bid opening and others at bid award.

The Public Records law (N.C.G.S. 132-1 *et seq.*) authorizes the Town to withhold from public inspection and copying legitimate and properly marked 'trade secrets'. If a record meets all the following conditions, then the Town may withhold that particular trade secret from a public record inspection request:

- It is a "trade secret" as defined in G.S. 66-152(3); and
- It is the property of a private "person" as defined in G.S. 66-152(2); and
- It is disclosed or furnished to the Town in connection with a bid or proposal; and
- It is marked as "confidential" or as a "trade secret" at the time of its initial disclosure to the Town.

If as part of your bid or proposal, you submit to the Town any record, or portion of a record, that you consider to be a trade secret meeting the definition contained in G.S. 66-152 (2), you may clearly mark the particular record, or portion of the record, that meets the definition of trade secret as TRADE SECRET or CONFIDENTIAL TRADE SECRET, and the Town will be authorized to withhold that particular record or portion thereof, from public inspection. In the event the Town receives a public records request for records you designate as 'trade secret' the Town will notify you and give you the opportunity to, within one week of such notification, confirm in writing that the specific record, or portion of record, that you designated as TRADE SECRET meets the requirements of G.S. 132-1.2 and G.S. 66-152, and the reasons, therefore. The Town will require that you indemnify the Town in the event a challenge is brought for the withholding of a record based on your having designated it a trade secret.

X. Addenda Notice:

It is the respondent's responsibility to ensure that all addenda have been received. Please visit <https://www.wakeforestnc.gov/finance/purchasing-warehouse/bids-announcements> for the most current information.

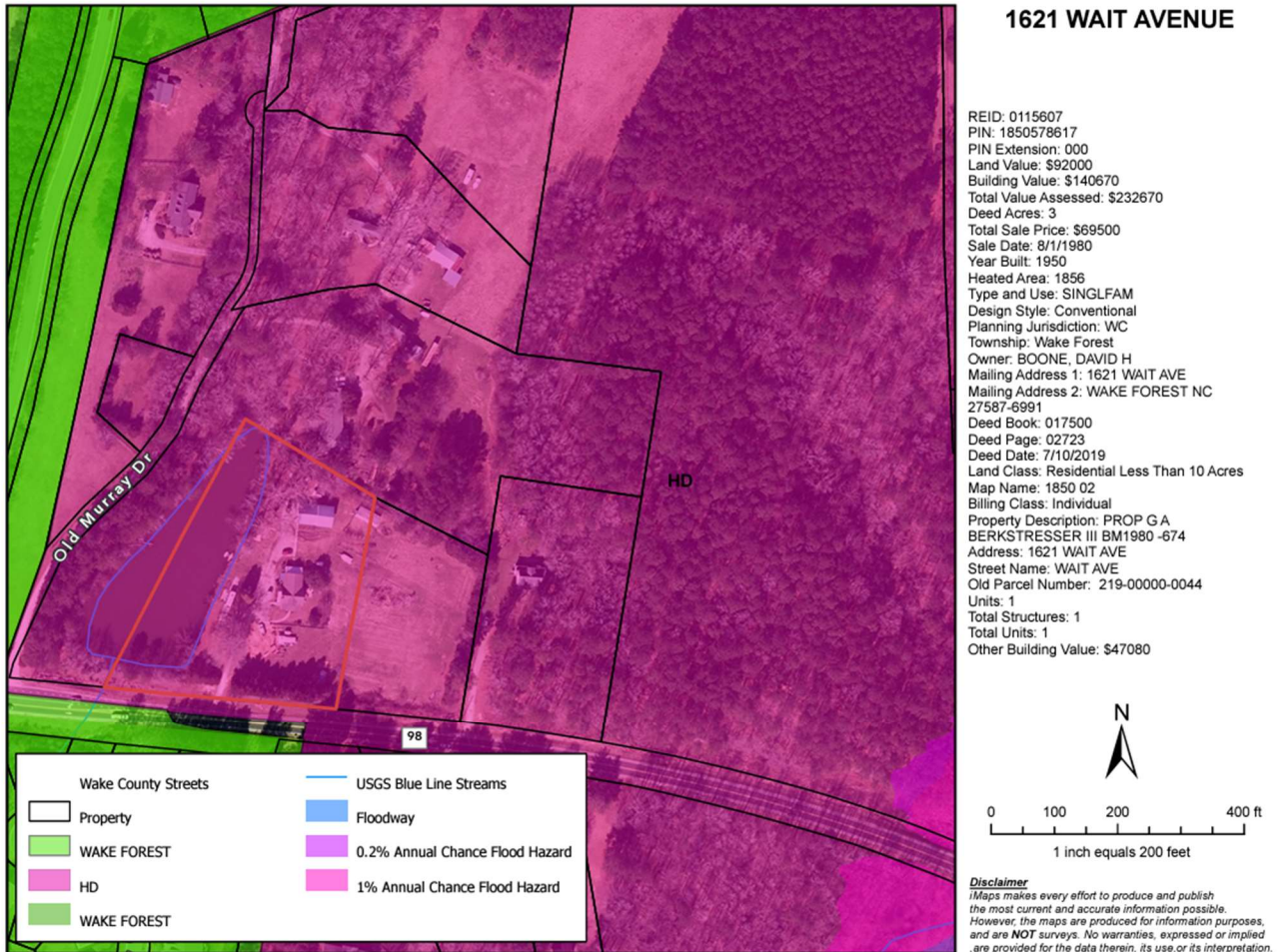
XI. Standard Terms and Conditions:

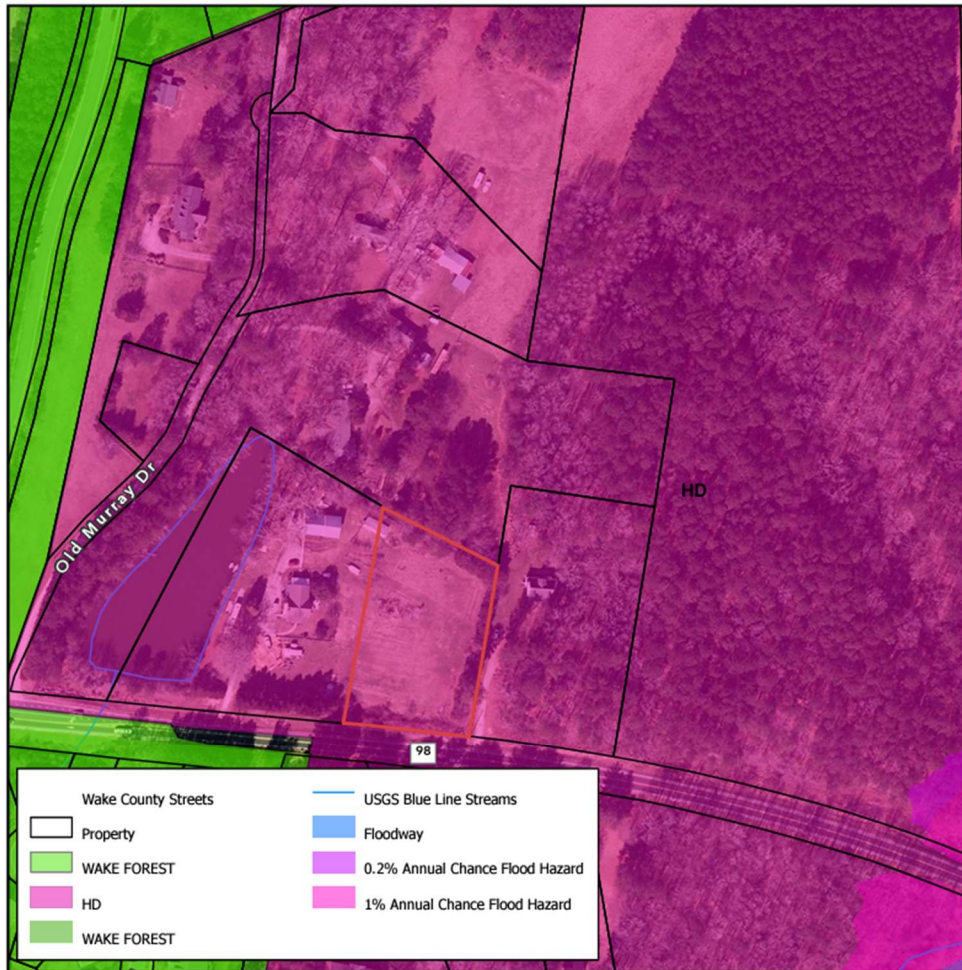
The Town's Standard Terms and Conditions listed at:

[https://www.wakeforestnc.gov/sites/default/files/uploads/purchasing/2023/9-27-](https://www.wakeforestnc.gov/sites/default/files/uploads/purchasing/2023/9-27-23_towf_standard_terms_and_conditions.pdf)

[23 towf standard terms and conditions.pdf](https://www.wakeforestnc.gov/sites/default/files/uploads/purchasing/2023/9-27-23_towf_standard_terms_and_conditions.pdf) will govern all matters related to the goods and/or services provided by you or your company (the "Vendor") to the Town of Wake Forest (the "Town") under a Town purchase order. Additional Terms and Conditions stated on the face of a Town purchase order shall take precedence over any conflicting Standard Terms and Conditions stated. Any Terms and Conditions not stated, but incorporated by reference therein, shall be binding only if provided or signed by the Town and attached hereto. In the event that a binding written contract signed by both the Vendor and the Town exists, the Terms and Conditions of that contract shall supersede any conflicting Standard Terms and Conditions.

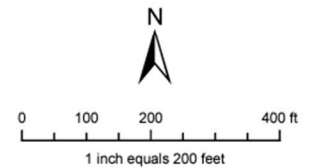
APPENDIX B- SITE LOCATION





1701 WAIT AVENUE

REID: 0116802
 PIN: 1850670578
 PIN Extension: 000
 Land Value: \$58560
 Total Value Assessed: \$58560
 Deed Acres: 1.48
 Total Sale Price: \$7500
 Sale Date: 2/2/1982
 Planning Jurisdiction: WC
 Township: Wake Forest
 Owner: BOONE, DAVID H
 Mailing Address 1: 1621 WAIT AVE
 Mailing Address 2: WAKE FOREST NC 27587-6991
 Deed Book: 017500
 Deed Page: 02723
 Deed Date: 7/10/2019
 Land Class: Vacant
 Map Name: 1850 02
 Billing Class: Individual
 Property Description: MONTAGUE LAND
 Address: 1701 WAIT AVE
 Street Name: WAIT AVE
 Old Parcel Number: 220-00000-0050
 Total Structures: 1
 ZIP: 27587



Disclaimer
 iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

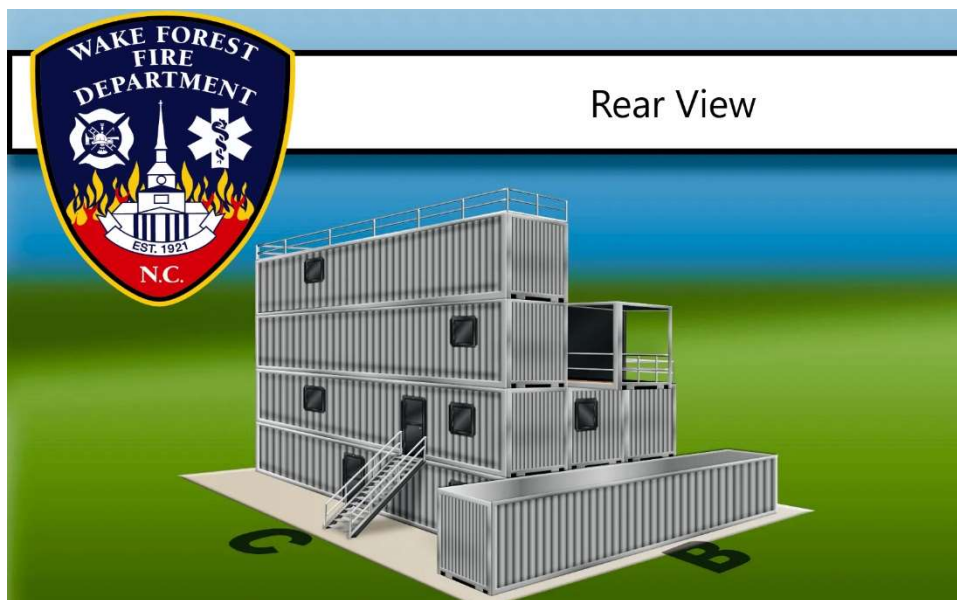
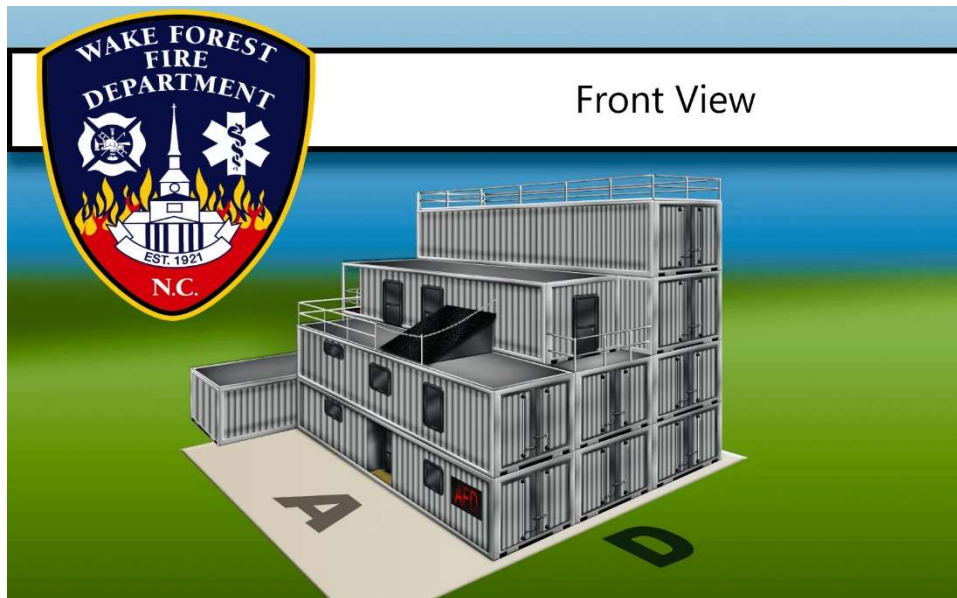
APPENDIX C- STAFF AMENITIES**Main Building:**

- Seven Offices
- Large Turnout Gear Storage Room
- Kitchen and Dining for 10 to 12
- 11 Bedrooms, 33 beds with storage lockers or closets
- Gym/ Exercise area
- Workshop
- Tool Room
- Outside storage for lawn equipment
- EMS supply storage
- Lobby/ Safe Room
- Large training room for 100 people
- Conference Room
- Restroom and showers for staff
- Public Restrooms
- Decontamination Room with 6 decontamination showers
- Breakroom for academy attendees
- Covered Patio

Exterior:

- 2400 Sq. Ft. climate- controlled workshop
- Training center ready site
- Concrete pads and drives for ease of access to all areas.

APPENDIX D- CONEX SCHEMATIC



APPENDIX E- APPLICATION SUBMITTAL CHECKLISTS

Below are a few of the major checklists that will be required during Town of Wake Forest review process. This list is meant to be a helpful resource and it not to be considered as all inclusive.

1. [Pre-Application Meeting Checklist](#)
2. [Annexation Checklist](#)
3. [Special Use Permit Checklist](#)
4. [Construction Drawing Submittal Checklist](#)
5. [Community Plan – Community Facilities](#)
6. [Review Timelines](#)
7. [Electronic Plan Review & Permit Portal](#)

End of Request for Qualifications # 23-0001

RESOLUTION 2024-XX

RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE ON
BEHALF OF THE TOWN OF WAKE FOREST, THE DESIGN BUILD CONTRACT
FOR FIRE STATION #6 PROVIDED BY EDIFICE LLC.

WHEREAS, the Town has identified the need to build an additional Fire Station to provide the same level of service as listed in our Insurance Services Office (ISO) level 1; and

WHEREAS, the Town should maintain its ISO Rating which scores a fire departments ability to protect the community rating; and

WHEREAS, the Town has purchases parcels 1701 and 1621 Wait Avenue that are suitable to provide the Northern and Eastern portions of the Town with fire services; and

WHEREAS, the Town released a request for qualifications (RFQ) in January 2024, which submissions due in February 2024; and

WHEREAS, the Town received a total of six submissions for Request for Proposals (RFP #2023-0001) that were reviewed by a multi-disciplinary selection committee; and

WHEREAS, after final interviews and negotiations, Edifice LLC a firm based out of Charlotte NC, Inc was selected as the highest ranked firm to design, build and construct Fire Station 6;

BE IT RESOLVED that the governing body of the Town of Wake Forest hereby authorizes the Town Manager to execute a contract with Edifice LLC for the Town of Wake Forest design build contract for Fire Station 6.

Adopted and effective this the 20th day of August 2024.

Vivian A. Jones, Mayor

Mayor

ATTEST:

Theresa Savary, Town Clerk



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-234-
Submitted by: Emma Linn
Submitting Department: Planning
Meeting Date: August 6, 2024

SUBJECT

Wake Forest Mobility Hub Project Update Presentation

Recommendation:

Item Summary:

ATTACHMENTS

- [Agenda Summary.pdf](#)

Agenda Item: Wake Forest Mobility Hub Project Update Presentation

Summary: A mobility hub is a place of connectivity where different travel options come together, offering an integrated suite of mobility services, amenities, and supporting technologies. Seven of the nine communities along NCDOT's planned S-line rail corridor are proposed to have a mobility hub. For Wake Forest, Downtown was selected as the preferred site for this facility, which will include an Amtrak rail station.

NCDOT is currently studying the design, engineering and space needs of the Wake Forest Mobility Hub and will be providing an update on this effort.

Attachments: None



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-252-

Submitted by: Candace Davis

Submitting Department: Administration

Meeting Date: August 6, 2024

SUBJECT

Presentation of Advisory Board Ordinance Amendment

Recommendation:

Item Summary:

ATTACHMENTS

- [Advisory_Boards-summary8.6.2024.docx](#)
- [AdvisoryBoardUpdate_8.6.2024.pptx](#)

Agenda Item: Presentation of Advisory Board Ordinance Amendment

Summary: At the October 20, 2020, Board of Commissioners meeting, the Board voted to change several Advisory Board ordinances. Tonight, staff would like to propose an Advisory Board ordinance amendment that would impact youth member seats.

Attachments: Presentation

Town Manager's Office



TOWN *of*
WAKE FOREST

Advisory Board Ordinance Amendment

Candace R. Davis, Assistant Town Manager

Overview

- In October 2020, the BOC voted to reduce the number of Advisory Boards from 14 to 9.
 - Streamline for more efficiency
 - Combine Boards that represent similar areas of interest
 - Manage volunteer participation
 - Promote collaboration
- Youth In Government (YIG) member seats were allotted to the remaining advisory boards. This allows the YIG members an opportunity to get involved with an Advisory Board of their interest.



Overview

- BOC changed the youth representative membership requirements.
- *The original grade levels for our youth reps changed from allowing teens in grades 9th through 12th to 11th & 12th only.*
- Since the ordinances have been in effect for a few years, we received feedback from the community, Commissioners and some advisory board members, regarding this requirement.



Youth In Government (YIG) Advisory Board Seats

Current Ordinance Language

All youth members must be high school students enrolled in grades 11 or 12, and residents of the town.

Recommended Change

All youth members must be high school students enrolled in grades 9th through 12th, and residents of the town.

Advisory Boards impacted:

1. Human Relations Council
2. Public Art Commission
3. Technology Advisory Board
4. Parks, Recreation and Cultural Resources Advisory Board
5. Urban Forestry Board



Next Steps

- Request BOC consensus to make edits; August 6th
- IF BOC agrees staff will work with Town Attorney to amend Ordinance text
- BOC vote to approve Advisory Board ordinance text changes at August 20th meeting.





Thank You!

wakeforestnc.gov



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-259-

Submitted by: Aileen J. Staples

Submitting Department: Administration

Meeting Date: August 6, 2024

SUBJECT

Financial Update

Recommendation:

Item Summary:

ATTACHMENTS

- [Financial Update_summary.pdf](#)

Agenda Item: Financial Update

Summary: Staff prepares monthly financial reports for each of the respective operating funds for which an annual budget is authorized by the Board of Commissioners. June 30 is the fiscal year end. Staff is working with our external auditors to close the books and prepare the Annual Comprehensive Financial Report for FYE 2024. The results for June 30, 2024, will be presented at the November 19 Board of Commissioner's meeting.

Staff will provide an update on the following at the work session:

- June 30 preliminary projections
- October 1 General Obligation Bond Sale
 - \$22,050,000 – November 2022 Referendum
 - \$ 1,460,000 - Two Thirds Bonds

Attachments: None



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-232-

Submitted by: Terry Savary

Submitting Department: Administration

Meeting Date: August 6, 2024

SUBJECT

Review of Draft Agenda for Upcoming Regular Meeting

Recommendation:

Item Summary:

ATTACHMENTS

- [DraftBOCAgenda_Aug202420.pdf](#)



Wake Forest Board of Commissioners
Draft Meeting Agenda
August 20, 2024 at 6:00 PM
All items listed are for discussion and possible action.

Call to Order

Pledge of Allegiance

1. Approval of Agenda

2. Approval of Minutes

- 2.A. July 2, 2024 Work Session
July 16, 2024 Regular Meeting

3. Presentations

- 3.A. Proclamation Recognizing September 2, 2024, as Saving Grace Day in the Town of Wake Forest, North Carolina
- 3.B. Proclamation Recognizing Constitution Week, September 17 - 23, 2024

4. Public hearings / Public Comment

- 4.A. Public Hearing to receive public comment on Proposed Bond Order authorizing \$1,460,000 Parks and Recreation Bonds (Two-Thirds)
- 4.B. Public Comment: If anyone would like to address the Board of Commissioners on an item other than a public hearing item during the time of public comment, please sign up with the Town Clerk prior to the meeting. Each speaker is asked to limit comments to 3 minutes. Please provide the clerk with copies of any handouts you have for the Board. Although the Board is interested in hearing your concerns, speakers should not expect Board action or deliberation on subject matter brought up during the Public Comment segment. Topics requiring further investigation will be referred to the appropriate Town Staff and may be scheduled for a future agenda. Thank you for your consideration of the Board of Commissioners, staff and other speakers.

5. Consent Agenda

(A Consent Agenda is a group of items passed with a single motion and vote. These matters are of a generally routine nature. No debate is allowable on any item included on

the Consent Agenda. If a Commissioner or any citizen of Wake Forest or its ETJ wants separate consideration of any item, it may be removed from the Consent Agenda by request.)

- 5.A. Approval of an Ordinance Amending the Code of Ordinances Chapter 8, Article I, Section 8-1 – Fire Limits
- 5.B. Approval of a Resolution authorizing the Town Manager to execute, on behalf of the Town of Wake Forest, a Design Build Contract (AIA Document 141) for Fire Station 6
- 5.C. Approval of The Horse Creek Watershed Study
- 5.D. Approval of Resolution to Participate in North Carolina Cooperative Liquid Assets Securities Systems (North Carolina CLASS)

6. Legislative Items

7. Planning Items

8. Administration and Financial Items

- 8.A. Consideration of approval of resolution providing for sale and issuance of \$1,460,000 General Obligation Parks and Recreation Bonds, Series 2024A (Two-thirds bonds)

9. Public Services Items

10. Parks and Recreation Items

11. Public Safety Items

12. Other Business

- 12.A. Department Monthly Reports
- 12.B. Wake County Tax Release
- 12.C. Strategic Plan Quarterly Tracker
- 12.D. CIP Project Tracker
- 12.E. Commissioner Reports

13. Adjournment



Board of Commissioners Work Session Agenda Item Report

Agenda Item No.: 2024-256-
Submitted by: Aileen J. Staples
Submitting Department: Finance
Meeting Date: August 6, 2024

SUBJECT

Consideration of approval of Resolution Making Certain Findings and Determinations and Ratifying the Filing of an Application with the Local Government Commission for the Proposed Issuance of Parks and Recreation Bonds

Recommendation:

Approval as submitted

Item Summary:

ATTACHMENTS

- [Two-thirds Bonds Resolution_Summary.pdf](#)
- [Preliminary Resolution-Wake Forest 2024 G.O. \(Two-Thirds\) \(4890-2804-7823.1\).doc](#)
- [Sworn Statement of Debt-Wake Forest 2024 G.O. \(Two-Thirds\) \(4882-5177-4671.1\).doc](#)
- [Statement of Disclosures - Wake Forest 2024 GO Bonds \(Two-Thirds\) \(4888-4737-9153.1\).doc](#)

Agenda Item:

Consideration of approval of resolution making certain findings and determinations and authorizing and ratifying the filing of an application with the Local Government Commission in connection with the proposed issuance of Parks and Recreation Bonds

Item Summary:

In conjunction with the scheduled \$22,050,000 bond sale on October 1 for the first authorized issuance from the November 2022 referendum it is staff's recommendation to utilize the two thirds bond authority to issue an additional \$1,460,000 for the purpose of Parks and Recreation. These additional monies will go towards Miller Park improvements and/or Reservoir Improvements. Both projects are underway and in the design phase.

Statutory provisions allow a unit to issue up to two thirds of general obligation bond principal retired in the previous fiscal year. This equates to just over \$1.4 million for the town. Since we are going to the bond market with a new issuance, all relative costs will be included for issuing this debt. Historically, the town has issued two thirds debt to during a regular bond sale which provides additional funding and is typically more cost effective than a stand-alone two thirds issuance.

Attachments:

- Resolution
- Sworn statement of net bonded debt
- Statement of disclosure

The Board of Commissioners of the Town of Wake Forest, North Carolina met in a regular meeting in the Board Chambers of the Town Hall located at 301 S. Brooks Street in Wake Forest, North Carolina, the regular place of meeting, at 6:00 p.m. on August 6, 2024.

Present: Mayor Vivian A. Jones, presiding, and Commissioners

Absent: Commissioners

Also Present: _____

* * * * *

_____ introduced the following resolution the title of which was read and a copy of which had been previously distributed to each Commissioner:

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS AND AUTHORIZING AND RATIFYING THE FILING OF AN APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION FOR THE PROPOSED ISSUANCE OF PARKS AND RECREATION BONDS BY THE TOWN OF WAKE FOREST, NORTH CAROLINA

BE IT RESOLVED by the Board of Commissioners (the “Board”) of the Town of Wake Forest, North Carolina (the “Town”):

Section 1. The Board does hereby find and determine that:

(a) Preliminary studies have been completed to demonstrate the need for improvements to various parks and recreational facilities of the Town.

(b) The Board wishes to commence the procedures for the issuance of not to exceed \$1,460,000 Parks and Recreation Bonds at this time.

(c) The annual audits of the Town show the Town to be in strict compliance with debt management policies and that the budgetary and fiscal management policies are in compliance with law.

Section 2. The filing of an application of the Town with the North Carolina Local Government Commission for approval of the issuance of said Parks and Recreation Bonds of the Town is hereby authorized, ratified and approved.

Section 3. The law firm of Womble Bond Dickinson (US) LLP is hereby appointed to serve, but solely at the pleasure of the Board, as bond counsel to the Town in connection with the authorization, sale and issuance of the said bonds.

Section 4. Davenport & Company LLC is hereby appointed to serve, but solely at the pleasure of the Board, as financial advisor to the Town in connection with the authorization, sale and issuance of the said bonds

Section 5. This resolution shall take effect immediately upon its adoption.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled "RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS AND AUTHORIZING AND RATIFYING THE FILING OF AN APPLICATION WITH THE LOCAL GOVERNMENT COMMISSION IN CONNECTION WITH THE PROPOSED ISSUANCE OF PARKS AND RECREATION BONDS BY THE TOWN OF WAKE FOREST, NORTH CAROLINA" was adopted by the following vote:

Ayes: _____

Noes: _____

Thereupon, _____ introduced the following order authorizing bonds the title of which was read and a copy of which had been previously distributed to each Commissioner:

**ORDER AUTHORIZING
\$1,460,000 PARKS AND RECREATION BONDS**

BE IT ORDERED by the Board of Commissioners of the Town of Wake Forest, North Carolina:

1. That pursuant to the Local Government Bond Act, as amended, the Town of Wake Forest, North Carolina is hereby authorized to contract a debt, in addition to any and all other debt which said Town may now or hereafter have power and authority to contract, and in evidence thereof to issue Parks and Recreation Bonds in an aggregate principal amount not exceeding \$1,460,000 for the purpose of providing funds, together with any other available funds, to acquire, construct, improve and equip various parks and recreational facilities inside and outside the corporate limits of said Town, including, without limitation, greenway and stream restoration improvements and any related land, easements and rights of way.

2. That taxes shall be levied in an amount sufficient to pay the principal of and the interest on said bonds.

3. That a sworn statement of debt of said Town has been filed with the Town Clerk and is open to public inspection.

4. That this order shall take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people within 30 days after the date of its publication as introduced as provided in G.S. 159-60, in which event it will take effect when approved by the voters of said Town at a referendum as provided in said Act.

5. That this order is adopted pursuant to the provisions of G.S. 159-49, which authorizes the issuance of bonds without a vote of the people for the purposes specified therein in an amount not exceeding two-thirds of the amount by which the outstanding indebtedness of said Town has been reduced in the preceding fiscal year.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing order entitled "ORDER AUTHORIZING \$1,460,000 PARKS AND RECREATION BONDS" was adopted upon introduction by the following vote:

Ayes: _____

Noes: _____

The Board thereupon designated the Assistant Town Manager/Chief Financial Officer of the Town to make and file with the Town Clerk the sworn statement of debt of the Town which is required by The Local Government Bond Act, as amended, to be filed after the bond order has been introduced and before the public hearing thereon. The Board also designated the Assistant Town Manager/Chief Financial Officer of the Town to file with the Town Clerk the statement of disclosures which is required by The Local Government Bond Act, as amended, to be filed with the Town Clerk at the time the bond order is introduced and further directed the Town Clerk to file a copy of such statement with the Local Government Commission and to post such statement on the Town's website.

Thereupon, the Town Clerk presented the sworn statement of debt and the statement of disclosures previously delivered to the Town Clerk by the Assistant Town Manager/Chief Financial Officer as so required.

Thereupon, the Board fixed 6:00 p.m., August 20, 2024, in the Board Chambers of the Town Hall located at 301 S. Brooks Street in Wake Forest, North Carolina, as the hour, day and place for the public hearing upon the order entitled "ORDER AUTHORIZING \$1,460,000 PARKS AND RECREATION BONDS" and directed the Town Clerk to publish said order, as required by The Local Government Bond Act, as amended, once in The News and Observer not later than the sixth day before said date.

* * * * *

I, Terry Savary, Town Clerk of the Town of Wake Forest, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the Board of Commissioners of said Town at a regular meeting held on August 6, 2024, as it relates in any way to the adoption of the foregoing resolution and bond order authorizing general obligation bonds of said Town and the calling of a public hearing thereon and that said proceedings are to be recorded in the minutes of said Board of Commissioners.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of said Town this 6th day of August, 2024.

Town Clerk

[SEAL]

**TOWN OF WAKE FOREST, NORTH CAROLINA
SWORN STATEMENT OF DEBT MADE PURSUANT TO THE
LOCAL GOVERNMENT BOND ACT, AS AMENDED**

I, Aileen J. Staples, Assistant Town Manager/Chief Financial Officer of the Town of Wake Forest, North Carolina, having been designated by the Board of Commissioners of said Town to make and file with the Town Clerk a statement of the debt of said Town pursuant to The Local Government Bond Act, as amended, DO HEREBY CERTIFY that the following is a true statement as shown by the books in my office, not taking into consideration any debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds:

(a) GROSS DEBT

a (1) Outstanding debt evidenced by bonds:

Public Improvement Bonds, Series 2015	\$ 2,365,000
Refunding Bonds, Series 2016	1,308,000
Public Improvement Bonds, Series 2018B	11,670,000
Refunding Bonds, Series 2019	2,151,000
Public Improvement, Series 2021A	4,920,000
Public Improvement, Series 2021B	<u>360,000</u>
Total	<u>\$22,774,000</u>

**a (2) Bonds authorized by orders introduced,
but not yet adopted:**

Parks and Recreation Bonds	<u>\$1,460,000</u>
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**a (3) Unissued bonds authorized by
adopted orders:**

Refunding Bonds (2019)	\$ 90,000
Roadway and Transportation Bonds (2022)	23,720,000
Parks and Recreation Bonds (2022)	24,430,000
Greenway Improvement Bonds (2022)	14,350,000
Parking Facilities Bonds (2022)	<u>12,500,000</u>
Total	<u>\$75,090,000</u>

a (4) Outstanding debt, not evidenced by bonds: \$ -0-

(a) GROSS DEBT, being the sum of a (1), a (2), a (3) and a (4): \$99,324,000

(b) DEDUCTIONS

- b (1) Funding and refunding bonds authorized by orders introduced but not yet adopted: \$ -0-
- b (2) Funding and refunding bonds authorized but not yet issued: \$ 90,000
- b (3) The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes or sanitary sewer purposes (to the extent that the bonds are deductible under G.S. 159-55(b)): \$ -0-
- b (4) Bonded debt included in gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes: \$ -0-
- b (5) Bonded debt included in gross debt and incurred, or to be incurred, for sanitary sewer system purposes (to the extent that said debt is made deductible by G.S. 159-55(b)): \$ -0-
- b (6) Uncollected special assessments heretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred to the extent that such assessments will be applied, when collected, to the payment of any part of the gross debt: \$ -0-
- b (7) The amount, as estimated by the Chief Financial Officer of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt: \$ -0-
- (b) DEDUCTIONS, being the sum of b (1), b (2), b (3), b (4), b (5), b (6) and b (7): \$ 90,000

(c) NET DEBT

- (c) NET DEBT, being the difference between the GROSS DEBT (a) and the DEDUCTIONS (b): \$ 99,234,000

(d) ASSESSED VALUE

(d) ASSESSED VALUE of property subject to taxation by the Town, as revealed by the Town tax records and certified to the Town by the assessor: \$11,748,790,394

(e) PERCENTAGE

(e) Percentage which the NET DEBT (c) bears to the ASSESSED VALUE (d): 0.85%

The foregoing statement is true.

Assistant Town Manager/Chief Financial Officer

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE) ss.:

Subscribed and sworn to before me this ____ day of August 2024.

[SEAL]

Notary Public

Printed Name: _____

My Commission expires _____.

* * * * *

I, Terry Savary, Town Clerk of the Town of Wake Forest, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of a statement which was filed with me at a meeting of the Board of Commissioners of said Town held on August 6, 2024, after the introduction of and before the public hearing on an order authorizing bonds of said Town, and that said statement is open to public inspection in my office.

WITNESS my hand and official seal of said Town this 6th day of August 2024.

Town Clerk

[SEAL]

TOWN OF WAKE FOREST, NORTH CAROLINA

**STATEMENT OF DISCLOSURE MADE PURSUANT TO
THE LOCAL GOVERNMENT BOND ACT, AS AMENDED**

I, Aileen J. Staples, Assistant Town Manager/Chief Financial Officer of the Town of Wake Forest, North Carolina (the “Town”), having been designated by the Board of Commissioners of the Town to make and file with the Town Clerk a statement of disclosure pursuant to The Local Government Bond Act, as amended, DO HEREBY CERTIFY as follows:

1. Bond Order. On August 6, 2024, the Board of Commissioners of the Town introduced a bond order authorizing the issuance by the Town of not to exceed \$1,460,000 Parks and Recreation Bonds (the “Bonds”), for the purpose of providing funds, together with any other available funds, to acquire, construct, improve and equip various parks and recreational facilities inside and outside the corporate limits of said Town, including, without limitation, greenway and stream restoration improvements and any related land, easements and rights of way.

2. Estimated Interest. If the Bonds are duly authorized and issued, I have estimated that the total amount of interest to be paid by the Town over the expected term of the Bonds to be \$806,410, which estimate is based on the following assumptions:

(a) The Bonds will be issued on October 1, 2024 in the aggregate principal amount of \$1,460,000.

(b) The Bonds will mature on October 1, \$75,000 2025 to 2036, inclusive, and \$70,000 2037 to 2044, inclusive.

(c) All of the Bonds will bear interest at a rate of 5.344% per annum, payable semiannually. Such interest rate was determined by the North Carolina Local Government Commission to be the highest interest rate charged for similar tax-exempt debt over the past twenty (20) years and is a conservative rate as compared to current market rates. Such rate assumes that interest on the Bonds will not be includable in the gross income of the owners thereof for federal income tax purposes.

(d) The Bonds will not be redeemed prior to their respective maturities.

The total estimated amount of interest on the Bonds over the expected term of the Bonds is preliminary and for general informational purposes only. The Town makes no assurances that the assumptions upon which such estimate is based will occur, and the occurrence of certain of such assumptions is beyond the control of the Town. Differences between the actual circumstances at the time the Bonds are issued and the assumptions set forth above could result in significant differences between the total amount of estimated interest and the total amount of actual interest to be paid on the Bonds if and when issued.

3. Property Tax Rate Increase. Sufficient general fund revenues are projected to be available to pay the principal of and interest on the Bonds, and no property tax rate increase is expected to be needed to pay the principal of and interest on the Bonds.

This estimate is preliminary and for general informational purposes only. The Town makes no assurances that the assumptions upon which such estimate is based will occur, and the occurrence of certain of such assumptions is beyond the control of the Town. Differences between the actual circumstances during the term of the Bonds and the assumptions used in determining such estimate could result in significant differences between the estimated property tax increase and the actual property tax increase resulting from the issuance of the Bonds.

4. “Two-Thirds” Capacity. At present, the Town has the capacity to issue general obligation bonds without a referendum in the amount of \$1,463,333 during the fiscal year ending June 30, 2025 on account of a net reduction in its general obligation bond indebtedness of \$2,195,000 in the fiscal year ended June 30, 2024. \$1,460,000 of such “two-thirds” capacity is being utilized for purposes of issuing the Bonds. Upon the issuance of the Bonds, the Town will have \$3,333 of further capacity to issue general obligation bonds without a referendum on account of a net reduction in its general obligation bond indebtedness in the fiscal year ended June 30, 2024 (which the Town does not expect to issue).

Pursuant to N.C.G.S. 159-55.1(b), the validity of the Bonds is not subject to challenge on the grounds that the actual interest to be paid on the Bonds when issued or the actual property tax increase that may be required to provide funds to pay principal and interest on the Bonds are different than the estimates set forth above.

Signed this ____ day of August, 2024.

Assistant Town Manager/Chief Financial Officer

* * * * *

I, Terry Savary, Town Clerk of the Town of Wake Forest, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of a statement of disclosure which was filed with me at a meeting of the Board of Commissioners of said Town held on August 6, 2024, after the introduction and before the public hearing on an order authorizing general obligation bonds of said Town, and that said statement is open to public inspection in my office.

WITNESS my hand and official seal of said Town this 6th day of August, 2024.

Town Clerk

[SEAL]