

# **LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET**

Tuesday, May 10, 2022  
5:00 p.m.



**Mayor Carol C. Pritchett**  
**Mayor Pro Tem David DiOrio**  
**Commissioner Patrick Bryant**  
**Commissioner Scott Doster**  
**Commissioner Jim Proctor**

# TOWN OF LAKE LURE

## Town Council Regular Meeting

Tuesday, May 10, 2022 - 5:00 PM  
Lake Lure Municipal Center



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### Agenda

**I. Call to Order**

**II. Agenda Adoption**

**III. Mayor's Communications**

**IV. Town Manager's Communications**

**V. Council Liaison Reports and Comments**

**VI. Public Comment**

*The public is invited to speak. Please keep comments limited to three minutes or less. Comments may also be submitted in writing to the Town Clerk, [ostewman@townoflakelure.com](mailto:ostewman@townoflakelure.com), at least one hour prior to the meeting.*

**VII. Consent Agenda**

- A. Approval of the March 4, 2022 Reconvened Meeting Minutes, the April 12, 2022 Regular Meeting Minutes, and the April 27, 2022 Special Work Session Meeting Minutes
- B. Budget Amendment (BA) #330 - Covering Department Overruns-Fuel & Repairs/Maint. Vehicles
- C. Budget Amendment (BA) #331 - Covering Department Overruns-Supplies/Chemicals
- D. Budget Amendment (BA) #332 - Covering Department Overruns- Salary & Retirement
- E. Approval of the Dirty Dancing Festival as a Town Sanctioned Event with Suspension of Chapter 8 Article II: "Peddlers" Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation; and Suspension of Chapter 30, Article II Sec. 30- 19 through 30-35 Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

- F. Approval of the “PAWS” (Pets are Worth Saving) Pet Fest at Morse Park with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances; Waiver of Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation.

**VIII. New Business**

- A. Approval of the DBIA Contract with Design Builder Ruby-Collins, Inc.

**IX. Closed Session**

- A. *In accordance with G.S. 143-318.11(a) (3) for the purpose of discussing attorney client privilege or legal claims.*

**X. Adjournment**

**III**  
**MAYOR'S**  
**COMMUNICATIONS**

**IV.**  
**Town Manager's**  
**Communications**



## **Town Manager / Town Clerk April Report**

Below are the March highlights from the various departments. Full department reports are available upon request.

**Public Services** – The Public Service Department is busy keeping everything working as smoothly as possible, from normal maintenance, to any problems the Town has that is in our realm to fix. Top three accomplishments/project updates:

- Began road mowing
- Administered new water taps
- Hired Kace Environmental to take over the water system reporting, putting the department back in compliance with state regulations

**Community Development** – Director Williams reports another active month of development permit applications. Various investigations and enforcement follow-ups on violations, including work without permits and land disturbance complaints, occurred in April. Director Williams and Mr. Carpenter are ready to move into May. Top accomplishments/project updates:

- Long-awaited Highlands slope failure repair work progressing as permitted.
- Attended 2 day workshop with NC DEMLR and DEQ for update on our responsibilities as a Local Program administering State-mandated erosion and sedimentation controls. Included training on DEQ's latest "land disturbance" reporting requirements. Established some key new contacts with other local programs, DEMLR and DEQ.
- Met with Jeff Geisler/Rumbling Bald to further understanding of both TOLL's and RBR's expectations and requirements, as well as to expand our communications.
- Met with Peter O'Leary regarding plans for development between Town and the Village. Effective reinforcement of that important relationship.
- Keeping cell tower project moving (although State Office of Historic Preservation and NC Fish & Wildlife has slowed progress). Balloon test for Historic Preservation was conducted successfully and without issues on April 12th. Reached out to Fish & Wildlife regarding critical emergency communications justification for tower. We have received the fully executed agreement to enter into the tower lease with Tillman (AT&T's construction partner) and their earnest money. Maintaining communication with both AT&T and Tillman.

- Restart of Lake Structure Maintenance Program delayed from last month. Pushed to priority for May.
- Continuing working with Director Krejci, Chief Waycaster and Chief Humphries to update Event management and permitting into workable, beneficial process.

**Fire / Emergency Management** – Chief Waycaster reports that Firefighter Max DaLauter completed EMT basic training. The department participated in SCUBA training at Gray’s Quarry, EMT in-service training, service testing, and more. A total of 281 hours of training was completed in April. The department responded to 30 calls throughout the month. The following are the top three notable accomplishments that took place during the month of March:

- Scheduled the Tabletop Exercise on June 3<sup>rd</sup>
- Trey Lewis and Chris Melton completed fire-inspector training
- Pre-plans are being completed

**Police** – The Lake Lure Police Department reports that April has shown a pick up in the volume of road traffic, which was predicted as they see folks beginning to come back out and vacation. It was evident of that as the call volume has increased. The department looks forward to policing the town as this busy summer begins. Top three accomplishments in March:

- AXON gave a presentation to Chief and Officers on the benefits of using drones for investigations.
- Staff is being dutiful working hard to get their yearly training completed before our busy season kicks in. This training is required on updated courses each and every year and helps our Officers stay up to date with new laws.
- Corporal Collins was nominated and accepted for the Region C Award for his diligent investigation work in an incident where he rode up on two individuals attempting to steal gas, via a scanner used to turn the pumps on, at Ingles. He was able to hold the two at gunpoint until other officers arrived. Corporal Collins was able to take them into custody and found large tanks for fuel storage in the back of the U-Haul they were driving. Corporal Collins continued investigating this crime and by his work has helped other jurisdictions in solving the way the gas was stolen as well as other need to know about the case. This incident was reported on three local television stations.

**Parks, Recreation & Lake** – Director Dean Givens and Parks & Trails Coordinator Dana Bradley continue to provide exemplary oversight of the Parks, Recreation, and Lake Department. Givens and Bradley have been working on dredging, debris pickup, mining permit modification, preparation of the new boat permitting system, renovation of the new Greenspace Parks, Recreation, and Lake Department Office, and much more. Additionally, Coordinator Bradley facilitated a total of 192 volunteer hours for the month of March. Three notable projects/activities updates:

- Completed the installation of the expanded Buffalo Creek Park parking lot
- New office renovations are nearly complete
- Continued building RecDesk software

**Finance** – Finance Director Sam Karr and Assistant Finance Director Stephen Ford various items of interest for the month of April, along with a finance report which is available upon request. Tax collections are over 100% collected through and state revenues are at 87.72% collected. Karr and Ford have been working extra hard to balance the budget, complete the draft FY 22-23 budget, prepare for and complete the annual audit, and prepare for the upcoming budget meeting with various staff and Town Council.

**Communications** – Communications Director Krejci has posted numerous articles that illustrate town related news, a listing of these articles with hyperlinks was emailed to over 1500 citizens, along with a link to the Town Calendar of Events. Director Krejci has participated on the Lake Utility Advisory Board, Parks and Recreation Board, Lake Lure Music Festival Planning Committee, and the staff event planning team. Additionally, Director Krejci has continued to work towards grant funding. Top projects/activities:

- **Social Media:** Made 35 posts for the community with a post reach of 34,000 for the month. Facebook Followers are up to 17,920, a 9% increase over 3/21.
- **Lake Lure Classical Academy High School Student Mentorship**
- **Administrative Professionals Recognition:** Helping make colleagues feel valued and appreciated is critical to our future success as a team. Department Heads came together in celebration of the seven staff members who support our Town Council, Town Boards, Town Staff and the Community.

### **Manager / Clerk / Admin Summary**

April was a busy month including an array of meetings and ever-changing day-to-day operations. The Town officially completed all necessary tasks to apply for additional project funding. The draft budget was completed and a budget meeting is set for May. The Town also advertised bids for both design build services of the sewer replacement and the reservoir drain procurement. Mr. Hank Perkins will begin as Town Manager on June 1.



**V**  
**COUNCIL LIAISON**  
**REPORTS AND**  
**COMMENTS**

# VI

## PUBLIC COMMENT

*The public is invited to speak. Please keep comments limited to three minutes or less. Comments may also be submitted in writing to the Town Clerk, [ostewman@townoflakelure.com](mailto:ostewman@townoflakelure.com), at least one hour prior to the meeting.*

# VII

## Consent Agenda

- A. Approval of the March 4, 2022 Reconvened Meeting Minutes, the April 12, 2022 Regular Meeting Minutes, and the April 27, 2022 Special Work Session Meeting Minutes
- B. Budget Amendment (BA) #330 - Covering Department Overruns-Fuel & Repairs/Maint. Vehicles
- C. Budget Amendment (BA) #331 - Covering Department Overruns-Supplies/Chemicals
- D. Budget Amendment (BA) #332 - Covering Department Overruns-Salary & Retirement
- E. Approval of the Dirty Dancing Festival as a Town Sanctioned Event with Suspension of Chapter 8 Article II: "Peddlers" Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation; and Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.
- F. Approval of the "PAWS" (Pets are Worth Saving) Pet Fest at Morse Park with Suspension of Chapter 8 Article II: "Peddlers" Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation.



**MINUTES OF THE RECONVENED MEETING OF THE LAKE LURE TOWN COUNCIL  
HELD FRIDAY, MARCH 4, 2022, 8:30 A.M. AT THE LAKE LURE MUNICIPAL  
CENTER**

**PRESENT:** Mayor Carol C. Pritchett  
Mayor Pro Tem David DiOrio  
Commissioner Patrick Bryant  
Commissioner Scott Doster  
Commissioner Jim Proctor

William Morgan, Jr., Town Attorney  
Olivia Stewman, Town Clerk / Interim Town Manager

**ABSENT:** N/A

Mayor Carol C. Pritchett reconvened the recessed meeting from February 8, 2022 at 8:30 a.m.

**IX. CLOSED SESSION**

Commissioner Doster made a motion to enter closed session in accordance with G.S. 143-318.11(a) (6) for the purpose of discussing personnel matters. Commissioner DiOrio seconded and all voted in favor.

During closed session, Council held interviews for the Town Manager Position.

A motion was made at 4:59 p.m. to return to open session. The motion was seconded and all members voted in favor.

Upon returning to open session, Mayor Pritchett excused herself from the meeting to accompany Renee Narloch to her hotel and discuss next steps.

Additionally, Commissioner Bryant made a motion to amend the agenda to add Resolution 22-03-04 honoring Kay Dittmer. Commissioner DiOrio seconded and all voted in favor.

**X. RESOLUTION NO. 22-03-04 HONORING KAY DITTMER**

Commissioner Doster moved to adopt the Resolution (Attachment A), Commissioner DiOrio seconded, and the motion unanimously passed.

**XI. ADJOURMENT**

The Board then discussed each members' recommendation for advisory board appointments for the boards each serves as the Council liaison. A discussion of how frequently the advisory boards should meet followed. The Board then discussion the possibility of combining and restructuring the Boards.

Commissioner Bryant motioned to adjourn the meeting. Commissioner Doster seconded and all voted in favor. The meeting was adjourned at 5:33 p.m.

ATTEST:

\_\_\_\_\_  
Olivia Stewman,  
Town Clerk

\_\_\_\_\_  
Mayor Carol C. Pritchett



**RESOLUTION NO. 22-03-04**  
**HONORING THE DEDICATED SERVICE OF**  
*Kay Dittmer*

**WHEREAS**, Kay Dittmer has served as an original co-founder of the Olympiad providing 17 years of exemplary service and dedication in orchestrating the Lake Lure Olympiad;

**WHEREAS**, The Lake Lure Olympiad is a non-profit organization that functions entirely through the hard work of over 250 volunteers that have been recruited by Kay Dittmer and her tireless Board;

**WHEREAS**, The Lake Lure Olympiad has been a major asset to the Lake Lure community and has given back well over \$300,000 to local charities and service organizations;

**WHEREAS**, The Lake Lure Olympiad is crucial for the promotion of health, wellness, regional tourism, and economic development for the Town of Lake Lure and the Hickory Nut Gorge with over 500 annual participants and their families who eagerly return to our area each year;

**WHEREAS**, Kay Dittmer has nurtured each of these participants with a special passion for enriching the lives of the children who participate in the Olympiad, as well as the children who live in the Gorge.

**WHEREAS**, Kay Dittmer has played a critical role in developing, sustaining and successfully operating the Lake Lure Olympiad for these countless participants; and

**WHEREAS**, Kay Dittmer has thus significantly contributed to the overall well-being of the Lake Lure Community, our residents and all those who visit to participate in the Olympiad over all these many years; now

**THEREFORE BE IT RESOLVED**, that on behalf of the Lake Lure Town Council and the citizens of the Town of Lake Lure, the Lake Lure Town Council expresses deep and sincere appreciation for Kay Dittmer's dedicated service to the Lake Lure Community.

**READ, APPROVED AND ADOPTED** this the 4<sup>th</sup> day of March, 2022.

ATTEST:

\_\_\_\_\_  
Olivia Stewman, Town Clerk

\_\_\_\_\_  
Mayor Carol C. Pritchett



**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL  
HELD TUESDAY, APRIL 12, 2022, 5:00 P.M. AT THE LAKE LURE MUNICIPAL  
CENTER**

**PRESENT:** Mayor Carol C. Pritchett  
Mayor Pro Tem David DiOrio  
Commissioner Patrick Bryant  
Commissioner Scott Doster  
Commissioner Jim Proctor

William Morgan, Jr., Town Attorney  
Olivia Stewman, Town Clerk / Interim Town Manager

**ABSENT:** N/A

**I. CALL TO ORDER**

Mayor Carol C. Pritchett called the meeting to order at 5:00 p.m. and Commissioner Patrick Bryant gave the invocation. Council members led the pledge of allegiance.

**II. AGENDA ADOPTION**

Commissioner Proctor made a motion to adopt the agenda, as presented. Commissioner DiOrio seconded and the motion carried 4-0.

**III. MAYOR'S COMMUNICATIONS**

Mayor Pritchett announced Mr. Hank Perkins had been selected as the new town manager and he will begin in June. Mayor Pritchett also noted that a balloon test was conducted this morning (April 12) by the Historic Preservation Society for the purpose of identifying how the communications tower might affect certain views and it went well, which means the town is one step closer to constructing the communications tower. Pritchett noted that the Trash Talkin' event took place this morning as well and the Mayor thanked all volunteers and expressed appreciation for all types of volunteers in the community.

**IV. TOWN MANAGER'S COMMUNICATIONS**

Interim Manager Olivia Stewman provided an update in regard to town operations.

**V. PUBLIC HEARING**

**A. PROPOSED ORDINANCE NO. 22-04-12 AN ORDINANCE AMENDING SECTION 36-231(D) OF THE ZONING REGULATIONS**

Community Development Director Michael Williams explained that in order to clarify a potential ambiguity in the interpretation of prohibited fencing materials, Ordinance No. 22-04-12 would amend the Section 36-231(d) to specifically allow welded, galvanized wire fencing materials. Williams also noted that this amendment would acknowledge that this type of fencing is distinctly different from chicken wire and other woven or mesh fencing, and thereby is not specifically prohibited in required street front yards. Director Williams noted that the Zoning and Planning Board voted to recommend that council approve of this change to the zoning regulations.

Members of the public were invited to participate in the public hearing and there was no participation.

**VI. COUNCIL LIAISON REPORTS AND COMMENTS**

Commissioner Scott Doster reported the activities of the Zoning and Planning Board and Utilities Advisory Board

Commissioner David DiOrio reported the activities of the Lake Advisory Board.

Commissioner Jim Proctor reported the activities of the ABC Board.

Commissioner Patrick Bryant reported the activities of the Parks and Recreation Board.

Mayor Pritchett reported on the activities of the Lake Lure Steering Committee.

**VII. PRESENTATIONS**

**A. LEGISLATIVE UPDATE**

State Representative Jake Johnson provided a legislative update including details regarding HD 113 changing the NC election districts, the state budget, wages, broadband expansion, the elimination of veteran tax, and more.

**VIII. PUBLIC COMMENT**

Mayor Carol C. Pritchett invited the audience to speak.

There was no public comment.



**IX. CONSENT AGENDA**

Mayor Carol C. Pritchett presented the Consent Agenda and asked if any other items should be removed before calling for action.

Commissioner Doster asked about Budget Amendment #326 and request for contractor for well water system operator in responsible charge and whether or not town employees are working towards getting their own certifications in order to fulfill this responsibility in the future. Public Services Director Dean Lindsey answered that various employees in the department are working at obtaining their certification, but the contracted operator will complete all required duties until then.

Commissioner Doster also inquired about Budget Amendment #327 in regard to request for sewer maintenance equipment, which included a jet setter. Commissioner Doster asked if the jet setter could be utilized around the entirety of the town. Director Lindsey explained that this piece of equipment was originally going to be bought using state funding, but due to the urgency of need for the piece of equipment, the town cannot wait. Lindsey also explained that the jet setter will be used for both land and lake operations.

Commissioner DiOrio made a motion to approve the Consent Agenda, as amended per the agenda adoption. Commissioner Doster seconded. Therefore, the Consent Agenda incorporating the following items was unanimously approved and adopted:

- A. Approval of the March 8, 2022 Regular Meeting Minutes and the March 23, 2022 Special Work Session Meeting Minutes
- B. Resolution No. 22-04-12 - Resolution by the Town Council of the Town of Lake Lure Accepting a State Revolving Loan Offer of \$12.5 Million
- C. Resolution No. 22-04-12A - Resolution by the Town Council of the Town of Lake Lure Accepting the American Rescue Plan Grant Offer of \$8 Million
- D. Lake Lure Classic Boat and Auto Show Request for Waivers / Council Approval
- E. Budget Amendment (BA) # 325 – Fire Department’s Emergency Tabletop Exercise
- F. Budget Amendment (BA) #326 and Request for Contractor for Well Water System Operator in Responsible Charge
- G. Budget Amendment (BA) #327 - Request for Sewer Maintenance Equipment for Lake Lure Sewer System
- H. Budget Amendment (BA) #328 - Cover outstanding invoices incurred by Labella on-call professional services regarding sewer assistance for Phase 6- Design & Permitting & Bid, and Phase 11- Survey Design, Permit & Bid Phase

- I. Approval of the Lake Lure Farmers Market as a Town Sanctioned Event with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances and Waiver of the Noise Regulation, Chapter 20 Article I Sec. 20-28 of the Noise Regulation.

**X. NEW BUSINESS**

**A. PANGAEA SERVICE AGREEMENT – SECOND AMENDMENT**

Interim Manager Stewman explained that following the discussion at the March 23, 2022 work session meeting, she spoke with Mr. Walters who agreed to add an additional location to the service agreement. Stewman noted that Mr. Walters would not reduce the length of the service agreement from five to three years.

Commissioner DiOrio asked if staff had any issues with PANGAEA internet and Stewman and present staff stated that there were no issues. Commissioner Proctor noted that since PANGAEA is increasing the MBs, internet service should improve regardless.

Commissioner Proctor made a motion to approve the PANGAEA Service Agreement Second Amendment. Commissioner Bryant seconded and the motion carried 4-0.

**X. NEW BUSINESS**

**B. SCHNABEL WORK ORDER NO. 7 – PROFESSIONAL DAM ENGINEERING SERVICES FOR THE RESERVOIR DRAIN CONSTRUCTION AT LAKE LURE DAM**

Commissioner DiOrio explained that the Town plans to procure the valve for the dam in the near future and noted that this valve will allow the town to drawdown the lake 20 feet opposed to the limit of 12 feet now. DiOrio also noted that this valve will relieve concerns of dam safety because it will fulfill safety requirements. Commissioner DiOrio explained that the cost of the valve is \$1 million and that dam it will be funded through the dam reserve fund. DiOrio detailed that Task 1 of Work Order 7 would go into financing the procurement, task 2 will allow for oversight and engineering, and task 3 provides engineering services during installation. Commissioner DiOrio recommended the approval of Task 1 and Task 2, but felt that Task 3 was premature.

Commissioner DiOrio made a motion to approve Task 1 and Task 2 of Schnabel Work Order No. 7 – professional dam engineering services for the reservoir drain construction at Lake Lure dam. Commissioner Proctor seconded and the motion carried 4-0.

**X. NEW BUSINESS**

**C. VALVE PROCUREMENT METHOD APPROVAL**

Valve procurement method approval covered under the approval of Schnabel Work Orr No. 7 Tasks 1 and 2.

**X. NEW BUSINESS**

**D. DAM CONCEPTUAL DESIGN**

Commissioner DiOrio explained that the dam conceptual design determines the location of the new dam. DiOrio explained that option A is the upstream variant and option B is the downstream variant. Commissioner DiOrio noted the following pros and cons of each option:

Option A pros: the Town owns all property including access and zoned General Use which is appropriate for a dam; ease of construction access and road development on both approaches; reduced Environmental (River Encroachment) Impact and easier permitting; Maintains Bridge over new dam option and Bridge over modified existing dam option; and it the parallel symmetry maintains similar viewscape.

Option A cons: wider but with no significant cost difference and has a slanted hydraulic flow which may be overcome with engineering adjustments.

Option B pros: expands lake about 100 feet more than option A and has a straight path hydraulic flow

Option B cons: difficult access for construction and maintenance on North side; Higher Environmental (River Encroachment) Impact and more difficult permitting; requires dam to be higher but with no significant cost difference; requires additional land procurement and rezoning which includes additional cost; impractical bridge over dam option due to North side topography

Commissioner DiOrio recommended option A upstream variant.

Commissioner Bryant expressed his support for option A due to the opportune relationship with DOT and the reduced environmental impact.

Commissioner Bryant made a motion to opt for option A upstream variant for the conceptual design of the dam. Commissioner DiOrio seconded and all voted in favor.

**X. NEW BUSINESS**

**E. ORDINANCE NO. 22-04-12 AN ORDINANCE AMENDING SECTION 36-231(D) OF THE ZONING REGULATIONS**

This ordinance was discussed under public hearing, Council had no further comments.

Commissioner Doster made a motion to approve Ordinance No. 22-04-12 an Ordinance Amending Section 36-231(d) of the Zoning Regulations. Commissioner Proctor seconded and the motion carried 4-0.

**X. CLOSED SESSION**

Commissioner Proctor made a motion to enter closed session in accordance with G.S. 143-318.11(a) (3) for the purpose of discussing attorney client privilege or legal claims and G.S. 143-318.11(a) (5) for the purpose of discussing property acquisition or employment contracts. Doster seconded and the motion to enter closed session was approved unanimously.

Commissioner Doster made a motion to return to open session. Commissioner Bryant seconded and all voted in favor.

**XI. ADJOURMENT**

Following closed session, Commissioner Proctor made a motion to approve budget amendment #329 to appropriate funds for project manager search. Commissioner DiOrio seconded and all voted in favor.

Commissioner Proctor motioned to adjourn the meeting. Commissioner Bryant seconded and all voted in favor. The meeting was adjourned at 6:45 p.m.

ATTEST:

\_\_\_\_\_  
Olivia Stewman,  
Town Clerk

\_\_\_\_\_  
Mayor Carol C. Pritchett

**ORDINANCE NUMBER 22-04-12**

**AN ORDINANCE AMENDING SECTION 36-231(D) OF THE ZONING REGULATIONS**

**WHEREAS**, The Town of Lake Lure finds it necessary to clarify a potential ambiguity in the interpretation of prohibited fencing materials; and

**WHEREAS**, Section 36-231(d) of the Zoning Regulations of the Town of Lake Lure states that, “chain link, chicken wire, hardware cloth, and other woven or mesh products are not permitted in required street front yards of any district”; and

**WHEREAS**, Town staff believes that welded, galvanized wire fencing is distinctly different from chicken wire and other woven or mesh fencing, and is not specifically prohibited in required street front yards; and

**WHEREAS**, The question of distinct difference in welded, galvanized wire fencing versus chicken wire and other woven or mesh fencing has been raised as a permitting issue on numerous occasions; and

**WHEREAS**, Town staff believes that welded, galvanized wire fencing should be permitted in required street front yards of any district; now, therefore, be it

**ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF TOWN COUNCIL VOTING IN THE AFFIRMATIVE.**

**SECTION ONE.** Section 36-231(d) of the Zoning Regulation of the Town of Lake Lure is hereby amended as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

**Sec. 36-231. Fences, walls and hedges.**

(d) Chain link, chicken wire, hardware cloth, and other woven or mesh products are not permitted in required street front yards of any district. Welded, galvanized or painted wire fencing materials are permitted when fully framed within a wood or similar construction fence.

*The Town of Lake Lure Town Council deems Ordinance No. 22-04-12 to be consistent with the Lake Lure comprehensive plan because it adopts a clarification of a potential ambiguity in the interpretation of prohibited fencing materials into the Town of Lake Lure Code of Ordinances.*

*The Town of Lake Lure Town Council deems Ordinance No. 21-11-09 to be reasonable and in the public interest because it adopts the permitting of welded, galvanized wire fencing in required street front yards of any district.*

Adopted this 12<sup>th</sup> day of March, 2022.

ATTEST:

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Olivia Stewman  
Town Clerk

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Carol C. Pritchett  
Mayor

Approved as to content & form:

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William C. Morgan, Jr.  
Town Attorney



**MINUTES OF THE SPECIAL WORK SESSION MEETING OF THE LAKE LURE TOWN COUNCIL HELD WEDNESDAY, APRIL 27, 2022, 8:30 A.M. AT THE LAKE LURE MUNICIPAL CENTER**

**PRESENT:** Mayor Carol C. Pritchett  
Mayor Pro Tem David DiOrio  
Commissioner Patrick Bryant  
Commissioner Scott Doster  
Commissioner Jim Proctor

William Morgan, Jr., Town Attorney  
Olivia Stewman, Town Clerk / Interim Town Manager

**ABSENT:** N/A

**I. CALL TO ORDER**

Mayor Carol C. Pritchett called the meeting to order at 8:33 a.m.

**II. AGENDA ADOPTION**

Commissioner Proctor made a motion to adopt the agenda, as presented. Commissioner DiOrio seconded and the motion carried 4-0.

**III. TOWN INFRASTRUCTURE LOCATION DISCUSSION**

**A.**

Fire Chief Waycaster provided the Council with an update in regard to the possibility of a public safety building, which was discussed at the March work session meeting. Chief Waycaster provided a brief history of the Lake Lure Fire Department and the locations of the Department. Waycaster explained that in the past, the current fire station had been shared with the Lake Operations Department, used as a shelter during emergency events (2016 and 2018 were last time used as a shelter). Waycaster explained that the current building is now used for medical training, emergency planning meetings, and various events, is utilized by state park officials, and more. Waycaster proposing to build a public safety facility which will house the Fire Department and the Police Department, and noted that it would be similar to the current shared situation in town hall. Chief Waycaster explained that this would alleviate various issues and allow for two

## Minutes of the April 27, 2022 Special Town Council Work Session Meeting

staff members on shift for 24 hours. Waycaster noted that there are on average of 10 fire fighters per call, all of which who have been exposed to something come back to Fire Department to decontaminate and all 10 individuals must wait for one shower to decontaminate. It was cited that 65 percent of Fire Fighters will get cancer due to exposure. Waycaster noted that the Public Safety facility would serve the town for years to come. Additionally, it would free up extra room at Town Hall. Waycaster explained that the facility would have training accommodations, clean storage, and legal evidence in which only the Police Department would have access.

In terms of budget, Waycaster explained that he has conversed with two contractor and both have estimated 5 to 7 million dollars for the completion of the facility. Waycaster has also discussed with Finance Director Sam Karr that the Town can get a 20 year loan which would be \$400,000 dollars annually. It was noted that the Town has \$300,000 set aside for expansion of the existing department and \$60,000 set aside for a second fire station. Chief Waycaster has searched for grants related to public safety facilities, and noted there may be some extra help with financing as he continues to search.

Interim Manager Olivia Stewman asked Chief Waycaster to explain why this is a better option than those discussed in previous meetings. Waycaster explained that the Public Safety Facility is a better option because will serve the town for many years to come, opens up a more diverse pool to hire from, is more accommodating, prevents any temporary lease agreement, leaves ABC store open, more centrally locates the Police Department, and more. Waycaster is forecasting that the Fire Department will grow outward and noted that if the West-end Connector is put in, there will be access to all parts of town, allowing for greater efficiency.

Mayor Pritchett noted that work out rooms, conference rooms, and other accommodations will be shared by the Fire and Police departments, and explained that the total amount of money is for two departments. Commissioner Doster asked if this idea would affect the rating at all. Waycaster explained that as of right now the Fire Department is making minor adjustments to maintain or improve rating, but does not predict that the new building will improve the rating in terms of location, but may in terms of a more secure and safe facility. Waycaster also noted that the building would protect over a million dollars in town assets. Waycaster reiterated that the West-end Connector is key and a substation would be looked at if it were to follow through. Mayor Pritchett noted that West-end Connector is an ongoing effort. Commissioner Proctor noted that he has not received any negative feedback on the West-end Connector if it is only an emergency access, as is the plan. However, the use of the connector as a public road is a concern and will be a matter of oversight to prevent this from happening.

Commissioner DiOrio asked where the specific location is planned to be. Waycaster answered that it is along the 64 corridor and the location on the bend will put the facility on the same side of the road as water and sewer, the school, etc. This would also allow for better road view (no blind curves).

Commissioner Diorio inquired about a debt service of 400,000 for 20 years, explaining that fire tax may have to increase to 15 or 16 cents. Commissioner Proctor pointed out that some funding would be fire tax and some would come from the Police budget. It was noted that that Public Works could move into old building and there is already a bay for vehicles, and the only addition



would be a maintenance bay or “pit.” Commissioner DiOrio stated that the first step is to get an architect to get a footprint. Waycaster explained that the two companies he has spoken with are Design Build and the architect costs are included in the overall sum, equating to about 5 to 10 percent of the overall cost. Waycaster also noted that building the facility with water access would save significantly since the extension of the existing station would require additional costs to be brought up to code.

Mayor Pritchett asked Police Chief Humphries if he thinks that this is a suitable fit for the Police Department. Chief Humphries answered that it would be sufficient and an improvement from the current situation. It was mentioned that these joint buildings are becoming more common. Dustin emphasized the separation between Police and Fire, but noted that showers, kitchen/common area, conference rooms, training rooms, work out rooms, and more would be shared between the two departments.

Commissioner DiOrio asked if this would be an LGC loan. Director Karr answered yes, the LGC would have to approve the loan, financing, and project. Karr noted it would be considered a regular installment loan. DiOrio stated we would need to take a look at existing infrastructure money and analyze what we can do shift some money to this project. DiOrio also suggested that an option could be to proceed with planning for the time being because plans can be used in the future regardless. DiOrio asked how long it would take to build the facility and Waycaster estimated 18 months.

## **B. COMMUNITY DEVELOPMENT LOCATION DISCUSSION**

Interim Manager Stewman provided an update that the overall options in regard to housing Community Development until the Police Department can relocate are renting the bank space or building a temporary structure in the Town Hall area.

Community Development Director Michael Williams noted that current location of the department is convenient, but the department will work wherever they need to work. Williams expressed that he thinks the temporary structure would not be realistic, is prohibited by our code, and is in a floodplain.

Mayor Pritchett noted that the estimate of 18 months to build a public safety facility will be bare minimum. It was detailed that the bank would just be rented, thus temporary, and does not interfere with ABC Store building. Director Williams noted that he could likely make the bank space work. Commissioner Bryant noted that the bank location has five offices, storage, and internet. Williams noted there are a lot of Community Development files in the current Public Services building and that the bank vaults would be useful in storing the documents. It was concluded that the Town would only need to use the bank portion. Consensus that this is that renting the building is the best plan of action as of right now.

Commissioner DiOrio motioned to allow for Interim Manager Stewman and Director Williams to look into bank location and get a cost estimate. Commissioner Bryant seconded and all voted in favor.

**C. PUBLIC SERVICES EQUIPMENT STORAGE BUILDING**

Commissioner DiOrio presented on behalf of Public Services Director Dean Lindsey and explained that public works may permanently move from behind the arcade, which will open a plot to expand downtown business area. DiOrio noted that the first action items are to vacate the property and obtain a temporary facility for infrastructure project storage area which is a cost avoidance area with engineer firms. DiOrio suggested that the old driving range at the Greenspace could be the location of the project storage area and noted that 40x60 steel building would be needed, a gateway, and truck access on a firm ground. Director Lindsey obtained a quote for about \$600,000, but will identify only primary necessary construction and get the price to about \$450,000. Commissioner DiOrio recommended to give Director Lindsey the authority to continue search for contractors to build the storage facility, which could possibly come out of capital reserve. It was also noted that the funds from selling the current public works property could likely go towards funding the new building.

Commissioner DiOrio noted that it is worthwhile to make the storage facility habitable and the estimated time to build is 6 to 8 months and it will take a couple of months to move from current location. DiOrio expressed that the Town needs to sale the existing property sooner than later. Commissioner Proctor noted a report on the well located on the existing property is still needed. Commissioner DiOrio explained that the well is necessary because it supplies Chimney Rock Village, thus the Town cannot recommission and will need a utility easement.

Chief Waycaster noted that the storage facility may be tied on to Fire Department and Parks. Recreation, and Lake Department septic system and he will look into the capacity to hold one more restroom.

Commissioner DiOrio motioned to have consensus to move the vacate the existing public works property and erect a temporary facility for infrastructure project storage area at the driving range and allow Dean Lindsey to contact contractors for bids. Commissioner Proctor seconded and all voted in favor.

**IV. MARINA PARKING DISCUSSION**

Interim Manager Stewman explained that a citizen has expressed concern in regard to the current employee parking situation at the Marina and felt that the current layout is a public safety concern and an eye sore. Stewman explained that Parks, Recreation, and Lake Director Dean Givens had set up the current parking layout to allow for efficient flow of traffic and to provide additional parking for visitors.

Mayor Pritchett suggested that a chain and poles could be an option to block. Proctor emphasized parking issues. It was explained that phase two of Town Center master plan had been approved which includes the expansion parking spaces. Commissioner Bryant, Commissioner DiOrio, and Commissioner Doster expressed support for changing the current marina employee parking. Commissioner Doster asked if it is possible to create a spot for just marina employees near town hall. Commissioner Proctor expressed concern that blocking it off

the current marina employee parking would cause less parking for visitors. Commissioner DiOrio stated that it would come down to three or four parking spots and that moving the current parking would result in better emergency access, better view, etc. Commissioner Doster noted that waiting for the new parking lot may take years.

Commissioner DiOrio proposed prohibited day parking in front of marina, putting up safety barriers and maintain every day. Commissioner Doster suggested the Town allow the Marina Manager to park there for loading, unloading, and emergency vehicles. Commissioner Bryant recommended signage and painting assigning the area as no parking, handicap drop off, and emergency only. Director Michael Williams expressed that it would be a more community friendly.

DiOrio motioned for the approval of a barrier and signage assigning the current marina employee parking area as no parking, handicap drop off, and emergency only. Commissioner Bryant seconded and all voted in favor.

#### **V. BUDGET UPDATE**

Finance Director Karr explained that the Town received tax evaluations from the county. Karr noted that the only item lacking in the draft FY 22-23 budget is salary and benefit information for the project manager position, which will go into Community Development budget. Interim Manager Stewman confirmed that a budget meeting Monday, May 9, and will provide additional details soon. Commissioner Proctor noted that the new Town Manager Hank Perkins may benefit from attending the budget meeting. Mayor Pritchett agreed to take the lead on finding out details in regard to Mr. Perkins' attendance.

#### **VI. CAPITAL IMPROVEMENT PLAN DISCUSSION**

Interim Manager Stewman explained the town needs a ten year CIP to submit to the state when applying for additional infrastructure funding. Commissioner DiOrio explained that we suggested small working group create a draft CIP. Consensus was made to have a small group including Finance Director Sam Karr, Assistant Finance Director Steve Ford, Interim Manager Stewman, Mayor Pritchett, and Commissioner DiOrio will meet to draft a 10 year CIP. Commissioner Proctor recommended that the 10 year be a part of the budget process and suggested it would be beneficial have a draft by the May 9<sup>th</sup> budget meeting.

#### **VII. RESOLUTION NO 22-04-27 – AIA GRANT**

Commissioner DiOrio motion to adopted Resolution No. 22-04-27 – AIA Grant. Commissioner Proctor seconded and all voted in favor.

#### **VIII. RESOLUTION NO 22-04-27A – GLS PROJECT STATE LOAN AND/OR GRANT**

Commissioner DiOrio motion to adopted Resolution No. 22-04-27A – GLS Project State Loan and/or Grant. Commissioner Bryant seconded and all voted in favor.

**IX. SELECTION FOR DESIGN-BUILD SERVICES – SUBAQUEOUS SANITARY SEWER REPLACEMENT**

Interim Manager Stewman explained that the state had changed ARPA funding stipulations which resulted in the Town having to choose to reissue a revised version of the RFQ for the sewer replacement project or not using the \$8 million in ARPA monies. Stewman explained that the town needs the funding, so the revised RFQ was reissued in accordance with state law and that Ruby-Collins and LaBella were the sole firm to submit an SOC and are qualified for the job.

Commissioner Proctor made a motion to approve Ruby Collins and LaBella for the selection for design-build services for the subaqueous sanitary sewer system. Commissioner DiOrio seconded and all voted in favor.

**X. CLOSED SESSION**

Commissioner Bryant made a motion to move into closed session in accordance with G.S. 143-318.11(a) (6) for the purpose of discussing personnel matters and in accordance with G.S. 143-318.11(a) (3) for attorney client privilege. Commissioner Proctor seconded and all voted in favor.

During closed session, Council discussed two matters in line with attorney client privilege.

Commissioner DiOrio made a motion to return to open session. Commissioner Bryant seconded and all were in favor.

**XI. ADJOURMENT**

Commissioner Bryant motioned to adjourn the meeting. Commissioner DiOrio seconded and all voted in favor. The meeting was adjourned at 11:06 a.m.

ATTEST:

\_\_\_\_\_  
Olivia Stewman,  
Town Clerk

\_\_\_\_\_  
Mayor Carol C. Pritchett

**LAKE LURE TOWN COUNCIL  
REQUEST FOR BOARD ACTION**

**Meeting Date: May 10, 2022**

**SUBJECT:** Cover overruns in Public Works Department, Sewer Department, and Hydro-electric Department.

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:** B, C, & D  
**Department:** Public Works Dept. Hydro-electric & Water/Sewer Fund  
**Contact:** Sam Karr  
**Presenter:** Sam Karr

**BRIEF SUMMARY:** Cover over runs in Public Works (Gas & Vehicle Repairs), Sewer (Supplies) and Hydro-electric (Salary & Retirement account).

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

Approve budget amendment #330, #331, & #332.

**FUNDING SOURCE:**

Transfer from Fund Balance, Water/Sewer Fund Equity and Hydro-electric Fund Equity.

**ATTACHMENTS:**

Budget Amendment Form

**STAFF'S COMMENTS AND RECOMMENDATIONS:**

Accept budget amendment #330-332 for overruns.

**TOWN OF LAKE LURE  
BUDGET AMENDMENT**

Be it ordained by the Board of Commissioners of the Town of Lake Lure that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2022:

**Department:** Public Works

**Purpose:** To cover department overruns-Fuel & Repairs/Maint. Vehicles

**Section 1.** To amend the General Fund, the expenditures are to be changed as follows:

<b>Line Item</b>	<b>Account Number</b>	<b>Amount Decrease</b>	<b>Amount Increase</b>	<b>Amended Budget</b>
211	10-451000		\$8,000	\$23,000
354	10-451000		\$15,000	\$33,000

To provide the additional expenditures for the above, the following revenues will be increased:

Account Name: **Transfer From Fund Balance**

Account Number: **10-398604**

Amount: **\$23,000**

**Section 2.** I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:

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

\_\_\_\_\_  
Date

**Section 3.** Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**TOWN OF LAKE LURE  
BUDGET AMENDMENT**

Be it ordained by the Board of Commissioners of the Town of Lake Lure that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2022:

**Department:** Sewer Dept.

**Purpose:** To cover department overruns-Supplies/Chemicals

**Section 1.** To amend the Water/Sewer Fund, the expenditures are to be changed as follows:

<b>Line Item</b>	<b>Account Number</b>	<b>Amount Decrease</b>	<b>Amount Increase</b>	<b>Amended Budget</b>
215	53-714000		\$20,000	\$200,000

To provide the additional expenditures for the above, the following revenues will be increased:

Account Name: **Transfer From W/S Fund Equity**  
Account Number: **53-398602**  
Amount: **\$20,000**

**Section 2.** I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:

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

\_\_\_\_\_  
Date

**Section 3.** Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**TOWN OF LAKE LURE  
BUDGET AMENDMENT**

Be it ordained by the Board of Commissioners of the Town of Lake Lure that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2022:

**Department:** Hydro-electric

**Purpose:** To cover department overruns-Salary & Retirement

**Section 1.** To amend the Hydro-electric Fund, the expenditures are to be changed as follows:

<b>Line Item</b>	<b>Account Number</b>	<b>Amount Decrease</b>	<b>Amount Increase</b>	<b>Amended Budget</b>
100	56-720000		\$35,000	\$185,787
110	56-720000		\$9,000	\$34,655

To provide the additional expenditures for the above, the following revenues will be increased:

Account Name: **Transfer From Fund Equity**

Account Number: **56-398601**

Amount: **\$44,000**

**Section 2.** I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:

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

\_\_\_\_\_  
Date

**Section 3.** Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.



**LAKE LURE TOWN COUNCIL  
REQUEST FOR BOARD ACTION**

**Meeting Date:** May 10, 2022

**SUBJECT:** Approval of the Dirty Dancing Festival as a Town Sanctioned Event with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation; and Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:** E  
**Department:** Administration  
**Contact:** Laura Doster, Director, Chamber of Hickory Nut Gorge  
**Presenter:** Laura Krejci, Communications Director

**BRIEF SUMMARY:** The Chamber of Hickory Nut Gorge would like to host the Dirty Dancing Festival on Saturday, September 10, 2022 from 7:00AM until 10:00PM in Keeter Field, Lake Lure, NC 298746. They are requesting approval of the Dirty Dancing Festival as a Town Sanctioned Event with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation; and Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

Tents will be utilized for this event, mobile food trucks will be invited to participate, and beer and wine will be available at the event. The Event Contact has been advised that the following permits/forms will also be required to support the event:

- Foothills Health Department Permits for each mobile food truck.
- Town of Lake Lure Mobile Food Truck Permits for each mobile food truck.
- A Fabric Structure Permit for tents.
- Temporary Sign Permit
- Request for Suspension of Alcohol Ordinance

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To approve the Dirty Dancing Festival as a Town Sanctioned Event with the following approvals:

- Suspension of Chapter 8 Article II: “Peddlers” of the Code of Ordinances
- Waiver of the Noise Regulation, Chapter 20 Article I Sec. 20-28 of the Noise Regulation.
- Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Application for Permit for Entertainment Event and notification to Event Contact

**STAFF'S COMMENTS AND RECOMMENDATIONS:** The Lake Lure Events Team has reviewed the Application for the Entertainment Event Permit for this event and recommends the following:

- Approval of the Dirty Dancing Festival as a Town Sanctioned Event with the following:
  - Suspension of Chapter 8 Article II: “Peddlers” of the Code of Ordinances
  - Waiver of the Noise Regulation, Chapter 20 Article I Sec. 20-28 of the Noise Regulation.
  - Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

**LAKE LURE TOWN COUNCIL  
REQUEST FOR BOARD ACTION**

**Meeting Date:** May 10, 2022

**SUBJECT:** Approval of the “PAWS” (*Pets are Worth Saving*) Pet Fest at Morse Park with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation.

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:** F  
**Department:** Administration  
**Contact:** Gale Wilson, PAWS  
**Presenter:** Laura Krejci, Communications Director

**BRIEF SUMMARY:** *Pets are Worth Saving*) would like to host the Dirty Dancing Festival on Saturday, September 10, 2022 from 7:00AM until 10:00PM in Keeter Field, Lake Lure, NC 298746. They are requesting approval of the Dirty Dancing Festival as a Town Sanctioned Event with Suspension of Chapter 8 Article II: “Peddlers” Code of Ordinances; Waiver of the Noise Regulation; Chapter 20 Article I Sec. 20-28 of the Noise Regulation; and Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

Tents will be utilized for this event, mobile food trucks will be invited to participate, and beer and wine will be available at the event. The Event Contact has been advised that the following permits/forms will also be required to support the event:

- Foothills Health Department Permits for each mobile food truck.
- Town of Lake Lure Mobile Food Truck Permits for each mobile food truck.
- A Fabric Structure Permit for tents.
- Temporary Sign Permit
- Request for Suspension of Alcohol Ordinance

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To approve the Dirty Dancing Festival as a Town Sanctioned Event with the following approvals:

- Suspension of Chapter 8 Article II: “Peddlers” of the Code of Ordinances
- Waiver of the Noise Regulation, Chapter 20 Article I Sec. 20-28 of the Noise Regulation.
- Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Application for Permit for Entertainment Event and notification to Event Contact

**STAFF'S COMMENTS AND RECOMMENDATIONS:** The Lake Lure Events Team has reviewed the Application for the Entertainment Event Permit for this event and recommends the following:

- Approval of the Dirty Dancing Festival as a Town Sanctioned Event with the following:
  - Suspension of Chapter 8 Article II: “Peddlers” of the Code of Ordinances
  - Waiver of the Noise Regulation, Chapter 20 Article I Sec. 20-28 of the Noise Regulation.
  - Suspension of Chapter 30, Article II Sec. 30-19 through 30-35 Traffic Regulations and Article III Sec. 30-56 through 30-94.: Parking Violations; Enforcement.

# VIII

## NEW BUSINESS

- A. Approval of the DBIA Contract with Design Builder Ruby-Collins, Inc.

**LAKE LURE TOWN COUNCIL  
REQUEST FOR BOARD ACTION  
AGENDA ITEM REQUEST FORM**

**Meeting Date: May 10, 2022**

**SUBJECT:** Approval of the DBIA Contract with Design Builder Ruby-Collins, Inc.

**AGENDA INFORMATION:**

**Agenda Location:** Item V  
**Department:** Sewer  
**Contact:** Olivia Stewman, Town Clerk / Interim Town Manager  
**Presenter:** Commissioner David DiOrio

**BRIEF SUMMARY:** In April, the Town of Lake Lure approved the recommended top qualifier, Ruby-Collins, Inc., for the design/build of phase 1 of the Subaqueous Sanitary Sewer Replacement Project. Ruby-Collins, Inc. has provided the town with a proposed DBIA contract.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

To approve the DBIA Contract with Design Builder Ruby-Collins, Inc.

**ATTACHMENTS:**

DBIA Contract Information

**STAFF'S COMMENTS AND RECOMMENDATIONS:**

Staff recommends the approval of the DBIA Contract with Design Builder Ruby-Collins, Inc.



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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND DESIGN-  
BUILDER - COST PLUS FEE  
WITH AN OPTION FOR A  
GUARANTEED MAXIMUM PRICE**

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**Document No. 530**

Second Edition 2010  
© Design-Build Institute of America  
Washington, DC

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# Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

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

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of May in the year of 2022,  
by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

*(Name and address)*

Town of Lake Lure, North Carolina  
2948 Memorial Highway  
Lake Lure, NC 28746

**DESIGN-BUILDER:**

*(Name and address)*

Ruby-Collins, Inc.  
4875 Martin Court  
Smyrna, Georgia 30082

**PROJECT:**

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

Subaqueous Sanitary Sewer (SASS) Replacement Project  
Lake Lure, NC

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

## **Article 1**

### **Scope of Work**

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2**

### **Contract Documents**

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

**2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) (“General Conditions of Contract”);

**2.1.2** The GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

**2.1.3** This Agreement, including all exhibits (including, as design criteria, the Engineering Report prepared by LaBella Associates and Submitted to the NC DEQ, dated May 2021, and published by the Town of Lake Lure at <https://www.townoflakelure.com/community/page/notice-public-hearing-subaqueous-sanitary-sewer-replacement-engineering>, as part of the solicitation for Design-Build Services for the Subaqueous Sanitary Sewer Replacement project) but excluding, if applicable, the GMP Exhibit;

**2.1.4** The General Conditions of Contract; and

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

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement (and again at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to Owner’s acceptance of the GMP Proposal.

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

listed in Section 2.1 hereof. (Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)

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

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

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

## Article 4

### Ownership of Work Product

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

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

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

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

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## Article 5

### Contract Time

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

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than May 15, 2026 ("Scheduled Substantial Completion Date"), which is contingent on and assumes the occurrence of three (3) full Lake drawdown periods running from mid-November to mid-April of the winter seasons of 2023-24, 2024-25, and 2025-26.

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

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

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

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

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

**5.5** Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be TO BE DETERMINED WITH GMP Dollars (\$ TBD ).

## Article 6

### Contract Price

#### 6.1 Contract Price.

**6.1.1** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

**6.1.2** For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

**6.1.2.1** The Design-Build team shall prepare and provide a GMP proposal to complete the maximum scope of work from the ER/EID referenced in 2.1.3 that can be completed within the Owner's budget for this phase of the project. Design-builder will provide GMP pricing broken down in an open book format and will be based on design documents prepared to a level sufficient to provide adequate GMP pricing (approximately 60% design level).

**6.1.2.2** For preliminary design and GMP preparation the Design-Builder shall receive a fee of SIX HUNDRED FORTY THOUSAND Dollars (\$640,000).

#### 6.2 Design-Builder's Fee.

**6.2.1** Design-Builder's Fee shall be: \_\_\_\_\_ TO BE DETERMINED WITH GMP \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ TBD \_\_\_\_\_), as adjusted in accordance with Section 6.2.2 below.

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

**6.2.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of \_\_\_\_\_ TO BE DETERMINED WITH GMP \_\_\_\_\_ percent (\_\_\_\_\_ TBD \_\_\_\_\_%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in Exhibit \_\_\_\_\_ TBD \_\_\_\_\_ hereto.

**6.2.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include: An amount equal to the sum of: (a) \_\_\_\_\_ TO BE DETERMINED WITH GMP \_\_\_\_\_ percent (TBD \_\_\_\_\_%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit \_\_\_\_\_ TBD \_\_\_\_\_ hereto applied to the direct costs of the net reduction.

**6.3 Cost of the Work.** The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following (which shall be **subject to 'open book' provisions of Section 7.5**):

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

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

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

**6.3.4** A multiplier of TO BE DETERMINED WITH GMP percent (TBD%) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

**6.3.17** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents, except for permits listed in Exhibit attached to this Agreement, "Owner's Permit List". To be determined.

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

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

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

**6.3.21** Accounting and data processing costs related to the Work.

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

#### **6.4 Allowance Items and Allowance Values.**

**6.4.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

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

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

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

**6.4.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

#### **6.5 Non-Reimbursable Costs.**

**6.5.1** The following shall not be deemed as costs of the Work:

**6.5.1.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

**6.5.1.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

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

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

**6.6 The Guaranteed Maximum Price ("GMP").**

**6.6.1 DELETED (GMP Established Upon Execution of this Agreement.)**

**6.6.2 GMP Established after Execution of this Agreement.**

**6.6.2.1 GMP Proposal.** Within 120 days of execution of this Agreement, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

**6.6.2.1.1** A proposed GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.4 hereof; and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

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

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

**6.6.2.1.4** The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

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

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

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



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

**6.6.2.1.9** The time limit for acceptance of the GMP Proposal.

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

**6.6.2.3** Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

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

**6.6.2.4.1** Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

**6.6.2.4.2** Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

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

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

### **6.6.3 Savings.**

**6.6.3.1** If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows: forty percent (40.0 %) to Design-Builder and sixty percent (60.0 %) to Owner's Project Contingency.

**6.6.3.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the

parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

#### **6.6.4 Contingencies.**

The total amount of the Contingencies remaining after completion of the Work covered under the GMP shall be applied to complete additional scope / length of SASS Installation Work as shall be agreed to by the parties.

No savings calculation or savings sharing shall be calculated on account of amounts expended from the Contingencies.

The parties shall maintain an accounting of the value of the Contingencies and the Design-Builder shall, at an appropriate time considering lead times and the Contingencies' expected remaining value upon completion of the scope of the GMP, prepare a proposal for Owner's review and approval, outlining the additional scope / length of SASS Installation Work to be completed.

**6.6.4.1 Owner's Project Contingency:** The GMP includes a Contingency in the amount of One Million Dollars (\$1,000,000.00) which is available for Owner's exclusive use in approving the payment of unanticipated costs such as for Change Orders under the Contract Documents for changes in the Work, significant unforeseen circumstances or Differing Site Conditions, Hazardous Conditions, actual costs for Allowance Items in excess of Allowance Values, or Force Majeure Events.

This Contingency shall be augmented by the savings as so identified in Section 6.6.3.1.

**6.6.4.2 Design-Builder's Project Contingency:** The GMP includes a Contingency in the amount of TO BE DETERMINED WITH GMP Dollars (\$TBD) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

## Article 7

### Procedure for Payment

#### 7.1 Progress Payments.

**7.1.1** Design-Builder shall submit to Owner on the Twenty-fifth (25<sup>th</sup>) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

**7.1.3** If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

#### 7.2 Retainage on Progress Payments.

**7.2.1** Owner will retain five percent (5.0%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

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

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one percent (1.0%) per month until paid.

**7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to

the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## **Article 8**

### **Termination for Convenience**

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

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

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

**8.1.3** Overhead and profit in the amount of \_\_\_ TO BE DETERMINED WITH GMP \_\_\_ percent (\_\_\_ TBD \_\_\_%) on the sum of items 8.1.1 and 8.1.2 above.

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## **Article 9**

### **Representatives of the Parties**

**9.1 Owner's Representatives.**

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

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

## **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individuals listed below as its Senior Representatives ("Design-Builder's Senior Representative"), which individuals have the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

**Brian Houston, Water/Wastewater Market Leader  
LaBella Associates, PC  
400 S. Tryon Street, Suite 1300  
Charlotte, NC 28285  
704.249.8069 (m) / 704.941.2110 (o)  
BHouston@LaBellaPC.com**

**Andy Cook, Project Manager, Division Director - Pipeline  
Ruby-Collins, Inc.  
4875 Martin Court  
Smyrna, Georgia 30082  
770.365.3113 (m) / 770.432.2900 (o)  
ACook@Ruby-Collins.com**

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

**Scott Cline, President, Chief Operating Officer  
Ruby-Collins, Inc.  
4875 Martin Court  
Smyrna, Georgia 30082  
404.392.8340 (m) / 770.432.2900 (o)  
SCline@Ruby-Collins.com**

## **Article 10**

### **Bonds and Insurance**

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

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide a performance bond and labor and material payment bond. In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

\_\_\_\_\_  
(Name of Owner)

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

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

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

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

**DESIGN-BUILDER:**

Ruby-Collins, Inc.  
\_\_\_\_\_  
(Name of Design-Builder)

*Scott N. Cline*  
\_\_\_\_\_  
(Signature)

Scott N. Cline  
\_\_\_\_\_  
(Printed Name)

President & COO  
\_\_\_\_\_  
(Title)

Date: 5/5/2022

**Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**



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

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**Document No. 535**

Second Edition, 2010

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Washington, DC

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# Article 1

## General

### 1.1 Mutual Obligations

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

### 1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under ~~either DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder - Lump Sum (2010 Edition) or~~ DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

1.2.2 *Basis of Design Documents* are ~~as follows: For DBIA Document No. 530, Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price, the Basis of Design Documents are~~ those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents." ~~For DBIA Document No. 525, Standard Form of Agreement Between Owner and Design-Builder - Lump Sum, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.~~

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

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

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

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

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

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

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

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of*

*Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

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

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

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

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

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

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

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

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

## **Article 2**

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

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

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

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of

the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

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

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

## **2.2 Design Professional Services.**

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

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

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

## **2.4 Design Development Services.**

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

to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

## **2.5 Legal Requirements.**

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

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

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

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

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

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

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

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

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

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

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

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

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

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

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

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

their performance of the Work.

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

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

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

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

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

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

## **Article 3**

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

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

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

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

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be

defective or not in compliance with the Contract Documents.

### **3.2 Furnishing of Services and Information.**

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

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

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

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

**3.2.1.4** A legal description of the Site;

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

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

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

### **3.3 Financial Information.**

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

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

### **3.4 Owner's Representative.**

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

### **3.5 Government Approvals and Permits.**

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

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

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

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

**(SEE SC-3.7)**

## **Article 4**

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

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

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

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

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

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

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.



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

## **4.2 Differing Site Conditions.**

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

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

**(SEE SC-4.3)**

# **Article 5**

## **Insurance and Bonds**

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

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

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

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

### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of

Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

### **5.3 Owner's Property Insurance.**

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

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

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

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

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

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

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

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

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

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

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

#### **6.2 Monthly Progress Payments.**

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

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

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

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

#### **6.3 Withholding of Payments.**

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

payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

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

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

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

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

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

#### **6.6 Substantial Completion.**

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

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

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

#### **6.7 Final Payment.**

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

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

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

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

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

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

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

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

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

## **Article 7**

### **Indemnification**

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

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

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

any such patent or copyright.

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

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

## **7.2 Tax Claim Indemnification.**

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

## **7.3 Payment Claim Indemnification.**

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

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

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

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

## **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend

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

## **Article 8**

### **Time**

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

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

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

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

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

## **Article 9**

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

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

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

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

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

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

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

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

services involved in the preparation of proposed revisions to the Contract Documents.

## **9.2 Work Change Directives.**

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

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

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

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

## **9.4 Contract Price Adjustments.**

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

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

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

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

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

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

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its



reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

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

# **Article 10**

## **Contract Adjustments and Disputes**

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

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

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

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

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

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

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to

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

### **10.3 Arbitration.**

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

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

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

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

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

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

### **10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

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

## Article 11

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request

of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

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

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

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

## **Article 12**

### **Electronic Data**

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

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

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

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

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

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

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

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

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

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

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

#### **13.2 Assignment.**

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

#### **13.3 Successorship.**

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

#### **13.4 Governing Law.**

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

### **13.5 Severability.**

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

### **13.6 No Waiver.**

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

### **13.7 Headings.**

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

### **13.8 Notice.**

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

### **13.9 Amendments.**

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

## Section 000535A - Supplementary Conditions

SC-1.2.6: Add the following at the end of Paragraph 1.2.6:

**The Design Consultant is LaBella Associates, PC.**

SC-2.9.1: Change the 2<sup>nd</sup> sentence of Paragraph 2.9.1 to read as follows:

**Design-Builder's warranty obligation excludes defects caused by Owner's abuse, alterations, or failure to maintain the Work in a commercially reasonable manner.**

SC-3.2.1: Add the following at the beginning of Paragraphs 3.2.1.1 and 3.2.1.2:

**"Previously prepared..."**

SC-3.7: Add the following after Paragraph 3.6.1:

### **3.7 Other Site Restrictions.**

**3.7.1 Owner shall regulate the activity of and enforce limitations on contractors and other entities and individuals, including private residents, who may desire to perform work in areas constituting the Site, such that interference with the Design-Builder's activity is avoided. Owner shall coordinate the timing and other particulars of such regulatory limitations with the Design-Builder.**

SC-4.3: Add the following after Paragraph 4.2.2:

### **4.3 Third-Party Improvements.**

**4.3.1 Design-Builder shall exercise due care to avoid adverse impact to existing Third-Party-owned improvements located on or adjacent to the Project site (e.g., boat houses, docks, etc.) by performing the Work via means and methods which minimize the potential for damage given the conditions discoverable upon a reasonable investigation. This level of care DOES NOT extend to the detailed engineering evaluation of structural or underlying geotechnical conditions or to latent conditions that are not discoverable upon a reasonable investigation.**

**4.3.2 Owner will be solely responsible for obtaining permission for Design-Builder to perform modifications to existing Third-Party-owned improvements as may be necessary to enable or facilitate the completion of the Work, and the Parties will agree on the scope of such modifications through a written change order that adjusts the Contract Price and/or Contract Time, as applicable, prior to the commencement of such change Work.**

**4.3.3 Where practical, the Parties may agree to completely remove and replace an improvement or portions thereof, in the same or better condition as existed before performance of the Work. This too would result in a Change Order that adjusts the Contract Price and/or Contract Time.**

**4.3.4 Design-Builder shall inform Owner of any case where adverse impacts to the Third-Party-owned improvement is expected and cannot be avoided. Owner shall diligently and**



**expeditiously obtain and grant to the Design-Builder permission to perform the Work irrespective of the anticipated adverse impact, notwithstanding that the Design-Builder shall proceed safely and with due care to avoid collateral damage to neighboring improvements.**

**4.3.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from (1) Owner's failure to obtain permission from third-party owners to make the modifications agree to by the Parties, (2) adverse impacts (whether actual or claimed) to Third-Party-owned improvements located on the Site during performance of Work, to the extent that Design-Builder (including its Subcontractors and Consultants of any tier) performs the Work with the level of care and skill ordinarily used by members of his profession practicing under similar circumstances at the same time and in the same locality. This indemnification shall not be construed to absolve Design-Builder of responsibility for their own negligence.**

SC-5.1.3: Change the second sentence of Paragraph 5.1.3 to read as follows:

**If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.**

SC-6.1.1: Delete Paragraph 6.1.1 and replace with the following:

**6.1.1 At the time of presentation of the Guaranteed Maximum Price ("GMP"), Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work following submission of the GMP.**

SC-6.1.2: Delete Paragraph 6.1.2 and replace with the following:

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

# IX

## CLOSED SESSION

A. In accordance with G.S. 143-318.11(a) (3) for the purpose of discussing attorney client privilege or legal claims.

**X**

**Adjournment**