

REQUEST FOR PROPOSALS
CMAR SERVICES FOR THE SOUTH END
STATION

RFP # 269-2023-1483



CITY OF CHARLOTTE
NORTH CAROLINA

JUNE 14, 2023

REQUEST FOR PROPOSALS
RFP # 269-2023-1483
CMAR Services for the South End Station

JUNE 14, 2023

Dear Sir or Madam:

The City of Charlotte, North Carolina, is now accepting Proposals for CMAR Services for the South End Station. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the “RFP”). Please review them carefully.

A **Non-Mandatory** Pre-Proposal Conference for the purpose of reviewing the RFP and answering questions regarding the Services will be held **via a teleconference**. Please have a copy of the RFP available for reviewing during the Pre-Proposal Conference.

All interested Companies should return a completed RFP Acknowledgement Form (see Section 6, Form 1) by the date stated in Section 2.1 of this RFP.

An electronic copy of the RFP in Microsoft Word format may be obtained on the City’s Contracting Opportunities Site by searching for the RFP Title or Number.

All Proposals are due to City of Charlotte Department of General Services, City Procurement, 3rd Floor, CMGC 600 East Fourth Street, Charlotte, North Carolina 28202, no later than **August 11th, 2023 at 2:00 p.m.**

One (1) electronic copy of the Proposal on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals
Attention: John Larson
[Name of Company Submitting Proposal]
CMAR Services for the South End Station
RFP # 269-2023-1483

RFP questions must be directed to John Larson, Department of General Services – City Procurement, per the enclosed instructions in Section 2.3. The City is an equal opportunity purchaser.

Sincerely,

Marcy Mars
Interim Chief Procurement Officer

cc: RFP Project Team
RFP file

Checklist for submitting a Proposal:

Step 1 – Read the document fully.

Step 2 – If you plan on submitting a Proposal, email **Form 1 in Section 6** to the number or email address listed on the sheet.

Steps 3 – If you have any questions send them before the deadline listed in **Section 2.3**.

If you plan to submit a Proposal, you must follow this checklist and include everything detailed below.

Proposal Copies - Please provide the specified number for each format:

- 1 Copy on flash drive
- 1 Copy marked “Original”

Proposal Format - Proposals should be formatted as follows:

- Cover Letter per **Section 4.1.1**
- Response to the solicitation per **Sections 4.1.2-4.1.8**
- Section 6, Form 2, Addenda Receipt Confirmation**
- Section 6, Form 3, Proposal Submission**
- Section 6, Form 4, Pricing Worksheet**
- Section 6, Form 5, Certification Regarding Debarment, Suspension and Other Responsibility Matters**
- Section 6, Form 6, Byrd Anti-Lobbying Certification**
- Letter from Surety confirming bonding capacity**
- Letter from Insurance company stating workers comp EMT rating**
- Letter from Insurance company confirming ability to obtain Builder’s Risk Insurance**
- Exceptions to any part of the RFP (If you take any exceptions to anything in this document list it in a category in your Proposal called “Exceptions” and offer an alternative solution.)

The above items constitute all that must be included in the Proposal. If awarded a contract, you will be required to provide an insurance certificate that meets or exceeds the requirements set forth in Exhibit A – Sample Contract.

It is the Company’s responsibility to check www.ips.state.nc.us or the City’s [Contract Opportunities Site](#) for any addenda or changes to this Project. Search for bid # 269-2023-1483 to find if any documents or changes have been posted.

TABLE OF CONTENTS

1. INTRODUCTION..... 1

1.1. OBJECTIVE.....1

1.2. DEFINITIONS.....1

1.3. ACCURACY OF RFP AND RELATED DOCUMENTS.....3

1.4. CITY’S RIGHTS AND OPTIONS.....3

1.5. EXPENSE OF SUBMITTAL PREPARATION.....4

1.6. PROPOSAL CONDITIONS.....4

2. PROCUREMENT PROCESS..... 8

2.1. SCHEDULE AND PROCESS.....8

2.2. INTENT TO PROPOSE.....8

2.3. INTERPRETATIONS AND ADDENDA.....8

2.4. PRE-PROPOSAL CONFERENCE.....9

2.5. SUBMISSION OF PROPOSALS.....9

2.6. CORRECTION OF ERRORS.....10

2.7. EVALUATION.....10

2.8. CONTRACT AWARD BY COUNCIL.....11

2.9. VENDOR INCLUSION.....11

3. SCOPE OF CMAR SERVICES FOR THE SOUTH END STATION..... 12

3.1. GENERAL SCOPE.....12

3.2. PROJECT PRIORITIES.....12

3.3. PROJECT HISTORY.....12

3.4. BUDGET AND SCHEDULE.....13

3.5. REAL ESTATE CONDITIONS.....13

3.6. PROJECT DELIVERY METHOD.....14

3.7. SCOPE OF CMAR SERVICES OVERVIEW.....14

4. PROPOSAL CONTENT AND FORMAT..... 16

4.1. PROPOSAL CONTENT.....16

4.1.1. *Cover Letter* :..... 17

4.1.2. *Tab 1: Proposed Team and Organization*..... 17

4.1.3. *Tab 2: Project Understanding, Methodology and Approach, and Safety Program and Record*..... 18

4.1.4. *Tab 3: Team’s Comparable Project Experience*..... 19

4.1.5. *Tab 4: Proposed Project Staff Experience and Availability*..... 19

4.1.6. *Tab 5: DBE Participation Approach and Documentation*..... 19

4.1.7. *Tab 6: Preconstruction Costs, Procurement, Self-Performed Work, Construction Phase Costs and Profit & Home Office Overhead*..... 20

4.1.8. *Required Forms*..... 21

4.1.9. *Exceptions to the RFP*..... 21

Table of Contents

5. PROPOSAL EVALUATION CRITERIA.....	22
5.1. ACCEPTANCE OF THE TERMS OF THE CONTRACT.	23
REQUIRED FORM 1 – RFP ACKNOWLEDGEMENT	24
REQUIRED FORM 2 – ADDENDA RECEIPT CONFIRMATION	25
REQUIRED FORM 3 – PROPOSAL SUBMISSION FORM.....	26
REQUIRED FORM 4 – PRICING WORKSHEET	28
REQUIRED FORM 5 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS RFP # 269-2023-1483	29
REQUIRED FORM 6 – BYRD ANTI-LOBBYING CERTIFICATION.....	30

**EXHIBIT A: CONTRACT FOR CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES**

EXHIBIT B: CONTRACT FOR CONSTRUCTION SERVICES

EXHIBIT C: SITE PLAN, SCHEDULE AND COST ESTIMATE

Introduction and General Information

1. INTRODUCTION.

1.1. Objective.

The objective of this RFP is to solicit Proposals that will enable the City to determine which Company and response will best meet the City’s needs for CMAR services for the South End Station on the City’s LYNX Blue Line. This Project will include constructing a new light rail station designed to similar standards as the recently constructed LYNX Blue Line Extension (BLE) stations, including the capacity to serve three-car consists of Light Rail Vehicles (LRVs).

1.2. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

Acceptance: Refers to receipt and approval by the City of a Deliverable or Service in accordance with the acceptance process and criteria in the Contract.

Affiliates: Refers to all departments or units of the City and all other governmental units, boards, committees, or municipalities for which the City processes data or performs services.

City: Refers to the City of Charlotte, North Carolina.

City Project Manager and Project Team: No later than the Effective Date of this Contract, the City shall designate one of its employees to act as its project manager (the “**Project Manager**”). The Project Manager shall have the authority to act as the City’s representative in connection with this Contract. The City may replace its Project Manager by providing written notice to the CMAR. The City may also identify one or more of its employees or subcontractors to coordinate with the CMAR and assist the Project Manager (the “**Project Team**”). The Project Manager shall be responsible for examining any materials submitted by the CMAR, identifying members of the Project Team, and providing other City resources to the CMAR, and acting as the City’s point of contact for all aspects of the Project.

Company: During the solicitation process, refers to a company that has interest in providing the Services. After the solicitation process, refers to a company that has been selected by the City to provide the Services.

CMAR Representative: Refers to a specified Company employee representing the best interests of the Company for this Project.

Construction Manager at Risk (CMAR): is responsible for the quality of Work under the Contract, including work performed by CMAR’s suppliers and subcontractors, and for providing QA/QC in accordance with Contract and the CMAR’s approved Quality Plan.

Introduction and General Information

<i>Contract:</i>	Refers to a written agreement executed by the City and the Company for all or part of the Services.
<i>Deliverables:</i>	For the required submittals, submit a statement for each product, signed by the responsible design professional, specifically assigned to this Project, indicating that the products and systems comply with performance and design criteria indicated.
<i>Department:</i>	Refers to a department within the City of Charlotte.
<i>Documentation:</i>	Refers to all written, electronic, or recorded works that describe the use, functions, features, or purpose of the Deliverables or Services or any component thereof, and which are provided to the City by the Company or its subcontractors, including without limitation all end user manuals, training manuals, guides, program listings, data models, flow charts, and logic diagrams.
<i>Evaluation Committee:</i>	Refers to a City-appointed committee that will evaluate Proposals and identify the Company(-ies) best meeting the needs of the City.
<i>Milestones:</i>	Refers to an identified deadline for the completion of specific Services and/or the Acceptance of identified Deliverables, as specified in this RFP.
<i>Project:</i>	Refers to the South End Station Project, as described in Section 3.1.
<i>Proposal:</i>	Refers to the Proposal submitted by a Company for the Services as outlined in this RFP.
<i>Services:</i>	Refers to the services described in Section 3.7 and the Contract.
<i>Specifications and Requirements:</i>	Refers to all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Deliverables and Services that are set forth or referenced in: (i) this RFP, including any addenda; (ii) the Documentation; and (iii) any functional and/or technical specifications that are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Deliverables or Services.
<i>Trade Secrets:</i>	Information of the City or any of its suppliers, contractors, or licensors that: (i) derives value from being secret; and (ii) the owner has taken reasonable steps to keep confidential. See N.C. Gen. Stat. § 66-152 et seq. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

Introduction and General Information

Work: Refers to improvements constructed by the CMAR and its subcontractors.

Work Product: Refers to the Deliverables and all other programs, algorithms, reports, information, designs, plans, and other items developed by the Company in connection with this RFP, and all partial, intermediate, or preliminary versions of any of the foregoing.

1.3. Accuracy of RFP and Related Documents.

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section 2.

1.4. City's Rights and Options.

The City reserves the right, at the City's sole discretion, to take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of the City, including:

- 1.4.1. To supplement, amend, substitute, or otherwise modify this RFP, including the schedule, or to cancel this RFP, at any time;
- 1.4.2. To require any Companies to supplement or clarify its Proposal or provide additional information relating to its Proposals;
- 1.4.3. To investigate the qualifications, experience, capabilities, and financial standing of each Company submitting a Proposal;
- 1.4.4. To waive any defect or irregularity in any Proposal received;
- 1.4.5. To reject any or all Proposals;
- 1.4.6. To share the Proposals with City employees and contractors in addition to the Evaluation Committee as deemed necessary by the City;
- 1.4.7. To award all, none, or any part of the Services and enter into Contracts with one or more of the responding Companies deemed by the City to be in the best interest of the City, which may be done with or without re-solicitation;
- 1.4.8. To discuss and negotiate with any Company(-ies) their Proposal terms and conditions, including but not limited to financial terms; and

Introduction and General Information

1.4.9. To terminate discussions and negotiations with any Company at any time and for any reason.

1.5. Expense of Submittal Preparation.

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

1.6. Proposal Conditions.

The following terms are applicable to this RFP and the Company's Proposal.

1.6.1. RFP Not an Offer.

This RFP does not constitute an offer by the City. No binding contract, obligation to negotiate, or any other obligation shall be created on the part of the City unless the City and the Company execute a Contract. No recommendations or conclusions from this RFP process concerning the Company shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of North Carolina.

1.6.2. Trade Secrets and Personal Identification Information.

Definition.

Upon receipt by City Procurement, all materials submitted by a Company (including the Proposal) are considered public records except for (1) material that qualifies as "trade secret" information under N.C. Gen. Stat. § 66-152 et seq. ("Trade Secrets") or (2) "personally identifiable information" protected by state or federal law, to include, but not be limited to, Social Security numbers, bank account numbers, and driver's license numbers ("Personally Identifiable Information" or "PII").

Instructions for Marking and Identifying Trade Secrets.

If any Proposal contains Trade Secrets or PII, such Trade Secrets and PII must specifically and clearly be identified in accordance with this Section 1.6.2 by clearly separating them from the rest of the Proposal. For hard copy documents, it must be submitted in a separate, sealed envelope, marked either "Personally Identifiable Information – Confidential" or "Trade Secret—Confidential and Proprietary Information." For electronic submissions it must also be submitted on a separate flash drive. In both hard copy or electronic format, the confidentiality caption stated above must appear on each page of the Trade Secret or PII materials.

Availability of Proposals to City Staff and Contractors.

By submitting a Proposal, each Company agrees that the City may reveal any Trade Secret materials and PII contained therein to all City staff and City officials involved in the selection process, and to any outside consultant or other third parties who serve on the Evaluation Committee or who are hired or appointed by the City to assist in the evaluation process.

Introduction and General Information

Availability of Proposals via Public Records Requests.

Any person or entity (including competitors) may request Proposals submitted in response to an RFP. Only those portions of RFPs properly designated as Trade Secret or PII are not subject to disclosure. The public disclosure of the contents of a Proposal or other materials submitted by a Company is governed by N.C. Gen. Stat. §§ 132 and 66-152, et seq.

When determining whether to mark materials as Trade Secret, please note the following:

- Entire Proposals may not be marked as Trade Secret
- Pricing may not be marked as Trade Secret

The City may disqualify any Company that designates its entire Proposal as a trade secret, or any portion thereof that clearly does not qualify under applicable law as a Trade Secret or PII. Each Company agrees to indemnify, defend, and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as a Trade Secret or PII. This includes an obligation on the part of the Company to defend any litigation brought by a party that has requested Proposals or other information that the Company has marked Trade Secret or PII.

1.6.3. Amendments to RFP.

If the City amends this RFP, addenda will be posted to the IPS website at www.ips.state.nc.us and the City's [Contract Opportunities Site](#). Companies are required to acknowledge receipt of each addendum by including the Addenda Receipt Confirmation Form (Section 6, Form 2) with their Proposals.

1.6.4. Proposal Terms Firm and Irreversible.

The signed Proposal shall be considered a firm offer on the part of the Company. The City reserves the right to negotiate price and other terms. All Proposal elements (including all statements, claims, declarations, prices, and specifications) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by the City. The Company chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at the City's election.

1.6.5. Proposal Binding for 180 Days.

Section 6, Form 3 contains a statement to the effect that the Proposal is a firm offer for one-hundred-eighty (180) calendar day period from the date of the opening. This statement must be signed by an individual authorized to bind the Company. All prices quoted shall be firm and fixed for the full Contract period. The City shall have the option to accept subject to exception by Contract.

1.6.6. RESERVED

Introduction and General Information

- 1.6.7. Subcontracting.
The Company given contract award shall be the prime contractor and shall be solely responsible for contractual performance. In the event of a subcontracting relationship, the Company shall remain the prime contractor and will assume all responsibility for the performance of the Services that are supplied by all subcontractors. The City retains the right to approve all subcontractors.
- 1.6.8. Equal Opportunity.
The City has an equal opportunity purchasing policy. The City seeks to ensure that all segments of the business community have access to supplying the goods and services needed by City programs. The City provides equal opportunity for all businesses and does not discriminate against any Companies regardless of race, color, religion, age, sex, and national origin or disability.
- 1.6.9. RESERVED
- 1.6.10. Withdrawal for Modification of Proposals.
Companies may change or withdraw a previously submitted Proposal at any time prior to the Proposal due date. Only formal written requests addressed in the same manner as the Proposal and received by the City prior to the Proposal due date will be accepted. The request must be in a sealed envelope that is plainly marked "Modifications to Proposal." No oral modifications will be allowed. If the Company complies with this Section, after the Proposal due date, the Proposal, will be withdrawn or corrected in accordance with the written request(s).
- 1.6.11. No Bribery.
In submitting a response to this RFP, each Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed, or attempted to bribe, an officer or employee of the City in connection with the Contract.
- 1.6.12. Exceptions to the RFP.
Other than exceptions that are stated in compliance with this Section and Section 4.1.9, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP including the Sample Contract language included in the Exhibits. An "exception" is defined as the Company's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP including the Sample Contract language included as in the Exhibits All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. The Company shall suggest an alternate solution when taking an exception to a requirement, the benefits to the City of this alternative solution, and impact, if any, on any part of the remainder of the Company's solution, must be described in detail.
- 1.6.13. Fair Trade Certifications.

Introduction and General Information

By submitting a Proposal, the Company certifies that:

- The prices in its Proposal have been arrived at independently, without consultation, communication, or agreement with anyone, as to any matter relating to such prices for the purpose of restricting competition;
- Unless otherwise required by law, the prices quoted in its Proposal have not been knowingly disclosed by the Company and will not knowingly be so disclosed prior to the Proposal due date; and
- No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

1.6.14. Companies' Obligation to Fully Inform Themselves.

Companies or their authorized representatives must fully inform themselves as to all conditions, requirements, and specifications of this RFP before submitting Proposals. Failure to do so will be at the Company's own risk.

Section 2 Procurement Process

2. PROCUREMENT PROCESS.

This Section 2 contains information about the procurement process for this Project.

2.1. Schedule and Process.

The following chart shows the schedule of events for the conduct of this RFP. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

DATE	EVENT
JUNE 14, 2023	<i>Issuance of RFP.</i> The City issues this RFP.
JULY 5, 2023	<i>RFP Acknowledgement.</i> Companies that intend to submit a Proposal shall submit the RFP Acknowledgement Form on this date to the email listed in Section 2.3.
JULY 5, 2023	<i>Submission of Written Questions Prior to Pre-Proposal Conference.</i> Companies are permitted to submit written questions for purposes of clarifying this RFP. All submissions must be pursuant to the instructions in Section 2.3 by 2:00 p.m.
JULY 6, 2023	<i>Non-Mandatory Pre-Proposal Conference</i> to be held at the location indicated in Section 2.4 at 1:00 p.m.
JULY 21, 2023	<i>Submission of Written Questions After the Pre-Proposal Conference.</i> Questions are due by 2:00 p.m.
AUGUST 11, 2023	<i>Proposal Submission.</i> Proposals are due by 2:00 p.m. at City Procurement, CMGC 3rd Floor.
AUGUST 11, 2023 – SEPTEMBER 8, 2023	<i>Evaluation.</i> The Evaluation Committee will assess each Proposal and conduct evaluation activities with Companies.
OCTOBER, 2023	<i>Contract Award by Council.</i>
NOVEMBER, 2023	<i>Services Commence.</i> Company begins providing the Services.

2.2. Intent to Propose.

Please acknowledge receipt of this RFP via email by **JULY 5, 2023** using the RFP Acknowledgement Form located in Section 6, Form 1. Complete the form in its entirety advising the City of your firm’s intention to submit or not submit a Proposal. Email a copy of the completed and signed form to the email address or number below. The City strongly encourages Companies to submit this form prior to the Pre-Proposal conference but Companies shall not be precluded from submitting a Proposal if they fail to submit this form.

2.3. Interpretations and Addenda.

There are two (2) ways to ask questions about this RFP: (1) submit a question in writing to the Procurement Officer at the e-mail address listed below; or (2) ask a question at

Section 2 Procurement Process

the Pre-Proposal Conference. Other than these permitted methods, Companies should refrain from contacting City staff prior to the Proposal deadline. **The City is not bound by any statements, representations, or clarifications regarding this RFP other than those provided in writing by the Procurement Officer.**

John Larson
City of Charlotte
City Procurement
600 East 4th Street, CMGC 3rd Floor
Charlotte, NC 28202
RFP # 269-2023-1483
E-mail: john.larson@charlottenc.gov

When submitting questions, please reference the RFP page, Section number, and Specification (topic) using the following format:

Company Name:			
Page #	Section #	Specification	Company Questions

In order for questions to be addressed at the Pre-Proposal Conference, they must be submitted by **2:00 p.m. on JULY 5, 2023**.

After the Pre-Proposal Conference, questions must be submitted in writing by the deadline stated in Section 2.1. In the case of questions not submitted by the deadline, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the Proposal deadline. When responding to Company questions or issuing addenda to the RFP, the City will post the answer or information to the Internet at <http://www.ips.state.nc.us> and the City's [Contract Opportunities Site](#), referencing solicitation # 269-2023-1483. Companies are required to acknowledge their receipt of each addendum by including in the Proposal a completed Addenda Receipt Confirmation Form (Section 6, Form 2).

2.4. Pre-Proposal Conference.

A Non-Mandatory Pre-Proposal Conference will be conducted on **JULY 6, 2023 at 1:00 p.m.** The meeting will be held via a teleconference. Please email John Larson for login information.

While attendance at the Pre-Proposal Conference is not mandatory, all interested Companies are encouraged to attend. If special accommodations are required for attendance, please notify John Larson in advance of the conference date and time identifying the special accommodations required.

2.5. Submission of Proposals.

Proposals must be in the format specified in Section 4 of this RFP. One (1) electronic copy on a flash drive in a searchable format such as MS Word or Adobe Acrobat and one (1) original Proposal signed in ink by a company official authorized to make a legal

Section 2

Procurement Process

and binding offer shall be submitted to the address listed in Section 2.3 above by **AUGUST 11, 2023 on or before but no later than 2:00 p.m.** The digital version of the Proposal shall be complete and unabridged and shall not refer to the signed and sealed original for any references, clarifications, or additional information.

When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of the City. **Proposals sent by fax or email will not be accepted.**

Due to security requirements at the Charlotte-Mecklenburg Government Center (CMGC), sealed box(es), including any portions marked as Confidential/Trade Secret, may be searched and thoroughly inspected prior to admittance. Please allow time for this search to take place and to re-seal the box if delivering your Proposal in person to CMGC.

Do not arrive at City Procurement on the Proposal due date for the purposes of reviewing your competitors' Proposals. The Proposals will not be read aloud or made available to inspect or copy until any trade secret issues have been resolved. All Proposals will be time-stamped upon receipt and held in a secure place until opening.

Proposals may be delivered in the following ways to the address in Section 2.3:

Via mail (USPS, UPS, FedEx, DHL, etc.).

Drop off at the locked Bid Drop Box in the CMGC Lobby (600 East 4th Street – 1st Floor, Charlotte, NC 28202) during normal business hours.

Delivered in person (Vendor must coordinate onsite delivery ahead of time by contacting John Larson at john.larson@charlottenc.gov)

2.6. **Correction of Errors.**

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Company further agrees that in the event of any obvious errors, the City reserves the right to waive such errors in its sole discretion. The City, however, has no obligation under any circumstances to waive such errors.

2.7. **Evaluation.**

As part of the evaluation process, the Evaluation Committee may engage in discussions with one or more Companies. Discussions might be held with individual Companies to determine in greater detail the Company's qualifications, to explore with the Company the scope and nature of the required contractual Services, to learn the Company's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the City.

The City may in its discretion require one (1) or more Companies to make presentations to the Evaluation Committee or appear before the City and/or its representatives for an interview. During such interview, the Company may be required to present its Proposal orally and otherwise and to respond in detail to any questions posed. Additional meetings may be held to clarify issues or to address comments, as the City deems appropriate. Companies will be notified in advance of the time and format of such meetings.

Section 2

Procurement Process

Since the City may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall state the Company's best offer for performing the Services described in this RFP.

2.8. Contract Award by Council.

As soon as practical after opening the Proposals, the name of the apparent successful Company will be submitted to the Council for final approval of award and the Procurement Officer will provide Contract documents to the Company. In the event the Council approval is not received within one hundred eighty (180) calendar days after opening of the Proposals, the Company may request that it be released from the Proposal.

2.9. Vendor Inclusion.

The City's vendor management philosophy supports a fair, open, and inclusive process that offers the same access and information to all Companies. Although Companies are not required to be registered in the City's vendor registration system prior to submitting a Proposal, to execute a contract with the City and receive payment from the City, all Companies must register with the City's vendor registration system.

Your registration provides the City with baseline information for your company including location, contact and demographic information, as well as your areas of expertise with specific commodity and/or service descriptions. You may also complete any applicable certifications if your company desires to establish itself as an SBE, MBE, or WBE. The link below will provide you with the opportunity to complete your registration on-line with the City.

<http://charlottenc.gov/vendors>

3. SCOPE OF CMAR SERVICES FOR THE SOUTH END STATION.

3.1. General Scope.

The South End Station Project will involve constructing a new light rail station designed to similar standards as the recently constructed LYNX Blue Line Extension (BLE) stations, including the capacity to serve train consists of three Light Rail Vehicles (LRVs). The new station will be incorporated into ongoing LYNX Blue Line operations. Major Project components include:

- Light rail station consisting of two side platforms offset from one another as described in the Locally Preferred Alternative (LPA);
- Centrally located pedestrian track crossing connecting the platforms;
- Relocation of the Rail Trail around and adjacent to the platforms;
- Completion of a missing segment in the Rail Trail behind the AutoBell car wash to facilitate pedestrian detours during construction;
- Installation of a track crossover to reduce the length of track affected by single tracking and facilitate LRV schedules during construction;
- Additional drainage capacity improvements near the Tremont Avenue crossing; and
- Improvements to existing pedestrian routes connecting the station platforms and Rail Trail through adjacent development to South Boulevard and Hawkins Street.

While the City is flexible with respect to certain elements of South End Station, the City has specific requirements and preferences for the Service delivery method.

3.2. Project Priorities

During planning activities, the Project team developed a list of seven priorities:

- Safety Considerations – including safety of station and Rail Trail users, emergency response and track crossings;
- Pedestrian and Bicycle Connectivity – track crossings and connections to outside destinations;
- Limit operational disruptions to existing light rail operations – assumption is that the LYNX Blue Line will be in operation throughout construction;
- Minimize adverse effects to the community – limit noise and disruptions during construction;
- Address community needs – support future economic development and improve existing quality of life by supporting adjacent land uses, improving urban design conditions, and maintaining public and stakeholder support; and
- Cost effectiveness – capital and operations & maintenance costs.

3.3. Project History

Following the opening of the LYNX Blue Line in 2007, private development began to dramatically re-shape the South End neighborhood. To plan for the area's changing needs, the City of Charlotte collaborated with Center City Partners and local

stakeholders to develop the South End Vision Plan, which was adopted by City Council in 2018. The South End Vision Plan recommended a pedestrian track crossing and a new light rail station between New Bern and East/West Stations. The City undertook the South End Pedestrian and Bicycle Connector Study to analyze the feasibility of these recommendations. Following completion of the study in 2019, CATS and local stakeholders determined that a new light rail station would best meet the area’s needs.

CATS initiated the South End Station Project and contracted with the Kimley-Horn consultant team in early 2022 to plan and design the station. The Project team undertook a planning study that culminated in August 2022 with the adoption of the current station layout as the Project’s LPA. Project development continues in early 2023 with environmental (NEPA), geotechnical and survey tasks as the Project advances into early design.

3.4. Budget and Schedule

The South End Station Project has an estimated year-of-expenditure budget of \$20.8 million using a mix of federal (FTA) and local funds. This budget must fund all stages of the Project, including planning and design, environmental studies, art in transit program, easement acquisition, permitting, construction, testing and system integration.

The South End Station Project is planned to be a five-year Project. Construction may be divided into an early package (to construct supporting infrastructure) and a primary package. The anticipated Project schedule includes:

Advertise and select planning and design consultant	Late 2021
Begin Planning and Environmental Activities	Spring 2022
Begin Early Design	January 2023
Issue NTP for CMAR’s Preconstruction Services	Summer 2023
Begin Early Construction	Mid-2024
Finish All Construction	Fall 2025
Testing and Systems Integration	Late 2025
Begin Revenue Service	Early 2026

The detailed Project schedule will be refined with input from the CMAR.

3.5. Real Estate Conditions

CATS purchased the Rail Corridor from Norfolk Southern Railroad to construct the LYNX Blue Line in 1999. The original 130’ corridor width has been modified by subsequent land exchanges with adjacent developers. The Project team does not anticipate a need to purchase additional rail rights of way to construct this Project. Permanent easements may be negotiated for pedestrian connections through adjacent developments. Temporary easements for staging, access, and working space are likely to be needed, and CMAR input will be instrumental in defining these needs.

3.6. Project Delivery Method

After adoption of the LPA, the South End Station Project team formally evaluated Project delivery methods. Using the process prescribed in the Project Delivery Method Selection Tool Guide, CATS selected Construction Manager at Risk (CMAR) to deliver the Project. CATS seeks a CMAR who can maximize the benefits of this delivery method to best position South End Station to meet the Project Priorities of Section 3.2 by doing the following:

- Promote a team approach between the Project team, designer, stakeholders, CMAR and others to mitigate cost, schedule and quality risks;
- Collaborate with the Project team during design to address the complexities of:
 - Construction during active rail operations on the LYNX Blue Line;
 - Lack of public street access to the Project site;
 - Limited staging opportunities;
 - Constraints due to adjacent businesses and resident sensitivities;
- Enable early opportunities during design to evaluate innovative construction methods that may reduce construction impacts and schedule;
- Provide early opportunities during design for coordination with CATS Rail Operations to develop work plans and conditions, including night work and single tracking;
- Allow for both qualifications and costs to be considered through the CMAR selection process;
- Evaluate innovative design ideas supporting Project sustainability certification through Envision;
- Enable open and transparent development of construction pricing during the design process (greater cost certainty and reduced potential for change orders);
- Allow for prequalification of subcontractors based on factors that include but are not limited to financials, experience, and demonstrated success; and
- Promote inclusion of DBE subcontractors through outreach, training, and procurement strategies.

3.7. Scope of CMAR Services Overview

General Services

The CMAR shall provide consulting, scheduling, estimating and cost control services. The CMAR will collaborate with all members of the Project Team in the assembly of work packages to break the Project into tasks and will manage the Work related to the Project. As part of its duties as a general contractor, the CMAR will be responsible for: Overseeing execution of the Work within an agreed-upon Guaranteed Maximum Price (GMP); Developing pricing for construction alternatives for consideration by the Project team; Scheduling, estimating and self-performing portions of the Work; and Recommending optimal construction phasing and sequences. Please see Exhibit

Section 3 Scope of Services

A CONTRACT FOR CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES for complete scope.

Preconstruction Phase

The preconstruction phase shall commence upon issuance of a Notice to Proceed with preconstruction services. The Project team intends for this to occur at the start of 65% design. Preconstruction services shall include, but are not limited to, the work described in Attachment C of the Preconstruction Services Contract.

Construction Phase

Upon the City's acceptance of the GMP for the construction work, the City and CMAR may execute a construction contract under which CMAR shall provide Construction Phase Services, which shall include, but are not limited to, the work described in the Contract for Construction Services. The Contract for Construction Services shall be awarded in City's sole discretion. CMAR acknowledges that City's award of the Preconstruction Services Contract to CMAR does not guarantee further contracting opportunities, including a contract to carry out construction services.

Section 4

Proposal Content and Format

4. PROPOSAL CONTENT AND FORMAT.

The City desires all Proposals to be identical in format to facilitate comparison. While the City's format may represent departure from the Company's preference, the City requires strict adherence to the format. The Proposal will be in the format described below:

- A. Cover Letter;
- B. The "Addenda Receipt Confirmation" set forth in Section 6, Form 2;
- C. The "Proposal Submission" set forth in Section 6, Form 3;
- D. The "Pricing Worksheet" set forth in Section 6, Form 4;
- E. The "Certification Regarding Debarment, Suspension and Other Responsibility Matters" set forth in Section 6, Form 5;
- F. The "Byrd Anti-Lobbying Certification" set forth in Section 6, Form 6;
- G. Letter from surety confirming bonding capacity;
- H. Letter from insurance company stating worker's comp EMR rating;
- I. Letter from insurance company confirming ability to obtain Builder's Risk insurance; and
- J. Exceptions to the Remainder of the RFP, including the both Sample Contracts in the Exhibits.

The City encourages Proposals to be compatible with the City's waste reduction goals and policies. Therefore, it is desired that all responses meet the following requirements:

- All Proposals be printed in 8 1/2" x 11" format with all standard text no smaller than eleven (11) points;
- Proposals are limited to a maximum of **sixteen (16)** numbered, printed pages (i.e., 16 pages printed on one side, or 8 pages printed on both sides, or a combination of both) excluding required forms and dividers/tabs but including resumes, covers, sub-tabs, and Appendices.
- All copies be printed on recycled paper (at least 30% post-consumer recovered material and at least 30% total recovered material);
- Unless necessary, all Proposal originals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as 3-ring binders, plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Glued materials, paper clips, and staples are acceptable; and
- Materials be submitted in a format that allows for easy removal and recycling.

Proposals must also include a flash drive including the entire Proposal in a searchable format such as MS Word or Adobe Acrobat.

Companies are required to organize the information requested in this RFP in accordance with the format and instructions outlined above and detailed below. Failure to do so may result in the City, at its sole discretion, deeming the Proposal non-responsive. The Company, however, may reduce the repetition of identical information within several sections of the Proposal by making the appropriate cross-references to other sections of the Proposal. Appendices for certain technical or financial information may be used to facilitate Proposal preparation.

4.1. Proposal Content.

Section 4

Proposal Content and Format

The respondent should describe its understanding of the Project and its approach and methodology for providing CMAR services. Describe whatever difficulties or challenges are foreseen in providing services on this Project; how these difficulties and challenges would be managed; and what assistance is required from CATS and the Design Consultant to meet those challenges. The respondent should also describe how the firm is uniquely qualified to act as the CMAR on this Project.

Proposal packages shall be arranged as follows:

4.1.1. Cover Letter :

The Proposal must include a Cover Letter attesting to its accuracy, signed by an individual authorized to execute binding legal documents. The cover letter shall provide the name, address, and telephone numbers of the Company along with the name, title, address, and telephone numbers of the executive that has the authority to contract with the City. The cover letter shall present the Company's understanding of the Project and a summary of the approach to perform the Services

- A. Describe your interest in this Project and the unique advantages your firm and team brings.
- B. State any conflicts of interest your firm or any key team member may have with this Project.
- C. Identify and describe any pending claims, disputes, or litigation and any that occurred within the past five (5) years involving your firm or any of your proposed subconsultants. With respect to resolved matters, describe the outcome.
- D. Provide a description of the company that will enter into the contract(s) with the City, including origin, background, current size, financial capacity, available resources, general organization, and company headquarters. Identify the name and title of the person authorized to enter into the contract(s) with the City.
- E. List exceptions to the City's standard contract terms and conditions. A sample contract is attached as Exhibit B.
- F. Cover Letters may be up to two pages and count toward the page limit.

4.1.2. Tab 1: Proposed Team and Organization

- Provide an organization chart of all key team members who will be directly involved in providing services, including any subcontractors, to be assigned specifically to this Project. Ensure the organization charts clearly designate the key team member for each service.
- Identify the Project Manager who will be empowered to make decisions for and act on behalf of the entire team.
- Identify any member of the team that is certified as a minority, women, or small business.
- Describe any previous collaboration(s) between key team members, the responsibilities of each team member during these collaboration(s), and the collaboration(s) outcome(s). Cite any significant achievements

reached because of this collaboration. Discuss the successes of the team collaboration, any problems encountered, and methods used to mitigate issues.

4.1.3. Tab 2: Project Understanding, Methodology and Approach, and Safety Program and Record

A. Project Understanding

- Describe the firm's or team's general observations of the South End Station Project.
- Identify the major construction activities and tasks involved in constructing the Project.
- Identify key issues or potential challenges that could hinder the successful delivery of the Project.
- Identify opportunities that may be leveraged to achieve the identified Project Priorities of Section 3.2.

B. Methodology and Approach (General, Project Controls and FTA Requirements)

- Describe the firm's or team's approach to providing preconstruction services and how this approach differentiates the firm or team from their competitors.
- Describe the firm's or team's general approach to construction management including management of subcontractors and communications with the rest of the Project team.
- Describe strategies successfully employed on past projects to manage records and reviews during construction of items such as key decisions, submittals, RFIs, materials testing, inspections and change management.
- Describe the firm's or team's approach to meeting FTA requirements including Buy America requirements.
- Describe the firm's or team's proposed methodology and approach to maintaining the Project schedule and budget while highlighting strategies successfully employed on past projects.
- Note any items potentially requiring long lead times for procurement and/or with high risk of price escalation as well as strategies that could potentially mitigate these risks.
- Summarize the firm's or team's quality control plan and procedures including how these would be applied to subcontractors while highlighting strategies successfully employed on past projects.

C. Safety Program and Record

- Provide an overview of your safety program and approach to safety.
- Describe how you propose to address any unique safety issues for the Project during construction and as it relates to certification and achieving approval from State Safety Oversight.
- Describe your experience with Safety and Security Certification processes through construction, integrated testing, and start-up.

4.1.4. Tab 3: Team’s Comparable Project Experience

List a maximum of 7 relevant, similar projects, either currently in progress or having been completed in the past 10 years, performed by key team members containing work comparable to the specific Scope of Services, including any projects with the City, as follows:

- List only projects involving the key team members or subcontractors proposed for this Project.
- List projects in date order with newest projects listed first and include the following:
 - Brief project description.
 - Owner’s representative having knowledge of the team’s work, include the representative’s firm, phone, email, and physical address.
 - Contract dollar amount and total time period involved.
 - Explain your team’s previous successes in being able to deliver similar projects on time and at or under budget.
 - Discuss the methods, approach and controls used on the project to complete it in an effective, timely, economical, and professional manner.

4.1.5. Tab 4: Proposed Project Staff Experience and Availability

- A. Resumes may be submitted for each proposed key team member and should highlight experience gained in the last ten years. Resumes will be counted towards the page limit.
- B. Discuss availability of key team members by providing a list of current projects/work for each key team member.
- C. Describe any specific projects or examples that illustrates your team’s availability and responsiveness

4.1.6. Tab 5: DBE Participation Approach and Documentation

The City will negotiate DBE goals for the Project with the selected firm(s) including a separate Project Goal for the Construction Phase of the Project to be negotiated as part of the GMP efforts.

- A. Provide a Disadvantaged and Minority Business Enterprise Participation Plan which describes the firm’s or team’s approach and history with DBE and MBE subcontractor utilization. The Participation Plan should include the following elements:
 - Identify outreach efforts that were employed by the Proposer to maximize inclusion of DBEs and MBEs;
 - Identify outreach efforts that will be employed by the Proposer to maximize inclusion during the Preconstruction Phase Services for the Project;

Section 4

Proposal Content and Format

- Identify DBEs and MBEs that will be utilized during the Preconstruction Phase Services;
 - Identify specific scopes of work to be performed by the DBEs and MBEs for Preconstruction Phase Services;
- B. Document the overall percentage to be committed to DBEs and MBEs for Preconstruction Phase Services; and
- C. Document efforts the Proposer will utilize to ensure maximum utilization for the Construction Phase Services.
- D. Document history of working with Disadvantaged and Minority Business Enterprises (DBEs and MBEs).

4.1.7. Tab 6: Preconstruction Costs, Procurement, Self-Performed Work, Construction Phase Costs and Profit & Home Office Overhead

- A. Project Year-of-Expenditure Budget Assessment
Provide an assessment of the overall Project estimated year-of-expenditure budget. The assessment should provide comments on the current Project estimates for each of the Standard Cost Categories (SCC) (SCC 10 – 60) and SCC 80.01 – 80.04 and 80.07, noting any significant differences between the current Project budget and the CMAR’s estimated budget
- B. Preconstruction Costs
Provide a Proposal for preconstruction services on a lump sum (fixed price) basis.
- C. Procurement Approach
Explain the firm’s or team’s approach to assembling a successful Project team and describe the firm’s or team’s strategy for procurement including strategies successfully employed on past projects.
- D. Self-Performed Work
Generally indicate which elements of work your firm would propose to perform with its own forces and reasons those elements should be self-performed.
- Provide your percentage mark-up for any self-performed work (including general conditions) provided on a cost-plus-fee basis. Percent mark-up to be applied to the labor and equipment rates below and company provided materials. Any materials or equipment from outside suppliers or subcontractors shall be provided at invoice cost, plus the “Profit & Home Office Overhead” below.
 - Provide trade labor rates (include small tools under \$1,000)
 - Provide billable % AED for any company owned equipment
- E. Construction Phase Costs
- Provide proposed General Conditions / Requirements in the form of a non-binding estimated breakdown as a percentage of the cost of work. This should include costs associated with a field office and its furnishings, construction supervision staff, field labor (including safety, security, and survey), field equipment and other related staff or equipment needed to carry out Construction Phase Services.

Section 4

Proposal Content and Format

- Provide management personnel labor rates, including superintendents.
- F. Profit & Home Office Overhead
Provide your fee (as a percentage of the cost of work). The fee definition is as follows: “profit and all off-site overhead.”
- 4.1.8. Required Forms.
To be deemed responsive to this RFP, Companies must complete, in detail, all Proposal Forms listed in this Section 4.
- 4.1.9. Exceptions to the RFP.
Exceptions must be submitted in accordance with Section 1.6.12 of this RFP. If exceptions are not identified in your Proposal they may not be considered during Contract negotiation and could result in Proposal being rejected from further consideration. If legal counsel needs to review the Sample Contract prior to signature, reviews must be completed before your Proposal is submitted.
The City intends to enter into a City-drafted Contract with the successful Company that contains the terms and conditions set forth in Section 7 (“Sample Terms”). The number and extent of any exceptions and proposed additions to the Sample Terms will be one of the City’s evaluation criteria. Accordingly, each Company must state specifically in its Proposal any exceptions to the Sample Terms, or any such exceptions will be waived. Any Company-proposed additional terms or conditions must also be included in the Proposal, and the City reserves the right to refuse consideration of any terms not so included. Any proposed changes to the Sample Terms after tentative contract award may constitute a material change to the Company’s Proposal and be grounds for revoking the award. Notwithstanding the foregoing, the City reserves the right to modify the Sample Terms prior to or during contract negotiations if it is in the City’s best interest to do so.

4.2 Minimum Qualifications

Firms will not be considered unless the following minimum qualifications are met:

- The firm must have bonding capacity to provide a payment and performance bond for the total cost of the work. A letter from a surety stating that the firm has sufficient bonding capacity must be submitted. The letter should also indicate the grade of the bonding agency.
- The firm must be able to obtain a Builder’s Risk Insurance policy for the total cost of the work; provide verification.
- Provide a letter from the firm’s insurance company stating the firm’s Workers Compensation Experience Modification Rate (EMR) for the past three years.
- The firm shall hold a valid North Carolina General Construction License.
- The firm shall not have any recent or pending litigation with the City.
The firm shall comply with NCGS § 133-1.

Section 5

Evaluation Criteria

5. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated based on the Company's ability to meet the performance requirements of this RFP. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the respondent to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. The respondent's Proposal will be the primary source of information used in the evaluation process. Proposals must contain information specifically related to the proposed Services and requested herein. Failure of any Company to submit information requested may result in the elimination of the Proposal from further evaluation.

Proposals will be assessed to determine the most comprehensive, competitive, and best value solution for the City based on, but not limited to, the criteria below. The City reserves the right to modify the evaluation criteria or waive portions thereof. Proposals will be evaluated on the following major categories:

Section 5 Evaluation Criteria

Proposed Project Team and Organization	20 points
Project Understanding, Methodology and Approach, and Safety Program and Record	25 points
Team's Comparable Project Experience	30 points
Proposed Project Staff Experience and Availability	25 points
DBE Participation Approach and Documentation	Y/N (3 points may to be awarded for the most appropriate DBE Approach in the case of a tie)
Preconstruction Costs, Construction Phase Costs and Profit & Home Office Overhead;	67 points (maximum total)
<ul style="list-style-type: none"> • Project Budget Assessment 	<ul style="list-style-type: none"> • 15 points (maximum subtotal)
<ul style="list-style-type: none"> • Preconstruction Costs 	<ul style="list-style-type: none"> • 15 points (maximum subtotal)
<ul style="list-style-type: none"> • Procurement Approach 	<ul style="list-style-type: none"> • 10 points (maximum subtotal)
<ul style="list-style-type: none"> • Self-Performed Work 	Y/N (0 points, amount to be between 15% and 50% of respondent's construction estimate)
<ul style="list-style-type: none"> • Construction Phase Costs 	<ul style="list-style-type: none"> • 10 points (maximum subtotal)
<ul style="list-style-type: none"> • Profit and Home Office Overhead 	<ul style="list-style-type: none"> • 17 points (maximum subtotal)
Acceptance of Terms of Contract/Exceptions	Y/N (0 points)
Required Forms	Y/N (0 points)
Letter from a surety stating that the firm has sufficient bonding capacity and indicating the grade of the bonding agency	Y/N (0 points)
Verification that the firm can obtain a Builder's Risk Insurance policy for the total cost of the work;	Y/N (0 points)
Letter from the firm's insurance company stating the firm's Workers Compensation Experience Modification Rate (EMR) for the past three years	Y/N (0 points)
Copy of firm's valid North Carolina General Construction License.	Y/N (0 points)

5.1. Acceptance of the Terms of the Contract.

The City will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP including the sample contract language provided in Exhibit A and Exhibit B. Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Exceptions shall be identified in accordance with Sections 1.6.12 and 4.1.9 of this RFP.

Section 6
Required Forms

REQUIRED FORM 1 – RFP ACKNOWLEDGEMENT
RFP # 269-2023-1483

CMAR Services for the South End Station

The Company hereby certifies receipt of the RFP for the City of Charlotte, North Carolina RFP #269-2023-1483, CMAR Services for the South End Station. This form should be completed upon receipt of the City's RFP and emailed in time for the City to receive it by or before **JULY 5, 2023**. Failure to submit this form by the designated date shall not preclude the Company from submitting a Proposal. Please email the completed RFP Acknowledgement Form to the attention of:

John Larson
Department of General Services – City Procurement
Email: john.larson@charlottenc.gov

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Contact Name: _____

Contact E-mail Address: _____

Contact Phone Number: _____

Please check the appropriate space below and provide the requested information:

_____ **We plan to attend the Pre-Proposal Conference and plan on submitting a Proposal**

Indicate number of attendees: In-Person _____ Via Teleconference _____

_____ **We do not plan to attend the Pre-Proposal Conference but plan on submitting a Proposal**

Reason: _____

_____ **We do not plan to attend the Pre-Proposal Conference and do not plan on submitting a Proposal**

Reason: _____

Section 6
Required Forms

REQUIRED FORM 2 – ADDENDA RECEIPT CONFIRMATION
RFP # 269-2023-1483

CMAR Services for the South End Station

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to the NC IPS website at www.ips.state.nc.us and the City’s Contract Opportunities Site at <http://charlottenc.gov/DoingBusiness/Pages/ContractOpportunities.aspx>.

ADDENDUM #:

**DATE ADDENDUM
DOWNLOADED FROM NC IPS:**

I certify that this Proposal complies with the Specifications and conditions issued by the City except as clearly marked in the attached copy.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Section 6
Required Forms

REQUIRED FORM 3 – PROPOSAL SUBMISSION FORM
RFP # 269-2023-1483

CMAR Services for the South End Station

This Proposal is submitted by:

Company Legal Name: _____

Representative (printed): _____

Address: _____

City/State/Zip: _____

Email address: _____

Telephone: _____

(Area Code) Telephone Number

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Company has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, or supplier based on race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this Project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Company on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Company agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Company further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Company or terminate any contract awarded on such proposal.
5. As part of its Proposal, the Company shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Company in a legal or administrative proceeding alleging that the Company discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

Section 6 Required Forms

6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.
7. None of Company's or its subcontractors' owners, employees, directors, or contractors will be in violation of the City's Conflict of Interest Policy for City, Secondary and Other Employment Relationships (HR 13) if a Contract is awarded to the Company.
8. It is understood by the Company that the City reserves the right to reject any Proposals, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and resolicit this RFP.
9. This Proposal is valid for one hundred and eighty (180) calendar days from the Proposal due date.

I, the undersigned, hereby acknowledge that my company was given the opportunity to provide exceptions to the Sample Contract as provided in the RFP. As such, I have elected to do the following:

Include exceptions to the Sample Contract in the following section of my Proposal: _____

Not include any exceptions to the Sample Contract.

I, the undersigned, hereby acknowledge that my company was given the opportunity to indicate any Trade Secret materials or Personally Identifiable Information ("PII") as detailed in Section 1.6.2. I understand that the City is legally obligated to provide my Proposal documents, excluding any appropriately marked Trade Secret information and PII, upon request by any member of the public. As such, my company has elected as follows:

The following section(s) of the of the Proposal are marked as Trade Secret or PII: _____

No portion of the Proposal is marked as Trade Secret or PII.

Representative (signed): _____

Section 6
Required Forms

REQUIRED FORM 4 – PRICING WORKSHEET
RFP # 269-2023-1483

CMAR Services for the South End Station

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs for which the City will be responsible. Please include this pricing sheet to Tab 6 in your proposal.**

From Tab 6	Cost
B. Pre-construction Cost	\$
E. Construction Phase Cost	%
F. Profit and Overhead	%

Section 6
Required Forms

**REQUIRED FORM 5 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS RFP # 269-2023-1483**

CMAR Services for the South End Station

The bidder, contractor, or subcontractor, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, or managers who will be working under the Contract, or persons or entities holding a greater than (ten percent) 10% equity interest in it (collectively “Principals”):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state, or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Proposal or termination of the award or in some instances, criminal prosecution.

I hereby certify as stated above:

(Print Name)

Signature

Title

Date

I am unable to certify to one or more the above statements. Attached is my explanation. [Check box if applicable]

(Print Name)

Signature

Title

Date

**REQUIRED FORM 6 – BYRD ANTI-LOBBYING CERTIFICATION
RFP # 269-2023-1483**

CMAR Services for the South End Station

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including all subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ (the "Company") certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

(Print Name)

Company Name

Authorized Signature

Address

Date

City/State/Zip

FEDERAL TRANSIT ADMINISTRATION CONTRACTING TERMS

This Attachment is attached and incorporated into the {---Contract Title---} (the "Contract") between the City of Charlotte and {---Vendor Legal Name---} ("The Company"). Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

1. THE COMPANY SHALL COMPLY WITH ALL FEDERAL REQUIREMENTS.

- A. The Company acknowledges and understands that this Contract will be financed at least partially with funding from the federal government. The Company further acknowledges and understands that this Contract is therefore subject to: (1) all applicable federal laws, (2) all applicable federal regulations, (3) all applicable federal policies, (4) the conditions and requirements of all federal grants that in any way will fund any part of the work under this Contract, and (5) the most recent Federal Transit Administration's "Master Agreement," including any certifications or contract provisions that the Master Agreement requires to be included in this Contract. For purposes of these Federal Contracting Requirements, items (1) through (5) in the immediately preceding sentence, as those items may be amended or updated from time to time, are referred to collectively as "Federal Law."
- B. All provisions of Federal Law are incorporated into this Contract by reference and are fully binding on the Company as if they were recited here verbatim. The Company shall ensure that all provisions of Federal Law are incorporated into all subcontracts (of every tier) and in all contracts with those supplying any materials, equipment, or other products related in any way to this Contract, such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of Federal Law.
- C. The Company at all times shall: (1) fully comply with all provisions of Federal Law, (2) ensure that all work under this Contract (including, by example only, all subcontracted work) fully complies with all provisions of Federal Law, and (3) ensure that no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to be at any risk of violating any provision of Federal Law. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create any risk of the City or any of its officials, employees, or agents being in violation of any provision of Federal Law.
- D. These Federal Contracting Requirements identify and summarize many provisions of Federal Law. However, the Company acknowledges and agrees that the

Company is fully and ultimately responsible for identifying and learning about all provisions of Federal Law. If these Federal Contracting Requirements omit any provision or requirement of Federal Law, the Company shall remain fully responsible for identifying and learning about that provision or requirement and for fully satisfying the Company's obligations under Article 1.1.C of these Federal Contracting Requirements with respect to that provision or requirement. The Company shall not be excused from ensuring full compliance with any provision or requirement of Federal Law because that provision or requirement is omitted from these Federal Contracting Requirements, nor shall the Company have any claim or remedy against the City because any such provision or requirement has been so omitted.

- E. By executing this Contract, the Company represents to the City and covenants with the City that, as of the date that this Contract takes effect, the Company has fully complied with all provisions of Federal Law and that the Company shall continue to fully comply with all provisions of Federal Law at all times while this Contract is in effect.
- F. Notwithstanding any other provision in this Contract, the Company and the City agree that Federal Law and these Federal Contracting Requirements take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of Federal Law or of these Federal Contracting Requirements, such that the Company cannot satisfy both provisions, the Company shall fully comply with the provision of Federal Law or of these Federal Contracting Requirements. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with Federal Law and with these Federal Contracting Requirements, and the Company otherwise shall fully comply with that conflicting Contract provision to the extent possible.
- G. The Company and the City agree that, in any situation where the Company can comply with both another Contract provision and with a provision of Federal Law or of these Federal Contracting Requirements, even if the two provisions address the same subject matter (e.g., if another Contract provision imposes an obligation on the Company beyond those obligations

imposed by Federal Law), that will not be deemed a conflict. Rather, in such a situation, the Company shall fully comply with Federal Law, with these Federal Contracting Requirements, and with the other Contract provision.

2. ACCESS TO CONTRACT RECORDS.

- A. For purposes of this Article 2 of these Federal Contracting Requirements, "Contract Records" means all documents (whether in hard copy, digital, or other format) that refer or relate to any aspect of this Contract or to the Company's performance under this Contract. By example only (and not for purposes of limitation), Contract Records include all of the following to the extent that they refer or relate to any aspect of this Contract or to the Company's performance under this Contract: subcontracts, contracts with suppliers and other third parties, invoices and other billing records, audits and other financial and accounting records, memos, letters, and emails.
- B. For purposes of this Article 2 of these Federal Contracting Requirements, "Retention End Date" means the later of:
 - (a) The third anniversary of the date on which this Contract is terminated or expires, or
 - (b) If, on or before that third anniversary, the Company has received notice (from the City or otherwise) of one or more lawsuits, legal proceedings, disputes, audits, or investigations related in any way to this Contract, the date on which the City later notifies the Company in writing that all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded. The City and the Company intend for all Contract Records to be retained, maintained, and made available for inspection and copying until all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded, even if that requires retaining, maintaining, and making those records available after the third anniversary of this Contract's termination or expiration.
- C. Through and including the Retention End Date, (a) the Company shall retain and maintain all Contract Records that the Company ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, the Company shall promptly make any and all Contract Records available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) the Company shall comply with all requirements imposed by 2 C.F.R. §200.334.
- D. Through and including the Retention End Date, the Company shall ensure that each subcontractor (of every tier) and each supplier providing any material,

equipment, or other product shall: (a) retain and maintain all Contract Records that the subcontractor or supplier ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, promptly make any and all Contract Records in that subcontractor's or that supplier's possession or control available for inspection and copying by the City, by the federal government, and by their respective Companies and agents, and (c) comply with all requirements imposed by 2 C.F.R. §200.334.

- E. In addition to taking all other necessary and appropriate steps to satisfy its obligations under Article 2.B(b) of these Federal Contracting Requirements, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier retain, maintain, and make available Contract Records as required by Article 2.B(b).
- F. This Article 2 will survive this Contract's termination or expiration regardless of how, when, or under what circumstances this Contract is terminated or expires.

3. BUY AMERICA.

- A. For purposes of this Contract, "Buy America Requirements" means all requirements imposed on the Project or on the Work by 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, as those provisions might be amended from time to time. For example, the Buy America Requirements include a requirement that all iron, steel, manufactured products, and construction materials used for the Work or otherwise incorporated into the Project are manufactured in the United States or otherwise originate in the United States.
- B. The CMAR shall comply with all Buy America Requirements and shall take all steps necessary and appropriate to ensure that no aspect of the Work or of the Project puts the City out of compliance with any of the Buy America Requirements. The CMAR shall provide the City, in accordance with this Article 3, with all certifications that might be requested or required from time to time by the City or by the federal government related in any way to the CMAR's compliance with the Buy America Requirements.
- C. The CMAR shall ensure that each subcontractor and each supplier providing any material, equipment, or other product for the Work or for the Project: (1) fully complies with the Buy America Requirements, (2) provides the City, in accordance with this Article 3, with all certifications that might be requested or required from time to time by the City or by the federal government related in any way to that subcontractor's or that supplier's compliance with the Buy America Requirements, and (3) fully complies with all other requirements that this Article 3 contemplates for, or imposes on, subcontractors or suppliers. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 3.C, the CMAR

shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with all Buy America Requirements and with this Article 3.

- D. All certifications submitted to the City under this Article – whether submitted by the CMAR, by a subcontractor, or by a supplier – must be complete and must be submitted on forms provided by or approved by the City. The first time that the CMAR proposes to use a particular material, equipment, or product from a particular manufacturer, the CMAR shall submit with its certification under this Article a signed letter from the manufacturer confirming that the material, equipment, or product satisfies all Buy America Requirements.
- E. If the CMAR believes it is necessary to provide iron, steel, manufactured products, or construction materials that do not comply with the Buy America Requirements or that otherwise would put the City, the Work, or the Project out of compliance with the Buy America Requirements, the CMAR shall submit a written justification to the City detailing the item, its estimated cost, the CMAR's rationale for using it, and the reasons that the CMAR believes that the Buy America Requirements cannot be satisfied. The City will determine whether to request a waiver of the Buy America Requirements for that item from the federal government. If the City decides not to request a waiver, or if the City requests a waiver but that request is not approved, the CMAR shall fully satisfy its obligations under this Article and will not be entitled to any remedy.
- F. The City from time to time may investigate whether the CMAR, any subcontractor, or any supplier has complied with or is complying with this Article 3. If the City conducts such an investigation, the CMAR shall fully cooperate with that investigation and shall ensure that each subcontractor and each supplier does the same. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 3.F, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully cooperate with any such investigation.
- G. Any violation of the Buy America Requirements or of this Article 3 by the CMAR, by any subcontractor, or by any supplier will be a material breach of this Contract by the CMAR. If such a breach happens, the City may terminate this Contract for default, may pursue any and all other remedies that the City has under this Contract or under the law, or both. To avoid any doubt, the CMAR's obligations under the indemnification provisions of this Contract's General Conditions include an obligation to defend, indemnify, and hold harmless each and all of the Indemnitees (as that term is defined in the indemnification provisions) against

any Charges (as that term is defined in the indemnification provisions) arising out of or related to any violation of the Buy America Requirements or of this Article by the CMAR, by any subcontractor, or any supplier.

- H. The CMAR acknowledges and agrees that, to the extent that the CMAR or any subcontractor or any supplier provides any rolling stock for the Work or for the Project, the "Buy America Requirements" for purposes of this Article 3 also include all requirements imposed by 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11, as those provisions may be amended from time to time. It is solely the CMAR's responsibility to determine whether the CMAR, each subcontractor, and each supplier will provide any rolling stock such that 49 U.S.C. § 5323(j)(2)(C) or 49 C.F.R. § 661.11 apply.

4. CIVIL RIGHTS LAWS AND REGULATIONS.

The Company acknowledges that the City must comply with all applicable federal civil rights laws and regulations and with 49 U.S.C. § 5323(h) (3) to the extent that the statute is applicable. The Company acknowledges and agrees that "Federal Law" for purposes of Article 1.1 of these Federal Contracting Requirements includes all applicable federal civil rights laws and regulations, as they may be amended from time to time. Some of those civil rights laws and regulations are identified and summarized below, and the Company acknowledges that its obligations under Article 1.1 of these Federal Contracting Requirements include an obligation to fully comply with the laws and regulations identified below and to ensure that all suppliers and all subcontractors (of every tier) fully comply with those laws and regulations. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 4, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 4 and with all applicable federal civil rights laws and regulations. Applicable federal civil rights laws and regulations include, by example only and not for purposes of limitation:

- A. **Nondiscrimination.** 49 U.S.C. § 5332 and its implementing regulations, which prohibit discriminating against any employee or any applicant for employment because of race, color, religion, national origin, sex, disability, or age.
- B. **Race, Color, Religion, National Origin, Sex.** Federal laws and regulations requiring that all job applicants must be employed, and all employees must be treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). For example, a person's race, color, religion, national origin, or sex cannot be considered for purposes of hiring; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination;

determining rates of pay or other forms of compensation; or selection for training, including apprenticeship. The laws and regulations imposing these requirements include for example Title VII of the Civil Rights Act (42 U.S.C. § 2000e *et seq.*); 49 U.S.C. § 5332 and its implementing regulations; United States Department of Labor regulations ("Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor") found in 41 C.F.R., Chapter 60; and Executive Order No. 11246 ("Equal Employment Opportunity in Federal Employment") dated September 24, 1965 and found at 42 U.S.C. § 2000e.

- C. **Age.** Federal laws and regulations prohibit discriminating against current or prospective employees on the basis of age. These laws and regulations include for example the Age Discrimination in Employment Act (29 U.S.C. §§ 621-634); United States Equal Employment Opportunity Commission (U.S. EEOC) regulations ("Age Discrimination in Employment Act") found in 29 C.F.R. part 1625; the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); United States Department of Health and Human Services regulations ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance") found in 45 C.F.R. part 90; and 49 U.S.C. § 5332 and the regulations implementing that statute.
- D. **Disabilities.** Federal laws and regulations prohibit discriminating against individuals on the basis of disability. These laws and regulations include for example Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 *et seq.*); and 49 U.S.C. § 5332 and the regulations implementing that statute.
- E. **Access to Services for Persons with Limited English Proficiency.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), found at 42 U.S.C. § 2000d-1 note and (2) applicable provisions of the United States Department of Transportation Notice ("DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons") found at 70 Fed. Reg. 74087 and dated December 14, 2005.
- F. **Environmental Justice.** The Company shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors (of every tier) facilitate compliance with: (1) Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") found at 42 U.S.C. § 4321 note and (2) United States Department

of Transportation Order 5620.3 ("Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations") found at 62 Fed. Reg. 18377 *et seq.* and dated April 15, 1997.

5. EMPLOYEE PROTECTIONS.

- A. The Company shall comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Company also shall comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work with federal assistance involving commerce and as the federal government otherwise determines applicable.
- B. The Company shall ensure that every subcontractor (of all tiers) and all suppliers fully comply with the laws and regulations referenced in Article 5.A of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 5.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 5 and with all with all of the laws and regulations referenced in Article 5.A.

6. ENERGY CONSERVATION.

The Company shall fully comply with the standards and policies related to energy efficiency in the state energy conservation plan issued under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.* The Company also shall ensure that each supplier and each subcontractor (of every tier) fully complies with those same standards and policies. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 6, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 6.

7. GOVERNMENT-WIDE DEBARMENT & SUSPENSION.

- A. The Company shall fully comply with, and shall facilitate the City's compliance with, those United States Department of Transportation regulations entitled "Nonprocurement Suspension and Debarment," which are found in 2 C.F.R. part 1200 and which adopt and supplement the United States Office of Management and Budget's "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement),"

which are found in 2 C.F.R. part 180. The Company acknowledges that these regulations govern: (1) every contract at any tier under which compensation of \$25,000 or more will be paid, (2) every contract at any tier for a federally required audit (irrespective of the contract amount), and (3) every contract at any tier that must be approved by the FTA (irrespective of the contract amount).

- B. The Company shall ensure that it and all of its officers, principals, affiliates, suppliers, and subcontractors (of every tier) are fully eligible, without limitation, to participate in this federally funded Contract and are not currently declared by any federal department or agency to be:
 - a) Debarred from participation in any federally assisted award;
 - b) Suspended from participation in any federally assisted award;
 - c) Proposed for debarment from participation in any federally assisted award;
 - d) Declared ineligible to participate in any federally assisted award;
 - e) Voluntarily excluded from participation in any federally assisted award; or
 - f) Disqualified from participation in any federally assisted Award.
- C. The Company at all times shall fully comply with the regulations in 2 C.F.R. part 180, subpart C, as supplemented by the regulations in 2 C.F.R. part 1200.
- D. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with all provisions of this Article 7 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 7.D, the Company shall ensure that each subcontract (at every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 7.
- E. By executing this Contract, the Company certifies to the City that the Company has fully complied as of the date that this Contract takes effect with all provisions in this Article 7 and that the Company shall continue to fully comply with all provisions in this Article 7 at all times while this Contract remains in effect. The Company acknowledges and agrees that the certification provided by the Company under this Article 7.E is a material representation of fact on which the City shall rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract

and otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example seeking the suspension and/or debarment of the Company.

8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- A. The City and the Company acknowledge and agree that the federal government is not a party to this Contract and that the federal government shall not, because of this Contract, have any obligations or liabilities to the City, to the Company, or to anyone else. The City and the Company acknowledge and agree that the first sentence of this paragraph shall not be affected by the federal government concurring in, or approving of, the solicitation or award of this Contract unless the federal government explicitly consents in writing to being a party to this Contract.
- B. The Company shall ensure that each subcontract (of every tier) and each supplier contract includes a provision in which the parties to that subcontract or supplier contract acknowledge and agree that the federal government is not a party to that subcontract or supplier contract and that the federal government shall not, because of that subcontract or supplier contract, have any obligations or liabilities to that subcontract's or supplier contract's parties or to anyone else.

9. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS.

- A. The Company shall fully comply with all provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§3801 *et seq.*) and with the United States Department of Transportation regulations entitled "Program Fraud Civil Remedies" that are found in 49 CFR Part 31.
- B. By executing this Contract, the Company certifies to the City the complete truthfulness and total accuracy of every statement that the Company has made, has caused to be made, shall make, or shall cause to be made that relates in any way to this Contract. The Company acknowledges and agrees that the certification provided by the Company under this Article 9.B is a material representation of fact on which the City will rely. If at any time this certification is found by the City to be false or inaccurate in any way, that shall be deemed a material breach of this Contract by the Company, and in such a situation the City may pursue any and all remedies available to it under this Contract and/or otherwise at law. Additionally, the Company acknowledges that, if such a breach happens, the federal government also may choose to pursue any and all remedies available to it, including for example imposing penalties on the Company under the Program Fraud Civil Remedies Act of 1986, 18 U.S.C. §1001, and/or 49 U.S.C. §5307(n)(1).
- C. The Company shall ensure that, at all times, all suppliers and all subcontractors (of every tier) fully comply with

all provisions of this Article 9 to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 9.C, the Company shall ensure that each subcontract and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 9.

10. RESERVED.

11. SAFE OPERATION OF MOTOR VEHICLES.

- A. The Company shall adopt and promote on-the-job seat belt use policies and programs for its employees and for anyone else who shall operate any vehicles in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.
- B. The Company shall adopt and enforce workplace safety policies to minimize crashes caused by distracted drivers. These policies shall include policies that ban and discourage text messaging by anyone operating a vehicle in relation to this Contract, regardless of whether those vehicles are owned or leased by the Company, the City, or another person or entity.

12. FEDERAL CHANGES.

- A. The Company at all times shall fully comply with all applicable FTA regulations, policies, procedures, and directives, including for example those listed or by reference in the FTA Master Agreement, as they may be issued or amended from time to time. Any failure by the Company to do so shall be a material breach of this Contract by the Company.
- B. The Company shall ensure that all suppliers and all subcontractors (of every tier) at all times fully comply with all applicable FTA regulations, policies, procedures, and directives to the same extent that the Company is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 12.B, the Company shall ensure that each subcontract (of every tier) and each supplier contract includes provisions requiring that the subcontractor or the supplier fully comply with this Article 12 just as the Company is required to do.

13. INCORPORATION OF FTA TERMS.

- A. The Company and the City acknowledge and agree that the United States Department of Transportation requires certain provisions (the "Applicable FTA Clauses") to be included in this Contract because this Contract is funded at least partially with federal funds. The Applicable FTA Clauses are specified in Federal Law and are also summarized in FTA Circular 4220.1F, as it may be amended or superseded from time to time. The City and the Company have tried to expressly include all Applicable FTA Clauses in these Federal Contracting Requirements or elsewhere in this Contract. However, the City and the Company agree that, if any of the Applicable FTA Clauses have not been expressly

included in this Contract, those Applicable FTA Clauses are nonetheless deemed incorporated into this Contract by reference and shall be fully binding on the Company as if they had been expressly included in this Contract.

- B. Notwithstanding any other provision in this Contract, the Company and the City agree that the Applicable FTA Clauses shall take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of the Applicable FTA Clauses, such that the Company cannot satisfy both, the Company shall fully comply with the Applicable FTA Clauses. In such a situation, the Company shall disregard the other, conflicting Contract provision, but the Company shall do so only to the minimal extent needed to comply fully with the Applicable FTA Clauses, and the Company otherwise shall fully comply with that conflicting provision. In contrast, in any situation where the Company can comply with both another Contract provision and with the Applicable FTA Clauses, even if these provisions address the same matter (for example, if another Contract provision imposes an obligation on the Company beyond those imposed by the Applicable FTA Clauses), that will not be deemed a conflict, and in such a situation the Company shall fully comply with the Applicable FTA Clauses and with the other Contract provision.
- C. The Company at all times shall: (1) fully comply with all provisions of the Applicable FTA Clauses, (2) ensure that all of the work under this Contract (including, by example only and not for purposes of limitation, all subcontracted work) fully complies with all provisions of the Applicable FTA Clauses, and (3) ensure that no aspect of the work under this Contract and no aspect of the Company's performance under this Contract would cause the City or any of its officials, employees, or agents to violate any provision of the Applicable FTA Clauses. In addition, the Company shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create a risk of the City or any of its officials, employees, or agents being in violation of any provision in the Applicable FTA Clauses.
- D. The Company shall ensure that all provisions of the Applicable FTA Clauses (including of any Applicable FTA Clauses not expressly included in this Contract) are incorporated into all subcontracts (of any tier) and in all contracts with those supplying any materials, equipment, or other products such that all subcontractors of every tier and all suppliers are contractually required to comply with all provisions of the Applicable Federal Clauses.

14. FEDERAL ACQUISITION REGULATIONS (F.A.R.) COMPLIANCE.

To the extent that this Contract provides for or allows for any adjustment to the Company's compensation based on costs or expenses incurred by the Company, any such adjustment will be determined based solely on any costs or expenses that: (A) are incurred in full compliance with all of this Contract's provisions, (B) for which the City is clearly required under this Contract to reimburse the Company, (C) are allowable, allocable, and reasonable, as those terms are defined and used in the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System (found in 48 CFR, Ch.1, Pt.31), including as those principles may be further defined or implemented by regulations or guidance adopted by the federal government, and (D) are otherwise allowed under applicable law.

15. CLEAN AIR.

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or actual violation (a "Clean Air Act Violation") of the Clean Air Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.
- B. The Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Air Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

16. CLEAN WATER.

- A. The Company shall fully comply with all applicable standards, orders, and regulations issued under the Water Pollution Control Act (33 U.S.C. §§1251, *et. seq.*, as amended). The Company shall promptly notify the City if the Company receives notice of any possible or

actual violation (a "Clean Water Act Violation") of the Water Pollution Control Act or of any of those standards, orders, or regulations, and the Company shall provide the City with all information that the Company has about the actual or possible violation. The Company acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities, and the Company shall not be entitled to any remedy because the City does so.

- B. The Company shall ensure that all subcontracts (of any tier) and all contracts with those supplying any materials, equipment, or other products include provisions: (1) requiring each subcontractor and each supplier to promptly notify the Company and the City if the subcontractor or supplier receives notice of any possible or actual Clean Water Act Violation and to provide the Company and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City may be required by law to report (or that the City may choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, and/or to other governmental entities and that the subcontractor or supplier shall have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

17. LOBBYING.

- A. The Company shall fully comply with 31 U.S.C. 1352, as amended; with any regulations implementing that statute; and with any non-superseded guidance about that statute issued by the federal government (this statute, those regulations, and that guidance together are the "Byrd Anti-Lobbying Amendment").
- B. The Company shall ensure that each subcontractor (of every tier) and all of those supplying any materials, equipment, or other products fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment. In addition to taking any other steps necessary and appropriate to satisfy its obligations under this Article 17.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment and by this Article 17.
- C. In addition to complying with all other requirements of the Byrd Anti-Lobbying Amendment, in order to comply fully with the Byrd Anti-Lobbying Amendment for purposes of this Article 17, the Company and each subcontractor and supplier must file one or more

certifications as required by 49 CFR Part 20 (entitled "New Restrictions on Lobbying").

1. In addition to all other consequences and implications provided by law for filing such a certification, when a subcontractor files one, the subcontractor is deemed to certify to the Company or subcontractor at the tier immediately above it that the certifying subcontractor has not, and shall not, use any federal funds to pay any person, entity, or organization to influence or attempt to influence an officer or employee of any governmental agency, any member of Congress, any officer or employee of Congress, or any employee of a member of Congress concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment.
2. When filing such a certification, the Company and each subcontractor and supplier also shall disclose along with that certification the name of any registrant under the Lobbying Disclosure Act of 1995 who has been paid non-federal funds to make lobbying contacts on the certifier's behalf concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment. All of these disclosures shall be made on forms designated by the City. Each subcontractor and supplier shall promptly forward to the Company or subcontractor at the tier immediately above it all such disclosures that the subcontractor or supplier receives from anyone involved in any way in the work under this Contract (*e.g.*, lower-tier subcontractors), and the Company shall promptly provide the City with the Company's own disclosures and with all such disclosures that the Company receives from subcontractors and suppliers.

18. CONTRACT WORK HOURS & SAFETY STANDARDS ACT.

- A. No laborer or mechanic, during any workweek in which he is involved in any way with work under this Contract, may work more than forty (40) hours unless he is paid at least one and one-half times his base pay rate for all hours over forty (40) that he works during that workweek. The obligations imposed by this Article 18.A shall be referred to as the "Overtime Requirements."
- B. The Company shall ensure that the Overtime Requirements are fully satisfied with respect to any individual who performs any part of the work under this Contract, including for example with respect to any such individual who is employed by a subcontractor of any tier.
- C. Any violation of the Overtime Requirements by the Company or by any subcontractor or supplier shall be:
(1) a material breach of this Contract by the Company

and (2) a material breach by that subcontractor or that supplier of its subcontract or its supplier contract.

1. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the laborer or mechanic at issue for all wages that were not paid to that laborer or mechanic in accordance with the Overtime Requirements.
 2. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the Company and any subcontractor or supplier that violated the Overtime Requirements shall be jointly and severally liable to the federal government for liquidated damages. Those liquidated damages shall be computed with respect to each individual laborer or mechanic who was underpaid, including each underpaid watchman and guard, as follows: Thirty-one dollars (\$31.00) for each calendar day that each mechanic or laborer was required or permitted to work more than forty (40) hours during a workweek without being paid in accordance with the Overtime Requirements.
 3. Whether or not the federal government asks or instructs the City to do so, the City may withhold (or may cause to be withheld) from any moneys owed to the Company and/or to any subcontractor or supplier that violated the Overtime Requirements such sums that the City determines may be necessary to satisfy any liabilities of the Company and/or that subcontractor or supplier for the unpaid wages and/or for the liquidated damages contemplated by this Article 18. These sums may be withheld from any moneys owed to the Company and/or to that subcontractor or supplier under: (1) this Contract, (2) any subcontract or supplier contract, and/or (3) any other contract or subcontract, under which the compensation to be paid shall be funded at least partially with federal funds.
- D. The Company shall ensure that the Company, all subcontractors (of every tier), and all suppliers shall: (i) prepare and maintain complete and accurate payroll records that fully comply with this Article 18 and with all industry standard accounting and employment practices and (ii) maintain all of those payroll records and make them available for inspection and copying as required for Contract Records under Article 2 of these Federal Contracting Requirements.
 1. These payroll records must include payroll information for all individuals who perform any of the work under this Contract, including by example for all guards and watchmen who perform any of that work.

2. These payroll records must contain the following information for each employee: (a) his name and address, (b) his social security number, (c) his employment classifications, (d) the hourly or other rates at which he was paid, (e) the number of hours that he worked each day and each week, (f) detailed information about the deductions made from his pay, and (g) the actual wages paid to him.
- E. The Company shall allow the City, the FTA, the federal Department of Labor, and any of their agents or representatives to interview during working hours any employees or other personnel who have performed, are performing, or are expected to perform any part of the work under this Contract. The Company also shall ensure that all subcontractors (of every tier) and all suppliers allow such interviews to be conducted.
 - F. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 18 to ensure that all subcontractors and all suppliers fully comply with this Article 18, the Company shall ensure that all subcontracts (of any tier) for any part of the work under this Contract and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with Article 1.18 of these Federal Contracting Requirements.

19. PROCUREMENT OF RECOVERED MATERIALS.

- A. The Company shall fully comply with Section 6002 of the Solid Waste Disposal Act, as that statute has been amended by the Resource Conservation and Recovery Act and by any other legislation.
- B. In addition to taking all other steps necessary and appropriate to satisfy its obligations under Article 19.A of these Federal Contracting Requirements, the Company shall do all of the following:
 1. Ensure that, whenever any material or product is procured for or related to this Contract, and that material or product is listed or identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, the material or item is procured so that it contains the highest percentage of recovered materials that is practicable while still maintaining a satisfactory level of competition in the procurement process. Except to the extent that Federal Law may otherwise provide, the requirements of this Article 19.B.1 shall apply only where the purchase price of a particular material or product exceeds \$10,000 or where the value of the quantity of that material or product acquired during the preceding fiscal year exceeded \$10,000.
 2. Ensure that all solid waste management services used for or in relation to the work under this Contract are procured in a manner that ensures

that those services shall maximize energy and resource recovery.

3. Establish an affirmative program for the procurement of recovered materials identified in those Environmental Protection Agency (EPA) regulations in 40 CFR Part 24.
- C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 19 of these Federal Contracting Requirements, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 19 to the same extent that the Company must do so and to facilitate, support, and cooperate in the Company's compliance with this Article 19.

20. RESERVED.

21. FLY AMERICA.

- A. The Company shall fully comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. §40118, as amended) and those United States General Services Administration regulations entitled "Use of U.S. Flag Air Carriers" that are found at 41 C.F.R. §§ 301-10.131 through 301-10.143 (together, this statute and those regulations shall be referred to as the "Air Travel Requirements").
- B. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the Air Travel Requirements and with this Article 21 of these Federal Contracting Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 21.B, the Company shall ensure that all subcontracts (of every tier) and all contracts with those supplying any materials, equipment, or other products include provisions requiring each subcontractor and each supplier to fully comply with this Article 21 and with the Air Travel Requirements.
- C. In addition to taking all other steps necessary and appropriate to fully comply with the Air Travel Requirements, the Company and all subcontractors and suppliers shall use only U.S.-flag air carriers for any international air transportation that is used to transport any person or any property for or in relation to this Contract. The requirements of this Article 21.C shall not apply, however, to the extent that any needed air transportation is not provided by any U.S.-flag air carriers.

22. CARGO PREFERENCE.

- A. Whenever shipping any equipment, material, other product, or other commodity needed for or otherwise related to this Contract, the Company shall use privately

owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers). This requirement, however, shall apply only to the extent that privately-owned U.S.-flag commercial vessels are available for such shipping at fair and reasonable rates for U.S.- flag commercial vessels.

- B. Within twenty (20) days after the date of loading for a shipment originating within the United States, and within thirty (30) days after the date of loading for a shipment originating outside of the United States, the Company shall provide complete and legible copies of a rated, "on-board" commercial ocean bill-of-lading in English for that shipment to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the City (through the Company in the case of a subcontractor's bill-of-lading).
- C. The Company shall ensure that all subcontractors (of every tier) and all suppliers fully comply with the requirements of Article 23.A and Article 23.B of these Federal Contracting Requirements to the same extent that the Company must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under.

23. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.

The Company, by entering into this Contract certifies that, consistent with 2 C.F.R. § 200.216 it will not use "covered telecommunications equipment or services" (as that term is defined in Section 889 of Public Law 115-232) if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system provided under this Contract. The Company will include a requirement not to use such "covered telecommunications equipment or services" in any subcontracts for the provision of "covered telecommunications equipment or services" let under this Contract. "

As used in this clause "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Covered telecommunications equipment or services" as used in this clause, includes but is not limited to:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- C. Telecommunications or video surveillance services provided by such entities listed in a) or b) or using such equipment provided by entities listed in a) or b).
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

24. NOTICE OF DISPUTES, BREACHES, DEFAULTS, AND LITIGATION.

If a current or prospective legal matter that may affect the city or the federal government emerges, the company must notify the city. The company must include a similar notification requirement in each of its subcontracts for twenty-five thousand dollars (\$25,000) or more.

- A. Legal disputes that require notification under this provision include, but are not limited to, a major dispute, breach, default, litigation, or naming the city or naming the federal government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the federal government (and thereby the city) include, but are not limited to, the or the federal government's interests in the award, the accompanying underlying agreement, and any amendments thereto, or the federal government's administration or enforcement of federal laws, regulations, and requirements.

Additional notice to U.S. DOT Inspector General. The Company must promptly notify the U.S. DOT Inspector General in addition to the FTA chief counsel or regional counsel for FTA region 4, if the company has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the false claims act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is the subject of this contract, another contract funded by the FTA, or an agreement involving a principal, officer, employee, or agent of the company. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the company. In this paragraph, "promptly" means to refer information without delay and without change.

25. DOMESTIC PREFERENCES FOR PROCUREMENTS.

As appropriate and to the extent consistent with law, the company should, to the greatest extent practicable under the Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the united states (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). For the purposes of this clause, (i) "produced in the united states" means, for iron and steel products, that all manufacturing processes, from the initial melting stage

through the application of coatings, occurred in the united states, and (ii) "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**EXHIBIT A: CONTRACT FOR CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES**

CONTRACTNUMBER: _____
AWARD DATE: _____
EXPIRATION DATE: _____



**CONTRACT FOR CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION SERVICES**

PROJECT:

South End Station
Construction Manager at Risk
Pre-Construction Phase Services

OWNER:

City of Charlotte

CONSTRUCTION MANAGER AT RISK:

[Company]

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

PRECONSTRUCTION SERVICES CONTRACT

This CONTRACT made and entered into this ____ day of _____, 2023 (“**Effective Date**”), by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation, hereinafter referred to as the “**City**” or “**Owner**”, and _____ [COMPANY], a _____ corporation authorized to do business in North Carolina, with a principal place of business located at _____, hereinafter referred to as the Construction Manager at Risk (“**CMAR**”). References to the City or Owner herein shall include its designee where one is assigned. City and CMAR may each be referred to hereinafter as a “**Party**” and together as the “**Parties**”.

GENERAL RECITALS

WHEREAS, the City advertised a Request for Proposals RFP _____ for CMAR Services for the South End Station (the “**Project**”) on _____, 2023;

WHEREAS, [COMPANY] submitted a proposal in response to the RFP;

WHEREAS, the City desires to engage [COMPANY] to provide CMAR services for the Project as outlined hereinafter upon the terms and conditions as set out herein;

WHEREAS, [COMPANY] desires to provide such CMAR services as outlined hereinafter upon the terms and conditions set out herein;

WHEREAS, the City is authorized by the City Council to enter in to a Contract for performance of such CMAR services;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and further consideration of the covenants and representation contained herein, the parties agree as follows:

CONTRACT

1. INCORPORATION OF ATTACHMENTS

The following attachments (the “**Attachments**”) are attached to this Contract and are incorporated into and made a part of this Contract:

- ATTACHMENT A: Federal Transit Administration Contracting Terms
- ATTACHMENT B: Disadvantaged Business Enterprise Terms
- ATTACHMENT C: The Preconstruction Services
- ATTACHMENT D: Rail Special Provisions
- ATTACHMENT E: Project Schedule
- ATTACHMENT F: Fee/ Cost Schedule
- ATTACHMENT G: Certificate of Insurance

In the event of a conflict among the Attachments, Attachments shall have the priority in the order in which they are listed in this Section 1.

2. TERM AND PROJECT SCHEDULE

The Contract shall commence upon the Effective Date and shall continue in effect, unless it is otherwise terminated in accordance with the terms of Section 6 herein, until the earlier of (i) the Notice to Proceed of the final construction contract for the Project by and between the City and the CMAR, or (ii) the issuance of written notice from the City to the CMAR that it will not proceed with a contract for construction services for the Project with the CMAR.

The CMAR will comply with the schedule set forth in Attachment D, as amended from time to time during the Contract Term (the “**Project Schedule**”), in performing the Services. The parties agree that time is of the essence in having the CMAR provide the Services specified in Attachment C. All references to days in this Contract (including the Attachments) shall state to calendar days unless a provision explicitly states otherwise. Any references to “business days” shall mean the days that the City’s offices are open for the public to transact business.

3. SERVICES

The CMAR shall perform the services described in Attachment C attached to this Contract and incorporated herein by reference (the “**Services**”). Unless otherwise provided in Attachment C, the CMAR shall obtain and provide all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services. The CMAR must self-perform between 15% and 50% of the Services measured on a dollar value basis. The CMAR shall have ultimate responsibility for the Services as designated by this Contract. The CMAR shall be responsible for all Services provided under this Contract whether such Services are provided directly by CMAR or by any of its subcontractors. The CMAR represents, covenants and agrees that all of the Services provided by the CMAR and its subcontractors shall be performed in a manner consistent with CATS and industry standards.

- 3.1. City Project Manager and Project Team. No later than the Effective Date of this Contract, the City shall designate one of its employees to act as its project manager (the “**Project Manager**”). The Project Manager shall have the authority to act as the City’s representative in connection with this Contract. The City may replace its Project Manager by providing written notice to the CMAR. The City may also identify one or more of its employees or subcontractors to coordinate with the CMAR and assist the Project Manager (the “**Project Team**”). The Project Manager shall be responsible for examining any materials submitted by the CMAR, identifying members of the Project Team and providing other City resources to the CMAR, and acting as the City’s point of contact for all aspects of the Project.
- 3.2. CMAR Representative. No later than the Effective Date of this Contract, the CMAR shall identify one of its employees to serve as its authorized representative (the “**CMAR Representative**”) to represent and act for the CMAR in connection with this Contract and the Project. All written communications provided to the City from the CMAR Representative shall be deemed to have the binding effect of an agent acting on behalf of its principal. All written communications provided to the CMAR Representative from the City or its subcontractors in connection with this Contract or the Project shall be deemed received upon the receipt of such communications by the CMAR Representative. The CMAR Representative acting alone shall have the authority to represent and act for CMAR and receive communications from the City, the Project Manager, and the Project Team. The CMAR may replace the CMAR Representative by providing written notice to City. City may, at any time, with or without cause, require the CMAR to replace a CMAR Representative or designate additional CMAR Representatives acceptable to the City. The CMAR Representative shall be responsible for the Scope of Services enumerated in Attachment A.
- 3.3. Certifications and Licenses. The CMAR represents and warrants to City that it is licensed to render construction services as a construction manager at risk in the State of North Carolina. During the Contract Term, CMAR shall maintain in full force and effect, and cause its personnel working on the Project, and CMAR’s subcontractors and all their respective personnel working on the Project, to maintain in full force and effect all necessary professional certifications and licenses in the State of North Carolina and as may be otherwise required for the Project. To this end and without limiting the foregoing, CMAR shall take all necessary steps and cause all necessary and appropriate documentation to be filed with the appropriate authorities to comply with all laws applicable to the performance of construction manager at risk services in the State of North Carolina. Upon City’s request, CMAR shall provide promptly to City copies of all such documentation and authorizations. CMAR’s subcontractors shall perform all professional services as required under applicable laws.

- 3.4. Deliverables. Upon satisfactory completion of each milestone set forth in Attachment C (each, a “**Milestone**”), the CMAR shall submit any reports, information, estimates, schedules, documents, or other items which the CMAR is required to complete and deliver in connection with this Contract (together, the “**Deliverables**”) to the City, as applicable. All Deliverables in connection with this Contract, shall be submitted by the CMAR via the City’s web-based project control software (e-Builder). Information on e-Builder can be found at www.e-builder.net. All parties shall use e-Builder for records retention and management of all project documentation. Documents, forms, and processes that will be used in e-Builder by the City, the Project Manager, the Project Team, and the CMAR include but are not limited to: Construction Drawings (including as-builts), Submittals (Quality Plan, Safety Plan, Schedules, etc.), Reports (Accident, Inspection, Non Conformance, etc.), Project Photos, Transmittals, Requests For Information, Change Notices, Change Requests, Change Orders, Change Directives, Design Change, Field Change Notices, Letters, Meeting Notifications, Meeting Minutes, Buy America Certifications, etc. If an item is not covered by e-Builder, submittal shall be as directed by the Project Manager. For material samples, submittal shall be as directed by the Project Manager.
- The City of Charlotte will provide access and technical service for five (5) e-builder licenses in the system at no cost to the CMAR. Any additional licenses will be the responsibility of the CMAR to purchase as needed. The City of Charlotte will provide training at no cost to the CMAR.
- No separate measurement or payment will be made for the mandatory use of the City’s web-based project control software.
- If the City is not satisfied that a Deliverable has been met, the CMAR shall be notified of such deficiency through e-Builder. In the event the CMAR fails to correct the deficiency within fifteen (15) days after the City issues notice of such deficiency through e-Builder, the City shall be entitled to terminate this Contract for default and without further obligation to the CMAR and without obligation to pay for the defective work. Any corrective actions performed pursuant to a deficiency shall be provided by the CMAR at no additional expense to the City.
- 3.5. City Ownership of Work Product. The City shall have exclusive ownership of all reports, documents, designs, ideas, materials, concepts, plans, creative works, software, data, programming code and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively, the “**Intellectual Property**”). The CMAR hereby assigns and transfers all rights in the Intellectual Property to the City. The CMAR further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain, and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The CMAR hereby appoints the City as attorney in fact to execute all such assignments and instruments and agrees that its appointment of the City as attorney in fact for this purpose is coupled with an interest and is irrevocable.
- The City grants the CMAR a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The CMAR may not use the Intellectual Property for other purposes without the City’s prior written consent, and the CMAR agrees to handle the Intellectual Property and all City data with the same standard of care the CMAR affords CMAR’s own trade secrets and intellectual property.
- 3.6. City Resources. The CMAR shall identify and request in writing from City in a timely manner: (i) all information reasonably required by the CMAR to perform the Services, (ii) a list of the City’s personnel whose presence or assistance reasonably may be required by the CMAR to perform the Services, and (iii) any other equipment, facility, or resource reasonably required by the CMAR to perform the Services (collectively (i), (ii), and (iii), the “**City Resources**”). Notwithstanding the foregoing, the City is not required to provide any City Resources, except as expressly required pursuant to Attachment C, unless the City can do so at no cost. The CMAR shall not be relieved of any failure to perform or delay under this Contract by virtue of the City’s failure to provide City Resources (i) that the CMAR failed to identify and request in writing from the City pursuant to this Section 3.6, or (ii) which the City is not required to provide pursuant to this Contract. In the event the City fails to provide a City Resource that it is required to provide pursuant to this Contract, the CMAR shall immediately notify the City in writing in accordance

with the notice provision of this Contract. Failure to do so shall constitute a waiver by the CMAR of any claim or defense it may otherwise have based on the City's failure to provide such City Resources. In addition, the duration of any excused delay created by City's failure to provide required City Resources will be limited to the time period after the CMAR has complied with the terms of this Section.

- 3.7. Work on City Premises. Whenever on City premises, the CMAR will comply with all instructions and City policies applicable to City employees and contractors that the CMAR is made aware of. If the CMAR causes damage to the City's equipment or facilities, the CMAR will promptly repair or replace such damaged items at CMAR's expense.
- 3.8. Regeneration of Lost or Damaged Data. If the CMAR loses or damages any data in the City's possession, the CMAR shall, at its own expense, promptly replace or regenerate such data from the City machine-readable supporting material, or obtain, at the CMAR's own expense, a new machine-readable copy of lost or damaged data from the City data sources.
- 3.9. Conflicts of Interest. This Contract is subject to the restrictions against organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1F or successor circulars. The CMAR and its subcontractors shall at all times comply with such restriction in connection with the services it provides to and on behalf of the City. The CMAR shall not provide Services to the City, under this Contract, which would constitute or create an organizational conflict of interest, including but not limited to any of the following that could result in a lack of impartiality or impaired objectivity, unequal access to information, and biased ground rules, for this Contract or any other contract for the City:
 - (i) Influenced Specifications or Scope of Work. The CMAR's prior work product, whether it is performed on behalf of the City or another public or private entity, has been relied upon in establishing, or significantly influenced, the specifications or scope of work under this Contract.
 - (ii) Opportunity to Create Contracting Opportunities. The CMAR's prior work product, whether it is performed on behalf of the City or another public or private entity, afforded an opportunity for the CMAR to make or influence findings with respect to this Contract.
 - (iii) Evaluation of Prior Work Product. The CMAR would be in position to evaluate its own prior work product as part of this Contract, whether the prior work product is performed on behalf of the City or another public or private entity; or as part of this Contract the CMAR would be in a position to assess its prior work product whether or not it was performed on behalf of the City or another public or private entity.
 - (iv) Access to Information. The CMAR received confidential or other information as part of the services performed for the City or another public or private entity which provides the CMAR with an unfair advantage to obtain this Contract or another contract with the City.
 - (v) Lack or Impartiality or Impaired Objectivity. The CMAR is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

4. COMPENSATION

The maximum total fees and charges payable to the CMAR under this Contract, including payment for all services performed and all reimbursable expenses, shall not exceed \$ [REDACTED]. The maximum total fees and charges shall be a sum of the items set forth in this Section 4 and shall include a ten percent (10%) contingency which may only be used by the CMAR upon written instructions from the Project Manager. The maximum total fees and charges shall not be increased except by a written amendment duly executed by both parties. The City shall not be charged for any Services or other work performed by the CMAR prior to the Effective Date of this Contract.

- 4.1. Hourly and Unit Price Basis Fees. Until the execution of a contract for construction services for the Project by and between the City and the CMAR, the CMAR shall perform the Services hereunder for the agreed upon Hourly Rates. The Hourly Rates shall increase by a maximum of percent (3%) per year upon the anniversary of the Effective Date. The Hourly Rates and reimbursable expenses shall not exceed \$ [REDACTED].

The City agrees to pay the CMAR for actual services performed on an hourly and unit price basis for Services using the hourly and unit price rates set forth in Attachment E in an amount not to exceed \$ [REDACTED].

- 4.2. Allowances for Unspecified Additional Services. Additional services shall be performed by the CMAR only upon the CMAR's receipt of written instructions to do so from the Project Manager. Compensation for additional services performed shall be in accordance with the hourly and unit price rates set forth in Attachment E and shall not exceed \$ [REDACTED].
- 4.3. Reimbursable Expense Allowance. Reimbursable expenses shall be limited to the actual expenditures made by the CMAR during the performance of the Services. The following expenses may be reimbursed at cost in an amount not to exceed \$ [REDACTED], as set forth in Attachment E:

Travel

- (i) Vehicular transportation at the rate established by the Internal Revenue Service current at the time the travel occurs;
- (ii) Parking fees;
- (iii) Airline tickets (with prior written approval from Project Manager); and
- (iv) Meals and lodging in connection with out-of-town travel (with prior written approval from Project Manager).

Permitting Fees

- (i) Permit costs and fees paid for securing approval of authorities having jurisdiction over the Project.

Software Licenses

- (i) Software for licenses required or requested by City

- 4.4. Documentation Required for Expense Reimbursement. Notwithstanding anything in this Contract to the contrary, original, itemized receipts must be submitted to the City as a condition precedent to CMAR's right to reimbursement under this Contract. Receipts must be electronically captured through digital photographs or exact copies of originals in electronic format and include any notations that describe the expense. Original (or exact copies of original), itemized receipts will be required for all meals, rental cars, taxi fares, parking and other costs for which receipts can be typically obtained. All expenses must have a receipt to be reimbursed. The cost of each expense must be reasonable for the service provided and must be supported by a personal log or other similar record. Any meal charges for business related meetings must include the names of all individuals, the business relationship and documentation of the business discussion. All receipts submitted for reimbursement must exclude alcoholic beverages.

- 4.5. Costs Ineligible for Reimbursement.

- (i) Mileage between CMAR's or CMAR's subcontractors' place of business and the Project site;

- (ii) Salaries and other compensation of the CMAR's personnel stationed at the CMAR's principal office or offices, except as approved by the Project Manager.
- (iii) Expenses of the CMAR's principal office and other offices.
- (iv) Overhead and general expenses, legal expenses, and administrative expenses.
- (v) The CMAR's capital expenses, including interest on the CMAR's capital employed for the Contract.
- (vi) Costs incurred due to the act or omission, or the fault or negligence or failure to fulfill a specific responsibility of the CMAR, subcontractors, subsequent-tier contractors, and suppliers (collectively, "**Contractors**") or anyone directly or indirectly employed by any Contractors or for whose acts any of the Contractors may be liable.
- (vii) Sales, use, or similar taxes imposed by a governmental authority where the purchase was subject to a sales, use, or other similar tax exemptions.
- (viii) Franchise, income, or other taxes ordinarily paid for by a general contractor in its regular course of business and imposed by a Governmental Authority.
- (ix) Notwithstanding anything herein to the contrary, costs incurred by CMAR pursuant to its defense and indemnification obligations in accordance with this Contract.
- (x) Fines or assessments attributable to CMAR's failure to timely secure permits and licenses as required herein.
- (xi) Acceleration or premium time costs to recover time lost resulting from error or faulty performance by the Contractors to the extent the costs were caused by or contributed to by the negligence of the CMAR or by the CMAR's breach of its contractual obligations arising hereunder.
- (xii) Travel that has not been pre-approved by City.
- (xiii) Hotels that are not a City-approved accommodation.
- (xiv) Alcoholic beverages.
- (xv) In-room movies and in-room bar charges.
- (xvi) In-flight alcohol or movies.
- (xvii) Any meal costs not compliant with City's travel regulations.

5. INVOICING AND PAYMENT

Each month, the CMAR shall submit an invoice to the Project Manager stating the nature and quantity of Services performed and accompanied by proper supporting documentation as the City may require, including a monthly project status report. Hourly rates, unit prices, and reimbursable expenses shall be itemized on each invoice.

The CMAR shall not charge the City at overtime rates (as defined by the Fair Labor Standards Act), regardless of the number of hours worked in each day or week.

The City agrees to pay undisputed, properly submitted invoices received within sixty (60) days of receipt. If an invoice submitted is not proper, is in dispute, or is not complete, the Project Manager shall process such invoice with the next due invoice for payment; provided that the Project Manager receives an undisputed, properly submitted invoice applicable thereto. There shall be no interest penalties assessed against the City for late or partial payments.

As a condition of payment, the CMAR must invoice the City for Services within sixty (60) days after such Services are performed. The CMAR waives the right to payment for any services that have not been invoiced to the City within sixty (60) days after such services were rendered.

Upon the earlier of (i) the execution of a contract for construction services for the Project by and between the City and the CMAR, or (ii) the expiration or termination of this Contract, no further costs will be incurred or approved as part of the Services under this Contract.

- 5.1. Time Records. The CMAR shall be responsible for keeping documentation sufficient to verify the time billed to the City. The City reserves the right to audit the CMAR's timecards, invoices, reports and other documents relating to the Services performed under this Contract and shall not be required to pay for: (a) any time billed that was excessive in light of the result achieved, or (b) any Services that did not meet the standards and requirements referenced in this Contract. The CMAR shall make such documents available for inspection and copying by the City in Charlotte, North Carolina between the hours of 9:00 AM to 5:00 PM Monday through Friday, whenever requested by the City.
- 5.2. Employment Taxes and Employee Benefits. The CMAR acknowledges and agrees that its employees and subcontractors are not employees of the City. The CMAR represents warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law in connection with provision of the Services.
- 5.3. Costs Overruns. If it appears during the course of the Services that any of the estimated fees and allowances may be exceeded, the CMAR shall immediately notify the Project Manager in writing. The estimated fees and allowances shall not be exceeded except by written amendment to this Contract. Any work which exceeds the permitted fees and allowances performed without the prior written approval of the Project Manager shall be at the CMAR's expense.
- 5.4. Accounting and Auditing. The CMAR shall maintain complete and accurate records, using Generally Accepted Accounting Principles (GAAP), of all costs related to this Contract. The CMAR shall maintain such records from the Effective Date of this Contract, for the duration of the Services, and until three (3) years after the date of final payment by the City to the CMAR pursuant to this Contract. Such records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the City's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the CMAR or any of his payees in connection with this Contract. Records subject to examination will include, but are not limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Contract. The City's agent or authorized representative shall have access to the CMAR's facilities and shall be provided an adequate and appropriate workplace, to conduct audits in compliance with this Section. The City will give the CMAR reasonable advance notice of planned inspections.

The CMAR shall require each of CMAR's subcontractors to keep books and records relating to its Services on the Project and to make such books and records available at its offices for inspection and copying by CMAR, City and their respective authorized representatives during the term of this Contract and for a period of three (3) years after final completion of the Project or such longer time period as applicable law may require.

To the extent that an audit by City, City's independent auditors, or their designees discloses (i) excess charges inaccurately or improperly attributed to this Project by the CMAR, or (ii) charges for amounts that are not allocable or verifiable, CMAR agrees to remit the amount of the overpayment to City, together with any of City's out-of-pocket expenses related to the discovery and recovery of such overpayments, within 10 business days after demand.

- 5.5. Withholding. The City may withhold up to five percent (5%) retainage of the fixed fee pursuant to this Contract until the CMAR completes and delivers all documentation and deliverables, including all claim

releases, required under this Contract. Final costs may be audited prior to the City making final payment to the CMAR. Along with the CMAR's submission of its final invoice to the City, the CMAR shall assert any and all claims for payment it has against the City in connection with this Contract, along with a signed release, in a form provided by or approved by the City in writing, from any future claims for payment arising out of the Contract. The failure to assert all claims against the City in connection with this Contract with the final invoice will act as a waiver of claims not asserted. In the event payment is withheld under this Article, the CMAR waives any right to interest on such payment. Nothing in this Article shall relieve the CMAR from any obligations it has under N.C. Gen. Stat. §143-134.1 or federal regulation regarding the payment of subcontractors. Change Orders shall not authorize the CMAR to exceed the amount previously approved by the City unless such Change Order contains a statement increasing the amount allocated.

- 5.6. Prompt Payment to Subcontractors. The CMAR shall pay subcontractors for satisfactory performance of their contracts within seven (7) days after the City has paid the CMAR for such work. If the CMAR withholds any retainage pending final completion of any subcontractor's work, the CMAR is required to pay the retainage so withheld within seven (7) days after such subcontractor completes his work satisfactorily.
- 5.7. Non-Appropriation of Funds. If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the CMAR of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

6. TERMINATION

- 6.1. Termination for Convenience. The City may terminate this Contract for convenience at any time, for any reason or no reason, by giving thirty (30) days' prior written notice to the CMAR. In the event the Contract is terminated pursuant to this Section, the CMAR shall continue performing the Services until the termination date designated in the termination notice. As soon as practicable after written notice of termination without cause, the CMAR shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, the City agrees to pay the CMAR for Services rendered through the termination date at the rates set forth in Attachment E. The foregoing payment obligation is contingent upon (i) the CMAR's full compliance with this Section 6, and (ii) the submission by CMAR to City of written documentation reasonably adequate to verify the number of hours of Services rendered by each person through the termination date and the percentage completion of each Deliverable.

Nothing in this Section shall be construed as limiting any right of either party in the event of a breach.

- 6.2. Termination for Cause. Without limiting any other termination rights set forth in this Contract, either party may terminate this Contract for default if the other party fails to cure a material breach within thirty (30) days after receipt of written notice that identifies the breach and the intent to terminate if not cured. The City may terminate this Contract for default without a cure period if the CMAR:
- (i) Fails to obtain, maintain, or provide proof of the insurance policies and endorsements as required by this Contract; or
 - (ii) Acts or fails to act in a way that creates a risk to safety or in a way that is likely to cause the City to incur property damage, fines, or penalties; or
 - (iii) Makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term, or condition contained in this Contract; or

- (iv) Attempts to assign, terminate or cancel the Contract contrary to the terms herein; or
- (v) Ceases to do business, makes an assignment for the benefit of its creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue) or if a receiver, trustee or liquidator is appointed for it or any substantial part of the CMAR's assets or properties.

Notwithstanding anything contained herein to the contrary, in the event the CMAR terminates this Contract for default, the CMAR shall continue to perform the Services required by this Contract until the earlier of: (i) six (6) months after the date of written termination notice; (ii) the date on which the City completes its transition to a new service provider; or (iii) until a date specified by the City in writing.

6.3. Transition Services Upon Termination. Upon termination or expiration of this Contract, the CMAR shall cooperate with the City to assist with the orderly transfer of the Services provided by the CMAR to the City. Prior to termination or expiration of this Contract, the City may require the CMAR to perform and, if so required, the CMAR shall perform certain transition services, necessary to shift the Services of the CMAR to another provider or to the City itself as described below (the "**Transition Services**"). Transition Services may include but shall not be limited to the following:

- (i) Working with the City to jointly develop a Transition Services plan to facilitate the termination of the Services;
- (ii) Notifying all affected service providers and subcontractors of the CMAR;
- (iii) Performing activities pursuant to the Transition Service plan;
- (iv) Answering questions regarding the Services on an as-needed basis; and
- (v) Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.

6.4. Authority to Terminate. Authority to terminate this Contract on behalf of the City rests with the City Manager, any Deputy or Assistant City Manager, or the Director of the City Department responsible for administering this Contract.

6.5. Obligations Upon Termination. Upon expiration or termination of this Contract, the CMAR will promptly provide to the City, at no cost, (i) all data, materials, software, and equipment provided to the CMAR by or on behalf of the City; (ii) all deliverables that are completed or in process as of the date of termination; and (iii) a statement of all Services performed through termination, together with such detail and documentation as is otherwise required under this Contract for payment. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in Section 10.

7. SUSPENSION

The City shall have the right to suspend, from time to time, the Services of CMAR under this Contract. The suspension shall be effective on the date indicated on the written notice of suspension delivered by City to CMAR. As of the effective date of suspension, CMAR shall cease its performance of all Services and the performance of all Services of all CMAR's subcontractors related to the Project in such a way that would allow for an orderly and efficient restart of their Services on the Project at a later date, if necessary. City shall pay CMAR for Services rendered in accordance with this Contract and reimbursable expenses pursuant to Attachment E incurred up to the actual date of the shutdown. Performance of Services may be resumed only after the delivery by City to CMAR of a written notice of resumption. If the duration of any continuous period of suspension is more than 365 days or if the aggregate of all suspensions exceeds 365

days, then CMAR and City shall use good faith efforts to provide for an adjustment in CMAR's compensation for Services due to the effects of increases in CMAR's costs, if any, of performing the Services remaining to be performed under this Contract. If the duration of any continuous suspensions by City exceeds 9 months, CMAR shall have the right to terminate this Contract at any time prior to receipt by CMAR of a written notice of resumption. City shall not be deemed to be in default based upon such suspensions, and CMAR shall not be entitled to any further compensation or damages based upon the suspensions or CMAR's election to terminate this Contract. City shall have no responsibility for any costs or expenses incurred by CMAR in the termination or suspension of contracts that CMAR may have with CMAR's subcontractors. The calculation of any days of suspension shall not include any suspensions that may have occurred prior to the effective date of this Contract.

8. REMEDIES

- 8.1. Right to Withhold Payment. If CMAR breaches any provision of this Contract, the City may elect to withhold all payments due until the breach has been fully cured.
- 8.2. Right to Cover. If the CMAR fails to meet any completion date or resolution time set forth in this Contract (including the Attachments), the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the CMAR is again able to resume performance under this Contract; and
 - Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the CMAR and, should the City's cost of obtaining or performing the Services exceed the amount due the CMAR, collect the amount due from the CMAR.
- 8.3. Specific Performance and Injunctive Relief. The CMAR agrees that monetary damages are not an adequate remedy for the CMAR's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the CMAR hereby consents to an order granting specific performance of such obligations of the CMAR in a court of competent jurisdiction within the State of North Carolina. The CMAR further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the CMAR breaches the Contract.
- 8.4. Other Remedies. The remedies set forth in this Contract are cumulative and not exclusive and may be exercised successively or concurrently, and in addition to any other remedy available at law or in equity. Additional remedies may be set forth in the Attachments.

9. DISPUTE RESOLUTION

The City hereby designates that the dispute resolution process to be used for the Project shall be a good-faith meeting of parties to be followed, if unsuccessful in settling the dispute, by mediation conducted pursuant to the conditions set forth in this Section.

Any party to this Project that is a party to an issue or claim in which the amount in controversy is less than fifteen thousand dollars (\$15,000.00) shall work to resolve the matter in good faith. Any party to this Project that is a party to an issue or claim in which the amount in controversy is at least fifteen thousand dollars (\$15,000.00) may require other parties that are party to the issue or claim and this Project to participate in the dispute resolution process as set forth in this Section. Unless otherwise directed by the City, the CMAR shall continue performance under this Contract while matters in dispute are being resolved. The process set forth by this Section may be foregone upon the mutual written agreement of all

parties in interest to the individual dispute. Otherwise, full compliance with this Section is a precondition for any party to initiating any form of litigation concerning the dispute.

- 9.1. Subcontract Inclusion. The CMAR shall and hereby agrees to include this Section 9 in every subcontract or any other agreement it enters into with any party related to or that will be involved in this Project.
- 9.2. Parties at Issue & Required Notice. If the City is not a party to the issue or claim, the party requesting dispute resolution must notify the Project Manager, in writing, of the requested dispute resolution and must include a brief summary of the issue including the alleged monetary value of the issue. The written notice must be sent to the Project Manager prior to the service of the request for dispute resolution upon the parties to the issue.

If the party requesting dispute resolution is a subcontractor, it must first submit its claim to the CMAR with whom it has a contract. If the dispute is not resolved through the CMAR's informal involvement, then the dispute becomes ripe for the dispute resolution process under this Section 9, and the party may submit its written notice of dispute resolution to the City.

The City is under no obligation to secure or enforce compliance with this Section for disputes in which the City is not a party. The City is entitled to notice of the dispute as required by this Section, but has no obligation to administer, mediate, negotiate, or defray any costs of disputes in which the City is not a party, but for the selection of a mediator as set forth in Section 9.4 herein. If the City is a party to the issue, the party requesting dispute resolution must submit a written request to the Project Manager for dispute resolution.

Prior to submission of a written request for dispute resolution to the City, the party requesting mediation must have first fully complied with this Section. If the dispute is not resolved through the process in Section 9.3 "Good Faith Meeting", the dispute then becomes ripe for the dispute resolution process under Section 9.4 "Mediation", and the party may submit its written request for dispute resolution to the City.

A written request for dispute resolution may be summarily rejected by the City if the party submitting such has failed to fully and timely comply with this Section.

Upon receipt of a written request for dispute resolution that fully complies with the requirements of this Section 9, the parties to the dispute shall follow the process as set forth in Section 9.3 "Good Faith Meeting." The costs of the process shall be divided equally among the parties, with the City paying at least one-third (1/3) of the costs if the City is a party to the dispute.

- 9.3. Good Faith Meeting. Representatives of each party shall meet as soon as reasonable to attempt in good-faith to resolve the dispute. If the City is a party to the dispute, all other parties must be represented by a person with the authority to settle the dispute on behalf of their respective parties. The parties may by agreement and in good-faith conduct further meetings as necessary to resolve the dispute. If resolution is not achieved, the parties shall initiate mediation as set forth in Section 9.4.
- 9.4. Mediation. The parties to a dispute that is ripe for mediation under this Section shall proceed in the following manner:
 - 9.4.1. Selection of Mediator. The parties shall in good-faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties desire a mediator not so certified, the City's consent to such a mediator must first be obtained in writing. If the parties cannot agree to a mediator within a reasonable time, the City shall have the right to unilaterally select a certified mediator if the City is a party to the dispute, or if the City is not a party to the dispute but is requested to do so by a party to the dispute.

9.4.2. Mediation Agreement. Upon selection of a mediator, the parties to the dispute shall in good-faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation including those set forth in Paragraph iv © below. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Section and Contract, as well as all applicable laws. If the parties fail to agree to the procedural rules to be used, then the American Arbitration Association Construction Industry Mediation Rules shall be used to the extent such rules are consistent with this Contract and applicable law.

9.4.3. Stalemate. If after all reasonable good-faith attempts to resolve the dispute have been made, it appears to the mediator that the parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the parties and shall issue a written notice of stalemate, which shall conclude the dispute resolution process, unless the parties agree otherwise.

10. CONFIDENTIALITY TERMS

10.1. Confidential Information. “**Confidential Information**” means, with respect to each Party, the terms of this Contract and the services hereunder, and with respect to a Party making a disclosure (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”):

- (i) Trade secrets. For purposes of this Contract, trade secrets are (i) defined pursuant to NCGS §132-1.2 (1), and (ii) identified as “Confidential” in writing at the time of initial disclosure. The identification of trade secrets, and the determination of the eligibility thereof pursuant to NCGS §132-1.2 (1), is the sole responsibility of the Disclosing Party. The Disclosing Party shall bear any losses, damages, costs, expenses, obligations, duties, fines, penalties, interest charges, and other liabilities arising from the Disclosing Party’s failure to identify trade secrets, or the Disclosing Party’s erroneous assertion or mischaracterization of a trade secret.
- (ii) Information of the Disclosing Party or its suppliers, contractors, or licensors marked as “Confidential” or “Proprietary” or “Safety Sensitive Information”.
- (iii) Information relating to criminal investigations conducted by the City and records of criminal intelligence information compiled by the City.
- (iv) Information contained in the City’s personnel files, as defined by NCGS §160A-168. This consists of all information gathered by City about employees, except for that information which is a matter of public record under North Carolina law.
- (v) Citizen or employee social security numbers collected by the Disclosing Party.
- (vi) Computer security information of the Disclosing Party, including all security features of electronic data processing, or information technology systems, telecommunications networks and electric security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software, and codes.
- (vii) Local tax records of City that contains information about a taxpayer’s income or receipts.
- (viii) Any attorney/ client privileged information disclosed by either Party.
- (ix) Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
- (x) The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
- (xi) Building plans of city-owned buildings or structures, as well as any detailed security plans.
- (xii) Billing information of customers compiled and maintained in connection with City providing utility services.
- (xiii) Other information that is exempt from disclosure under the North Carolina public records laws.

Confidential Information of a Disclosing Party does not include information that (i) was in the public domain, or that subsequently becomes part of the public domain, except by the wrongful disclosure hereunder by the Receiving Party; (ii) as evidenced in writing, was in the Receiving Party's possession prior to receipt of the same hereunder and was not acquired from a third party under any obligation of confidentiality known to the Receiving Party with respect to such information; (iii) as evidenced in writing, was received from a third party who had a right to make such disclosure; or (iv) can be proven to have been independently developed by the Receiving Party.

The Parties acknowledge that in addition to information disclosed or revealed after the Effective Date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the Effective Date.

10.2. Confidentiality Obligations. Subject to Section 10.1, the Receiving Party shall keep the Confidential Information of the Disclosing Party in strict confidence (in no event exercising less care than the degree of care used to protect its own confidential information) in the manner set forth below:

10.2.1. Receiving Party shall not, directly or indirectly, publish, disclose, divulge, reveal, report, or transfer to third parties the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent.

10.2.2. Upon the request of the Disclosing Party, promptly return to the Disclosing Party or destroy all written copies of the Disclosing Party's Confidential Information; provided that the Receiving Party shall be authorized to retain archival copies of the Confidential Information in strict confidence for purposes of record retention and compliance as required by applicable laws.

10.2.3. Receiving Party shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the Parties or is for the purpose for which such Confidential Information is being disclosed.

10.2.4. Receiving Party shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.

10.2.5. Receiving Party shall not copy, modify, enhance, compile, or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the Disclosing Party in writing.

11. NON-EXCLUSIVITY

The CMAR acknowledges that it is one of several providers of professional services to the City and the City does not represent that it is obligated to contract with the CMAR for any particular project.

12. REPRESENTATIONS AND WARRANTIES OF CMAR

12.1. Warranties. The CMAR represents, warrants, and covenants that:

12.1.1. All Services and deliverables will meet and comply with Contract requirements, applicable law, and accepted industry standards

12.1.2. Each person providing the Services has the qualifications, skills, experience, and knowledge necessary to perform the tasks assigned.

12.1.3. No services or deliverables provided under this Contract will infringe or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property rights of any third party.

12.1.4. Neither the execution nor the performance of this Contract will violate any third-party contractual rights.

12.1.5. All information provided by the CMAR is accurate.

12.1.6. It is a duly organized and validly existing entity of the type set forth in the first paragraph of this Contract, is in good standing under the laws of the state specified in the first paragraph of this Contract, and is registered to do business in North Carolina.

12.1.7. It has the requisite power and authority to execute and perform this Contract.

12.1.8. The execution, delivery, and performance of this Contract have been duly authorized by the CMAR.

12.1.9. No approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract.

12.1.10. In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses.

Additional warranties may be set forth in the Attachments.

13. INDEMNIFICATION

To the fullest extent permitted by law, the CMAR shall indemnify, and hold harmless the City and the City's officials, employees, and agents from and against any and all claims, losses, damages, fines, penalties, royalties, obligations, liabilities, and expenses to the extent that they arise from actual or alleged:

- (i) Breach of contract, negligence or intentional act or omission by CMAR or any of CMAR's agents, employees, or subcontractors, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage to or destruction of any property whether real, personal, or intangible, and including data and other intellectual property.
- (ii) Violation of any federal, state, or local law, ordinance, rule, regulation, guideline, or standard by CMAR or its employees or subcontractors, or by any service, product, or deliverable provided under this Contract.
- (iii) Violation, misappropriation, or infringement by CMAR or any of CMAR's agents, employees, or subcontractors, of any copyright, trademark, patent, trade secret, or other proprietary rights with respect to any services products or deliverables provided under this Contract ("**Infringement Claims**"); or
- (iv) Claims that the CMAR or an employee or subcontractor of the CMAR is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like.

If an Infringement Claim occurs, the CMAR shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. Such adverse affection shall be determined by the City in its sole discretion. If the CMAR is unable to comply with the preceding sentence within thirty days after the City is directed to cease use of a product or service, the CMAR shall promptly refund to the City all amounts paid under this Contract.

The CMAR may be obligated to pay attorneys' fees, litigation or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract provided that the fault of the CMAR is a proximate cause of such defense costs, litigation expenses or court costs. To the extent permitted by law, CMAR shall defend the City

and the City’ officials, employees, and agents from and against any and claims, losses, damages, fines, penalties, royalties, obligations, liabilities, and expenses, including reasonable attorneys’ fees, to the extent that they arise from actual or alleged willful misconduct, or an intentional act or omission by CMAR or any of CMAR’s agents, employees, or subcontractors. In any case in which CMAR provides a defense for the City pursuant to this indemnity, the defense will be provided by attorneys reasonably acceptable to the City.

If this Contract is funded in full or in part by federal funds, the indemnity rights granted to the City in this Contract shall also extend to the U.S. Government agency that extends such funding, and to the agency’s officers, officials, employees, agents, and independent contractors (excluding CMAR).

The provisions of this Contract regarding indemnity will survive the expiration or termination of this Contract.

14. NOTICES

Any notice, consent, waiver, authorization, or approval referenced in this Contract must be in writing, and delivered in person, by U.S. mail, overnight courier or electronic mail to the City and CMAR Contacts identified on the Cover Sheet (or as updated in writing from time to time). Notice of breach, default, termination, prevention of performance, delay in performance, modification, extension, or waiver must also be copied to the recipients listed below (the “**Official Notice Recipients**”), and if sent by electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier:

If to City:

Todd Thorne CATS Development 600 East Fourth Street Charlotte, NC 28202 todd.thorne@charlottenc.gov	Racheal Baker City Attorney’s Office 600 East Fourth Street Charlotte, NC 28202 racheal.baker@charlottenc.gov
---	---

If to CMAR:

--	--

Notice shall be effective upon receipt by the intended recipient. The parties may change their Official Notice Recipients by written notice to the other party.

15. INSURANCE

15.1. General Requirements. Throughout the term of this Contract, the CMAR shall comply with the insurance requirements described in this Section. In the event the CMAR fails to procure and maintain each type of insurance required by this Contract, or in the event the CMAR fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate this Contract immediately upon written notice to the CMAR.

The CMAR shall not commence any work in connection with this Contract until it has obtained all of the types of insurance set forth in this Section and the City has approved such insurance. The CMAR shall not allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained and approved.

All insurance policies required by this Section 15 shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The CMAR shall name the City as an additional insured under the commercial general liability policy required by Section 15.2.2.

The CMAR's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the CMAR's operations under this agreement. The CMAR and each of its subcontractors shall and does waive all rights of subrogation against the City and the City's officials, employees, and agents.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CMAR and/or subcontractor providing such insurance.

Prior to execution of this Contract, the CMAR shall provide the City with certificates of insurance documenting that the insurance requirements set forth in this Section have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The CMAR shall further provide such certificates of insurance to the City at any time requested by the City after execution of this Contract and shall provide such certificates within five (5) days after the City's request.

The City's failure to review a certificate of insurance sent by or on behalf of the CMAR shall not relieve the CMAR of its obligation to meet the insurance requirements set forth in this Contract.

Should any or all of the required insurance coverage be self-funded/self-insured, the CMAR shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Section, provided that the amounts of the various types of insurance shall be such amounts as are approved by the City in writing. However, this will in no way relieve the CMAR from meeting all insurance requirements or otherwise being responsible for the subcontractor.

15.2. Types of Insurance. CMAR shall obtain and maintain during the life of this Contract, at its sole cost and expense, the types and amounts of insurance specified in this Section. All insurance shall be procured from insurers rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina. City shall have the right, from time to time, to increase the insurance coverage limits and other requirements provided in this Section to conform to rail transit industry standards. CMAR shall provide the original Rail Protective Liability ("RPL") Policy and original Certificates of Insurance acceptable to the Charlotte-Mecklenburg, Risk Management Division for the following insurance:

15.2.1. *Automobile Liability.* Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage. The policy shall name the City of Charlotte as an additional insured with respect to the Services to be performed under this Contract. If CMAR will be transporting and/or disposing of any hazardous material or waste off of the City's right-of-way or real property in which the City has a recorded interest, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to five million dollars (\$5,000,000.00) each occurrence.

15.2.2. *Commercial General Liability.* Bodily injury and property damage liability as shall protect the CMAR and any subcontractor performing work under this Contract, from claims of bodily injury or property damage which arise from operation of this Contract, whether such operations are performed by the CMAR, any subcontractor, or anyone directly or indirectly employed by either. The amounts

of such insurance shall not be less than \$5,000,000 bodily injury each occurrence/aggregate and \$5,000,000 property damage each occurrence/aggregate, or \$10,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Contract, **with the contractual limitations related to construction and demolition activity above or below City's tracks or within fifty (50) feet horizontally of the City's tracks (measured from edge of closest track) and any Explosion/Collapse/Underground (X-C-U) exclusions deleted.** The City of Charlotte shall be listed as an additional insured under this coverage using the Insurance Services Office Endorsement CG 20 10 12 19 or CG 20 10 07 04 & CG 20 37 12 19 or such endorsements as provide equivalent coverage to City with respect to the Services to be performed under this Contract.

- 15.2.3. *Workers' Compensation Insurance.* The CMAR shall meet the statutory requirements of the State of North Carolina, covering all employees and owners and including Employer's Liability coverage with limits of not less than five hundred thousand (\$500,000.00) per accident limit, five hundred thousand (\$500,000.00) disease per policy limit and five hundred thousand (\$500,000.00) disease per employee limit.
- 15.2.4. *Professional Liability Insurance.* The CMAR shall obtain professional liability insurance covering the liability of CMAR, as applicable, for any and all errors or omissions committed by the CMAR in the performance of the Services, regardless of the type of damages. The coverage shall be maintained during the term of the Services and for at least three (3) years following completion of the construction of the Project. The policy shall have limits of liability of not less than two million dollars (\$2,000,000.00) per claim and in the annual aggregate or in the alternative, CMAR may provide evidence of one million dollars (\$1,000,000.00) per claim in primary insurance with evidence of coverage in excess of one million dollars (\$1,000,000.00) per claim to satisfy the two million dollars (\$2,000,000.00) per claim limit. The policy may contain a maximum self-insured retention or deductible of ten thousand dollars (\$10,000.00) unless a higher retention or deductible has been approved in writing by City. CMAR may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.
- 15.2.5. *Rail Protective Liability (RPL) Insurance.* If the CMAR is engaged in construction or demolition activity above or below City's tracks or within fifty (50) feet horizontally of City's tracks (measured from the edge of the closest track), the CMAR shall obtain RPL insurance designating the City of Charlotte as Name Insured and fully covering such operations. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of City shall have limits of liability of not less than five million dollars (\$5,000,000.00) each occurrence, ten million dollars (\$10,000,000.00) in the aggregate for each annual period for Coverages A and B, Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

The original RPL Insurance Policy must be submitted to City fifteen (15) calendar days prior to commencement of construction or demolition work above or below City's tracks or within fifty (50) feet horizontally of the City's tracks (measured from edge of closest track). The City reserves the right to increase the CGL Insurance requirement above if City approves the removal of the RPL Insurance requirement. Notwithstanding the above, the City reserves the right to require RPL

Insurance if at any time the Services provided by the CMAR rise to a level that requires RPL Insurance in City's reasonable discretion.

15.2.6. *All Risk Property Insurance.* The CMAR shall obtain all risk property insurance covering physical loss or damage to all property, equipment and materials used in the performance of the Services. The policy shall have limits of liability adequate to cover all property of City and shall include a waiver of subrogation against City.

16. BACKGROUND CHECKS

Prior to starting work under this Contract, the CMAR is required to conduct a background check on each CMAR employee assigned to work under the Contract and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under the Contract (collectively, the "Background Checks"). Each Background Check must include: (a) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven years; and (b) a reference check.

After starting work under this Contract, the CMAR is required to perform a Background Check for each new CMAR employee assigned to work under the Contract and shall require its subcontractors (if any) to do the same for each of their new employees. If the CMAR undertakes a new project under the Contract, then prior to commencing performance of the project the CMAR shall perform a Background Check for each CMAR employee assigned to work on the project and shall require its subcontractors (if any) to do the same for each of their employees.

If a person's duties under the Contract fall within the categories described below, the Background Checks that the CMAR will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- (i) If the job duties require driving: A motor vehicle records check.
- (ii) If the job duties include responsibility for initiating or affecting financial transactions: A credit history check.
- (iii) If job duties include entering a private household or interaction with children: A sexual offender registry check.

The CMAR must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The CMAR shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the CMAR as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

17. COMMERCIAL NON-DISCRIMINATION

The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract CMAR agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, CMAR shall not discriminate on the basis of a Protected Class in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers, in connection with a City contract or contract solicitation process, nor shall CMAR retaliate against any person or entity for reporting instances

of such discrimination. Protected Class means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability. The CMAR shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

As a condition of entering into this Contract, CMAR agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Company on each subcontract or supply contract. The CMAR further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The CMAR understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the CMAR from participating in City contracts, and other sanctions.

18. NORTH CAROLINA PROHIBITION ON CONTRACTS WITH COMPANIES THAT INVEST IN IRAN OR BOYCOTT ISRAEL

CMAR certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a CMAR engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract CMAR further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to CMAR appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

19. E-VERIFY

CMAR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and shall require each of its subcontractors to do so as well.

20. GENERAL

20.1. Entire Agreement. This Contract is the parties' entire agreement regarding its subject matter. It supersedes all prior agreements, negotiations, representations, and proposals, written or oral. No change order, amendment, or other modification to this Contract will be valid unless in writing and signed by both the CMAR and the City. Clicking "consent" or "agree" electronically when accessing software or a website will not constitute a writing sufficient to bind the City.

20.2. Relationship of the Parties. The parties' relationship under this Contract is solely that of independent contractors. Nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners, or otherwise as participants in a joint venture. Neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

20.3. Governing Law and Venue. North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of

law principles). Any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

- 20.4. Binding Nature and Assignment. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 20.5. Delay/ Consequential Damages. The City shall not be liable to the CMAR, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City, or any consequential, indirect or special damages or lost profits related to this Contract.
- 20.6. Severability. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 20.7. No Publicity. The CMAR may not identify or reference the City or this Contract in any advertising, sales promotion, or other materials without the City's prior written consent of the City except: (i) the CMAR may list the City as a reference, and (ii) the CMAR may identify the City as a customer in presentations to potential customers.
- 20.8. No Bribery or Lobby. The CMAR certifies that to the best of its knowledge, information, and belief, neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or lobbied, or attempted to bribe or lobby, an officer or employee of the City in connection with this Contract.
- 20.9. Waiver. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights. No delay or omission by either party to exercise any right or remedy it has under this Contract shall impair or be construed as a waiver of such right or remedy. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant.
- 20.10. Survival. All provisions of this Contract which by their nature and effect are required to be observed, kept or performed after termination of this Contract shall survive the termination of this Contract and remain binding thereafter, including but not limited to the following:
- (i) **Section 5.2** "Employment Taxes and Employee Benefits"
 - (ii) **Section 12** "Representations and Warranties of CMAR"
 - (iii) **Section 6** "Termination"
 - (iv) **Section 3.5** "City Ownership of Work Product"
 - (v) **Section 13** "Indemnification"
 - (vi) **Section 14** "Notices"
 - (vii) **Section 10** "Confidentiality Terms"
- 20.11. Taxes. Except as specifically stated elsewhere in this Contract, the CMAR shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The CMAR consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the CMAR by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the CMAR pursuant to this Contract for an amount equal to

any and all taxes and related interest, fines, or penalties owed by the CMAR to the City. The CMAR hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the CMAR from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.

- 20.12. Construction of Terms. Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 20.13. Compliance with Laws. The CMAR agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The CMAR further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 20.14. Flow-Down Requirements. All provisions required by law, regulation, rule, or the Contract shall apply to subcontracts of any tier. The CMAR shall incorporate into each subcontract and require insertion of the same into all lower tier subcontracts, those requirements which are expressly indicated within each applicable provision.
- 20.15. Force Majeure. The CMAR shall not be liable for any failure or delay in the performance of its obligations pursuant to this Contract and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder, except as set forth below, if all of the following conditions are satisfied:
- (i) If such failure or delay could not have been prevented by reasonable precautions;
 - (ii) If such failure or delay cannot reasonably be circumvented by the non-performing party through alternate sources, work-around plans, or other means; and
 - (iii) If and to the extent such failure or delay is caused by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or court order (each, a "**Force Majeure Event**").

Upon the occurrence of a Force Majeure Event, the CMAR shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as: (i) such Force Majeure Event continues and (ii) the CMAR continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

The CMAR shall promptly notify the City by telephone or other means available (to be confirmed by written notice within five (5) business days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the CMAR from performing its obligations for more than thirty (30) days, the City may terminate this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City of Charlotte and [COMPANY], each acting through its respective duly authorized representative, have caused this Construction Manager at Risk Pre-Construction Phase Services for the South End Station Project, in an **amount not to exceed** _____ to be signed in their respective names and delivered as of the date first above written.

CITY OF CHARLOTTE

By: _____

Print Name: _____

Title: _____

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, City of Charlotte and [COMPANY], each acting through its respective duly authorized representative, have caused this Construction Manager at Risk Pre-Construction Phase Services for the South End Station Project, in an **amount not to exceed** _____ to be signed in their respective names and delivered as of the date first above written.

[COMPANY]

By: _____

Print Name: _____

Title: _____

ATTACHMENT A

FEDERAL TRANSIT ADMINISTRATION CONTRACTING TERMS

This Attachment is attached and incorporated into the Contract between the City and CMAR. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Attachment and the terms of the main body of the Contract or any other Attachment or appendix, the terms of this Attachment shall govern.

- 1. Federal Applicability.** The Services to be performed under this Contract will be financed in whole or in part with federal funding. As such, federal laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract, shall govern the Contract, unless the federal government determines otherwise. This Section identifies the federal requirements that are applicable to this Contract. The CMAR is responsible for complying with all applicable provisions.

To the extent applicable, the federal requirements contained in the most recent version of the Federal Transit Administration (FTA) Master Agreement, as amended (the “**Master Agreement**”), including any certifications and contractual provisions required by any federal statutes, or regulations referenced therein, to be included in this Contract, are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract executed by the CMAR pursuant to its obligations under this Contract. The CMAR and its subconsultants, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the Master Agreement then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Services to be performed under this Contract. Notwithstanding anything to the contrary herein, all FTA mandated terms shall be deemed to control in the event of a conflict with other applicable provisions contained in this Contract. The CMAR shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

- 2. Access to Records & Reports.** The CMAR will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records. The CMAR agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The CMAR shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. The CMAR agrees to provide sufficient access to the City, the FTA and their respective contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required. The CMAR agrees to permit the City, the FTA and their respective contractors access to the sites of performance under this Contract as reasonably may be required.

The CMAR agrees to include the above clause(s) in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

- 3. Buy America.** All iron, steel and manufactured products provided by the CMAR shall be of domestic manufacture or origin, except as otherwise approved by the City. The CMAR agrees to comply with 49 U.S.C. §5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. See Exhibit 1 for certification.

This requirement extends to all third party contractors and their contracts at every tier and this clause shall be included in all such subcontracts. CMARs shall require any subcontractors providing iron, steel or manufactured products to provide certification of Buy America compliance

Whenever the CMAR provides a product the CMAR shall first ensure that the product is of domestic manufacture or origin. The CMAR shall submit certification with documentation of Buy America compliance, which shall include a certified letter from the manufacturer of the product stating such compliance for all iron, steel or manufactured products, prior to the incorporation of such product into the Project.

Should the CMAR find it necessary to provide iron, steel, or manufactured products, which are not produced in the U.S., insufficient and reasonably available quantities, then the CMAR shall submit a written justification to the City describing in detail the product, its estimated cost, the rationale for its use in the Project and the basis for the CMAR's belief that the product is of limited domestic availability. The City, in its sole discretion, will determine whether to seek a waiver of the Buy America requirements from the U.S. Secretary of Transportation. Should the City determine that there is insufficient basis for seeking a waiver, or if a waiver request is denied by US-DOT, the CMAR shall redesign the Project to conform with Buy America requirements at no additional cost to the City.

The City may investigate the CMAR's and any subcontractors' or suppliers' compliance with this Section. If an investigation is initiated, the CMAR shall document his compliance and cooperate with the investigation. The CMAR shall include the terms of this Section in every subcontract or purchase order as necessary to enforce such provision.

The CMAR's non-compliance with all or any portion of this Section shall constitute a material breach of contract for which the City may, in addition to all other remedies provided by law by the Contract, or otherwise, terminate this Contract for default. The CMAR further agrees to indemnify and hold the City free and harmless from and against any and all liability, loss, costs, claims, demands, damage, or expense of every kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and costs of litigation) that the City suffers or incurs arising from, or out of, or by reason of the CMAR's non-compliance or alleged non-compliance with any provision of this Section.

4. **Clean Air Act and Federal Water Pollution Control Act.** Except to the extent the Federal Government determines otherwise in writing, the CMAR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401, et seq.; and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251, et seq. The CMAR agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The CMAR agrees: (a) It will not use any violating facilities; (b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" (c) It will report violations of use of prohibited facilities to FTA; and (d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§1251-1387).

The CMAR also agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000.00) financed in whole or in part with Federal assistance provided by FTA.

5. **Civil Rights Requirements.** The City is an Equal Opportunity Employer. As such, the City has agreed to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City has agreed to comply with the requirements of 49 U.S.C. §5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the CMAR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Nondiscrimination

In accordance with Federal transit law at 49 U.S.C. § 5332, the CMAR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the CMAR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Religion, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the CMAR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The CMAR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CMAR agrees to comply with any implementing requirements FTA may issue.

Age

In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the CMAR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CMAR agrees to comply with any implementing requirements FTA may issue.

Disabilities

The CMAR agrees to comply with 49 U.S.C. §5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those

services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The CMAR also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. §794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the CMAR agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (i) U.S. DOT regulations “Transportation Services for Individuals with Disabilities (ADA)” 49 CFR Part 37;
- (ii) U.S. DOT regulations “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
- (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
- (iv) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
- (v) U.S. DOJ regulations “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.” 28 CFR Part 36;
- (vi) U.S. GSA regulations “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
- (vii) U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
- (viii) U.S. Federal Communications Commission regulations “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 49 CFR Part 64, Subpart F;
- (ix) U.S. Architectural and Transportation Barriers Compliance Board regulations, “Electronic and Information Technology Accessibility Standards.” 36 CFR Part 1194;
- (x) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 CFR part 609; and
- (xi) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

Access to Services for Persons with Limited English Proficiency

The CMAR agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of USDOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to

Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

Environmental Justice

The CMAR agrees to facilitate compliance with the policies of: Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and USDOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the CMAR agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The CMAR agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

The CMAR also agrees to include the above requirements in all subcontracts. Failure by the CMAR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate.

6. **Energy Conservation.** The CMAR agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.*, except to the extent that the Federal Government determines otherwise in writing.

This requirement extends to all third party consultants and their contracts at every tier and this clause shall be included in all such subcontracts.

7. **Fly America.** The CMAR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with §5 of the International Air Transportation Fair Competitive Practices Act of 1974, as

amended, 49 U.S.C. §40118, and U.S. GSA regulations, "Use of U.S. Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

This requirement extends to all third party consultants and their contracts at every tier and this clause shall be included in all such subcontracts.

- 8. Government-Wide Debarment & Suspension.** The CMAR shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the CMAR shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By executing this Contract, the CMAR certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the CMAR knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CMAR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, throughout the period of this Contract. The CMAR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Verification

The CMAR and all lower-tier participants must verify that the person with whom the CMAR or lower-tier participant intends to do business with is not excluded, pursuant to the definition set out in 2 CFR 180.940, or disqualified, pursuant to the definition in 2 CFR 180.935. The CMAR and all lower-tier participants may do this by either: (a) checking the Excluded Parties List System (EPLS), found at <http://epls.arnet.gov> or <http://www.epls.gov>, (b) collecting the certification form from the lower-tier participant, or (c) adding a clause or condition to the covered transaction with that lower-tier participant. See Form 6 for CMAR certification form and Lower-tier participant certification form.

Disclosing Information

The CMAR and all lower-tier participants, before entering into a covered transaction, must notify the higher-tiered participant if they are presently excluded or disqualified, or any of their principals are excluded or disqualified, pursuant to 2 CFR 180.355.

- 9. Lobbying.** The CMAR agrees to comply with the provisions of Title 31, U.S.C. 1352, The Byrd Anti-Lobbying Amendment, as in force or as it may hereafter be amended. The CMAR and all subconsultant tiers shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City. The CMAR shall make such disclosure on the disclosure form included in the proposal. See Form 7 for certification.

The CMAR further agrees to secure like undertakings from all subconsultant tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

- 10. No Government Obligation to Third Parties.** The City and the CMAR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, the CMAR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

The CMAR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultants who will be subject to its provisions.

- 11. Program Fraud & False or Fraudulent Statements & Related Acts.** The CMAR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801, et seq. and US-DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the CMAR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA-assisted project for which this Contract Services is being performed. In addition to other penalties that may be applicable, the CMAR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CMAR to the extent the Federal Government deems appropriate.

The CMAR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the CMAR, to the extent the Federal Government deems appropriate.

The CMAR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

- 12. Recycled Products.** The CMAR agrees to comply with all the requirements of the Resource Conservation and Recovery Act (RCRA) §6002, as amended and now cited as 42 U.S.C. 6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

This requirement extends to all third party consultants and their contracts at every tier.

- 13. Safe Operation of Motor Vehicles.** The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. *Seat Belt Use* - The CMAR is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the CMAR tractor or City. *Distracted Driving* - Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. §402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, the CMAR agrees to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to encourage each subconsultant to do the same.

The CMAR agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA.

- 14. Incorporation of FTA Terms.** The provisions of this Contract include, in part, certain standard terms and conditions required by the US-DOT, whether or not expressly set forth in the Contract provisions. All applicable contractual provisions required by US-DOT, as set forth in FTA Circular 4220.1F or Federal law, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CMAR shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause the City to be in violation of the FTA terms and conditions.

The CMAR also agrees to include the requirements above in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 15. Federal Changes.** The CMAR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during

the term of this Contract. The CMAR's failure to so comply shall constitute a material breach of this Contract.

This requirement extends to all third party consultants and their contracts at every tier and this clause shall be included in all such subcontracts.

- 16. F.A.R. Compliance.** Any adjustment to the CMAR's compensation under this Contract shall include only costs and other compensation that are allowable, allocable and reasonable as provided elsewhere herein, or otherwise by law, and that are allowable, allocable and reasonable under the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System, 48 C.F.R., Ch.1, Pt.31, and any implementing guidelines or regulations issued by the said Administration.
- 17. Sensitive Security Information.** The CMAR shall take all appropriate measures to protect "sensitive security information" made available during the course of its performance hereunder, in accordance with the provisions of 49 U.S.C. §40119(b); the implementing U.S. Department of Transportation regulations at 49 CFR Part 15; 49 U.S.C. §114(s); and the implementing U.S. Department of Homeland Security regulations at 49 CFR Part 1520.
- 18. Cargo Preference Act.** The CMAR agrees to comply with the Cargo Preference Act of 1954 and its regulations. The CMAR agrees to include the requirements of this section install subcontracts that involve the transport of equipment, material or commodities by ocean vessel.
- 19. Federal Privacy Act.** The CMAR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act 5 U.S.C. 552a. Among other things, the CMAR agrees to obtain the express consent of the Federal Government before CMAR or employees operate a system of records on behalf of the Federal Government. The CMAR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract. The CMAR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
- 20. Rights in Data.** The CMAR agrees to follow the requirements as set forth in 49 CFR part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 37 U.S.C. 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements) and 49 CFR part 19 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) with regard to experimental, development or research work; rights in data; copyrights; and intangible property.

- 21. Seismic Safety Requirements.** The CMAR agrees that any new building or addition/renovation to an existing building will be constructed in accordance with the standards for seismic safety required in US-DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation, The CMAR also agrees to ensure that all Work performed under this Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
- 22. Davis Bacon Act.** In its performance under the Contract, the CMAR shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, the CMAR is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the CMAR is required to pay wages not less than once a week.
- 23. Contract Work Hours and Safety Standards Act.** CMAR agrees to comply with: (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and (b) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. part 1910; and “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.
- 24. Copeland Anti-Kickback Act.** In its performance under the Contract, the CMAR shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “CMARs and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that the CMAR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The CMAR shall ensure, and require its subconsultants to ensure, that the requirements of this section be included in subcontracts at all tiers.

ATTACHMENT B

DISADVANTAGED BUSINESS ENTERPRISE TERMS

THE DBE GOAL FOR THIS CONTRACT IS: XX.X%

This Contract is subject to the requirements of 49 C.F.R. Part 26 *Participation by DBE in Department of Transportation Financial Assistance Programs.*

I. POLICY

As a recipient of funds from the Federal Transit Administration (“FTA”), the City has established a Disadvantaged Business Enterprise Program (“DBE Program”) in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 C.F.R. Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goal-setting.

The DBE Program is incorporated into and made a part of the Bidding Documents and resulting Contract. Copies of the DBE Program may be obtained online at: <http://charmeck.org/city/charlotte/cats/about/Business/procurement/Pages/dbesbe.aspx>; under “City of Charlotte’s DBE Program (document)” on the www.ridetransit.org “Doing Business with CATS as a DBE/SBE” page.

It is the policy of the City to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The City’s objectives are as follows:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The CATS Civil Rights Officer has been designated as the DBE Liaison Officer (“DBELO”). In that capacity, he/she is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the DOT.

II. APPLICATION

Pursuant to 49 C.F.R. Part 26 and the DBE Program, all Bidders must affirmatively ensure that in any contract entered into with the City, DBEs will be afforded equal opportunity to participate in subcontracting opportunities.

A Bid will not be considered responsive unless the Bidder complies with 49 C.F.R. Part 26 and the DBE Program. Failure to carry out the pre-award requirements stated in the DBE Contract Provisions will be sufficient grounds to reject the Bid. Moreover, failure by the CMAR to comply with 49 C.F.R. Part 26 and the DBE Program after award shall constitute a breach of Contract.

The Bidder shall thoroughly examine and be familiar with provisions of 49 C.F.R. Part 26 and the DBE Program. Submission of a Bid shall constitute an acknowledgment upon which the City may rely that the Bidder has thoroughly examined, and is familiar with said regulations and contract requirements. Failure or neglect of a Bidder to receive or examine any of these government regulations and contract requirements shall in no way relieve him from any obligations with respect to his Bid or this Contract.

III. REQUIREMENTS

The CMAR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CMAR shall carry out applicable requirements of 49 C.F.R. Part 26 and the DBE Program in the award and administration of this DOT-assisted contract. Failure by the CMAR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate. Each subcontract the CMAR signs with a subcontractor (both DBE and non-DBE subcontractors) must include the assurance in this paragraph. Such contract language is located in Section VIII below. (See 49 C.F.R. §26.13(b)).

Bidders are required to document sufficient DBE participation to meet the goal established for this Contract or, alternatively, document adequate Good Faith Efforts to do so, as provided for in 49 C.F.R. §26.55. Specifics regarding Good Faith Efforts is located in Section VI below. Award of this Contract is conditioned upon the submission of the following concurrent with and accompanying the sealed Bid:

1. The names and addresses of DBE firms that will participate in this Contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the Bidder's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;
5. Written confirmation from the DBE that it is participating in the Contract as provided in the CMAR's commitment; and
6. If the Contract goal is not met, evidence of Good Faith Efforts to do so.

Bidders must present the information required above as a matter of responsiveness with the Bid submission. Additional information on all required documentation is specified in Section VII below. (See 49 C.F.R. §26.53 (3)). By submitting a Bid, the Bidder gives assurances that he/she will meet the Contract goal for DBE participation in performance of this Contract, or as an alternative, that the Bidder has made such Good Faith Efforts as required in Section VI below.

The CMAR is required to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the CMAR receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City. This clause applies to both DBE and non-DBE subcontractors.

The CMAR is required to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made

incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The CMAR's failure to pay subcontractors as provided shall be a material breach for which the City may cancel this Contract.

The CMAR may not hold retainage from its subcontractors once the City has provided notice that the work completed by the subcontractors has been completed and has been accepted.

To terminate a DBE subcontractor, the CMAR must follow the procedure stated in Section 26.53(f) of the DBE Program. The CMAR shall not terminate a DBE subcontractor ***without prior written consent of the City***. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE Program. In those instances where "good cause" exists to terminate a DBE subcontractor, the City will require the CMAR to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the Contract goal. The CMAR shall notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

If the CMAR fails or refuses to comply, the Contracting Officer will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the CMAR still fails to comply, the Contracting Officer may terminate the Contract.

IV. REQUIRED DOCUMENTATION

A Bid will not be considered responsive unless the Bidder complies with 49 C.F.R. Part 26 and the City's DBE Program. The applicable forms in this section **MUST** be completed and included with the Bid (or specified timeframe) if a Bidder is to be considered responsive. If these forms are not submitted as such, the Bidder will be considered non-responsive and the Bid rejected. The required forms are listed below.

1. LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A

The Bidder must submit its proposed DBE and non-DBE utilization on FORM A (List of Subcontractors/Suppliers) listing **ALL** subcontractors and suppliers that will be providing goods or services under the Contract. This form is to include all subcontractors the Bidder proposes to use, not just the DBE subcontractors. Bidders are required to list the names, contact information, annual gross receipts, age of firm, respective scope of work/service to be performed, NAICS Code, NCDOT Reporting Number, the dollar values of each subcontract that the Bidder proposes for participation in the Contract work, and the dollar value of total DBE participation for the Contract.

Blank forms will be deemed to represent zero participation. Forms without a signature will be considered non-responsive.

2. EVIDENCE OF GOOD FAITH EFFORTS – FORM C

If the information submitted in FORM A indicates that the City's goal will not be met, the Bidder shall also submit evidence sufficient to show to the City's satisfaction that the Bidder has in good faith made every reasonable effort, in the City's judgment, to meet such goal prior to contract award. FORM C (Evidence of Good Faith Efforts) must be completed and all accompanying documentation provided to show DBE firms that were contacted, but were not utilized. More information relating to Good Faiths Efforts is located in Section VI below.

Blank forms will be deemed to represent zero Good Faith Efforts. Completed forms without accompanying documentation will be considered non-responsive.

3. LETTER OF INTENT – FORM D

The Letter of Intent (FORM D) must be completed for **EACH** DBE listed on FORM A. Letters of Intent are not required to be submitted with the Bid, but can be submitted with the Bid. However, the apparent low Bidder will be required to submit Letters of Intent within three (3) business days from the time the City makes the request.

All documentation submitted at time of Bid, as well as additional data provided by the successful Bidder, is considered part of the Contract Documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of Bid must have prior approval of the DBELO.

V. DBE PARTICIPATION TOWARDS DBE GOAL

In accordance with 49 C.F.R. Part 26 and the DBE Program, the City may set contract specific goals. The degree of goal attainment by DBE contractors and DBE suppliers should be calculated as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE counts toward the DBE goal and shall be calculated as follows:
 - A. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph 2 of this Section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - B. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
2. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - A. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - C. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - D. When a DBE is presumed not to be performing a commercially useful function as provided in this Section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - E. Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
4. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - E. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.
 - F. Example: DBE Firm X uses two (2) of its own trucks on a contract. It leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six (6) trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight (8) trucks. With respect to the other two (2) trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.
 - G. For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - 1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - 2) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - 3) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
 - C. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- 6. If a firm is not currently certified as a DBE in accordance with the standards of this Section at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 49 C.F.R. §26.87(i).
 - 7. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
 - 8. Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

VI. DOCUMENTATION OF GOOD FAITH EFFORTS

In order to be responsive, a Bidder must make good faith efforts to meet the DBE participation goal set forth in the Contract. The Bidder must document the good faith efforts it made in that regard. Thus, the Bid submitted to the City must be accompanied by written documentation prepared by the Bidder evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE participation to meet the Contract DBE participation goal. Mere pro forma efforts are not acceptable and will be rejected by the DBELO. The DBELO shall be responsible for determining whether the Bidder satisfied the good faith efforts.

Good faith efforts require that the Bidder consider all qualified DBEs, who express an interest in performing work under the Contract. This means that the Bidder cannot reject a DBE as unqualified unless the Bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation are not legitimate causes for the rejection or non-solicitation of bids in the CMAR's efforts to meet the Contract DBE participation goal. The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a Bidder to meet the DBE goal.

1. Attendance at a pre-bid meeting, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
 2. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before Bids are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable.
 3. Written notification to capable DBEs that their interest in the Contract is solicited.
 4. Documentation of efforts to negotiate in good faith with interested DBEs for specific subcontracts. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers, so as to facilitate DBE participation. Such documentation includes at a minimum:
 - A. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;
 - B. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 - C. A statement explaining why additional agreements with DBEs were not reached;
 - D. For each DBE the Bidder contacted but rejected as unqualified, the reason for the Bidder's conclusion; and
 - E. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Bidder or the City.
- NOTE:** A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make GFEs. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
5. Documentation of efforts to utilize the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
 6. Documentation that the Bidder has broken out Contract work items into economically feasible units in fields where there are available DBE firms to perform the work in order to increase the likelihood that DBEs goals will be achieved.
 7. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the Contract, and that such information was communicated in a timely manner with sufficient time to allow the DBEs to respond to the solicitation.
 8. Documentation of efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Bidders must present the information required above as a matter of responsiveness on FORM C together with accompanying documentation. (See 49 C.F.R. §26.53 (b)(3)(i)).

VII. DBE REPORTING AND RECORD KEEPING REQUIREMENTS

Once a Bidder has been awarded a Contract, there are continuing obligations under the DBE Program. The City shall verify the veracity and accuracy of representations made by the CMAR as well as to ensure their compliance with these requirements. To ensure that all such obligations and representations are met, the City will conduct periodic reviews of the CMAR's DBE involvement efforts during Contract performance. These procedures will include, but not be limited to, the following:

1. The CMAR shall submit a monthly report on DBE Participation with each request for payment from the City. Such information shall be provided on **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS – FORM B**. Failure to submit this form with every request for payment will result in delays in payment.
2. The CMAR shall bring to the attention of the DBELO any situation in which regularly scheduled progress payments are not made to DBE subcontractors.
3. The CMAR shall maintain their books, records, and accounts for three (3) years following the performance of this Contract. These records shall be maintained by the CMAR in a fashion, which is readily accessible to the City and shall be made available for inspection upon request by any authorized representative of the City or FTA. This reporting requirement also extends to any subcontractor.
4. The CMAR shall make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. The CMAR shall not terminate a DBE subcontractor without DBELO's prior consent. To terminate a DBE subcontractor, the CMAR must follow the procedure stated in Section 26.53(f) of the DBE Program.
5. Any alterations, substitutions, deletions, etc., to data provided to the City must have prior approval of the DBELO.
6. The City will monitor the progress of DBE work through on-site visits, communication with DBEs, and review reports regarding employment as well as DBE participation.
7. The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.
8. The City will track and report the extent of the CMAR's race-neutral business assistance efforts. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following: (i) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures; (ii) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and (iii) DBE participation through a subcontract from a prime contract that did not consider a firm's DBE status in making the award.

VIII. CONTRACT CLAUSES

The CMAR *shall* include the following in each subcontract the CMAR signs with a subcontractor (both DBE and non-DBE subcontractors):

1. The CMAR, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 46 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
2. The CMAR is required to pay each subcontractor (DBEs and non-DBEs) under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the CMAR receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above

referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City.

3. The CMAR is required to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

IX. INFORMATION

If you have any questions concerning the required documentation listed above, or concerning the DBE requirements in general, contact:

CATS Civil Rights Officer

Arlanda Rouse,
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
704-432-2566
arouse@charlottenc.gov

ATTACHMENT C

THE PRECONSTRUCTION SERVICES

Preconstruction Services to be provided by CMAR include constructability reviews, value engineering, cost estimating and management, scope management, schedule development, construction planning, and the development of one or more guaranteed maximum prices (“GMP”) as detailed below. As specified, CMAR will have design responsibility for temporary works necessary to construct the project.

CMAR Preconstruction Services will include, but not be limited to, the following:

Project Management, General Administration, and Coordination

- The CMAR shall collaborate with the Project Team, third parties only as directed by the City, and regulatory agencies and maintain a cooperative attitude throughout the life of the Project.
- The CMAR shall attend design review meetings and Project Team meetings.
- The CMAR shall integrate CATS program controls into CMAR Project delivery strategy.
- The CMAR shall review the South End Station Geotechnical Report and provide recommendations if further testing is needed, become familiar with site conditions, site geology and geotechnical conditions, and constraints as they relate to design and construction.
- The CMAR shall identify long lead items.
- The CMAR shall assist the Project Team with Safety and Security certification and shall review and become familiar with project safety documents, such as the SSMP, SSCP, TVA and PHA, and provide comments regarding constructability impacts of these documents.
- The CMAR shall review the standard CATS QA/QC construction specifications and provide comments regarding the constructability impacts of these specifications.
- The CMAR shall assist the Project Team with efforts to certify project sustainability through the Envision program.
- The CMAR shall be available to attend and assist with public presentations as requested by CATS.
- The CMAR shall assist with providing documentation for permit applications as needed.
- The CMAR shall perform field visits and activities, as required.
- The CMAR shall develop, maintain, and distribute monthly progress reports.
- The CMAR shall review Project environmental reports and National Environmental Policy Act (NEPA) documentation and provide recommendations on strategies for compliance including preparation of a plan to mitigate or avoid construction noise and vibration.
- The CMAR shall become thoroughly familiar with the site and conditions surrounding the site.
- The CMAR shall follow the development of the design through final construction documents, review the in-progress plans and specifications, and become familiar with the evolving plans and specifications.

- The CMAR shall review the Risk Register developed by the Project Team and participate in workshops to identify, define, and document other project- specific risks, opportunities, and/or innovations. The CMAR shall participate in the maintenance of the Risk Register.

Scope Management

- The CMAR shall conduct scope management to ensure that design can be constructed for the established budget.
- The CMAR shall develop and maintain a scope management log to track scope along with cost impact with the objective of achieving a net zero change to the construction cost.
- The CMAR shall continuously monitor the impact of the proposed design on project schedule and recommend adjustments in the design documents including phasing and sequencing to ensure completion of the project in the most expeditious and cost-effective manner possible.
- CMAR shall provide scope management update as part of the Monthly Progress report.

Cost Estimating and Cost Control

- The CMAR shall review the 30% Project Design Plans, 30% Cost Estimate and Project Schedule and provide written analysis on adequacy of the current project budget.
- The CMAR shall provide intermediate estimating support to the Project Team for design alternatives.
- The CMAR shall participate in a meeting with the Project Team to establish baseline production rate assumptions and standards for formulation of future cost estimates and schedule estimates.
- The CMAR shall provide a detailed open book cost estimate after the 65% and 95% design milestone accompanied with prepared estimate narratives which include assumptions and clarifications.
- The CMAR shall prepare a cash flow analysis for projected construction spending per month.
- The CMAR estimates shall be detailed open book estimates and shall include, but are not limited to the following:
 - WBS breakdown by facility, discipline, bid group or subcontract package, as agreed to by the Program Team
 - Material quantity take offs
 - Unit prices
 - Crew size/make up
 - Labor and equipment rates
 - Labor man hours and equipment hours
 - Labor and equipment production rates
 - Fuel consumption rates/costs
 - Subcontractor costs

- Scope assumptions and clarifications
- CMAR shall use commercial off-the-shelf estimating software. The estimating software are acceptable software to be used to create construction cost estimates. One licensed seat shall be provided by the CMAR to the City for its use.
- The CMAR shall attend and participate in estimate review workshops to reconcile quantities and cost differences during 65% and 95% design.
- The CMAR shall review the design to identify long lead procurement items (equipment, materials and supplies). When each item is identified, the CMAR shall notify the CATS Project Manager of the required procurement and schedule.
- The CMAR shall monitor conditions in the construction market to identify factors that would or may affect costs and time for completing the project. CMAR contractor shall monitor and report escalation trends a minimum of once per quarter.

Quality Requirements

1. **Description** The CMAR shall implement a Quality Program complying with CATS Quality Management System (QMS), CATS Project Quality Plan and FTA Quality Management System Guidelines. See <https://www.transit.dot.gov/funding/grant-programs/capital-investments/quality-management-system-guidelines> to access a copy of FTA Guidelines. The CMAR's Quality Program shall include administrative and procedural requirements for QA/QC as well as the services of a Quality Officer for the duration of the Project.
2. **Definitions**
 - **Quality-Assurance (QA):** QA involves all those planned and systematic actions necessary to provide adequate confidence to the management that a product or service will satisfy given requirements for quality. It emphasizes planned and systematic actions and is necessary to provide adequate confidence that preventive/continual improvement actions at a management level will result in a product or service that meets requirements. QA includes ensuring the project requirements are developed to meet the needs of all relevant internal and external agencies, planning the processes needed to assure quality of the project, ensuring that equipment and staffing can perform tasks related to project quality, ensuring that contractors are capable of meeting and carrying out quality requirements, and documenting the quality efforts.
 - **Quality-Control (QC):** QC is the techniques used to assure that a product or service meets requirements and that the work meets the product or service goals. Generally, QC refers to the act of taking measurements, testing, and inspecting a process or product to assure that it meets specification. It also includes actions by those performing the work to control the quality of the work. Products may be design drawings/calculations or specifications, manufactured equipment, or constructed items. QC also refers to the process of witnessing or attesting to and documenting such actions.
 - **Quality Plan:** The Quality Plan is a written description of intended actions to control and assure quality. This plan shall identify the methods and means to be employed in implementing the requirements of the program set forth in the Contract.
 - **Quality Control Officer:** The Quality Control Officer is the person responsible for implementing the Quality Management Plan. Appointment of the Quality Control Officer will be communicated by a letter from an officer of the CMAR.

3. Quality Deliverables

- **CMAR Quality Control Officer Qualifications:** A graduate engineer having design experience with not less than seven years of quality management experience, or a non-graduate with no less than ten years of construction experience plus three years or more of quality control supervisory experience. Submit CMAR Quality Control Officer resume for approval by the Project Manager within 28 days after the effective date of the Notice of Award.
- **CMAR's Quality Plan:** Encompassing those activities to be performed by the CMAR to ensure that the Work conforms to the Contract requirements. Submit the Quality Plan for approval by the City within 28 days after the effective date of the Notice of Award. Submit revisions to the Quality Plan not less than ten days before the effective date thereof. The CMAR's Quality Plan may be submitted as chapter(s) of the CMAR's PMP.
- **Deliverables:** For the required submittals, submit a statement, signed by the responsible design professional, for each product specifically assigned to this project, indicating that the products and systems comply with performance and design criteria indicated.
- **Permits, Licenses, and Certificates:** For City's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of Work. Where appropriate, upload documents in the City's web-based project control software.

4. Quality Assurance/Quality Control Obligations

CMAR is responsible for the quality of Work under the Contract, including work performed by CMAR's suppliers and subcontractors, and for providing QA/QC in accordance with Contract and the CMAR's approved Quality Plan.

5. CMAR's Quality Plan

The Quality Plan encompasses those activities to be performed by the CMAR to ensure that the Work conforms to the Contract requirements. The Quality Plan shall contain an index and each page shall be numbered and uniquely identified with a revision number and date of issue. The Quality Plan will be signed by an officer of the CMAR. The Quality Plan shall, at a minimum, meet the requirements of the FTA Quality Management Guidelines and CATS QMS & PQP: (NOTE: Procedures referred to herein shall be made available to the City for review and approval.)

- **Element 1 - Management Responsibility:** Identify CMAR's personnel who have quality responsibilities and describe their responsibility and authority.
- **Element 2 - Documented Quality Management System:** Describe detailed operating procedures and forms that will be used to implement the Quality Plan. Include use of forms and workflows provided in the City's web-based project control software where appropriate.
- **Element 3 - Design Control:** If applicable, describe the procedure that defines the requirements for control, verification, and documentation of design activities. (Recognize that the CMAR is responsible for ensuring all submitted Work meets design/Contract requirements.)
- **Element 4 - Document Control:** Describe the procedure which will ensure that the latest issue of documents and information shall be used to govern the Work. The procedure shall provide for the removal from use of obsolete or suspended information in a timely fashion.
- **Element 5 - Purchasing:** Recognize that the CMAR is responsible for ensuring that supplies and services procured or provided conform to the Contract.
- **Element 6 - Product Identification and Traceability:** Describe the procedure used to ensure that all submittals (or any other products) are properly identified and controlled to prevent the use of incorrect or obsolete items.
- **Element 7 - Process Control:** Describe the following:

- Means of assuring accuracy and consistency in production identification of special processes and associated work plans that provide for work sequence, working environment, and equipment.
 - Appropriate qualifications and certifications for personnel reviewing and verifying submittals.
- **Element 8** - Review of Deliverables: Describe a procedure for positively identifying the status of the deliverables.
 - **Element 9** - Nonconformance: Describe a procedure for controlling nonconforming deliverables, including its identification, and disposition. The procedure shall provide for use of the City's web-based project control software where appropriate.
 - **Element 10** - Corrective Action: Describe a tracking system procedure to ensure timely actions are taken to address any nonconformances identified. The procedure shall include identification of root cause(s) of the nonconformance and implementation of appropriate corrective and preventive actions. In the event actions are not forthcoming in a timely manner, the need for action is escalated in a step-by-step fashion to increasingly higher levels of management.
 - **Element 11** - Quality Records: Describe a procedure for providing verifiable objective evidence in the form of complete and reliable records. The procedure shall provide for the use of the City's web-based project control software where appropriate.
 - **Element 12** - Quality Audits: Describe the program to ensure that the elements of the Quality Plan are functioning as intended. Such program shall identify frequency of the audit programs and the audit report will be submitted to the City.
 - **Element 13** - Training: Describe the program by which employees will be trained, briefed; have feedback acknowledged, skills verified, and also provide documentation of such training.

Constructability Review and Value Engineering

- The CMAR shall review the 30% Project Design Plans for constructability and provide written comments.
- The CMAR shall analyze the design for constructability, including construction feasibility and practicality, phasing and sequencing, and alternative materials and methods.
- The CMAR shall provide input and plan construction sequencing, access, temporary works, staging, laydown areas, and storage on and off the site. Design of temporary works shall be the responsibility of the CMAR
- The CMAR shall break down construction activities into discrete items and analyze potential impacts to ongoing LYNX Blue Line operations including potential construction activities that may require changes to operating procedures, single tracking, or that would need to be performed with de-energized OCS and no trains in operation.
- The CMAR shall attend and participate in review workshops to discuss and resolve impacts during construction to LYNX Blue Line operations.
- The CMAR shall provide a constructability and value engineering review of the design based on review of the 65% and 95% Project Design Plans. The constructability review will outline items that in CMAR's opinion may cause problems during construction and identify discrepancies between the drawings and specifications that may result in Change Orders or claims during construction. The value engineering review will offer suggested revisions to the design that will reduce construction cost and/or construction duration, while not impacting project function and/or operating costs.

- The CMAR shall provide input on construction feasibility; availability of materials and labor; time requirements for installation and construction; temporary works, cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings.
- The CMAR shall analyze the life cycle design and costs for operations and maintenance of the proposed Project. For purposes of this scope of services the CMAR should assume a minimum service life of 50 years for the Project. The CMAR shall evaluate individual products or Project component's service life which may differ from the overall Project service life considering life cycle design and cost. The life cycle design shall ensure Project performance throughout the service life, with reasonable ownership requirements for inspection, evaluation, maintenance, repair, rehabilitation, and replacement considering the life cycle cost over the entire Project service life.
- The CMAR shall provide suggestions on possible alternatives that could reduce costs, improve Project quality, reduce risk, and/or shorten the schedule. The CMAR will advise on likely construction phasing and sequencing approaches as well.

The CMAR shall assist in exploring alternative innovative cost and time saving approaches, materials, and systems to minimize total construction and operation costs.

Project Schedule

- The CMAR shall create a baseline construction schedule at the beginning of the Contract.
- The CMAR will review the designer's project schedule and provide comments and input, especially in regard to construction scheduling and update the construction schedule with each progressive estimate and again with the GMP submittal. The CMAR shall provide a finalized construction schedule with its GMP, which will be included as part of the Contract for Construction Services (if awarded).
- The CMAR shall provide project planning and scheduling (using the critical path method) to minimize the construction impact and duration.
- Construction schedules shall be established according to the Project's WBS and shall be kept in Primavera P6. Schedule updates shall be submitted monthly as .pdf files in e-Builder.
- Schedule submittals shall meet the following minimum requirements:
 - **Baseline Progress Schedule Format:** CMAR shall use the precedence diagramming methods. The WBS of the Baseline Schedule shall be formatted in a manner consistent with the Program WBS.
 - **Project Calendars:** Holidays and non-Workdays, such as weather days, shall be established in coordination with the Program Team.
 - **Activity Identification Number:** Each activity shall have a unique identification number.
 - **Activity Description:** Each activity shall be clearly described. Use of descriptions referring to percent of a multi-element item will not be acceptable. Separate activities shall represent different elements of multi-element activities. Multiple activities with the same Work description shall include a location description.
 - **Activity Duration:** Work shall be subdivided into individual activities having durations of no longer than 10 Working Days each. Exceptions to this rule will be reviewed by the

Project Team. Production rates or other information needed to justify the reasonableness of activity time durations shall be made available by CMAR.

- **Seasonal Conditions:** Expected seasonal conditions, such as temperatures effecting asphalt and concrete construction, shall be included by the CMAR in the planning and scheduling of activities.
- **Start and Finish Dates:** The earliest start date, earliest finish date, latest start date, and latest finish date shall be shown for each activity.
- **Total Float:** Total float shall be shown for each activity. Total float is the full amount of time by which the start on an activity may be delayed without causing the Project to last longer.
- **Activity Codes:** Activities shall be coded to allow for summaries including responsible party for the accomplishment of each activity (i.e. CMAR, Subcontractor, CATS), phase / stage during which activity is planned to be accomplished, and area / location of activity.
- **Activity Constraints:** No activity shall be restrained unless specifically required.
- **Activity Price:** Final baseline schedule (GMP submittal) shall include total price per activity. The total of the price-loaded schedule shall equal the approved GMP.
- **Sequence of Operations:** The logic diagram or PERT chart shall show the sequence and interdependence of activities required for complete performance.
- Activities for submittals and Activities for three weeks of review time for each submittal

Construction Planning

- The CMAR shall prepare a Project Management Plan (CMAR PMP). The CMAR PMP shall be submitted within 30 days of Notice to Proceed (NTP)
- The CMAR shall prepare and submit a Quality Assurance / Quality Control Plan (QA/QC Plan) which includes quality control plan and proposed organization. The CMAR proposed QA/QC Plan will be consistent with the CATS Project Quality Plan and shall be included as part of the CMAR PMP.
- The CMAR shall identify work that the CMAR proposes to self-perform (which must be between 15% and 50% of the cost of work, measured on a dollar value basis) and shall identify all additional sub-CMAR contractors.
- The CMAR shall obtain construction-related approvals of public agencies and authorities with jurisdiction over the Project work.
- The CMAR shall prepare and submit a Procurement Plan as a chapter of the CMAR PMP describing approach for self- performance, competitive bidding, equipment selection, and subcontractor selection.
- The CMAR shall prepare and submit a Document Management Plan as a chapter of the CMAR PMP.
- The CMAR shall prepare and submit a Construction Risk Management Plan as a chapter of the CMAR PMP.

- The CMAR shall prepare and submit a Scope/Change Management Plan as a chapter of the CMAR PMP.
- The CMAR shall submit the final draft of all plans mentioned above within 30 days of NTP. All plans will be reviewed and updated by the CMAR at the end of the 65% and 95% phases.

GMP Development

- The CMAR shall incorporate CATS policies relating to quality, safety, community, and environmental factors.
- The CMAR shall identify work that the CMAR proposes to self-perform (which must be between 15% and 50% of the cost of work, measured on a dollar value basis). The CMAR will submit a narrative report that describes how the mix of self-performed and sub-contracted work ensures that the overall division of work and pricing will be most advantageous to CATS.
- The CMAR shall conduct subcontractors and material suppliers outreach to inform them about the Project to gain interest.
- The CMAR shall pre-qualify subcontractors (including second tier and lower) to determine qualification, financial stability, safety record, bonding capacity, and available resources. CMAR shall only employ subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. CMAR shall flow down the appropriate clauses of the prime contract to each respective subcontractor. Owner may object to CMAR's selection of a subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts the CMAR's cost and/or time of performance.
- The CMAR shall schedule and conduct pre-bid conferences with pre-qualified bidders, subcontractors, material suppliers, and equipment suppliers
- The CMAR shall obtain bids only from the pre-qualified subcontractors as required.
- The CMAR shall review with CATS the proposed packaging of the construction work to facilitate competitive bidding of work elements not planned for self-performance by the CMAR.
- The CMAR shall solicit competitive sealed proposals from subcontractors. The CMAR shall open all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal to a person not employed by CMAR or the Project Team.
- The CMAR shall develop and submit recommendations to CATS for the award of the subcontracts to construct the Project.
- The CMAR shall provide a complete GMP proposal to include the following: clarifications, assumptions, general conditions, construction costs, payment and performance bonds, insurances, overhead and profit, contingency, and associated schedule as required.
- The CMAR shall provide a finalized Critical Path Method (CPM) schedule with the GMP. The schedule shall include the following key milestones; NTP, Substantial Completion, Final Completion.

Deliverables

The deliverables listed below shall be completed and submitted by the CMAR prior to the end of each Pre-construction Phase.

- 65% Design Milestone

- CMAR PMP with all chapters
 - Geotechnical review comments
 - Plan for limiting construction noise and vibration
 - Comments on Safety and Security documents
 - Cost estimating standards report documenting established baseline production rates, standards, and format to be used for cost estimates,
 - Constructability review report / written comments resulting from 30% and 65% Design reviews including potential long lead procurement items.
 - Operations and Maintenance review report analyses for the Project life cycle design and cost.
 - 65% Value Engineering Memo.
 - 65% Light Rail Operations Impacts Report
 - Analysis of 30% Cost Estimate
 - Analysis of Project Schedule and Construction Schedule Update.
 - 60% Temporary Works Design Submittal Report compiling proposals of alternatives with associated cost estimates during 65% design
 - Monthly Progress Reports.
 - Quarterly cost escalation trend reports.
- 95% Design Milestone
 - Constructability review report / written comments resulting from 95% Design review.
 - Operations and Maintenance review report analyses for the Project life cycle design and cost.
 - 95% Light Rail Operations Impacts Report
 - 95% Cost Estimate and Narrative including work to be self-performed.
 - Construction Schedule Update.
 - Report compiling proposals of alternatives with associated cost estimates
 - Monthly Progress Reports.
 - Quarterly cost escalation trend reports.
- GMP Milestone
 - GMP Proposal.
 - Final Project Construction Schedule.

Upon approval, acceptance, and award of the GMP and the Final Project Construction Schedule, the Final Project Construction Schedule will be the Master Schedule.

ATTACHMENT D

RAIL SPECIAL PROVISIONS

1. Definitions. Unless otherwise defined below, all capitalized terms not defined in this Attachment shall have the meanings set forth in the Contract.

- (a) “General Manager of Rail Operations” shall mean City’s General Manager of Rail Operations and/or his duly authorized representative.
- (b) “Contract” shall mean the Preconstruction Services Contract to which these Rail Special Provisions are attached, which is incorporated herein by reference.
- (c) “CMAR” shall mean, individually and collectively, the party identified in the Contract as “CMAR” and its officers, employees, agents, servants, contractors, subcontractors and any other person acting for or through CMAR.
- (d) “ROW” shall mean City’s railroad corridor as more particularly described in that deed recorded in Book 10433, Page 258 of the Mecklenburg County Register of Deeds.

2. Entry on ROW. Other than as allowed in the Contract, before entry of CMAR onto the ROW, a pre-entry meeting (“ROW Access Meeting”) shall be held between the General Manager of Rail Operations and representatives of the CMAR, at which time CMAR shall describe for approval of the General Manager of Rail Operations, a detailed description of proposed methods for accomplishing the Work permitted by the Contract, including methods for protecting City’s operations and CMAR’s proposed schedule for access to the ROW (“Safety Work Plan”). The CMAR can then request access to the ROW by submitting the ROW Access Request Form, pursuant to City’s standard rules and procedures, to the General Manager of Rail Operations. The CMAR’s proposed work schedule and requested ROW access is not approved until the ROW Access Request Form has been signed and returned to CMAR by CATS Rail Operations. Any such approval shall not relieve CMAR of its complete responsibility for the adequacy and safety of its operations. CMAR shall not deviate from the Safety Work Plan without the prior approval of the General Manager of Rail Operations.

No use of or entry upon the ROW will be permitted until: (1) the ROW Access Request Form has been submitted by CMAR and approved by City, (2) a representative of the CMAR has attended a minimum of one (1) ROW Access Meeting and anyone acting through or for CMAR working in the ROW has completed RWPP Training; (3) this Contract has been executed; and (4) the insurance required pursuant to Section 15 of the Contract has been approved by City.

The ROW Access Meeting is held every Wednesday at 1:00 pm at virtually. **A minimum of two (2) weeks advanced notice is required.** The City retains the right to alter the schedule of the ROW Access Meeting in its sole discretion.

Contact Essence Douglas at Essence.Douglas@charlottenc.gov (704.432.6614) for copies of the ROW Access Request Form and if there are any questions related to the weekly ROW Access Meeting.

3. Safety Training. All individuals, including representatives and employees of CMAR, shall attend City’s Roadway Worker Protection Program (RWPP) safety training prior to performing any Services in/on the ROW that is construction or demolition. The purpose of this safety program is to aid in the prevention of accidents and injuries. These rules are developed as a minimum safety standard based upon the following documents, as adapted for the conditions of City’s operations:

- 49 CFR 214, Railroad Workplace Safety

- APTA RT-OP-S-010-03, Standard for Contractor’s Responsibility for Right of Way Safety
- APTA RT-S-OP-0034-043, Standard for Work Zone Safety
- APTA RT-S-OP-016-XX, Draft Standard for Roadway Worker Protection Program Requirements

The RWPP safety training is provided by City’s safety representative at CMAR’s expense. The RWPP safety training is valid for one (1) year from the date of training. Proof of training cards showing the expiration date of the RWPP training will be issued to upon completion and must be worn/displayed by all individuals on the ROW. CMAR shall appoint a qualified person as its Safety Representative, who shall continuously ensure that all individuals comply with City’s safety requirements. All safety training records shall be maintained with the Safety Work Plan.

RWPP Training must be coordinated by contacting Chad Hagans at 704-432-5032.

4. Compliance by Contractors. CMAR shall take all steps necessary to ensure that its officers, employees, agents, servants, contractors, subcontractors and any other person acting for or through CMAR under this Contract complies with the terms and conditions of this Contract, which shall include, but not be limited to, notifying all such officers, employees, agents, servants, contractors, subcontractors of the terms of this Contract, or incorporating the terms and conditions of this Contract into all contracts between the CMAR and third parties performing Services on/in the ROW under this Contract.

5. Rules, Regulations and Requirements. City’s operations shall be maintained at all times with safety and continuity, and CMAR shall conduct their operations in compliance with the Contract and any rules, regulations and requirements of City, from time to time, with respect to any work performed on, over, under, or within the ROW. CMAR shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of City’s safety rules, regulations or requirements shall be grounds for the immediate suspension of the Contract.

6. Maintenance of Safe Conditions. If tracks or other property of City are endangered during the Services, CMAR shall immediately take such steps as may be directed by City to restore safe conditions, and upon failure of CMAR immediately to carry out such direction, City may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions and of repairing any damage to City’s trains, tracks, Transit Corridor, or other property caused by the operations of CMAR shall be paid by CMAR in accordance with the terms of this Contract.

7. Protection in General. All activities performed by or on behalf of CMAR shall be performed so as not to interfere unreasonably with City’s operations or with any of City’s facilities. Additionally, in no event shall personnel, equipment or material cross a track or tracks without special advance permission from City’s General Manager of Rail Operations or his designee. CMAR shall consult with the General Manager of Rail Operations to determine the type and extent of protection required to ensure safety and continuity of City’s traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagmen, Signalmen, Electric Traction Linemen or other employees deemed necessary by City, at its sole discretion, for protective services shall be obtained from City by CMAR. The provision of such employees by City, and any other precautionary measures taken by City, shall not relieve CMAR from its complete responsibility for the adequacy and safety of their operations.

8. Clearances. Any Services, equipment or material of CMAR on the ROW (as permitted by this Contract) shall be kept at all times not less than fifteen (15) feet from the centerline of City’s track and not less than ten (10) feet from City’s Overhead Catenary System (“OCS”) (which includes messenger wire, catenary wire, span wire, and poles), unless otherwise authorized in writing by the General Manager of Rail Operations. CMAR shall conduct all Services so that no part of any permitted equipment or material shall

foul an operating track, transmission, communication or signal line or any other structure or facility of City. In the opinion of the General Manager of Rail Operations, if conditions (at any time) warrant such, City will provide flag service and/or other protection; and “power down” (de-energize) electrical power to City’s system during CMAR’s Services. CMAR shall pay the cost and expense for such services and protection.

9. Protection for Work Near Electrified Track or Wire. Whenever Services are performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and City’s requirements regarding clearance to be maintained between equipment and tracks and/or energized catenary wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near catenary wires, except when protected by an authorized employee of City. CMAR must supply an adequate length of grounding cable (4/0 copper with approved clamps) for each piece of equipment on the ROW working near or adjacent to any catenary wire.

10. Fouling of Track or Wire. CMAR must adhere to the clearances outlined in this Contract unless otherwise specifically described in the approved Safety Work Plan or authorized by the General Manager of Rail Operations. CMAR shall conduct its Services so that no part of any equipment or material shall foul an active track or catenary wire without the written permission of the General Manager of Rail Operations. When CMAR desires to foul an active track or catenary wire, they must provide the General Manager of Rail Operations with a revised Safety Work Plan a minimum of twenty one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of City. If acceptable to the General Manager of Rail Operations, a safety barrier (approved temporary fence or barricade) may be installed at a lesser distance than outlined in this Contract to afford the CMAR with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the General Manager of Rail Operations.

11. Track Outages. CMAR shall verify the time and schedule of track outages from City before scheduling any of its Services on, over, under, or within the ROW. City does not guarantee the availability of any track outage at any particular time. CMAR shall schedule all Services to be performed in such a manner as not to interfere with City operations. CMAR shall use all necessary care and precaution to avoid accidents, delay or interference with City’s trains or other property.

12. Demolition. During any demolition on or adjoining the ROW, CMAR must provide horizontal and vertical shields, designed by a Professional Engineer registered and licensed in North Carolina. These shields shall be designed in accordance with City’s specifications and approved by City so as to prevent any debris from falling onto the ROW. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge. Ballasted track structure shall be kept free of all construction and demolition debris.

13. Equipment Condition. All equipment to be used by CMAR in the vicinity of operating tracks shall be in “certified” first class condition so as to prevent failures that might cause delay to trains or damage to the ROW. Under no circumstances shall any equipment or materials be placed or stored any closer than the clearances outlined in this CMAR, except as approved by the Safety Work Plan.

14. Storage of Materials and Equipment. No material or equipment shall be stored on the ROW without first having obtained permission from the General Manager of Rail Operations. If approved, any storage or laydown on the ROW will be on the condition that City will not be liable for loss of or damage to such materials or equipment from any cause. If permission is granted for the storage of compressed gas

cylinders on the remaining ROW, they shall be stored in an approved lockable enclosure. The enclosure shall be locked when the CMAR is not on the ROW.

15. Condition of ROW. CMAR shall keep the ROW clear of all refuse and debris from its Services. Upon completion of the Services, CMAR shall remove from the ROW all of CMAR's machinery, equipment, surplus materials, false-work, rubbish, temporary structures, and other property of CMAR and shall leave the ROW in a condition reasonably satisfactory to the General Manager of Rail Operations.

16. Restoration. Other than as approved by the Project Manager, CMAR shall not materially change the existing ground elevation or drainage pattern of the ROW. CMAR shall leave the ROW in a neat and well-kept condition reasonably satisfactory to City.

17. Security. CMAR acknowledges and agrees that City's police force, guards and other security personnel or security systems are for City's sole benefit and that CMAR has no right to the benefit of such security personnel, guards or security systems.

18. Crane/Hoisting Operations. CMAR shall NOT lift or swing any materials over the ROW or Transit Corridor AT ANY TIME. Crane counterweight may swing over the ROW and the crane may be allowed to weather-vane over the ROW during periods of non-use. CMAR shall submit a crane radius site plan to CATS Rail Operations for review and approval at least three (3) weeks before crane base is installed. CATS Rail Operations will make every reasonable effort to work with the CMAR to coordinate the implementation of flagging personnel and the "time limitations" required for special load/lifting requirements and special circumstances where loads will be lifted over the ROW only under prior approval of CATS Rail Operations and CATS Safety & Security and during non-revenue service.

EXHIBIT B: CONTRACT FOR CONSTRUCTION SERVICES

Contract Number: _____

Contract for
Construction Services

PROJECT:
South End Station Construction

OWNER:
City of Charlotte

CONSTRUCTION MANAGER AT RISK (CMAR):



CHARLOTTE

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONTRACT FOR CONSTRUCTION SERVICES

City Contract # _____

THIS CONTRACT FOR CONSTRUCTION SERVICES (this "Contract") is made by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation (the "City" or the "Owner"), and _____ (the "CMAR"), a company organized under the laws of the State of _____. This Contract will be effective starting on _____, 20__ (the "Effective Date"). The City and the CMAR are each a "Party" to this Contract, and together they are its sole "Parties."

RECITALS

- A. The City issued Request for Proposals Number _____, dated _____, soliciting contractors interested in performing construction-manager-at-risk services for the City's South End Station project. This Request for Proposals, including any attachments, exhibits, addenda, and amendments to it that were issued by the City, is the "RFP."
- B. In response to the RFP, the CMAR submitted to the City a proposal (the "Proposal") dated _____. The "Proposal" means the CMAR's bid itself, along with any attachments to the proposal and any trade secrets or other documents that the CMAR submitted to the City in response to or concerning the RFP.
- C. After evaluating the Proposal, the City determined that the CMAR is the responsible offeror whose proposal, with price and other factors considered, is most advantageous offer received by the City in response to the RFP.
- D. The City and the CMAR now want to execute this Contract to provide the construction services contemplated by the RFP and by this Contract.
- E. The Charlotte City Council, on _____, authorized the City to enter into this Contract with the CMAR.

NOW, THEREFORE, in exchange for the promises that each Party makes in this Contract, and for other good and valuable consideration, the Parties hereby agree to be fully bound by this Contract's provisions. Each Party acknowledges and agrees that it has received valuable consideration for entering into this Contract.

THE AGREEMENT
(AIA Document A133 – 2019 Modified)

AIA[®] Document A133[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

City of Charlotte, a North Carolina Municipal Corporation
600 East Fourth Street
Charlotte, North Carolina 28202-2844

and the Construction Manager:
(*Name, legal status, address, and other information*)

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

South End Station Construction

The Designer:
(*Name, legal status, address, and other information*)

Kimley-Horn & Associates, Inc., a North Carolina corporation
200 South Tryon Street, Suite 200
Charlotte, North Carolina 28202

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 **GENERAL PROVISIONS**
- 2 **CONSTRUCTION MANAGER’S RESPONSIBILITIES**
- 3 **OWNER’S RESPONSIBILITIES**
- (Paragraph deleted)*
- 4 **COMPENSATION FOR CONSTRUCTION**
- 5 **COST OF THE WORK FOR CONSTRUCTION**
- 6 **DISCOUNTS, REBATES, AND REFUNDS**
- 7 **SUBCONTRACTS AND OTHER AGREEMENTS**
- 8 **ACCOUNTING RECORDS**
- 9 **PAYMENTS FOR CONSTRUCTION**
- 10 **DISPUTE RESOLUTION**
- 11 **TERMINATION OR SUSPENSION**
- 12 **MISCELLANEOUS PROVISIONS**
- 13 **SCOPE OF THE AGREEMENT**

(Paragraph deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and properly issued Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Section 1.2.1 of the General Conditions. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Change Directive, or (4) a written order for a minor change in the Work (Field Change Notice (FCN)) issued by the Owner Rep (as that term is defined in Section 4.1.2 of the General Conditions).

(Paragraphs deleted)

§ 1.2 Relationship of the Parties

The parties understand and agree that the Owner elected to perform this Project (as that term is defined in Section 1.1.4 of the General Conditions) with a Construction Manager at Risk ("CMAR") to minimize impacts to the Owner's transit system, existing passengers, and transit service through specialized methods of construction.

The Construction Manager at Risk ("CMAR") covenants with the Owner to furnish the CMAR's reasonable skill and judgment and to cooperate with the Owner and Owner Rep in furthering the interests of the Owner. The CMAR shall furnish construction administration and management services and use the CMAR's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The parties agree that time is of the essence with respect to milestone dates, the scheduled completion date, and other specified undertakings set forth herein. The Owner shall endeavor to promote harmony and cooperation among the Owner, Owner Rep, CMAR, and other persons or entities employed by the Owner for the Project. The CMAR shall perform its work in close coordination with the Owner and Owner Rep. The CMAR represents that it has a thorough understanding of the Owner's organization, and its decision-making process.

§ 1.3 General Conditions

§ 1.3.1 The general conditions of the contract shall be as set forth in the AIA Document A201-2017, as modified for use on the Project (hereinafter the "General Conditions"), which document is incorporated herein by reference. The term "Contractor" if used in the General Conditions or elsewhere in this Contract shall mean the CMAR.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The CMAR's Preconstruction phase responsibilities are set forth in a separate contract governing the Preconstruction Work (the "Contract for Construction Manager at Risk Preconstruction Services" or the "Preconstruction Contract"). The CMAR's responsibilities for the Construction Project are summarized in Section 2.2. The CMAR shall identify a representative authorized to act on behalf of the CMAR with respect to the Project.

§ 2.1

(Paragraphs deleted)

Preconstruction Work

(Paragraphs deleted)

§ 2.1.1 The CMAR's Preconstruction responsibilities are set forth in the Preconstruction Contract.

(Paragraph deleted)

§ 2.1.2 The CMAR shall not incur any cost to be reimbursed as part of the Cost of the Work for the Construction Project prior to the execution of this Contract. Unless the Owner provides prior written authorization, costs incurred under the Preconstruction Contract are not to be considered part of the Cost of the Work under this Contract.

(Paragraphs deleted)

Init.

§ 2.2. Construction Work

(Paragraph deleted)

§ 2.2.1 General

(Paragraphs deleted)

§ 2.2.1.1 The date of commencement of the Work (as that term is defined in Section 1.1.3 of the General Conditions) shall be specified in a properly issued Notice to Proceed as described in Section 8.1.2 of the General Conditions. At the sole and final discretion of the Owner the Work may be divided into separate phases. The Owner anticipates that there will be two phases of the Work, a preliminary construction phase ("Phase One") and a primary construction phase ("Phase Two"). If the Work is divided into multiple phases the provisions of Article 5, Article 7, and Article 9 will be applied to each phase individually (i.e. calculations of cost will be made within the relevant phase rather than from the total Contract Sum). Separate Guaranteed Maximum Price ("GMP") proposals for each phase of the Work will be developed by the CMAR under the Preconstruction Services Contract.

(Paragraph deleted)

§ 2.2.1.2 The Work shall commence upon the Owner's execution of the Contract and issuance of a Notice to Proceed with the Work. The Contract shall set forth a description of the Work to be performed by the CMAR.

(Paragraphs deleted)

§ 2.2.2 Administration

(Paragraphs deleted)

§ 3.3.2.1 The CMAR shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The CMAR shall prepare and promptly distribute minutes of the meetings to the Owner and Owner Rep.

(Paragraphs deleted)

§ 2.2.2.2 Upon the execution of the Contract, the CMAR shall prepare and submit to the Owner and Owner Rep a submittal register in accordance with Section 3.10 of the General Conditions. The CMAR shall utilize the construction schedule prepared under the Preconstruction Services Contract as described in Section 3.10 of the General Conditions.

§ 2.2.2.3 Monthly Report

The CMAR shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the CMAR shall submit written progress reports to the Owner and Owner Rep, showing percentages of completion and other information requested by the Owner.

(Paragraphs deleted)

§ 2.2.2.4 Daily Logs

The CMAR shall keep, and make available to the Owner and Owner Rep, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.2.2.5 Cost Control

The CMAR shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMAR shall identify variances between actual and estimated costs and report the variances to the Owner's Representative and shall provide this information in its monthly reports to the Owner, in accordance with Section 2.2.2.3 above.

§ 2.2.3 Consultation

§ 2.2.3.1 The CMAR shall schedule and conduct meetings with the Owner Rep and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

possible cost reductions. The CMAR shall consult with the Owner regarding professional services to be provided by the CMAR during the Construction Phase.

§ 2.2.3.3 DELETED.

§ 2.2.4 Project Schedule

Within thirty (30) calendar days after the award of the Contract, a revised Project Schedule (as described in Section 2 of the Preconstruction Agreement) identifying key dates and significant milestone dates will be developed by mutual consent of the CMAR, Owner Rep, and Owner. The CMAR shall update monthly the Project construction schedule in a format consistent with the Project construction schedule issued with the bidding documents and utilizing the first-tier subcontractors' construction schedules provided by the separate first-tier subcontractors. The CMAR shall include the original critical path schedule, activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, delivery of products requiring long lead time procurement, and the Owner's occupancy requirements showing portions of the Project having occupancy priority. The CMAR shall update and reissue the Project construction schedule as required to show current conditions and revisions required by actual experience. The updated schedule shall be provided with each Application for Payment.

§ 2.2.5 Subcontractors and Suppliers

§ 2.2.5.1 The CMAR shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 2.2.6 Compliance with Laws

The CMAR shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 DELETED.

§ 3.1.3 DELETED.

§ 3.1.4 **Geotechnical and Environmental Tests, Surveys and Reports.** To the extent that such information has not already been provided under the Preconstruction Agreement, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CMAR's performance of the Work with reasonable promptness after receiving the CMAR's written request for such information or services. The CMAR shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CMAR's performance of the Work with reasonable promptness after receiving the CMAR's written request for such information or services.

§ 3.2 Owner's Designated Representative

In accordance with Section 4.1.2 of the General Conditions, the Owner may designate an Owner Rep authorized to act on behalf of the Owner with respect to the Project. The Owner or the Owner Rep shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the CMAR. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Designer does not have the Authority to act on

behalf of the owner. In accordance with this section, as used in this Contract the term "Owner" means the Owner or any properly designated Owner Rep.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that the Contract requires the Owner to furnish.

§ 3.3 Designer

The Owner shall retain a Designer to provide services, duties and responsibilities as described in the agreement between the Owner and Designer (the "Design Agreement"). If such information has not already been provided under the Preconstruction Services Contract, the Owner shall provide the CMAR with a copy of the scope of services in the executed Design Agreement between the Owner and the Designer, and any further modifications to the Designer's scope of services in the Design Agreement.

ARTICLE 4 COMPENSATION FOR CONSTRUCTION

§ 4.1 Contract Sum

§ 4.1.1 The Contract Sum refers to Cost of the Work as defined in Article 5 plus the Construction Manager's Fee. The Owner shall pay the CMAR in accordance with the payment provisions of the Contract as defined in Article 9 and elsewhere. If it appears during the course of the Work that any of the estimated fees and allowances of the relevant GMP proposal may be exceeded, the CMAR shall immediately notify the City's Project Manager in writing. The estimated fees and allowances shall not be exceeded without written amendment to this Agreement. Any work performed without prior written approval shall be at the CMAR's expense.

§ 4.1.2 The Construction Manager's Fee. The CMAR's fee will be set forth in each GMP proposal that is finalized and accepted by the Owner.

§ 4.1.3 DELETED

§ 4.1.4 DELETED

(Paragraphs deleted)

§ 4.1.5 DELETED

§ 4.1.6 Liquidated damages may be assessed consistent with the liquidated damage provisions included in the Supplementary Conditions. The Owner and the CMAR acknowledge and agree that the Owner will incur costs and suffer compensable damages if the CMAR fails to complete the Project by the completion dates specified herein, subject to adjustments by mutual consent of parties. Liquidated damages are intended to compensate the Owner for specific losses, including the Owner's loss of goodwill, detrimental impact from loss of use of facilities, administrative costs of management and coordination of the extended Work efforts, and costs of all efforts necessary to mitigate the effects of CMAR's delay. Accordingly, the CMAR agrees to pay the Owner liquidated damages for delay at the rates set forth in the Supplementary Conditions. These liquidated damages are not a penalty and are in addition to any actual damages associated with costs incurred by the Owner for inexcusable delay caused by the CMAR. The parties further acknowledge and agree that the Owner will incur damages as a result of delays, but that the costs of the Owner might reasonably be anticipated to accrue as a result of any delays caused by CMAR are difficult to ascertain due to their indefiniteness and uncertainty, except for those scheduled events which the parties have identified prior to execution of this agreement. Accordingly, the CMAR agrees to pay the Owner liquidated damages at the rates set forth in the Supplementary Conditions for failure to meet each specified Milestone Date/Targeted Completion Date (including Substantial Completion and Final Completion). The CMAR further agrees that the remedy for its failure to meet each specified milestone date is the agreed upon liquidated damages which are reasonably proximate to the loss the Owner will incur as a result.

Notwithstanding the above, the parties agree that the Owner may offset and withhold the amount reasonably claimed to be due the Owner (including but not limited to liquidated damages) from any amounts due to the CMAR, including but not limited to progress payments or final payments. The above referenced amounts are hereby agreed upon by the CMAR by execution of the Contract and other Contract Documents.

§ 4.1.7 DELETED.

§ 4.2 Guaranteed Maximum Price

The CMAR guarantees that the total Contract Sum shall not exceed the sum of all GMPs properly established pursuant to the Contract, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the GMP for any phase to be exceeded shall be paid by the CMAR without reimbursement by the Owner.

(Paragraph deleted)

§ 4.3

(Paragraphs deleted)

Changes in the Work

§ 4.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The CMAR may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 4.3.1.1 The Owner Rep may order minor changes in the Work (Field Change Notice (FCN)) as authorized by Section 7.4 of the General Conditions.

§ 4.3.2 Adjustments to the GMP on account of changes in the Work subsequent to the execution of the Contract may be determined by any of the methods listed in Article 7 of the General Conditions.

§ 4.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions, as they refer to "cost" and "fee," and not by Articles 4 and 5 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 4.3.4 In calculating adjustments to any GMP, the terms "cost" and "costs" as used in Article 7 of General Conditions shall mean the Cost of the Work as defined in Article 5 of this Agreement and the term "fee" shall mean the CMAR's Fee as defined in Section 4.1.2 of this Agreement.

§ 4.3.5 If no specific provision is made in Section 4.1.3 for adjustment of the CMAR's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 4.1.3 will cause substantial inequity to the Owner or CMAR, the CMAR's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the GMP for the phase of work in question shall be adjusted accordingly.

ARTICLE 5 COST OF THE WORK FOR CONSTRUCTION

§ 5.1 Costs to Be Reimbursed

§ 5.1.1

(Paragraphs deleted)

The term Cost of the Work shall mean costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 5.1 through 5.7.

(Paragraphs deleted)

§ 5.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the CMAR shall obtain such approval in writing prior to incurring the cost.

(Paragraph deleted)

(Table deleted)

§ 5.1.3 All Costs shall only be incurred in compliance with Federal Transit Administration Requirements, including but not limited to those requirements related to labor standards and eligibility for reimbursement under Federal Law.

§ 5.2 Labor Costs

§ 5.2.1 Wages or salaries of construction workers directly employed by the CMAR to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 5.2.2

(Paragraphs deleted)

Wages or salaries of the CMAR's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 5.2.2.1 Wages or salaries of the CMAR's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities identified in the GMP for the phase of work in question.

§ 5.2.3 Wages and salaries of the CMAR's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 5.2.4 Costs paid or incurred by the CMAR, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 5.2.1 through 5.2.3.

§ 5.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in the Contract Documents, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 5.3 Subcontract Costs

Payments made by the CMAR to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 5.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 5.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 5.4.2 Costs of materials described in the preceding Section 5.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the CMAR. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 5.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

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

§ 5.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CMAR at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the CMAR, or a related party as defined in Section 5.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 5.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 5.5.4 Costs of the CMAR's site office, including general office equipment and supplies.

§ 5.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 5.6 Miscellaneous Costs

§ 5.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 5.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 5.6.1.2 Costs for insurance through a captive insurer owned or controlled by the CMAR, with the Owner's prior approval.

§ 5.6.2 To the extent that such cost is authorized under Section 3.6 of the General Conditions, sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the CMAR is liable.

§ 5.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the CMAR is required by the Contract Documents to pay.

§ 5.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 5.7.3 of this Agreement.

§ 5.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 5.6.5.1 DELETED.

§ 5.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 5.6.7 Costs of document reproductions and delivery charges.

§ 5.6.8 Deposits lost for causes other than the CMAR's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 5.6.9 DELETED.

§ 5.6.10 Expenses incurred in accordance with the CMAR's standard written personnel policy for relocation and temporary living allowances of the CMAR's personnel required for the Work, with the Owner's prior approval.

§ 5.6.11 That portion of the reasonable expenses of the CMAR's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 5.7 Other Costs and Emergencies

§ 5.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 5.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in the Supplementary Conditions.

§ 5.7.3 DELETED.

§ 5.7.4 The costs described in Sections 5.1 through 5.7 shall be included in the Cost of the Work, notwithstanding any provision of The General Conditions or other Conditions of the Contract which may require the CMAR to pay such costs, unless such costs are excluded by the provisions of Section 5.9.

§ 5.8 Related Party Transactions

§ 5.8.1 For purposes of this Section 5.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the CMAR; (2) any entity in which any stockholder in, or management employee of, the CMAR holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the CMAR; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the CMAR.

§ 5.8.2 If any of the costs to be reimbursed arise from a transaction between the CMAR and a related party, the CMAR shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the CMAR shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 7. If the Owner fails to authorize the transaction in writing, the CMAR shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 7.

§ 5.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the CMAR's personnel stationed at the CMAR's principal office or offices other than the site office, except as specifically provided in Section 5.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the CMAR or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the CMAR's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 5.1 to 5.7;
- .5 The CMAR's capital expenses, including interest on the CMAR's capital employed for the Work;
- .6 Except as provided in Section 5.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the CMAR, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 5.1 to 5.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 6 DISCOUNTS, REBATES, AND REFUNDS

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

(Paragraphs deleted)

§ 6.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.1 shall be credited to the Owner as a deduction from the Cost of the Work.

(Paragraphs deleted)

ARTICLE 7 SUBCONTRACTS AND OTHER AGREEMENTS

§ 7.1 Those portions of the Work that the CMAR does not customarily perform with the CMAR's own personnel shall be performed under subcontracts or other appropriate agreements with the CMAR. The Owner may designate specific persons from whom, or entities from which, the CMAR shall obtain bids. The CMAR shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The CMAR shall deliver such bids to the Owner Rep and Owner with an indication as to which bids the CMAR intends to accept. The Owner then has the right to review the CMAR's list of proposed subcontractors and suppliers in consultation with the Owner Rep and to object to any subcontractor or supplier. Any advice of the Owner Rep, or approval or objection by

the Owner, shall not relieve the CMAR of its responsibility to perform the Work in accordance with the Contract Documents. All Subcontracts shall be let in a manner that complies with applicable federal, state, and local law. Subcontracts let by the CMAR shall contain all required provisions of federal, state, and local law that are required to flow down to such Subcontracts by the provisions of the Contract.

§ 7.1.1 DELETED.

(Paragraphs deleted)

§ 7.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. The CMAR shall provide in each subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the CMAR in the contract.

(Paragraphs deleted)

ARTICLE 8 ACCOUNTING RECORDS

(Paragraphs deleted)

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

(Paragraphs deleted)

§ 8.2 1. The Owner shall pay its own expenses relating to such audits but shall not have to pay any expenses or additional costs of the CMAR. However, if non-compliance is found that would have cost the Owner in excess of \$10,000 but for the audit, then the CMAR shall be required to reimburse the Owner for the cost of the audit.

ARTICLE 9 PAYMENTS FOR CONSTRUCTION

§ 9.1 Progress Payments

§ 9.1.1 The Owner shall make progress payments on account of the Contract Sum, to the CMAR, as provided below and elsewhere in the Contract Documents including but not limited to Article 9 of the General Conditions.

(Paragraphs deleted)

§ 9.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

(Paragraphs deleted)

§ 9.1.3 The Owner will make progress payments based on the Applications for Payment (described in Section 9.3 of the General Conditions) submitted by the Contractor on a monthly schedule established by the Owner. Progress payments will be made within sixty (60) calendar days after the later of (a) receipt of a complete and accurate Application for Payment and (b) issuance of a Certificate for Payment (as described in Section 9.4 of the General Conditions) for such Application for Payment. Progress payments will be approximate only and will be subject to correction in the Final Payment.

§ 9.1.4 With each Application for Payment, the CMAR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that payments already made by the CMAR on account of the Cost of the Work equal or exceed progress payments already received by the CMAR, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the CMAR's Fee.

(Paragraph deleted)

§ 9.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the CMAR in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the CMAR's Fee.

§ 9.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The schedule of values shall be used as a basis for reviewing the CMAR's Applications for Payment.

(Paragraph deleted)

§ 9.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 9.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

(Paragraph deleted)

§ 9.1.5.3 When the CMAR allocates costs from a contingency to another line item in the schedule of values, the CMAR shall submit supporting documentation to the Owner.

§ 9.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the CMAR on account of that portion of the Work and for which the CMAR has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(Paragraph deleted)

§ 9.1.7 In accordance with and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 9.1.7.1 The amount of each progress payment shall state the amount included therein for each contract item to provide a basis for determining progress payment. Applications for Payment may include materials and equipment used in the Work. The amount of each payment shall also include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Change Directives that the Owner determines, to be reasonably justified; and
- .4 The CMAR's Fee, computed upon the Cost of the Work described in the preceding Sections 9.1.7.1.1 and 9.1.7.1.2 at the rate stated in Section 4.1.2 or, if the CMAR's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 9.1.7.1.1 and 9.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

(Paragraph deleted)

§ 9.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of the General Conditions;
- .3 Any amount for which the CMAR does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the CMAR intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions;

- .5 The shortfall, if any, indicated by the CMAR in the documentation required by Section 9.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 9.1.8.

(Paragraphs deleted)

§ 9.1.8 Retainage

(Paragraphs deleted)

§ 9.1.8.1.1 The Owner will retain 5 percent (5%) of the amount of each progress payment until the project is fifty percent (50%) complete. For the purposes of this Section 9.1.8, "project" means Work for the relevant phase of construction. The project will be deemed fifty percent complete when the CMAR's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent of the value of the contract, and the work is satisfactory to the Owner. The value of materials stored on-site will not exceed twenty percent (20%) of the CMAR's gross project invoices for the purpose of determining whether the project is fifty percent complete for each phase of the project. For purposes of this provision, "value of the contract" equals the total of the GMR for the relevant phase of Work, as amended by Change Order(s). The CMAR shall submit consent of surety for retainage adjustment in a form satisfactory to the Owner which shall be signed by an agent authorized to act for the Surety.

(Paragraphs deleted)

§ 9.1.8.1.2 If after the project is fifty percent (50%) complete and retainage has been suspended, the Owner determines the character and progress of the Work is unsatisfactory, the Owner may reinstate retainage up to the maximum amount of five percent (5%) for each subsequent progress payment;

(Paragraphs deleted)

§ 9.1.8.1.3 Notwithstanding any other provision of this contract, additional retainage up to five percent (5%) may be withheld from any progress payment past the 50% completion point so that the Owner retains at least two and one-half percent (2.5%) of all payments to the Contractor throughout the project until completion of the project.

(Paragraphs deleted)

§ 9.1.8.1.4 When the Contract Time has elapsed and anticipated liquidated damages as determined by the Owner equal or exceed one percent (1%) of the Contract Sum, the Owner will withhold an amount sufficient to cover such anticipated damages and such amount will be in addition to the retainage as shown above.

§ 9.1.8.1.5 Within sixty (60) days following the receipt of an Application for Payment and receipt of a certificate of substantial completion from the Engineer; or the City receives beneficial occupancy or use of the project, the City with written consent of the surety will release to the Contractor all retainage on payments held by the City. However, the City may retain sufficient funds to secure completion of the project and corrections of any Work. If the City retains funds, the amount retained shall not exceed two and one-half times the Engineer's estimated value of the Work to be completed and/or corrected.

§ 9.1.8.1.6 The Owner may approve release of full retainage of early packages at the discretion of the Owner for work that is satisfactorily completed.

§ 9.1.9 If final completion of the Work is materially delayed through no fault of the CMAR, the Owner shall pay the CMAR any additional amounts in accordance with Article 9 of the General Conditions.

(Paragraphs deleted)

§ 9.1.10 Except with the Owner's prior written approval, the CMAR shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 9.1.11 The Owner and the CMAR shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the CMAR shall execute subcontracts in accordance with those agreements.

§ 9.1.12 In taking action on the CMAR's Applications for Payment the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the CMAR, and such action shall not be deemed to be a

representation that (1) the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 9.1.4 or other supporting data; (2) that the Owner has made exhaustive or continuous on-site inspections; or (3) that the Owner has made examinations to ascertain how or for what purposes the CMAR has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 9.2 Final Payment

§ 9.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the CMAR when the CMAR has fully complied with the requirements of Section 9 of the General Conditions relating to final payment, and when

- .1 the CMAR has fully performed the Contract, except for the CMAR's responsibility to correct Work as provided in Article 12 of General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the CMAR has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Owner in accordance with Section 9.10 of the General Conditions.

§ 9.2.2 DELETED.

§ 9.2.2.1 DELETED.

§ 9.2.2.2 DELETED.

§ 9.2.2.3 DELETED.

§ 9.2.3 The Owner's final payment to the CMAR shall be made no later than 60 days after the issuance of the Owner's final Certificate for Payment.

§ 9.2.4 If, subsequent to final payment, and at the Owner's request, the CMAR incurs costs, described in Sections 5.1 through 5.7, and not excluded by Section 5.9, to correct defective or nonconforming Work, the Owner shall reimburse the CMAR for such costs, and the CMAR's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 4.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 9.2.4 in determining the net amount to be paid by the Owner to the CMAR.

ARTICLE 10 DISPUTE RESOLUTION

§ 10.1 DELETED.

§ 10.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of the General Conditions

Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and CMAR do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 11 TERMINATION OR SUSPENSION

§ 11.2 Termination or Suspension Following Execution of the Contract

§ 11.2.1

(Paragraphs deleted)

Termination

The Contract may be terminated by the Owner or CMAR as provided in Article 14 of the General Conditions.

§ 11.2.2 Termination by the Owner for Cause

§ 11.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of the General Conditions, the amount, if any, to be paid to the CMAR under Article 14 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the CMAR prior to the date of termination;
- .2 Add the CMAR's Fee, computed upon the Cost of the Work prior to the date of termination at the rate stated in Section 4.1.2 or, if the CMAR's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of the General Conditions.

§ 11.2.2.2 The Owner shall also pay the CMAR fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the CMAR that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 11.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the CMAR shall, as a condition of receiving the payments referred to in this Article 11, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the CMAR, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the CMAR under such subcontracts or purchase orders.

(Paragraph deleted)

§ 11.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the CMAR for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the CMAR shall, as a condition of receiving the payments referred to in this Section 11.2.3, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the CMAR, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the CMAR under such subcontracts or purchase orders. Under no circumstances shall the Contractor be entitled to, nor shall the Owner be liable for, any loss of anticipated profit on the Work not executed

(Paragraph deleted)

§ 11.3 Suspension

(Paragraphs deleted)

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, except that the term "profit" shall be understood to mean the CMAR's Fee as described in Sections 4.1 and 4.3.5 of this Agreement.

ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 Terms in this Agreement shall have the same meaning as those in the version of the AIA A201–2017 General Conditions as modified for utilization on this Project. Where reference is made in this Agreement to a provision of the

General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

(Paragraphs deleted)

§ 12.2

(Paragraphs deleted)

Successors and Assigns

§ 12.2.1 The Owner and CMAR, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 12.2.2 of this Agreement, and in Section 13.2.2 of the General Conditions, neither party to the Contract shall assign the Contract without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 12.3 Insurance and Bonds

§ 12.3.1 Construction Phase

After execution of the Contract the Owner and the CMAR shall purchase and maintain insurance as set forth in Section 11 of the General Conditions and elsewhere in the Contract Documents.

§ 12.3.1.1 The CMAR shall provide bonds as set forth in Exhibit B of the General Conditions and elsewhere in the Contract Documents.

§ 12.4 Notice

§ 12.4.1 Any notice, consent, waiver, authorization, or approval referenced in this Contract must be in writing, and delivered in person, by U.S. mail, overnight courier or electronic mail to the City and CMAR Notice Contacts identified on In Section 12.4.2 below. Notice of breach, default, termination, prevention of performance, delay in performance, modification, extension, or waiver must be sent to the Notice Contacts and also be to the recipients listed below in Section 12.4.3 (the "Official Notice Recipients"), and if sent by electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier:

§ 12.4.2 Notice Contacts:

For City:	For CMAR:

§ 12.4.3 Official Notice Recipients:

For City:	For CMAR:

Notice shall be effective upon receipt by the intended recipient. The parties may change their Official Notice Recipients by written notice to the other party.

ARTICLE 13 SCOPE OF THE CONTRACT

§ 13.1 This Agreement to execute the Contract according to the provisions of the Contract Documents listed in Section 1.2.1.2 of the General Conditions, represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and CMAR.

(Paragraphs deleted)

§ 13.2 DELETED.

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)
(Paragraphs deleted)

(Printed name and title)

THE GENERAL CONDITIONS
(AIA Document A201 – 2017 Modified)

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

South End Station Construction

THE OWNER:

(Name, legal status and address)

City of Charlotte, a North Carolina municipal corporation
600 East Fourth Street
Charlotte, North Carolina 28202-2844

THE DESIGNER:

(Name, legal status and address)

Kimley-Horn & Associates, Inc., a North Carolina corporation
200 South Tryon Street, Suite 200
Charlotte, North Carolina 28202

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CMAR
4	DESIGNER AND OWNER REP
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

| (Paragraphs deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the AIA A133 – Standard Form of Agreement between the Owner and Contractor (hereinafter the Agreement). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Change Directive, or (4) a written order for a minor change in the Work (Field Change Notice (FCN)) issued by the Owner.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the CMAR and the Designer or the Designer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Designer or the Designer's consultants, or (4) between any persons or entities other than the Owner and the CMAR. The Designer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Designer's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the CMAR to fulfill the CMAR's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, materials to be used, and any equipment and fixtures to be installed. The Drawings generally include plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Designer and the Designer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

(Paragraphs deleted)

§ 1.1.8 Repair

Repair means the restoration of a nonconforming component of the Work to a suitable or acceptable condition for its intended use.

§ 1.1.9 Rework

Rework means the restoration of a nonconforming component of the Work so that the component complies with the applicable Specifications.

§ 1.1.10 Validation

Validation means establishing by objective evidence that a component of the Work consistently functions according to the applicable Specifications.

§ 1.1.11 Verification

Verification means confirming by examination and provision of objective evidence that a component of the Work meets the applicable Specifications.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CMAR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CMAR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 To the extent that any conflict exists among the Contract Documents, a particular Contract Document's provisions will prevail over conflicting provisions in any Contract Documents listed below it in this Section. For example, the FTA Terms in Part A of the Supplementary Conditions will prevail over any conflicting provisions in any other Contract Documents. For the purposes of this Contract, two provisions are conflicting only if, and only to the extent, that the CMAR cannot satisfy both. If a conflict arises where both requirements cannot be satisfied, the CMAR shall fully comply with the Contract provision in the Contract Document that is ranked highest in this section. The CMAR shall disregard the other conflicting Contract provisions found in lower-ranked Contract Documents, but only to the minimum extent needed to comply with the higher-ranking provision. The CMAR otherwise shall fully comply with the lower-ranked Contract Document's provisions to the maximum extent possible. The Contract Documents, listed in order in which they will prevail over all others, are as follows:

- .1 FTA Terms
- .2 Disadvantaged Business Enterprise Terms
- .3 Project Drawings and Specifications
- .4 Project Special Provisions (including any third-party specifications)
- .5 City Standard Provisions
- .6 General Conditions
- .7 Agreement
- .8 Addenda
- .9 Any other documents that are part of the Contract Documents

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the CMAR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications, and hold all common law, statutory, and other reserved rights in the Instruments of Service, including

copyrights. The Designer, Designer's consultants, CMAR, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service.

§ 1.5.2 The CMAR, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The CMAR, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by hand delivery, certified or registered mail, or by courier providing proof of delivery.

(Paragraphs deleted)

§ 1.7 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, before the use of such form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

§ 2.1.2 DELETED.

§ 2.2 DELETED.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the CMAR under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 DELETED.

§ 2.3.3 DELETED.

§ 2.3.4 The Owner shall furnish any surveys in its possession describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The Owner makes no representations

about the accuracy of such surveys and the CMAR shall exercise proper precautions relating to the safe performance of the Work, including performing site-specific examinations of all physical characteristics and utility locations.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CMAR's performance of the Work with reasonable promptness after receiving the CMAR's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the CMAR one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the CMAR fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the CMAR or any other person or entity. The CMAR shall not be entitled to any extension of Contract Time due to a stoppage of Work ordered by the Owner under this section.

§ 2.5 Owner's Right to Carry Out the Work

If the CMAR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Owner's Rep shall, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Owner's Rep's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the CMAR shall pay the difference to the Owner.

§ 2.6 Extent of Owner's Rights

The rights stated in this Article and elsewhere in the Contract Documents are cumulative and not in limitation of any rights the Owner has at law, in equity, or pursuant to the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The CMAR is the person or entity identified as the CMAR in the Agreement and is referred to throughout the Contract Documents as if singular in number. The CMAR shall be lawfully licensed, if required in the jurisdiction where the Project is located. The CMAR shall designate in writing a representative who shall have express authority to bind the CMAR with respect to all matters under this Contract. The term "CMAR" means the CMAR or the CMAR's authorized representative.

§ 3.1.2 The CMAR shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The CMAR shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner Rep in the Owner's Rep's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the CMAR.

§ 3.2 Review of Contract Documents and Field Conditions by CMAR

§ 3.2.1 Execution of the Contract by the CMAR is a representation that the CMAR has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the CMAR shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the CMAR and are not for the purpose

of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the CMAR shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the CMAR as a request for information in such form as the Owner may require. It is recognized that the CMAR's review is made in the CMAR's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The CMAR is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the CMAR shall promptly report to the Owner any nonconformity discovered by or made known to the CMAR as a request for information in such form as the Owner may require.

§ 3.2.4 If the CMAR believes that additional cost or time is involved because of clarifications or instructions the Owner or Owner's Rep issues in response to the CMAR's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the CMAR shall submit Claims as provided in Article 15. If the CMAR fails to perform the obligations of Sections 3.2.2 or 3.2.3, the CMAR shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the CMAR had performed such obligations. If the CMAR performs those obligations, the CMAR shall not be liable to the Owner or Owner's Rep for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The CMAR shall supervise and direct the Work, using the CMAR's best skill and attention. The CMAR shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the CMAR shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the CMAR determines that such means, methods, techniques, sequences, or procedures may not be safe, the CMAR shall give timely notice to the Owner, shall propose alternative means, methods, techniques, sequences, or procedures, and shall not proceed with that portion of the Work without further written instructions from the Owner. Unless the Owner objects to the CMAR's proposed alternative, the CMAR shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The CMAR shall be responsible to the Owner for acts and omissions of the CMAR's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CMAR or any of its Subcontractors.

§ 3.3.3 The CMAR shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

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

§ 3.4.2 The CMAR may make substitutions only with the consent of the Owner and in accordance with a Change Order or Change Directive.

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

§ 3.5 Warranty

§ 3.5.1 The CMAR warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CMAR further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those

inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The CMAR's warranty excludes remedy for damage or defect caused by abuse by others, alterations to the Work not executed by the CMAR, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 All subcontractors', manufacturers', and suppliers' warranties and guaranties, expressed or implied, respecting any part of the Work or any material, equipment, or other product used therein, shall be deemed to be obtained by the CMAR as the agent of and for the benefit of the Owner, and shall be enforced as such, without the necessity of separate transfer or assignment thereof.

§ 3.6 Taxes

The CMAR shall pay sales, consumer, use and similar taxes for the Work provided by the CMAR that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1 SALES/USE TAX

The Owner is NOT exempt from applicable sales or use taxes assessed by North Carolina or other states. However, the North Carolina Department of Revenue does reimburse the Owner for the North Carolina sales or use taxes the Owner pays for certain construction-related goods. Therefore, the Owner uses the procedures below for such sales tax. The CMAR agrees to follow the procedures set forth below for all sales or use taxes related to the Work and any other work performed pursuant to this Contract.

"Eligible Taxes" are defined as North Carolina sales or use taxes paid by the CMAR for buildings, materials, supplies, fixtures and equipment that become a part of or annexed to any building or structure that is owned or leased by the Owner and is being erected, altered or repaired by the Owner (North Carolina GS §105-164-14(c)).

"Non-Eligible Taxes" are defined as all other sales or use taxes including those paid to states other than North Carolina, or sales or use taxes paid to North Carolina on purchases or rental of tools, equipment, and disposable supplies, including fuel, used in the Work.

§ 3.6.1.1 Non-Eligible Taxes

Non-Eligible Taxes shall be included in the Bid and will be included in the Contract Sum.

The Contract Sum as shown in Article 4 of the Agreement includes full and complete compensation for the CMAR for any and all Non-Eligible Taxes paid by the CMAR in the prosecution of the Work and any other work performed pursuant to this Contract.

§ 3.6.1.2 Eligible Taxes

Eligible Taxes **shall not** be included in the Bid and will **not** be included in the Contract Sum. Eligible Taxes will be reimbursed separately pursuant to the procedures below.

Prior to award of the Contract, the CMAR shall provide the Owner with the estimated amount of total Eligible Taxes for the Contract. This estimated amount of total Eligible Taxes will be used solely for the purpose of the Owner's budget planning for the Project and will **not** be included in the Contract Sum.

The Contract Sum as shown in Article 4 of the Agreement excludes Eligible Taxes. The CMAR shall invoice the Owner for Eligible Taxes as set forth below and the Owner will reimburse the CMAR for those Eligible Taxes pursuant to the procedures below.

In the event the CMAR fails to materially follow the procedures set forth by this Article, and/or fails to properly document its payment of Eligible Taxes, the Owner will not be liable to the CMAR in any way for the payment of such Eligible Taxes.

In order to receive the reimbursement for Eligible Taxes, the CMAR shall provide a detailed listing of Eligible Taxes on the State/County Sales/Use Tax Statement ("Tax Statement") provided in the Contract Documents. A Tax Statement must be submitted with each Application for Payment and shall include invoices documenting the Eligible Taxes and the underlying purchases made by the CMAR or its subcontractor.

Tax Statements must indicate whether such Eligible Taxes were paid by the CMAR or by its subcontractor.

If no Eligible Taxes have been paid for the period in which an Application for Payment is being submitted by the CMAR, then the CMAR shall indicate "No Eligible Taxes paid this period" on the Tax Statement and submit it accordingly. Tax Statements must be completed and signed by the CMAR/subcontractor's company officer submitting the statement and certified by a Notary Public.

Tax Statement must list in detail the Eligible Taxes paid for each individual invoice paid by the CMAR/subcontractor. No lump sum, running total, or copies of previously reported statements will be accepted.

Tax Statements must show separately the portion of Eligible Taxes that are paid to the State of North Carolina and any applicable North Carolina county, identifying each county accordingly.

Tax Statements will be reviewed and approved by the Owner prior to paying the Eligible Taxes reimbursement. Such approval will not be unreasonably withheld.

§ 3.7 Permits, Fees, Notices, Compliance with Laws, and Utility Service Connections

§ 3.7.1 Unless otherwise provided in the Contract Documents, the CMAR shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.1.1 The CMAR shall make application on behalf of the Owner for permanent service connections to the various applicable utilities (electric, water, sewer, and natural gas.). The CMAR shall include the cost of all tapping fees, permits and inspections necessary to obtain the permanent utility services. Upon certification of Substantial Completion by the Owner Rep, the cost of utilities shall become the responsibility of the Owner. The CMAR shall be responsible for the cost of utilities used until Substantial Completion. The Owner and CMAR will coordinate to ensure proper transfer of the utilities to the Owner.

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

§ 3.7.3 If the CMAR performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the CMAR shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the CMAR encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the CMAR shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the CMAR's cost of, or time required for, performance of any part of the Work, will negotiate with the CMAR an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the CMAR, stating the reasons.

§ 3.7.5 If, in the course of the Work, the CMAR encounters human remains or recognizes the existence of burial markers, artifacts of historical or archaeological significance, archaeological sites or wetlands not indicated in the Contract Documents, the CMAR shall immediately (a) suspend any operations that would affect them, (b) notify the Owner, and (c) construct temporary fencing or employ other techniques to cordon off and protect the affected areas.

Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The CMAR shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 An Allowance is an amount specified and included in the Contract Documents, listed on Exhibit A attached hereto, for a certain item of Work whose details are not yet determined at the time of contracting. The CMAR shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the CMAR shall not be required to employ persons or entities to whom the CMAR has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the CMAR of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 CMAR's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum but not in the Allowances;
- .3 whenever applicable costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly through the Owner Contingency by a Contingency Authorization; and.
- .4 all Allowances will originate and be tracked on Exhibit A, attached hereto, until finalized and placed into a contingency transfer.

§ 3.8.3 Materials and equipment under an Allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The CMAR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the CMAR and shall have the authority to act on behalf of the CMAR in all matters. Communications given to the superintendent shall be as binding as if given to the CMAR.

§ 3.9.2 The CMAR, as soon as practicable after award of the Contract, shall notify the Owner of the name and qualifications of a proposed superintendent and any proposed project manager. Within 14 days of receipt of the information, the Owner may notify the CMAR, stating whether the Owner (1) has reasonable objection to the proposed superintendent or project manager or (2) requires additional time for review.

§ 3.9.3 The CMAR shall not employ a proposed superintendent or project manager to whom the Owner has made reasonable and timely objection. The CMAR shall not change the superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 At any time, the Owner may disapprove of the person serving as the CMAR's superintendent or project manager and may require the CMAR to assign a new person to that role.

§ 3.10 CMAR's Construction and Submittal Register

§ 3.10.1 The CMAR's construction schedule prepared pursuant to the Preconstruction Services Contract and approved by the Owner shall constitute the construction schedule for the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and in accordance with the Contract Documents.

§ 3.10.2 The CMAR, within twenty-eight (28) days of the Notice of Award, shall submit a Submittal Register for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld.

The Submittal Register shall include a list of all shop drawings, product information, designs, reports, procedures, management and quality plans, Buy America certifications, test plans, operations and maintenance manuals, and all other documents required to be submitted under the Contract. The Submittal Register shall also include the planned

dates for all submittals to be submitted for the entire duration of the Contract. The CMAR shall submit an updated Submittal Register monthly with any changes to the planned submittal dates.

The Owner will provide the CMAR with the format for the Submittal Register. The CMAR should allow a minimum of twenty-one (21) days for review and approval of the Submittal Register following the submittal date. Unless otherwise approved by the Owner, the Submittal Register shall include the following information:

1. Number
2. Package
3. Specification Section and Sub-Section
4. Revision (designate on original submittals as Rev. 00)
5. Description
6. Category
7. Submittal Date
8. Submittal Title
9. Timeframe (Prior to, During or After Construction)
10. Status
11. Comments

The dates in the Submittal Register shall (1) be coordinated with the CMAR's construction schedule, and (2) allow the Owner and Owner Rep reasonable time to review submittals. If the CMAR fails to timely submit a monthly updated Submittal Register or fails to provide submittals in accordance with the approved submittal schedule in the Submittal Register, the CMAR shall not be entitled to (a) submit an Application for Payment or (b) any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

Within 14 days of the Notice of Award, the CMAR shall propose to the Owner a written policy for naming, saving, and organizing submittals and other documents that will be used and stored in e-Builder (the Owner's web-based project control system for this Project) by the CMAR, the Owner, and other parties working on the Project. After receipt, the Owner shall promptly review and provide feedback to the CMAR on the proposed written policy with a goal of finalizing it with the CMAR within 28 days of the Notice of Award. Throughout the Project, the CMAR shall be responsible for ensuring that submittals and other documents in e-Builder are named, saved, and organized in accordance with the final written policy.

§ 3.10.3 The CMAR shall perform the Work in accordance with the most recent schedules submitted to the Owner and Owner Rep.

§ 3.11 Documents and Samples at the Site

The CMAR shall make available, at the Project site, the Contract Documents, including Change Orders, Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, and delivered to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the CMAR to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by

Init.

the Owner or Owner Rep is subject to the limitations of Section 4.2.7. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Owner without action.

§ 3.12.5 The CMAR shall review for compliance with the Contract Documents, approve, and submit to the Owner and Owner Rep, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 If the CMAR's Shop Drawings, Product Data, Samples, and similar submittals require more than two iterations of review by the Owner or such submittals by the CMAR are not timely submitted to the Owner (including re-submitting a submittal more than 30 calendar days after it is classified as "revise and resubmit"), representatives of the CMAR, Owner, and Owner Rep shall hold an in-person "over-the-shoulder" meeting to discuss and resolve outstanding issues concerning the applicable submittal. Any costs of the Owner or Owner Rep for participating in such a meeting shall be reimbursed by the CMAR.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the CMAR represents to the Owner that the CMAR has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The CMAR shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Owner.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the CMAR shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the CMAR has specifically notified the Owner of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Change Directive has been issued authorizing the deviation. The CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Owner's approval thereof.

§ 3.12.9 The CMAR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The CMAR shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the CMAR needs to provide such services in order to carry out the CMAR's responsibilities for construction means, methods, techniques, sequences, and procedures. The CMAR shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the CMAR by the Contract Documents, the Owner will specify all performance and design criteria that such services must satisfy. The CMAR shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The CMAR shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner have specified to the CMAR the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the CMAR's design professional to certify that the Work has been performed in accordance with the design criteria, the CMAR shall furnish such certifications to the Owner and Owner Rep at the time and in the form specified by the Owner.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

§ 3.14.1 The CMAR shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The CMAR shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The CMAR shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The CMAR shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The CMAR shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the CMAR shall remove waste materials, rubbish, the CMAR's tools, construction equipment, machinery, and surplus materials from and about the Project, including any areas planned for landscaping.

The CMAR shall familiarize itself thoroughly with any landscaping plans for the Project. During the Work, the CMAR shall ensure that any areas planned for landscaping are free from accumulation of waste materials and rubbish caused by operations under the Contract. If any such areas are not kept clear, the CMAR shall promptly remove the materials and rubbish from those areas.

§ 3.15.2 If the CMAR fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the CMAR.

§ 3.16 Access to Work

The CMAR shall provide the Owner and Owner Rep with access to the Work in preparation and progress wherever located. To the extent that access to any existing rail or track is needed for the Work, the CMAR shall ensure that such access complies with the Owner's applicable track allocation process, as described in Article 30 of the Supplementary Conditions. Such access shall also be subject to the Owner's right to prioritize and maximize the time that the tracks are operable during the Work.

§ 3.17 Royalties, Patents and Copyrights

The CMAR shall pay all royalties and license fees. The CMAR shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner Rep harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Owner Rep. However, if an infringement of a copyright or patent is discovered by, or made known to, the CMAR, the CMAR shall be responsible for the loss unless the information is promptly furnished to the Owner and Owner Rep.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the CMAR shall indemnify, defend, and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) arising out of or resulting from, or alleged to arise out of or result from:

- .1 any violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any products or deliverables provided to the

- 2 Owner pursuant to this Contract ("Infringement Claims");
- 3 the CMAR's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the CMAR or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible;
- 4 any violation of any federal, state or local law or regulation by the CMAR or any of the CMAR's subcontractors (including without limitation e-Verify or other immigration laws);
- 5 any allegation that an employee or subcontractor of the CMAR is an employee of the Owner, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like; or
- 6 the CMAR's performance under this Contract, to the extent not covered by subsections .1 - .4 above.

If any claim subject to indemnity under this Contract should arise, the Owner may withhold from payments otherwise due under the Contract such funds as are reasonably sufficient to secure itself and the other Indemnitees against the claim, loss, damage, or liability asserted against them.

For purposes of this Section: (a) the term "Indemnitees" means the Owner and each of the Owner's officers, officials, employees, agents and independent contractors (excluding the CMAR); and (b) the term "Charges" means any and all claims, losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the CMAR shall either:

- .1 procure for the Owner the right to continue using the affected product or service; or
- .2 repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the Owner shall not be adversely affected by such replacement or modification.

If the CMAR is unable to resolve an Infringement Claim within thirty (30) days after the Owner is directed to cease use of the product or service, the CMAR shall promptly pay to the Owner an amount equal to any and all costs the Owner incurs due to the Infringement Claim and the lack of use of the product or service at issue, including but not limited to any amounts payable due to the Infringement Claim, project delays, staff time required to process and mitigate the loss of use of the infringing product, and any inefficiency created if a lesser product or service must be substituted for the infringing product or service.

§ 3.18.2 In claims against any Indemnitee by an employee of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the CMAR or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 If this Contract is funded in full or in part by federal funds, the indemnity rights granted to the Owner in this Contract shall also extend to the U.S. Government agency that extends such funding, and to the agency's officers, officials, employees, and agents.

§ 3.18.4 The CMAR shall purchase insurance, as described in Article 11, which shall include coverage for the contractual liability described herein. In any case in which CMAR provides a defense to an Indemnitee pursuant to this Section 3.18, the defense will be provided by attorneys reasonably acceptable to the Owner. This Section 3.18 shall survive the expiration or early termination of the Contract.

ARTICLE 4 DESIGNER AND OWNER REP

§ 4.1 General

§ 4.1.1 The Designer is the person or entity retained by the Owner and identified as such in the Agreement.

§ 4.1.2 The Owner Rep is the person(s) or entity(ies) retained by the Owner to advise the Owner concerning all phases of the Project, including matters related to design, project management, construction, oversight, monitoring, and

close-out. The Owner Rep shall include the Designer, but may include other persons or entities designated by the Owner. The Owner shall notify the CMAR of the persons or entities that are designated as an Owner Rep under this Contract.

§ 4.1.3 Duties, responsibilities, and limitations of authority of the Designer as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, CMAR, and Designer. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner Rep will provide administration of the Contract as described in the Contract Documents. The Owner Rep will have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Documents.

§ 4.2.2 The Owner Rep will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner Rep will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CMAR's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Owner Rep will keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the CMAR, and (3) defects and deficiencies observed in the Work. The Owner Rep will not be responsible for the CMAR's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner Rep will not have control over or charge of, and will not be responsible for acts or omissions of, the CMAR, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner, Owner Rep and CMAR shall communicate with each other as necessary about matters arising out of or relating to the Contract. Communications by and with the Designer's consultants shall be through the Designer. Communications by and with Subcontractors and material suppliers shall be through the CMAR. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Owner Rep's evaluations of the CMAR's Applications for Payment, the Owner Rep will assist in review and certification of the amounts due the CMAR and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Owner Rep has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner Rep considers it necessary or advisable, the Owner Rep will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Owner Rep nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner Rep to the CMAR, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Owner Rep will review, and take any other appropriate action upon, the CMAR's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Owner Rep's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner Rep's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CMAR as required by the Contract Documents. The Owner Rep's review of the CMAR's submittals shall not relieve the CMAR of the obligations under Sections 3.3, 3.5, and 3.12. The Owner Rep's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures.

§ 4.2.8 The Owner may prepare Change Orders, Contingency Authorizations, and Change Directives, and may order minor changes in the Work (FCN) as provided in Section 7.4. The CMAR will prepare Change Requests.

§ 4.2.9 The Owner Rep will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the CMAR pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Owner Rep agree, the Owner Rep will provide one or more Project representatives to assist in carrying out the Owner Rep's responsibilities at the site. The Owner shall notify the CMAR of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Owner Rep will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or CMAR. The Owner Rep's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 DELETED.

§ 4.2.13 DELETED.

§ 4.2.14 The Owner Rep may review and respond to requests for information about the Contract Documents. The Owner Rep's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Owner Rep will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the CMAR to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the CMAR, as soon as practicable after award of the Contract, shall notify the Owner and Owner Rep of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design.

§ 5.2.2 DELETED.

§ 5.2.3 The Owner shall have the right to approve all Subcontractors and require that the Contractor dismiss from this Project a previously approved Subcontractor. The CMAR shall not execute any subcontract without the prior review and written approval of that specific subcontract from the Owner. Each specific subcontract shall contain a clause incorporating by reference all terms and conditions of this Contract. The CMAR shall provide to the Owner a copy of each executed subcontract through e-Builder. In the event the CMAR does execute a subcontract without the prior written approval of that specific subcontract from the Owner, the CMAR agrees that the Owner will sustain harm and that liquidated damages pursuant to Part D of the Supplementary Conditions may be assessed against the CMAR in addition to any other damages that the Owner may be entitled to for such a breach of this section. The Owner may also require the CMAR to renegotiate a subcontract executed in violation of this provision to add any subcontract provisions required by this Contract that may have been omitted from such subcontract.

§ 5.2.4 Each subcontract agreement shall contain the FTA Terms in accordance with Section 1.B of the FTA Terms. Before any subcontractor performs any work on the Project, the CMAR shall submit any certificates required (including, but not limited to, insurance, debarment, Equal Employment Opportunity, and Disadvantaged Business

Enterprise programs) and shall obtain the Owner's approval of the Subcontractor's qualifications to perform the Work.

§ 5.2.5 The CMAR shall not, without the Owner's consent, replace any Subcontractor approved by the Owner, or permit any approved Subcontractor to assign or transfer its subcontract, or permit the part of the Work subcontracted to him to be performed by anyone else.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the CMAR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CMAR by terms of the Contract Documents, and to assume toward the CMAR all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the CMAR, by these Contract Documents, assumes toward the Owner and Owner Rep. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner Rep under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the CMAR that the CMAR, by the Contract Documents, has against the Owner. Where appropriate, the CMAR shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CMAR shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The CMAR shall be responsible for (a) supervising, managing, and coordinating the Work of its subcontractors and access to the project site for its subcontractors and (b) resolving any conflicts that may arise among the subcontractors and any disputes concerning their respective responsibilities or the scope of their Work. Entering into subcontracts shall not relieve the CMAR of its responsibility for the whole of the Work or of its responsibilities to (a) be familiar with the whole of the Contract Documents and (b) ensure that the Project is completed in full and strict conformity to the Contract Documents.

§ 5.3.3 The CMAR, in paying its Subcontractors and suppliers, shall fully and strictly comply with N.C. Gen. Stat. § 143-134.1, and shall, by means of appropriate provisions in all subcontracts and orders for materials, supplies, or equipment, and by all other appropriate means, ensure that all Subcontractors and suppliers fully and strictly comply with N.C. Gen. Stat. § 143-134.1. It is the policy of the Owner that prompt payment for all purchases and services satisfactorily rendered are to be made to all subcontractors. The CMAR is required to pay Subcontractors for satisfactory performance of their contracts within seven (7) calendar days after the Owner has paid the CMAR for such Work (refer to Article 9.6.6 of these General Conditions). If the CMAR withholds any retainage pending final completion of any Subcontractor's Work, the CMAR is required to pay the retainage so withheld within seven (7) days after such subcontractor completes its Work satisfactorily. The CMAR's failure to pay Subcontractors as provided herein shall be a material breach for which the Owner may cancel the Contract.

§ 5.3.5 Nothing provided herein or elsewhere in the Contract shall be construed as creating privity of contract between the Owner and any subcontractor, or as limiting or diminishing any rights or remedies that the Owner may have against the CMAR arising out of the Contract, or as relieving the CMAR of any responsibility for performance of the Contract because of any action, or of any failure to act, by the Owner.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the CMAR to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and CMAR; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the CMAR's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "CMAR" in the Contract Documents in each case shall mean the CMAR who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the CMAR, who shall cooperate with them concerning such activities and coordinating access to the site. The CMAR shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The CMAR shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement, with any unresolved issues being subject to the dispute resolution procedures in Section 15.3. The construction schedules shall then constitute the schedules to be used by the CMAR, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the CMAR has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The CMAR shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the CMAR's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the CMAR's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the CMAR shall, prior to proceeding with that portion of the Work, promptly notify the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the CMAR's Work. Failure of the CMAR to notify the Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the CMAR's Work. The CMAR shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The CMAR shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the CMAR's delays, improperly timed activities or defective construction.

§ 6.2.4 The CMAR shall promptly remedy damage that the CMAR wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the CMAR in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the CMAR, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and allocate the cost among those the Owner determines responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Change Directive or order for a minor change in the Work (Field Change Notice (FCN)), subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. All Changes in the Work are also subject to the Owner's [reference to be inserted in final contract to the Owner's Change Order policy], which is hereby incorporated into the Contract and which shall control in the event of any conflict between the policy and the Contract concerning any Changes in the Work.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and CMAR. A Change Directive requires agreement by the Owner and may or may not be agreed to by the CMAR. An order for a minor change in the Work (FCN) may be issued by the Owner alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The CMAR shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Change Directive, or order for a minor change in the Work (FCN).

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Owner Rep and signed by the Owner and CMAR stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The form of Change Order shall be the form generated from the e-Builder Change Order workflow and shall be accompanied by a complete cost breakdown showing computation of the cost together with a written explanation of the change and reason for the change. All Change Orders must indicate if an extension of time is, or will be, part of a change. A Change Order will not be considered complete or accepted if time is not explicitly addressed.

§ 7.2.3 Any Change Request by the CMAR that includes a request for an extension of time to complete the Work or any part of it must be accompanied by a time impact analysis and detailed justification for the extension, in a format and manner approved by the Owner and in compliance with [reference to be inserted in final contract to the Owner's policy on TIA procedures].

§ 7.3 Change Directives

§ 7.3.1 A Change Directive is a written order prepared by the Owner Rep, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, and the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3

(Paragraphs deleted)

DELETED.

§ 7.3.4 If the CMAR does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner Rep shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the CMAR shall keep and present, in such form as the Owner Rep may prescribe, an itemized accounting

together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Documented costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Documented costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Documented rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CMAR or others;
- .4 Document costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Documented costs of supervision and field office personnel directly attributable to the change.

Signed Time and Materials (T&M) must be included in the CMAR's supporting data. The Owner Rep will verify and sign T&M tickets daily. Unsigned T&M tickets will not be accepted.

§ 7.3.5 If the CMAR disagrees with the adjustment in the Contract Time, the CMAR may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Change Directive, the CMAR shall immediately proceed with the change in the Work involved and advise the Owner of the CMAR's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Change Directive signed by the CMAR indicates the CMAR's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the CMAR to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner Rep. When both additions and credits covering related Work or substitutions are involved in a change, the Allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the CMAR may request payment for Work completed under the Change Directive in Applications for Payment. The Owner Rep may make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner Rep determines, in the Owner Rep's professional judgment, to be reasonably justified. The Owner Rep's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and CMAR agree with a determination made by the Owner Rep concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner Rep will prepare a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 7.4 Minor Changes in the Work (Field Change Notices (FCNs))

The Owner may order minor changes in the Work (FCNs) that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The order for minor changes shall be in writing. If the CMAR believes that the proposed minor change in the Work (FCN) will affect the Contract Sum or Contract Time, the CMAR shall notify the Owner and shall not proceed to implement the change in the Work. If the CMAR performs the Work set forth in the Owner's order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the CMAR waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 CONTINGENCY AUTHORIZATION

§ 7.5.1 A Contingency Authorization is a written instrument prepared by the Owner and signed by the Owner and CMAR documenting the expenditure of funds from the Owner Contingency.

§ 7.5.2 The form of Contingency Authorization shall be the form included in the Contract Documents or otherwise provided by the Owner and shall be accompanied by a complete cost breakdown showing computation of the cost together with a written explanation of the change and reason for the change.

§ 7.6 OVERRUNS AND UNDERRUNS OF CONTRACT QUANTITIES

§ 7.6.1 GENERAL

§ 7.6.1.1 The Owner reserves the right to make, at any time during the Work, such changes in quantities as are necessary to satisfactorily complete the Project. Such changes in quantities shall not invalidate the Contract, nor release the Surety, and the CMAR agrees to perform the Work as changed. The Owner shall notify the CMAR in writing of the significant changes in the quantities.

The CMAR will be entitled to an adjustment in contract unit prices for increased costs incurred over the original bid prices in performing contract items that overrun or underrun the estimated contract quantities only as provided for in this Article.

All contract items and extra work shall be considered as minor items, unless such an item is specifically defined as a major item in the Contract.

§ 7.6.2 OVERRUNS – INCREASE IN UNIT PRICE

If the actual quantity of any major contract item overruns the original bid quantity by more than 15% of such original bid quantity, or the actual quantity of any minor contract item overruns the original bid quantity by more than 100% of such original bid quantity, an increase to the contract unit price may be authorized by the Owner. Revised contract unit prices pertaining to overruns will be applicable only to that portion of the overrun that is in excess of the percentages stated above. The paid profit amount for each Unit Price item provided as part of an overrun shall remain the same as the actual profit amount paid for the same Unit Price item had there been no overrun.

§ 7.6.2.1 Whenever it is anticipated that an overrun in a major or minor contract item in excess of that described above will occur, the CMAR may make written request for a revision to contract unit prices. The CMAR shall justify the request for a revision to contract unit prices with written documentation. After reviewing the CMAR's request, the Owner will notify the CMAR of its determination.

- .1 If the Owner determines a revision to the contract unit price is justified, the Owner will issue a Change Directive before performing work on that quantity in excess of the percentage set forth above.

§ 7.6.2.2 Whenever an overrun in a contract item in excess of the percentage previously set forth has occurred and a Change Directive establishing an increase to the contract unit has not been executed or the Owner has not issued a Change Directive, the CMAR may make written request for a revision in the original contract unit price. Any adjustment to the contract unit prices due to overruns will be made by the Owner based upon its evaluation and comparison of the CMAR's documented cost records of the contract unit prices for those contract items. The CMAR's cost records and supporting data shall be complete in every respect and in such form that they can be checked. The CMAR must satisfy the Owner of the validity of any request presented by the CMAR for an adjustment to the contract unit price. After reviewing the CMAR's request, the Owner can make such adjustment as it deems warranted based upon its judgment and the payment to the CMAR will be made accordingly.

§ 7.6.3 UNDERRUNS – INCREASE IN UNIT PRICE

If the actual quantity of any major contract item underruns the original bid quantity by more than 15% of such original bid quantity, an increase to the contract unit price, excluding loss of anticipated profit, may be authorized by the Owner. Revised contract unit prices pertaining to underruns of major contract items will be applicable to the entire quantity of the contract item that underruns. No revision will be made to the contract unit price for any minor contract item that underruns the original bid quantities.

§ 7.6.3.1 Whenever it is anticipated that an underrun in a major contract item in excess of that described above will occur, the CMAR may make written request for a revision to the contract unit price. If the Owner and the CMAR are in agreement as to the revision to be made to the contract unit price, then a Change Directive covering the revised unit price will be entered into. If the Owner and the CMAR are not in agreement, then after performance of the Work, a revised unit price may be determined as described below:

§ 7.6.3.2 Whenever an underrun in a major contract item in excess of the percentage previously set forth has occurred and a Change Directive establishing an increase to the contract unit price has not been executed, the CMAR may make written request for a revision to the original contract unit price. The CMAR shall submit sufficient documentation and analysis of its costs to satisfy the Owner of any non-recovered costs included in the item that underran. Any adjustments to the contract unit prices due to underruns will be made by the Owner based upon its evaluation of the CMAR's documentation and an analysis showing how changes in contract item cost are attributable to the underrun. An analysis of costs shall be supplemented with the CMAR's documented cost records for work performed on the total quantity of the affected item where the CMAR's request for compensation includes compensation for costs other than recovered fixed costs.

§ 7.6.3.3 The CMAR's cost records shall be complete in every respect and in such form that the Owner can check them. The CMAR must satisfy the Owner of the validity of any request presented by the CMAR for adjustment to the contract unit price. After reviewing the CMAR's request, the Owner may make such adjustment as he deems warranted, based upon its judgment and payment will be made on the final estimate.

§ 7.6.3.4 Where non-stock fabricated materials are involved in minor items that underrun or in major items that underrun by less than 15%, and where fabrication of such material has begun or been completed before the CMAR is advised of the reduction in the quantity of the pay item, the Owner will reimburse the CMAR for the verified fabrication cost, including the cost of material less salvage value, or it may instruct the CMAR to have the fabricated material delivered to a site designated by the Owner and make payment for the verified actual cost of such material, including any handling charges less any discount, but in no event shall payment exceed that which would have been made at the contract unit or lump sum price for the completed work.

§ 7.6.3.5 The CMAR shall furnish invoices and cost records to the Owner to verify the actual cost of materials, handling charges, discounts that were taken, and transportation charges. No percentage additive will be added to the verified cost of such material.

§ 7.6.3.6 No payment will be made for the loss of anticipated profits and no other payment will be made for leftover materials.

§ 7.6 ELIMINATED CONTRACT ITEMS

§ 7.6.1 The Owner may eliminate any item from the Contract and such action will in no way invalidate the Contract. In the event the item of work involves pre-fabricated materials that are not considered to be stock items and fabrication of such material is begun or completed before the CMAR is advised of the elimination of the contract item, the Owner may reimburse the CMAR for the verified fabrication cost including the cost of materials less salvage value or may instruct the CMAR to have the fabricated material delivered to a site designated by the Owner and make payment for the verified actual cost of such material, including any handling charges less any discount, but in no event shall payment exceed that which would have been made at the contract unit or lump sum price for the completed work.

§ 7.6.2 The CMAR shall furnish invoices and cost records to the Owner to verify the actual cost of materials, handling charges, discounts that were taken, and transportation charges. No percentage additive will be added to the verified cost of such material.

§ 7.6.3 No payment will be made for loss of anticipated profits, and no other allowances will be made for eliminated items.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date to be fixed in the Notice to Proceed.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner Rep in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 The term "abnormally adverse weather" shall be defined as weather extremes (precipitation, temperature, and/or winds) which exceed the anticipated adverse weather workdays listed in Section 8.4.4 which prohibit the type of construction activity scheduled during the time of adverse weather and for which no substitute activities are available.

§ 8.2 Progress and Completion

§ 8.2.1

It is hereby understood and mutually agreed, by and between the CMAR and City, that the date of beginning and the time for completion as specified in the Contract for the Work to be done are ESSENTIAL CONDITIONS and time is of the essence to this Contract; and it is further mutually understood and agreed that the Work required by this Contract shall be commenced on a date to be fixed in the Notice to Proceed.

§ 8.2.1.1 The Contract Time shall be the amount of consecutive calendar days stated in Article 1 of Part D of the Supplementary Conditions. Thirty (30) calendar days will be allowed for completion of the items listed with the Certificate of Substantial Completion. Failure to complete these items during this period will result in the assessment of liquidated damages at the rate agreed upon below for each consecutive calendar day beyond the thirty-day period that is necessary to complete the items.

§ 8.2.1.2 Liquidated Damages will be assessed at the rates stated in Part D of the Supplementary Conditions for unauthorized delays beyond the Contract Time. This amount, and the fact that the Owner will be damaged by the failure of the CMAR to timely complete the Work and Work milestones set forth in this Contract, is hereby agreed upon by the CMAR by execution of the Agreement and other Contract Documents.

§ 8.2.2 The CMAR shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the CMAR and City in accordance with Article 11. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The CMAR agrees that said Work shall be prosecuted at such rate of progress as will ensure full completion thereof within the Contract Time specified. It is expressly understood and agreed, by and between the CMAR and the Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same.

§ 8.3 Progress Schedule

§ 8.3.1 The progress schedule required for this Project is the construction schedule prepared pursuant to the Preconstruction Services Contract and approved by the Owner.

§ 8.3.2 The Owner will not measure or pay for the CPM Schedule, schedule updates, recovery schedules or any other schedule requirements set forth in this section directly, but the cost of preparing and updating the schedule is incidental to all Contract Items. The CMAR shall use a compatible version of Oracle Primavera P6 scheduling software to generate the CPM Schedule. It is the CMAR's responsibility to verify with the Owner the software version being used for this Project and shall maintain the required version for the entire Contract duration. The use of Microsoft Project and Primavera Project Planner (P3) and other scheduling software is not acceptable and will be rejected by the Owner.

§ 8.3.3 DELETED.

§ 8.3.4 The CMAR shall submit a revised progress schedule to the Owner for review and approval upon request.

§ 8.3.5 DELETED.

§ 8.3.6 DELETED.

§ 8.3.7 Update Requirements:

On the fifth (5th) day of the current month, during the life of the Project, the CMAR shall submit an updated CPM Schedule and all required information with a data date of the last day of the preceding month. The CMAR shall submit the monthly CPM Schedule updated bar chart and updated schedule. The Owner may withhold progress payments estimates if the updated CPM Schedule is not submitted as required by this section. For each updated CPM Schedule,

identify the actual start and finish dates for all completed activities, the actual start date and remaining duration for all activities in progress, and the difference in duration of all activities since the last update. Also, include actual and planned start dates, durations, and the relationship to other activities for Work that has been added to the Project. Only approved changes will be incorporated into the monthly CPM Schedule update.

The CMAR's scheduling coordinator shall regularly meet (meaning, at least monthly) with the Owner to review the project schedule and discuss and resolve related issues.

§ 8.3.7.1 Each updated CPM Schedule shall provide a written narrative that (a) identifies any changes or shifts in the critical path and submits reasons for the changes or shifts in the critical path and (b) identifies any changes in logic for the updated CPM Schedule and submits reasons for changes to the schedule logic.

§ 8.3.8 Recovery Schedule:

If the CPM Schedule projects a finish date for the Project beyond the Contract Time, the CMAR shall submit a revised schedule showing a plan to finish within the Contract Time.

(A) In the event Work or related construction activities shown on the CMAR's originally submitted CPM Schedule fall behind schedule to the extent that dates established as completion dates are in jeopardy, (i) the CMAR shall take all steps necessary and appropriate to improve its progress and shall submit to the Owner a Recovery Schedule showing its intent to remedy delays and to regain the originally scheduled time of completion of Work within a timely manner and (ii) the Owner's Project Manager may write a "Letter of Concern" to the CMAR establishing a meeting date between the Project Manager and the CMAR (and any other appropriate parties) to discuss the project schedule and requiring the CMAR to provide a written explanation of how the Project's completion dates will be achieved.

.1 For purposes of this section, jeopardy shall be defined to include, without limitation, when any of the following circumstances exist:

(a) The dollar value of the Work completed, excluding any payments for materials, is less than the dollar value of the Work that should have been completed, on the basis of the CMAR's approved progress schedule, by more than 15% of the current Contract Sum. The dollar value of the Work completed will be the total to date shown in the latest Application for Payment, excluding any payments for materials. The current Contract Sum will be the total amount bid plus accumulated overruns less accumulated underruns shown in the latest Application for Payment.

(b) The percentage of the Work completed is less than the percentage of Contract Time elapsed on the Work by more than 15%. The percentage of Work completed will be the dollar value of the Work completed as defined above, divided by the current Contract Sum as defined above. The percentage of Contract Time elapsed will be the number of calendar days elapsed as shown in the latest Application for Payment divided by the total Contract Time in calendar days.

(c) The Contractor fails to begin and pursue the Work before the expiration of 5% of the original Contract Time after the date Work was scheduled to begin based upon the approved progress schedule.

(B) The Recovery Schedule shall be submitted in such form and detail appropriate to the delay or delays, explaining and displaying how the CMAR intends to reschedule those activities and reestablish compliance with the approved baseline CPM schedule during the immediate subsequent pay period or as permitted by Owner. This shall include a logic diagram comparing the original and the revised sequence of activities, identifying all affected activities.

(C) Upon determining the requirement for a Recovery Schedule:

.1 Within five (5) calendar days of notification by the Owner, the CMAR shall present to the Owner a proposed Recovery Schedule and shall schedule a meeting with the Owner to discuss the proposed Recovery Schedule. The Recovery Schedule shall represent the CMAR's best judgment as to how to best reorganize the Work and achieve progress to comply with the approved CPM Schedule; and

.2 The Recovery Schedule shall be prepared to a similar level of detail as the CPM Schedule.

(Paragraphs deleted)

§ 8.4 Delays and Extensions of Time

§ 8.4.1 If the CMAR is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Owner Rep, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 8.4.4.1, or other causes beyond the CMAR's control; (4) by delay authorized by the Owner pending the dispute resolution procedures in Article 15; or (5) by other causes that the CMAR asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine.

§ 8.4.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.4.3 This Section 8.4 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.4.4 The CMAR's sole remedy for delays caused by abnormally adverse weather shall be a Claim for an extension of time in accordance with applicable provisions of Article 15. The monthly anticipated adverse weather workdays are as follows: January, February, December = 9 days per month; March, October, November = 7 days per month; April, May, September = 6 days per month; and June, July, August = 5 days per month. To demonstrate delay as the result of abnormally adverse weather, the CMAR shall demonstrate that the critical path activities have been delayed beyond the allotted days per month as specified above. To be considered a day of delay, the CMAR shall demonstrate that work was prevented on critical path activities for more than fifty percent (50%) of the day of adverse weather. Abnormally adverse weather occurring on holidays, Saturdays, or Sundays cannot be used to demonstrate delay.

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the CMAR for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or CMAR, the applicable unit prices shall be equitably adjusted through the process set forth in Article 15.

§ 9.1.3 At the sole and final discretion of the Owner, the Work may be divided into separate phases. The Owner anticipates that there will be two phases of the Work, a preliminary construction phase and a primary construction phase. If the Work is divided into multiple phases, references in this Contract Document to the Contract Sum shall be to the applicable Contract Sum for each phase.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the CMAR shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the CMAR's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner, shall be used as a basis for reviewing the CMAR's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment (unless instructed otherwise by the Owner in response to a written request from the CMAR), the CMAR shall submit to the Owner and Owner Rep an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the CMAR's right to payment that the Owner or Owner Rep require, such as copies of requisitions, and

releases and waivers of liens from Subcontractors and suppliers and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the CMAR does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the CMAR intends to pay.

§ 9.3.1.3 Each Application for Payment also must incorporate and deduct from the payment sought by the CMAR any testing or inspection costs and any liquidated damages incurred by CATS since the previous Application for Payment was submitted.

§ 9.3.1.4 The CMAR shall submit the following required documents with each Application for Payment:

- .1 Erosion Control Logs (form provided by the Owner);
- .2 Monthly Payments to Subcontractors/Suppliers – Form B (form provided by the Owner);
- .3 Contractor’s Affidavit and Waiver of Claim (form provided by the Owner) (only required for final Application for Payment or otherwise upon request by the Owner);
- .4 State/County Sales/Use Tax Statement (form provided by the Owner);
- .5 Payment Buy America Certification (form provided by the Owner);
- .6 Weekly quality summary reports for the period of time covered by the Application for Payment (per Article 35 of Part C of the Supplementary Conditions);
- .7 An updated list of the status of non-conformance reports (per Article 35 of Part C of the Supplementary Conditions); and
- .8 Latest updated CPM Schedule in accordance with Article 8.3.7.

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

§ 9.3.3 The CMAR warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The CMAR further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the CMAR’s knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the CMAR, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner Rep will, within seven days after receipt of the CMAR’s Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the CMAR; or (2) issue to the Owner a Certificate for Payment for such amount as the Owner Rep determines is properly due, and notify the CMAR and Owner of the Owner Rep’s reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the CMAR and Owner of the Owner Rep’s reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner Rep to the Owner, based on the Owner Rep’s evaluation of the Work and the data in the Application for Payment, that, to the best of the Owner Rep’s knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CMAR is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor

deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner Rep. However, the issuance of a Certificate for Payment will not be a representation that the Owner Rep has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the CMAR's right to payment; or (4) made examination to ascertain how or for what purpose the CMAR has used money previously paid on account of the Contract Sum.

§ 9.4.3 For this Contract, a Certificate for Payment shall consist of an approval in e-Builder (the Owner's web-based project control system for this Project) of an Application for Payment.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner Rep may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner Rep's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner Rep is unable to certify payment in the amount of the Application, the Owner Rep will notify the CMAR and Owner as provided in Section 9.4.1. If the CMAR and Owner Rep cannot agree on a revised amount, the Owner Rep will promptly issue a Certificate for Payment for the amount for which the Owner Rep is able to make such representations to the Owner. The Owner Rep may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner Rep's opinion to protect the Owner from loss for which the CMAR is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When either party disputes the Owner Rep's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 DELETED.

§ 9.6 Progress Payments

§ 9.6.1 The CMAR shall submit Applications for Payment pursuant to Section 9.3 in a manner approved by the Owner. Applications for Payment may include materials and equipment used in the Work.

§ 9.6.2 The Owner will make progress payments based on the Applications for Payment submitted by the CMAR on a monthly schedule established by the Owner. Progress payments will be made within sixty (60) calendar days after the later of (a) receipt of a complete and accurate Application for Payment and (b) issuance of a Certificate for Payment for such Application for Payment. Progress payments will be approximate only and will be subject to correction in the Final Payment.

§ 9.6.3 DELETED.

§ 9.6.4 DELETED.

§ 9.6.5 If any mechanic's or materialman's lien, or any notice or claim of such lien, is filed or noticed against the Project for any labor, materials, supplies, or equipment claimed to have been furnished to or incorporated into the Work, or for any other alleged contribution thereto, the Owner shall have the right to retain from payments otherwise

due the CMAR, in addition to all other amounts properly withheld under this Article or under other provisions of the Contract, an amount equal to such lien or liens claimed. The CMAR warrants that:

- .1 all materials are free and clear of all liens, claims, security interests, or encumbrances; and
- .2 no materials have been acquired by the CMAR, or by any other person performing Work at the site or furnishing materials for the Work under this Contract, that are subject to an agreement under which an interest in, or encumbrance on, the materials or equipment is retained by the seller or otherwise imposed.

§ 9.6.6 It is the policy of the Owner that prompt payment for all purchases and services satisfactorily rendered are to be made to all subcontractors. In accordance with N.C. Gen. Stat. § 22C, the CMAR is required to pay subcontractors for satisfactory performance of their contracts within seven (7) calendar days after the Owner has paid the CMAR for such Work. Additionally, the CMAR shall pay the undisputed portions of subcontractors' invoices within one hundred twenty (120) calendar days of the date of subcontractor's invoice, independent of any payment by the Owner to the CMAR. If the CMAR withholds any retainage pending final completion of any subcontractor's Work, the CMAR is required to pay the retainage so withheld within seven (7) calendar days after such subcontractor completes its Work satisfactorily, regardless of any payment of retainage by the Owner to the CMAR. The CMAR's failure to pay subcontractors as provided herein shall be a material breach for which the Owner may cancel the Contract or assess liquidated damages.

§ 9.6.7 The Owner has the right to request written evidence from the CMAR that the CMAR has properly paid Subcontractors and suppliers amounts paid by the Owner to the CMAR for subcontracted Work. The Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Owner Rep shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.8 The CMAR shall have a copy of its current Application for Payment available on e-Builder and it may be viewed by subcontractors upon request.

§ 9.6.9 Five percent (5%) of each progress payment will be retained by the Owner, subject to the terms of N.C. Gen. Stat. § 143-134.1.

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

§ 9.6.11 There shall be no interest penalties assessed against the Owner for late payment of any amount due under the Contract.

§ 9.6.12 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the CMAR shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier.

§ 9.7 DELETED.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (a) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and (b) the CMAR has provided any applicable manuals or training needed to maintain or operate any part of the Work.

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

§ 9.8.3 Upon receipt of the CMAR's list, the Owner Rep and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If such inspection discloses any item, whether or not included on the CMAR's list, which is not sufficiently complete in accordance with the Contract Documents so that

the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the CMAR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or Owner Rep. In such case, the CMAR shall then submit a request for another inspection by the Owner Rep and Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Owner Rep, in consultation with the Owner and CMAR, will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and CMAR for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the CMAR shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and CMAR for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the CMAR, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CMAR have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CMAR considers a portion substantially complete, the CMAR shall prepare and submit a list to the Owner and Owner Rep as provided under Section 9.8.2. Consent of the CMAR to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and CMAR or, if no agreement is reached, by decision of the Owner Rep.

§ 9.9.2 Immediately prior to such partial occupancy or use, (a) the Owner, CMAR, and Owner Rep shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work and (b) the CMAR shall provide any applicable manuals or training needed to maintain or operate any of the area to be occupied or portion of the Work to be used.

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the CMAR's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner Rep and Owner will promptly make such inspection. When the Owner Rep and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner Rep will promptly issue a final Certificate for Payment stating that to the best of the Owner Rep's knowledge, information and belief, and on the basis of the Owner Rep's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the CMAR and noted in the final Certificate is due and payable. The Owner Rep's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the CMAR's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the CMAR submits to the Owner Rep and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the CMAR knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any warranties covered by Section 3.5.3 above or any other special warranties, including executed assignments of such warranties transferring them to

the Owner and a listing of all such warranties, (6) as-built drawings of the Project, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMAR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the CMAR shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the CMAR, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

(Paragraphs deleted)

ARTICLE 10 DELETED.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance

§ 11.1.1 During the term of the Contract and for such additional time as may be required, the CMAR shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The CMAR shall purchase and maintain the required insurance from an insurance company or insurance companies acceptable to the Owner lawfully authorized to issue insurance in the jurisdiction where the Project is located and such insurance shall provide coverage as required by this Article or required by law, whichever coverage is greater. The required insurance shall protect from claims set forth below which may arise out of or result from the CMAR's operations and completed operations under the Contract and for which the CMAR may be legally liable, whether such operations be by the CMAR or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Owner, Owner Rep, and Owner Rep's consultants shall be named as additional insureds under the CMAR's commercial general liability policy or as otherwise described in the Contract Documents.

The CMAR shall not commence any Work in connection with this Contract until it has obtained all required insurance, which must be approved by the Owner. The CMAR shall not allow any subcontractor to commence Work on its subcontract until all insurance required of the subcontractor has been obtained and approved by the Owner.

(Paragraphs deleted)

§ 11.1.2 All insurance policies required by this Contract shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office and having a minimum A.M. Best rating of 'A-' and a size category of 'VII' or larger. All required insurance policies, except Workers' Compensation and Professional Liability, shall defend the Owner (including all "Indemnitees") and name the Owner (including all "Indemnitees") as an additional insured for operations or services rendered under this Contract. For the Commercial General Liability insurance, the Owner (including all "Indemnitees") is to provide additional insured

status using Insurance Services Office endorsements CG 20 10 11 85 or CG 20 10 07 04 & CG 20 37 07 04 or equivalent approved in writing by the Owner. The CMAR shall cause the commercial liability coverage required by this Contract to include:

- .1 the Owner (including all Indemnitees) and the Owner Rep as additional insureds for claims caused in whole or in part by the CMAR's negligent acts or omissions during the CMAR's operations; and
- .2 the Owner (including all Indemnitees) as an additional insured for claims caused in whole or in part by the CMAR's negligent acts or omissions arising from the CMAR's completed operations.

§ 11.1.3 The CMAR's insurance shall be primary of any self-funding and/or insurance otherwise carried by the Owner for all loss or damages arising from the CMAR's operations under this Contract. The CMAR and each of its subcontractors shall have all insurance policies in any way related to or covering the Work include clauses stating that each underwriter will waive all rights of recovery, under subrogation or otherwise, against the Owner, the Owner Rep and the Owner Rep's consultants.

§ 11.1.4 By requiring insurance, the Owner does not represent that the coverage and limits required will be adequate to protect the CMAR from losses, claims or liabilities arising out of the Work or this Contract. Further, the insurance required will not reduce or limit the CMAR's obligation to indemnify and defend the Owner and other indemnities for claims or suits which result from or are connected with the performance of this Contract.

The Owner shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CMAR and/or subcontractor providing such insurance.

§ 11.1.5 Within ten (10) days after Award of this Contract, the CMAR shall provide certificates of insurance completed by a duly authorized representative and acceptable to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be canceled, materially changed, or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. An additional certificate(s) evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment and thereafter upon renewal or replacement of such coverage for the period of time required by this Contract. The CMAR shall further provide such certificates of insurance to the Owner at any time requested by the Owner after execution of this Contract and shall provide such certificates within ten (10) days after the Owner's request.

The Owner's failure to demand or review a certificate of insurance sent by or on behalf of the CMAR shall not relieve the CMAR of its obligation to meet the insurance requirements set forth in this Contract. The acceptance of the certificate of insurance by the Owner does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Contract. The Owner retains the right, but not the obligation, to prohibit the CMAR from entering the project site until evidence that the required insurance has been provided in complete compliance with these requirements. If the CMAR, or any subcontractor, fails to maintain the insurance as set forth herein, the Owner shall have the right, but not the obligation, to purchase such insurance necessary for compliance with this Contract at the expense of the CMAR. Alternatively, the failure to maintain the insurance as required may result in termination of this Contract at the Owner's sole option.

§ 11.1.6 If any of the required insurance covers other operations of the CMAR or Subcontractor, the Owner shall be immediately notified should any insurance policy subject to an aggregate limit of liability be eroded by more than thirty percent (30%) of the aggregate limit of liability. In the event that an aggregate limit of liability is eroded to a point that the minimum per occurrence limit of liability is impaired, the CMAR and/or subcontractor shall immediately secure such additional insurance, at the CMAR's and/or subcontractor's sole expense, required to reinstate the coverage to the full required limits of liability. Information concerning reduction of coverage on account of revised limits shall be furnished by the CMAR with reasonable promptness.

§ 11.1.7 Should any or all of the required insurance coverage be self-funded/self-insured, the CMAR must identify on the certificate of insurance the type and amount of self-funding/insurance and provide satisfactory evidence, in the sole judgment of the Owner, that the CMAR can meet the financial obligations of the Contract. For all State of North Carolina compulsory insurances, the CMAR shall furnish to the Owner a copy of the Certificate of Self-Insurance or

other documentation from the North Carolina Department of Insurance.

§ 11.1.8 If any part of the Work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Contract, provided that the amounts of the various types of insurance shall be such amounts as are approved by the Owner in writing. However, this will in no way relieve the CMAR from meeting all insurance requirements or otherwise being responsible for the subcontractor.

§ 11.1.9 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the CMAR's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in this Contract.

The Owner shall have the right, from time to time, to reasonably increase the insurance coverage limits and other requirements provided in this Contract to conform to rail transit industry standards, with consideration given to the size, complexity, nature, use, height, type of construction and risk profile of the Project.

(Paragraphs deleted)

§ 11.1.10 Notice of Cancellation or Expiration of CMAR's Required Insurance. Within three (3) business days of the date the CMAR becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the CMAR shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the CMAR, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the CMAR. The furnishing of notice by the CMAR shall not relieve the CMAR of any contractual obligation to provide any required coverage. Such stoppage of Work shall not be a basis to extend the Contract Time.

§ 11.2 Types of Insurance Requirements

§ 11.2.1 Throughout the term of this Contract and for such additional time as may be required, the CMAR shall purchase and maintain the following minimum insurance coverage:

§ 11.2.1.1 Commercial Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than two million dollars (\$2,000,000.00) bodily injury each person, each accident and two million dollars (\$2,000,000.00) property damage, or two million dollars (\$2,000,000.00) combined single limit - bodily injury and property damage.

§ 11.2.1.2 Workers' Compensation/Employer's Liability Insurance - Workers' compensation insurance meeting all statutory requirements of the State of North Carolina or any other jurisdiction which may apply; and Employers Liability with limits of liability not less than, five hundred thousand (\$500,000.00) per accident limit, five hundred thousand (\$500,000.00) disease per policy limit, five hundred thousand (\$500,000.00) disease each employee limit providing coverage for employees and owners.

§ 11.2.1.3 Commercial General Liability - Commercial General Liability insurance covering all operations by or on behalf of the CMAR on an "occurrence" basis for claims of bodily injury, property damage, and personal injury liability as shall protect the CMAR and any subcontractor performing Work under this Contract, whether such operations are performed by the CMAR, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than two million dollars (\$2,000,000.00) each occurrence and four million dollars (\$4,000,000) in the aggregate annually. This insurance shall include coverage for products, operations, completed operations, personal injury liability and contractual liability assumed under the indemnity provisions of this Contract, with any contractual limitations related to construction and demolition activity above or below the Owner's railroad tracks or within fifty (50) feet horizontally of the Owner's tracks (measured from edge of closest track) and any Explosion/Collapse/Underground (X-C-U) exclusions deleted. The aggregate limit of liability shall apply on a "per project" basis. The Commercial General Liability Insurance, including the Completed Operations coverage, shall be maintained for a period of six (6) years after completion of the Work or for the Statute of Repose for latent defect in the State of North Carolina, whichever is longer.

§ 11.2.1.4 Umbrella/Excess Liability - Umbrella/Excess liability insurance, on an "occurrence" basis excess of the

Commercial Automobile Liability, Employer's Liability and Commercial General Liability insurance required above. Coverage shall be at least as broad as the coverage provided by the underlying insurance; shall include the Owner (and all "Indemnitees") as additional insured; and have limits of liability not less than \$5,000,000 each occurrence and \$5,000,000 in the aggregate annually. Coverage is to "pay on behalf" of all insureds and shall be concurrent in policy term with all underlying insurance. The Umbrella/Excess Liability coverage applicable to the Commercial General Liability insurance, including the Completed Operations coverage, shall be maintained for a period of six (6) years after completion of the work or for the Statute of Repose for latent defect in the State of North Carolina, whichever is longer.

§ 11.2.1.5 Professional Liability – Insurance with a limit of not less than \$5,000,000 per claim, \$5,000,000 aggregate as shall protect the CMAR and the CMAR's employees for negligent acts, errors or omissions in performing the professional services under the contract. Coverage shall include the following minimum terms and conditions:

- .1 Include the Insured's interest in joint ventures as applicable to the Work performed under this contract;
- .2 Punitive damages to be covered where not prohibited by law; and
- .3 Retroactive date for the coverage to be prior to the start of the Work.

Coverage is to be maintained through the statute of repose applicable to the liability for negligent acts, errors or omission in the jurisdiction in which the Work is performed, installed or implemented or 3 years following substantial completion of the Work, whichever is longer unless coverage becomes unavailable on a commercially reasonable basis. The Owner reserves the right to determine whether coverage is available for a commercially reasonable basis and the sole right to agree to no longer require the Professional Errors and Omissions insurance coverage.

§ 11.2.1.6 Railroad Protective Liability (RPL) Insurance – the CMAR shall provide RPL insurance designating the Owner as Name Insured and fully covering the CMAR's operations on the Project. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of the Owner shall have limits of liability of not less than five million dollars (\$5,000,000.00) each occurrence, ten million dollars (\$10,000,000.00) in the aggregate for the project term for Coverages A and B, The electronic original RPL Insurance Policy or binder must be submitted to the Owner fifteen (15) calendar days prior to commencement of construction or demolition work above or the Owner's railroad tracks or within fifty (50) feet horizontally of the Owner's tracks (measured from edge of closest track).

§ 11.2.1.7 Riggers Liability Insurance - All crane operators shall provide and maintain Riggers Liability Insurance insuring against property damage to personal property of others in their care, custody or control on the Project site which is to be used in the Work. Limits of liability not less than five million dollars (\$5,000,000.00).

§ 11.3 DELETED.

§ 11.4 DELETED.

§ 11.5 DELETED.

§ 11.6 Safety Program Participation

The CMAR will adhere to all safety requirements and will follow all safety requirements imposed by the Owner or its designated representative(s).

§ 11.7 Claim and Accident Reporting Procedures

[to be provided by the Owner prior to Contract execution]

§ 11.8 Performance Bond and Payment Bond

The CMAR shall provide surety bonds covering faithful performance of the Contract and payment of obligations arising thereunder in the full amount (100%) of the Contract Sum (or Contract Sums, if the Work is divided into separate phases). Such bonds shall be in the form shown in AIA Document A312, attached hereto as Exhibit B.

§ 11.8.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the CMAR shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Owner or Owner Rep's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Owner Rep, be uncovered for the Owner and Owner Rep's examination and be replaced at the CMAR's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner or Owner Rep has not specifically requested to examine prior to its being covered, the Owner or Owner Rep may request to see such Work and it shall be uncovered by the CMAR. If such Work is in accordance with the Contract Documents, the CMAR shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the CMAR's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The CMAR shall correct Work rejected by the Owner or Owner Rep or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Within 30 days after receiving notice from the Owner or Owner Rep that Work was rejected or fails to conform to the requirements of the Contract Documents, the CMAR shall (a) begin to correct such rejected Work and (b) submit to the Owner a detailed schedule for the correction of such rejected Work. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner and Owner Rep's services and expenses made necessary thereby, shall be at the CMAR's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the CMAR's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CMAR shall correct it within 30 days after receipt of notice from the Owner to do so, unless the Owner has previously given the CMAR a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the CMAR and give the CMAR an opportunity to make the correction, the Owner waives the rights to require correction by the CMAR and to make a claim for breach of warranty. If the CMAR fails to correct nonconforming Work within 30 days after receipt of notice from the Owner, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the CMAR pursuant to this Section 12.2.

§ 12.2.3 The CMAR shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the CMAR nor accepted by the Owner.

§ 12.2.4 The CMAR shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the CMAR's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the CMAR has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the CMAR to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CMAR's liability with respect to the CMAR's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable, with any disputes about such reduction subject to the dispute resolution procedures in Section 15.3. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and CMAR respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 DELETED.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the CMAR shall plan for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The CMAR shall give the Owner and Owner Rep timely notice of when and where tests and inspections are to be made so that the Owner and Owner Rep may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Owner Rep, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Owner Rep will, upon written authorization from the Owner, instruct the CMAR to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the CMAR shall give timely notice to the Owner and Owner Rep of when and where tests and inspections are to be made so that the Owner and Owner Rep may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner and Owner Rep's services and expenses, shall be at the CMAR's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the CMAR and promptly delivered to the Owner and Owner Rep.

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

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 DELETED.

(Paragraphs deleted)

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the CMAR

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make timely payment to Subcontractors or suppliers in accordance with the respective agreements between the CMAR and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the CMAR and the CMAR's surety, if any, seven days' notice, terminate employment of the CMAR and may, subject to any prior rights of the surety:

- .1 Exclude the CMAR from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the CMAR;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the CMAR, the Owner shall furnish to the CMAR a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the CMAR shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner Rep's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the CMAR. If such costs and damages exceed the unpaid balance, the CMAR shall pay the difference to the Owner. These obligations for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the CMAR shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the CMAR for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Under no circumstances shall the CMAR be entitled to, nor shall the Owner be liable for, any loss of anticipated profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and CMAR arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 DELETED.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or CMAR shall be initiated by written notice to the other party. Claims by either party shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 DELETED.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the CMAR shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 DELETED.

§ 15.1.5 Claims for Additional Cost

If the CMAR wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. The CMAR shall submit complete a Change Request, including appropriate supporting documentation, within 14 days of the notice, unless the parties agree upon a longer time period.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the CMAR wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. The CMAR shall submit a complete Change Request, including an estimate of cost and of probable effect of delay on progress of the Work, within 14 days of the notice. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 DELETED.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of

Init.

liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

(Paragraphs deleted)

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

§ 15.2 DELETED.

§ 15.3 Mediation

§ 15.3.1 Pursuant to N.C. Gen. Stat. § 143-128(f)(1), the Owner is required to adopt a dispute resolution process that may be used by all parties involved in the Project. The Owner hereby designates that the dispute resolution process to be used in the Project shall be a good-faith meeting of parties to be followed, if unsuccessful in settling the dispute, by mediation conducted pursuant to the conditions set forth in this Article.

§ 15.3.2 Any party to this Project that is a party to a disputed issue or Claim in which the amount in controversy is at least fifteen thousand dollars (\$15,000.00) may require other parties that are party to the issue or Claim and this Project to participate in the dispute resolution process as set forth in this Article. Unless otherwise directed by the Owner, the CMAR shall continue performance under this Contract while matters in dispute are being resolved. The process set forth by this Article may be foregone upon the mutual written agreement of all parties in interest to the individual dispute. Otherwise, full compliance with this Article is a precondition for any party to initiating any form of litigation concerning the dispute.

§ 15.3.2.1 Subcontract Inclusion - The CMAR shall and hereby agrees to include this Article in every subcontract or any other agreement it enters into with any party related to or that will be involved in this Project.

§ 15.3.2.2 Parties at Issue & Required Notice - If the Owner is not a party to the issue or Claim, the party requesting dispute resolution must still notify the Owner, in writing, of the requested dispute resolution and must include a brief summary of the issue including the alleged monetary value of the issue. The written notice must be sent to the Owner prior to the service of the request for dispute resolution upon the parties to the issue.

§ 15.3.2.2.1 If the party requesting dispute resolution is a subcontractor, it must first submit its Claim to the CMAR with whom it has a contract. If the dispute is not resolved through the CMAR's informal involvement, then the dispute becomes ripe for the dispute resolution process under this Article, and the party may submit its written notice of dispute resolution to the Owner.

§ 15.3.2.2.2 The Owner is under no obligation to secure or enforce compliance with this Article for disputes in which the Owner is not a party. The Owner is entitled to notice of the dispute as required by this Article, but has no obligation to administer, mediate, negotiate, or defray any costs of disputes in which the Owner is not a party, but for the selection of a mediator as set forth in Paragraph 15.3.2.4.1 below.

If the Owner is a party to the issue, the party requesting dispute resolution must submit a written request for dispute resolution to the Owner and any other parties to the issue.

§ 15.3.2.2.3 Prior to submission of a written request for dispute resolution to the Owner, the party requesting mediation must have first fully complied with this Article. If the dispute is not resolved through the process in this Article, paragraph 15.3.2.3 below "Good Faith Meeting", the dispute then becomes ripe for the dispute resolution process under this Article, paragraph 15.3.2.4 below "Mediation", and the party may submit its written request for dispute resolution to the Owner.

§ 15.3.2.2.4 A written request for dispute resolution may be summarily rejected by the Owner if the party submitting such has failed to fully and timely comply with this Article.

§ 15.3.2.2.5 Upon receipt of a written request for dispute resolution that fully complies with the requirements of this Article, the parties to the dispute shall follow the process as set forth in Paragraph 15.3.2.3 below "Good Faith Meeting." The costs of the process shall be divided equally among the parties, with the Owner paying at least one-third (1/3) of the costs if the Owner is a party to the dispute.

§ 15.3.2.3 Good Faith Meeting - Representatives of each party shall meet as soon as reasonable to attempt in good-faith to resolve the dispute. If the Owner is a party to the dispute, all other parties must be represented by a person with the authority to settle the dispute on behalf of their respective parties. The parties may by agreement and in good-faith conduct further meetings as necessary to resolve the dispute. If resolution is not achieved, the parties shall initiate mediation as set forth below.

§ 15.3.2.4 Mediation - The parties to a dispute that is ripe for mediation under this Article shall proceed in the following manner:

§ 15.3.2.4.1 Selection of Mediator - The parties shall in good-faith select a mediator certified in accordance with the rules of mediator certification in Superior Court in North Carolina. If the parties desire a mediator not so certified, the Owner's consent to such a mediator must first be obtained in writing. If the parties cannot agree to a mediator within a reasonable time, the Owner shall have the right to unilaterally select a certified mediator if the Owner is a party to the dispute, or if the Owner is not a party to the dispute but is requested to do so by a party to the dispute.

§ 15.3.2.4.2 Mediation Agreement - Upon selection of a mediator, the parties to the dispute may in good-faith enter into a mediation agreement that shall include terms governing the time, place, scope, and procedural rules of the mediation including those set forth in Paragraph 15.3.2.4.3 below. The agreement shall also include terms governing the compensation, disqualification, and removal of the mediator. All terms of the mediation agreement must be consistent with the terms of this Article and Contract, as well as all applicable laws. If the parties fail to agree to the procedural rules to be used, then the American Arbitration Association Construction Industry Mediation Rules shall be used to the extent such rules are consistent with this Contract and applicable law.

§ 15.3.2.4.3 Stalemate - If after all reasonable good-faith attempts to resolve the dispute have been made, it appears to the mediator that the parties are at a stalemate with no significant likelihood of reaching resolution, the mediator shall so inform the parties and shall issue a written notice of stalemate, which shall conclude the dispute resolution process, unless the parties agree otherwise.

§ 15.3.2.5 The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Mecklenburg County, as the mediator shall determine.

§ 15.3.2.6 The Parties understand and agree that mediation in accordance with this Article shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Article.

§ 15.4 DELETED.

EXHIBIT A

TO THE GENERAL CONDITIONS

[to be inserted into final contract before execution]

EXHIBIT B
TO THE GENERAL CONDITIONS

DRAFT AIA® Document A312® - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

« »
« »

SURETY:

(Name, legal status and principal place of business)

« »
« »

OWNER:

(Name, legal status and address)

« »
« »

CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

« »
« »

BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »
« »
« »

OWNER'S REPRESENTATIVE:

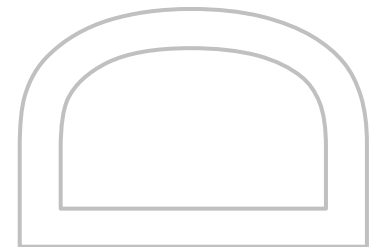
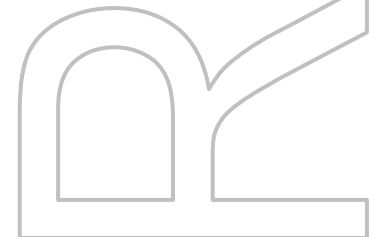
(Architect, Engineer or other party:)

« »
« »
« »
« »
« »
« »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____ (Corporate Seal)

Signature: _____

Name and Title: « »« »

Address: « »

Signature: _____

Name and Title: « »« »

Address: « »



DRAFT AIA® Document A312® - 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

« »
« »

SURETY:

(Name, legal status and principal place of business)

« »
« »

OWNER:

(Name, legal status and address)

« »
« »

CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:
(Name and location)

« »
« »

BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »
« »
« »

OWNER'S REPRESENTATIVE:

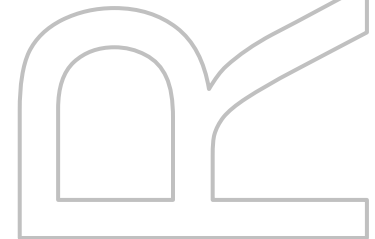
(Architect, Engineer or other party:)

« »
« »
« »
« »
« »
« »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

<< >>

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: << >><< >>
Address: << >>

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: << >><< >>
Address: << >>

SUPPLEMENTARY CONDITIONS – PART A

FEDERAL TRANSIT ADMINISTRATION TERMS

The provisions in this Part A to these Supplementary Conditions are referred to together as the “FTA Terms.” Undefined terms in this Part A have the meanings ascribed to them in the Contract.

1. THE CONTRACTOR SHALL COMPLY WITH ALL FEDERAL REQUIREMENTS

A. The CMAR acknowledges and understands that the Work under this Contract will be financed at least partially with funding from the federal government. The CMAR further acknowledges and understands that this Contract and the Work are subject to: (1) all applicable federal laws, (2) all applicable federal regulations, (3) all applicable federal policies, (4) the conditions and requirements of all federal grants that in any way will fund any part of the Work, and (5) the Federal Transit Administration’s “Master Agreement,” including any certifications or contract provisions that the Master Agreement requires to be included in this Contract. For purposes of these FTA Terms, items (1) through (5) in the immediately preceding sentence, as those items may be amended or updated from time to time, are referred to collectively as “Federal Law.”

B. All provisions of Federal Law are incorporated into this Contract by reference and are fully binding on the CMAR as if they were recited here verbatim. The CMAR shall ensure that all provisions of Federal Law are incorporated into all subcontracts for any part of the Work and in all contracts with those supplying any materials, equipment, or other products for the Work, such that all subcontractors and all suppliers are contractually required to comply with all provisions of Federal Law.

C. The CMAR at all times shall: (1) fully comply with all provisions of Federal Law, (2) ensure that all of the Work (including, for example, all subcontracted Work) fully complies with all provisions of Federal Law, and (3) ensure that no aspect of the Work and no aspect of the CMAR’s performance under this Contract will cause the City or any of its officials, employees, or agents to be at any risk of violating any provision of Federal Law. In addition, the CMAR

shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create any risk of the City or any of its officials, employees, or agents being in violation of any provision of Federal Law.

D. These FTA Terms identify and summarize many provisions of Federal Law. However, the CMAR acknowledges and agrees that the CMAR is fully and ultimately responsible for identifying and learning about all provisions of Federal Law. If these FTA Terms omit any provision or requirement of Federal Law, the CMAR shall remain fully responsible for identifying and learning about that provision or requirement and for fully satisfying the CMAR’s obligations under Article 1.C of these FTA Terms with respect to that provision or requirement. The CMAR will not be excused from ensuring full compliance with any provision or requirement of Federal Law because that provision or requirement is omitted from these FTA Terms, nor will the CMAR have any remedy because any such provision or requirement has been so omitted.

E. By executing this Contract, the CMAR represents to the City and covenants with the City that, as of the date that this Contract takes effect, the CMAR has fully complied with all provisions of Federal Law and that the CMAR shall continue to fully comply with all provisions of Federal Law at all times while this Contract is in effect.

F. Notwithstanding any other provision in this Contract, the CMAR and the City agree that Federal Law and these FTA Terms take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of Federal Law or of these FTA Terms, such that the CMAR cannot satisfy both provisions, the CMAR shall fully comply with the provision of Federal Law or of these FTA Terms. In such a situation, the CMAR

shall disregard the other, conflicting Contract provision, but the CMAR shall do so only to the minimal extent needed to comply fully with Federal Law and with these FTA Terms, and the CMAR otherwise shall fully comply with that conflicting Contract provision to the extent possible.

G. The CMAR and the City agree that, in any situation where the CMAR can comply with both another Contract provision and with a provision of Federal Law or of these FTA Terms, even if the two provisions address the same subject matter (e.g., if another Contract provision imposes an obligation on the CMAR beyond those obligations imposed by Federal Law), that will not be a conflict. Rather, in such a situation, the CMAR shall fully comply with Federal Law, with these FTA Terms, and with the other Contract provision.

2. ACCESS TO CONTRACT RECORDS AND THE PROJECT SITE

A. For purposes of this Article 2 of these FTA Terms, “Contract Records” means all documents (whether in hard copy, digital, or other format) that refer or relate to any aspect of this Contract, of the CMAR’s performance under this Contract, of the Work, or of the Project. For example, Contract Records include all of the following to the extent that they refer or relate to any aspect of this Contract, of the CMAR’s performance under this Contract, of the Work, or of the Project: subcontracts, contracts with suppliers and other third parties, invoices and other billing records, audits and other financial and accounting records, memos, letters, and emails.

- i. For purposes of this Article 2 of these FTA Terms, “Retention End Date” means the later of: The third anniversary of the date on which this Contract is terminated or expires, or if, on or before that third anniversary, the CMAR has received notice (from the City or otherwise) of one or more actual or threatened lawsuits, legal proceedings, disputes, audits, or investigations related in any way to this Contract, to the Work, or to the Project, the date on which the City later notifies the CMAR in writing that all such lawsuits,

legal proceedings, disputes, audits, and investigations have fully and finally concluded.

- ii. The City and the CMAR intend for all Contract Records to be retained, maintained, and made available for inspection and copying until all such lawsuits, legal proceedings, disputes, audits, and investigations have fully and finally concluded, even if that requires retaining, maintaining, and making those records available after the third anniversary of this Contract’s termination or expiration.

B. Through and including the Retention End Date, (a) the CMAR shall retain and maintain all Contract Records that the CMAR ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, the CMAR shall promptly make any and all Contract Records available for inspection and copying by the City, by the federal government, and by their respective contractors and agents, and (c) the CMAR shall comply with all requirements imposed by 2 CFR § 200.334.

C. Through and including the Retention End Date, the CMAR shall ensure that each subcontractor and each supplier providing any material, equipment, or other product for the Work or for the Project shall: (a) retain and maintain all Contract Records that the subcontractor or supplier ever creates, receives, or otherwise possesses or controls so that those Contract Records are always complete, legible, and readily accessible, (b) as the City may request from time to time, promptly make any and all Contract Records in that subcontractor’s or that supplier’s possession or control available for inspection and copying by the City, by the federal government, and by their respective contractors and agents, and (c) comply with all requirements imposed by 2 CFR § 200.334.

D. In addition to taking all other necessary and appropriate steps to satisfy its obligations under Article 2.B(2) of these FTA Terms, the CMAR shall ensure that each subcontract and each supplier contract includes provisions

requiring that the subcontractor or the supplier retain, maintain, and make available Contract Records as required by Article 2.B(2).

E. To avoid any doubt, the CMAR's obligations under the indemnification provisions of this Contract's General Conditions include an obligation to defend, indemnify, and hold harmless each and all of the Indemnitees (as that term is defined in the indemnification provisions) against any Charges (as that term is defined in the indemnification provisions) arising out of or related to any breach by the CMAR of any of its obligations under this Article.

F. In any litigation, legal proceeding, or other dispute-resolution proceeding involving the City and the CMAR, if the CMAR cannot produce any Contract Document that this Article 2 required the CMAR or any subcontractor or supplier to retain, maintain, or make available for inspection and copying, it will be conclusively presumed that the missing Contract Document would have fully supported the City's position in that litigation or other proceeding and would not have supported in any way the CMAR's position. The City and the CMAR agree and consent that, in such a situation, the court or other body with authority over the litigation or other proceeding may and should take any and all steps necessary to implement the conclusive presumption contemplated by this paragraph.

G. The CMAR shall ensure that the City, the federal government, and their respective contractors and agents can access upon request the Project site and any other places where any work or other activity related to the Work is being performed in order to perform audits or inspections or for any other purpose.

3. BUY AMERICA

A. For purposes of this Contract, "Buy America Requirements" means all requirements imposed on the Project or on the Work by 49 U.S.C. § 5323(j) and 49 CFR part 661, as those provisions might be amended from time to time. For example, the Buy America Requirements include a requirement that all iron, steel, manufactured products, and construction materials used for the Work or otherwise

incorporated into the Project are manufactured in the United States or otherwise originate in the United States.

B. The CMAR shall comply with all Buy America Requirements and shall take all steps necessary and appropriate to ensure that no aspect of the Work or of the Project puts the City out of compliance with any of the Buy America Requirements. The CMAR shall provide the City, in accordance with this Article 3, with all certifications that might be requested or required from time to time by the City or by the federal government related in any way to the CMAR's compliance with the Buy America Requirements.

C. The CMAR shall ensure that each subcontractor and each supplier providing any material, equipment, or other product for the Work or for the Project: (1) fully complies with the Buy America Requirements, (2) provides the City, in accordance with this Article 3, with all certifications that might be requested or required from time to time by the City or by the federal government related in any way to that subcontractor's or that supplier's compliance with the Buy America Requirements, and (3) fully complies with all other requirements that this Article 3 contemplates for, or imposes on, subcontractors or suppliers. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 3.C, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with all Buy America Requirements and with this Article 3.

D. All certifications submitted to the City under this Article – whether submitted by the CMAR, by a subcontractor, or by a supplier – must be complete and must be submitted on forms provided by or approved by the City. The first time that the CMAR proposes to use a particular material, equipment, or product from a particular manufacturer, the CMAR shall submit with its certification under this Article a signed letter from the manufacturer confirming that the material, equipment, or product satisfies all Buy America Requirements. In addition to complying

with any other requests from the City to provide certifications under this Article, the CMAR shall submit a certification of its compliance with all Buy America Requirements with each submittal or payment request that it submits to the City and when the Work is fully and finally completed. If the CMAR fails to submit a proper certification under this Article by any deadline specified by this Contract or by the City, the City may withhold any and all payments due to the CMAR under this Contract, including any Progress Payments, until the CMAR brings itself into full compliance with this Article.

E. If the CMAR believes it is necessary to provide iron, steel, manufactured products, or construction materials that do not comply with the Buy America Requirements or that otherwise would put the City, the Work, or the Project out of compliance with the Buy America Requirements, the CMAR shall submit a written justification to the City detailing the item, its estimated cost, the CMAR's rationale for using it, and the reasons that the CMAR believes that the Buy America Requirements cannot be satisfied. The City will determine whether to request a waiver of the Buy America Requirements for that item from the federal government. If the City decides not to request a waiver, or if the City requests a waiver but that request is not approved, the CMAR shall fully satisfy its obligations under this Article and will not be entitled to any remedy.

F. The City from time to time may investigate whether the CMAR, any subcontractor, or any supplier has complied with or is complying with this Article 3. If the City conducts such an investigation, the CMAR shall fully cooperate with that investigation and shall ensure that each subcontractor and each supplier does the same. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 3.F, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully cooperate with any such investigation.

G. Any violation of the Buy America Requirements or of this Article 3 by the CMAR,

by any subcontractor, or by any supplier will be a material breach of this Contract by the CMAR. If such a breach happens, the City may terminate this Contract for default, may pursue any and all other remedies that the City has under this Contract or under the law, or both. To avoid any doubt, the CMAR's obligations under the indemnification provisions of this Contract's General Conditions include an obligation to defend, indemnify, and hold harmless each and all of the Indemnitees (as that term is defined in the indemnification provisions) against any Charges (as that term is defined in the indemnification provisions) arising out of or related to any violation of the Buy America Requirements or of this Article by the CMAR, by any subcontractor, or any supplier.

H. The CMAR acknowledges and agrees that, to the extent that the CMAR or any subcontractor or any supplier provides any rolling stock for the Work or for the Project, the "Buy America Requirements" for purposes of this Article 3 also include all requirements imposed by 49 U.S.C. § 5323(j)(2)(C) and 49 CFR § 661.11, as those provisions may be amended from time to time. It is solely the CMAR's responsibility to determine whether the CMAR, each subcontractor, and each supplier will provide any rolling stock such that 49 U.S.C. § 5323(j)(2)(C) or 49 CFR § 661.11 apply.

4. CIVIL RIGHTS LAWS AND REGULATIONS

A. The CMAR acknowledges that the City is subject to all applicable federal civil rights laws and regulations and with 49 U.S.C. § 5323(h)(3) to the extent that the statute is applicable. The CMAR acknowledges and agrees that "Federal Law" for purposes of Article 1 of these FTA Terms includes all applicable federal civil rights laws and regulations, as they might be amended from time to time. Some of those civil rights laws and regulations are identified and summarized below, and the CMAR acknowledges that its obligations under Article 1 of these FTA Terms include an obligation to fully comply with the laws and regulations identified below and to ensure that all suppliers and all subcontractors fully comply with those laws and regulations. In addition to taking all other necessary and

appropriate steps to satisfy its obligations under this Article 4, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with this Article 4 and with all applicable federal civil rights laws and regulations. Applicable federal civil rights laws and regulations include, for example:

- i. Nondiscrimination. 49 U.S.C. § 5332 and its implementing regulations, which prohibit discriminating against any employee or any applicant for employment because of race, color, religion, national origin, sex, disability, or age.
- ii. Race, Color, Religion, National Origin, Sex. Federal laws and regulations requiring that all job applicants must be employed, and all employees must be treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). For example, a person's race, color, religion, national origin, or sex cannot be considered for purposes of hiring; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; determining rates of pay or other forms of compensation; or selection for training, including apprenticeship. The laws and regulations imposing these requirements include for example Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.); 49 U.S.C. § 5332 and its implementing regulations; United States Department of Labor regulations ("Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor") found in 41 CFR chapter 60; and Executive Order No. 11246 ("Equal Employment Opportunity in Federal Employment") dated September 24, 1965 and found at 42 U.S.C. § 2000e note.
- iii. Age. Federal laws and regulations prohibit discriminating against current or prospective employees on the basis of age. These laws and regulations include for example the Age Discrimination in Employment Act (29 U.S.C. §§ 621-634); United States Equal Employment

Opportunity Commission (U.S. EEOC) regulations ("Age Discrimination in Employment Act") found in 29 CFR part 1625; the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); United States Department of Health and Human Services regulations ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance") found in 45 CFR part 90; and 49 U.S.C. § 5332 and the regulations implementing that statute.

- iv. Disabilities. Federal laws and regulations prohibit discriminating against individuals on the basis of disability. These laws and regulations include for example Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 et seq.); and 49 U.S.C. § 5332 and the regulations implementing that statute.
- v. Access to Services for Persons with Limited English Proficiency. The CMAR shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors facilitate compliance with: (1) Executive Order No. 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), found at 42 U.S.C. § 2000d-1 note and (2) applicable provisions of the United States Department of Transportation Notice ("DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons") found at 70 Fed. Reg. 74087 and dated December 14, 2005.
- vi. Environmental Justice. The CMAR shall facilitate compliance with, and shall ensure that all suppliers and all subcontractors facilitate compliance with: (1) Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") found at 42 U.S.C. § 4321 note and (2) United States Department of Transportation Order 5620.3 ("Department of Transportation Actions To Address

Environmental Justice in Minority Populations and Low-Income Populations”) found at 62 Fed. Reg. 18377 et seq. and dated April 15, 1997.

5. EMPLOYEE PROTECTIONS

The CMAR shall comply with the Labor Standards Provisions, including the minimum wage rates that are included in the Contract Documents and by this reference are made a part thereof.

(1) Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the Work (or under the U.S. Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CMAR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked

therein: Provided, that the employers’ payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon Poster (WH-1321) shall be posted at all times by the CMAR and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The City shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The City shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

The CMAR must submit all requests for conformance to Terrence Watson, Terrence.Watson@charlottenc.gov, for City approval.

(B) If the CMAR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of action taken shall be sent by the City to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the City or will notify the

City within the thirty (30)-day period that additional time is necessary.

(C) In the event the CMAR, the laborers or mechanics to be employed in the classification or their representatives, and the City do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the City shall refer the questions, including the views of all interested parties and the recommendation of the City, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the City or will notify the City within the thirty (30)-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in this Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CMAR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CMAR does not make payments to a trustee or other third person, the CMAR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the CMAR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CMAR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld from the CMAR under this Contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the CMAR or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, the City may, after written notice to the CMAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls & Basic Records

(i) Payrolls and basic records relating thereto shall be maintained by the CMAR during the course of the Work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CMAR shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The CMAR shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the City for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted into the City's LCP Tracker System at <https://lcptracker.com/>. The information to be included in the City's LCP Tracker System is the same information required on the USDOL's WH-347 form. The CMAR is responsible for the submission of copies of payrolls by all subcontractors. The CMAR and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City for transmission to the FTA, the CMAR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for the CMAR to require a subcontractor to provide addresses and social security numbers to the CMAR for its own records, without weekly submission to the FTA or the City.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the

CMAR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 C.F.R. § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 C.F.R. § 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by Paragraph (3)(ii)(B) of this section. The certification may be completed online in the City's LCP Tracker System at <https://lcptracker.com/>.

(D) The falsification of any of the above certifications may subject the CMAR or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

(iii) The CMAR or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City, the FTA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CMAR or subcontractor fails to submit the required records or make them available, the FTA or the City may, after written notice to the

CMAR, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(4) Apprentices & Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CMAR as to the entire work force under the registered program. Any worker listed on the payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CMAR's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress,

expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CMAR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a

training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CMAR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the Equal Employment Opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The CMAR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Subcontracts. The CMAR or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the FTA or the City may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CMAR shall be responsible for the compliance of any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

(7) Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

(8) Compliance with Davis-Bacon & Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CMAR (or any of its subcontractors) and the City, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility

(i) By entering into this Contract, the CMAR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CMAR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

(11) Minimum Wage Rates. The Minimum Wage Rates are those established, for the listed trade working at the jobsite by the U.S. Secretary of Labor. The rates have been established in accordance with the stipulations contained in the Davis-Bacon Act, as amended, and have been established as being the rates for the corresponding classes of workmen employed for projects of a similar character in the locality where the work is to be performed. The CMAR shall pay wages and fringe benefits at rates not less than those stipulated for each listed trade. A mistake in the indicated wages and fringe benefits will not entitle the CMAR to cancel the Project, to increase the Contract price, or to additional payments and recoveries.

6. ENERGY CONSERVATION

The CMAR shall fully comply with the standards and policies related to energy efficiency in the state energy conservation plan issued under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, et seq. The CMAR also shall ensure that

each supplier and each subcontractor fully complies with those same standards and policies. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 6, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with this Article.

7. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

A. The CMAR shall fully comply with, and shall facilitate the City's compliance with, those United States Department of Transportation regulations entitled "Nonprocurement Suspension and Debarment," which are found in 2 CFR part 1200 and which adopt and supplement the United States Office of Management and Budget's "Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement)," which are found in 2 CFR part 180.

B. The CMAR shall ensure that it and all of its officers, principals, affiliates, suppliers, and subcontractors are fully eligible, without limitation, to participate in this federally funded Contract and are not currently declared by any federal department or agency to be:

- i. Debarred from participation in any federally assisted award;
- ii. Suspended from participation in any federally assisted award;
- iii. Proposed for debarment from participation in any federally assisted award;
- iv. Declared ineligible to participate in any federally assisted award;
- v. Voluntarily excluded from participation in any federally assisted award; or
- vi. Disqualified from participation in any federally assisted Award.

C. The CMAR at all times shall fully comply with the regulations in 2 CFR part 180, subpart C, as supplemented by the regulations in 2 CFR part 1200.

D. The CMAR shall ensure that, at all times, all suppliers and all subcontractors fully comply with all provisions of this Article 7 to the same

extent that the CMAR is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 7.D, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with this Article 7.

E. By executing this Contract, the CMAR certifies to the City that the CMAR has fully complied as of the date that this Contract takes effect with all provisions in this Article 7 and that the CMAR shall continue to fully comply with all provisions in this Article 7 at all times while this Contract remains in effect. The CMAR acknowledges and agrees that the certification provided by the CMAR under this Article 7.E is a material representation of fact on which the City may rely. If at any time this certification is found by the City to be false or inaccurate in any way, that will be a material breach of this Contract by the CMAR, and in such a situation the City may pursue any and all remedies available to it under this Contract and otherwise at law. Additionally, the CMAR acknowledges that, if such a breach happens, the federal government also might choose to pursue any and all remedies available to it, including for example seeking the suspension or debarment of the CMAR.

8. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

A. The CMAR acknowledges and agrees that the federal government is not a party to this Contract and that the federal government will not, because of this Contract, have any obligations or liabilities to the CMAR or to anyone else. The CMAR acknowledges and agrees that the first sentence of this paragraph will not be affected by the federal government concurring in, or approving of, the solicitation or award of this Contract unless the federal government explicitly consents in writing to being a party to this Contract.

B. The CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes a provision in which the parties to that subcontract or supplier contract acknowledge and agree that the federal

government is not a party to that subcontract or supplier contract and that the federal government will not, because of that subcontract or supplier contract, have any obligations or liabilities to that subcontract's or supplier contract's parties or to anyone else.

9. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS

A. The CMAR shall fully comply with all provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801 et seq.) and with the United States Department of Transportation regulations entitled "Program Fraud Civil Remedies" that are found in 49 CFR part 31.

B. By executing this Contract, the CMAR certifies to the City the complete truthfulness and total accuracy of every statement that the CMAR has made, has caused to be made, will make, or will cause to be made that relates in any way to this Contract, to the Work, or to the Project. The CMAR acknowledges and agrees that the certification provided by the CMAR under this Article is a material representation of fact on which the City may rely. If at any time this certification is found by the City to be false or inaccurate in any way, that will be a material breach of this Contract by the CMAR, and in such a situation the City may pursue any and all remedies available to it under this Contract and otherwise at law. Additionally, the CMAR acknowledges that, if such a breach happens, the federal government also might choose to pursue any and all remedies available to it, including for example imposing penalties on the CMAR under the Program Fraud Civil Remedies Act of 1986, 18 U.S.C. § 1001, and 49 U.S.C. § 5307(n).

C. The CMAR shall ensure that, at all times, all suppliers and all subcontractors fully comply with all provisions of this Article 9 to the same extent that the CMAR is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article 9.C, the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with this Article 9.

10. SAFE OPERATION OF MOTOR VEHICLES

The CMAR shall adopt and promote on-the-job seat belt use policies and programs for its employees and for anyone else who will operate any vehicles in relation to the Work, regardless of whether those vehicles are owned or leased by the CMAR, the City, or another person or entity.

The CMAR shall adopt and enforce workplace safety policies to minimize crashes caused by distracted drivers. These policies must include policies that ban and discourage text messaging by anyone operating a vehicle in relation to the Work, regardless of whether those vehicles are owned or leased by the CMAR, the City, or another person or entity.

11. FEDERAL CHANGES

The CMAR at all times shall fully comply with all applicable FTA regulations, policies, procedures, and directives, including for example those listed or by reference in the FTA Master Agreement, as they might be issued or amended from time to time. Any failure by the CMAR to do so will be a material breach of this Contract by the CMAR.

The CMAR shall ensure that all suppliers and all subcontractors at all times fully comply with all applicable FTA regulations, policies, procedures, and directives to the same extent that the CMAR is required to do so. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article the CMAR shall ensure that each subcontract and each supplier contract related to the Work or to the Project includes provisions requiring that the subcontractor or the supplier fully comply with this Article just as the CMAR is required to do.

12. INCORPORATION OF FTA TERMS

The CMAR and the City acknowledge and agree that the United States Department of Transportation requires certain provisions (the "Applicable FTA Clauses") to be included in this Contract because this Contract is funded at least partially with federal funds. The Applicable FTA Clauses are specified in Federal Law and are also summarized in FTA Circular 4220.1F, as it may be amended or superseded from time to time. The

City and the CMAR have tried to expressly include all Applicable FTA Clauses in these FTA Terms or elsewhere in this Contract. However, the City and the CMAR agree that, if any of the Applicable FTA Clauses have not been expressly included in this Contract, those Applicable FTA Clauses are nonetheless deemed incorporated into this Contract by reference and will be fully binding on the CMAR as if they had been expressly included in this Contract.

Notwithstanding any other provision in this Contract, the CMAR and the City agree that the Applicable FTA Clauses take priority over all other Contract provisions. This means that, if a conflict arises between another Contract provision and any provision of the Applicable FTA Clauses, such that the CMAR cannot satisfy both, the CMAR shall fully comply with the Applicable FTA Clauses. In such a situation, the CMAR shall disregard the other, conflicting Contract provision, but the CMAR shall do so only to the minimal extent needed to comply fully with the Applicable FTA Clauses, and the CMAR otherwise shall fully comply with that conflicting provision. In contrast, in any situation where the CMAR can comply with both another Contract provision and with the Applicable FTA Clauses, even if these provisions address the same matter (for example, if another Contract provision imposes an obligation on the CMAR beyond those imposed by the Applicable FTA Clauses), that will not be a conflict, and in such a situation the CMAR shall fully comply with the Applicable FTA Clauses and with the other Contract provision.

The CMAR at all times shall: (1) fully comply with all provisions of the Applicable FTA Clauses, (2) ensure that all of the Work (including, for example, all subcontracted Work) fully complies with all provisions of the Applicable FTA Clauses, and (3) ensure that no aspect of the Work and no aspect of the CMAR's performance under this Contract will cause the City or any of its officials, employees, or agents to violate any provision of the Applicable FTA Clauses. In addition, the CMAR shall not perform any act, fail to perform any act, or refuse to comply with any City request to the extent that doing any of those things would create a risk of

the City or any of its officials, employees, or agents being in violation of any provision in the Applicable FTA Clauses.

The CMAR shall ensure that all provisions of the Applicable FTA Clauses (including of any Applicable FTA Clauses not expressly included in this Contract) are incorporated into all subcontracts for any part of the Work and in all contracts with those supplying any materials, equipment, or other products for the Work such that all subcontractors and all suppliers are contractually required to comply with all provisions of the Applicable Federal Clauses.

13. FEDERAL ACQUISITION REGULATIONS (F.A.R.) COMPLIANCE

To the extent that this Contract provides for or allows for any adjustment to the CMAR's compensation based on costs or expenses incurred by the CMAR, any such adjustment must be determined based solely on any costs or expenses that:

- i. are incurred in full compliance with all of this Contract's provisions,
- ii. the City is clearly required under this Contract to reimburse the CMAR for,
- iii. are allowable, allocable, and reasonable, as those terms are defined and used in the Contract Cost Principles of the Federal Acquisition Regulations (F.A.R.) System (found in 48 CFR chapter 1, part 31), including as those principles may be further defined or implemented by regulations or guidance adopted by the federal government, and
- iv. are otherwise allowed under applicable law.

14. CLEAN AIR

The CMAR shall fully comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 U.S.C. §§ 7401, et. seq, as amended). The CMAR shall promptly notify the City if the CMAR receives notice of any possible or actual violation (a "Clean Air Act Violation") of the Clean Air Act or of any of those standards, orders, or regulations, and the CMAR shall provide the City with all information that the CMAR has about the actual or possible violation. The CMAR acknowledges and agrees that the

City might be required by law to report (or that the City might choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, or to other governmental entities, and the CMAR will not be entitled to any remedy because the City does so.

The CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions: (1) requiring each subcontractor and each supplier to promptly notify the CMAR and the City if the subcontractor or supplier receives notice of any possible or actual Clean Air Act Violation and to provide the CMAR and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City might be required by law to report (or that the City might choose to report, even if not required by law) any actual or possible Clean Air Act Violation to the FTA, to one or more EPA Regional Offices, or to other governmental entities and that the subcontractor or supplier will have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

15. CLEAN WATER

The CMAR shall fully comply with all applicable standards, orders, and regulations issued under the Water Pollution Control Act (33 U.S.C. §§ 1251, et. seq. as amended). The CMAR shall promptly notify the City if the CMAR receives notice of any possible or actual violation (a “Clean Water Act Violation”) of the Water Pollution Control Act or of any of those standards, orders, or regulations, and the CMAR shall provide the City with all information that the CMAR has about the actual or possible violation. The CMAR acknowledges and agrees that the City might be required by law to report (or that the City might choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, or to other governmental entities, and the CMAR will not be entitled to any remedy because the City does so.

The CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions: (1) requiring each subcontractor and each supplier to promptly notify the CMAR and the City if the subcontractor or supplier receives notice of any possible or actual Clean Water Act Violation and to provide the CMAR and the City with all information that the subcontractor or supplier has about the actual or possible violation and (2) in which each subcontractor and each supplier acknowledges and agrees that the City might be required by law to report (or that the City might choose to report, even if not required by law) any actual or possible Clean Water Act Violation to the FTA, to one or more EPA Regional Offices, or to other governmental entities and that the subcontractor or supplier will have no claim, right, or remedy against the City or against any City official, employee, or agent because the City does so.

16. LOBBYING

A. The CMAR shall fully comply with 31 U.S.C. § 1352, as amended; with any regulations implementing that statute; and with any non-superseded guidance about that statute issued by the federal government (this statute, those regulations, and that guidance together are the “Byrd Anti-Lobbying Amendment”).

B. The CMAR shall ensure that each subcontractor and all of those supplying any materials, equipment, or other products for the Work fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment. In addition to taking any other steps necessary and appropriate to satisfy its obligations under this section B, the CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions requiring each subcontractor and each supplier to fully comply with all requirements imposed by the Byrd Anti-Lobbying Amendment and by this Article.

C. In addition to complying with all other requirements of the Byrd Anti-Lobbying

Amendment, in order to comply fully with the Byrd Anti-Lobbying Amendment for purposes of this Article, the CMAR and each subcontractor and supplier must file one or more certifications as required by 49 CFR part 20 (entitled "New Restrictions on Lobbying").

D. In addition to all other consequences and implications provided by law for filing such a certification, when a subcontractor files one, the subcontractor is deemed to certify to the contractor or subcontractor at the tier immediately above it that the certifying subcontractor has not, and shall not, use any federal funds to pay any person, entity, or organization to influence or attempt to influence an officer or employee of any governmental agency, any member of Congress, any officer or employee of Congress, or any employee of a member of Congress concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment.

E. When filing such a certification, the CMAR and each subcontractor and supplier also shall disclose along with that certification the name of any registrant under the Lobbying Disclosure Act of 1995 who has been paid non-federal funds to make lobbying contacts on the certifier's behalf concerning or in connection with any federal contract, federal grant, or any other award covered by the Byrd Anti-Lobbying Amendment. All of these disclosures must be made on forms designated or approved by the City. Each subcontractor and supplier shall promptly forward to the contractor or subcontractor at the tier immediately above it all such disclosures that the subcontractor or supplier receives from anyone involved in any way in the Work (e.g., lower-tier subcontractors), and the CMAR shall promptly provide the City with the CMAR's own disclosures and with all such disclosures that the CMAR receives from subcontractors and suppliers.

17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT

A. No laborer or mechanic, during any workweek in which he or she is involved in any way with the Work, may work more than forty

(40) hours unless they are paid at least one and one-half times their base pay rate for all hours over forty (40) that they work during that workweek. The obligations imposed by this Article are the "Overtime Requirements."

B. The CMAR shall ensure that the Overtime Requirements are fully satisfied with respect to any individual who performs any part of the Work or who otherwise works at the Project site, including for example with respect to any such individual who is employed by any subcontractor.

C. Any violation of the Overtime Requirements by the CMAR or by any subcontractor or supplier will be: (1) a material breach of this Contract by the CMAR and (2) a material breach by that subcontractor or that supplier of its subcontract or its supplier contract related to the Work.

D. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the CMAR and any subcontractor or supplier that violated the Overtime Requirements will be jointly and severally liable to the laborer or mechanic at issue for all wages that were not paid to that laborer or mechanic in accordance with the Overtime Requirements.

E. If such a breach happens, in addition to all other remedies provided by this Contract or by the law, the CMAR and any subcontractor or supplier that violated the Overtime Requirements will be jointly and severally liable to the federal government for liquidated damages. Those liquidated damages will be computed with respect to each individual laborer or mechanic who was underpaid, including each underpaid watchman and guard, as follows: Thirty-one dollars (\$31.00) for each calendar day that each mechanic or laborer was required or permitted to work more than forty (40) hours during a workweek without being paid in accordance with the Overtime Requirements.

F. Whether or not the federal government asks or instructs the City to do so, the City may withhold (or may cause to be withheld) from any moneys owed to the CMAR or to any

subcontractor or supplier that violated the Overtime Requirements such sums that the City determines might be necessary to satisfy any liabilities of the CMAR or that subcontractor or supplier for the unpaid wages or for the liquidated damages contemplated by this Article. These sums may be withheld from any moneys owed to the CMAR or to that subcontractor or supplier under: (a) this Contract, (b) any subcontract or supplier contract related to the Work, or (c) any other contract or subcontract, whether or not related to the Project, under which the compensation to be paid will be funded at least partially with federal funds.

G. The CMAR shall ensure that the CMAR, all subcontractors, and all suppliers: (i) prepare and maintain complete and accurate payroll records that fully comply with this Article and with all industry standard accounting and employment practices and (ii) maintain all of those payroll records and make them available for inspection and copying as required for Contract Records under Article 2 of these FTA Terms.

H. These payroll records must include payroll information for all individuals who perform any of the Work, including by example for all guards and watchmen who perform any of the Work or who otherwise work at the Project site.

I. These payroll records must contain the following information for each employee:

- i. name and address,
- ii. social security number,
- iii. employment classifications,
- iv. the hourly or other rates at which the employee was paid,
- v. the number of hours that worked each day and each week,
- vi. detailed information about the deductions made from the employee's pay, and
- vii. the actual wages paid to each employee.

J. The CMAR shall allow the City, the FTA, the federal Department of Labor, and any of their agents or representatives to interview during working hours any employees or other personnel who have performed, are performing, or are expected to perform any part of the Work.

The CMAR also shall ensure that all subcontractors and all suppliers allow such interviews to be conducted.

K. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article to ensure that all subcontractors and all suppliers fully comply with this Article, the CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions requiring each subcontractor and each supplier to fully comply with this Article.

18. PROCUREMENT OF RECOVERED MATERIALS

A. The CMAR shall fully comply with Section 6002 of the Solid Waste Disposal Act, as that statute has been amended by the Resource Conservation and Recovery Act and by any other legislation.

B. In addition to taking all other steps necessary and appropriate to satisfy its obligations under section A of this Article, the CMAR shall do all of the following:

1. Ensure that, whenever any material or product is procured for the Work or for the Project, and that material or product is listed or identified in those Environmental Protection Agency (EPA) regulations in 40 CFR part 247, the material or item is procured so that it contains the highest percentage of recovered materials that is practicable while still maintaining a satisfactory level of competition in the procurement process. Except to the extent that Federal Law may otherwise provide, the requirements of this Article will apply only where the purchase price of a particular material or product exceeds \$10,000 or where the value of the quantity of that material or product acquired during the preceding fiscal year exceeded \$10,000.
2. Ensure that all solid waste management services used for or in relation to the Work are procured in a manner that ensures that those services shall maximize energy and resource recovery.

3. Establish an affirmative program for the procurement of recovered materials identified in those Environmental Protection Agency (EPA) regulations in 40 CFR part 24.

C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article of these FTA Terms, the CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions requiring each subcontractor and each supplier to fully comply with this Article to the same extent that the CMAR must do so and to facilitate, support, and cooperate in the CMAR's compliance with this Article.

19. FLY AMERICA

A. The CMAR shall fully comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118, as amended) and those United States General Services Administration regulations entitled "Use of U.S. Flag Air Carriers" that are found at 41 CFR §§ 301-10.131 through 301-10.143 (together, this statute and those regulations are the "Air Travel Requirements").

B. The CMAR shall ensure that all subcontractors and all suppliers fully comply with the Air Travel Requirements and with this Article of these FTA Terms.

C. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article, the CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions requiring each subcontractor and each supplier to fully comply with this Article and with the Air Travel Requirements.

D. In addition to taking all other steps necessary and appropriate to fully comply with the Air Travel Requirements, the CMAR and all subcontractors and suppliers shall use only U.S.-flag air carriers for any international air

transportation that is used to transport any person or any property for or in relation to the Work or to the Project. The requirements of this Article will not apply, however, to the extent that any needed air transportation is not provided by any U.S.-flag air carriers.

20. CARGO PREFERENCE

A. Whenever shipping any equipment, material, other product, or other commodity needed for the Work or otherwise related to this Contract, the CMAR shall use privately owned U.S.-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers). This requirement, however, will apply only to the extent that privately owned U.S.-flag commercial vessels are available for such shipping at fair and reasonable rates for U.S.-flag commercial vessels.

B. Within twenty (20) days after the date of loading for a shipment originating within the United States, and within thirty (30) days after the date of loading for a shipment originating outside of the United States, the CMAR shall provide complete and legible copies of a rated, "on-board" commercial ocean bill-of-lading in English for that shipment to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the City (through the CMAR in the case of a subcontractor's bill-of-lading).

C. The CMAR shall ensure that all subcontractors and all suppliers fully comply with the requirements of sections A and B of this Article to the same extent that the CMAR must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article, the CMAR shall ensure that all subcontracts for any part of the Work and all contracts with those supplying any materials, equipment, or other products for the Work include provisions requiring each subcontractor and each supplier to fully comply with this Article.

21. SEISMIC SAFETY REQUIREMENTS

A. To the extent that any part of the Work involves constructing a new building, renovating

an existing building, or adding to an existing building, the CMAR shall ensure that the new building, the renovated building, or the building addition are constructed in accordance with the standards for seismic safety required by those United States Department of Transportation regulations in 49 CFR part 41. The CMAR also shall certify the Work's compliance with those regulations as required by those regulations.

B. The CMAR shall ensure that all subcontractors fully comply with the requirements of this Article of these FTA Terms to the same extent that the CMAR must comply with them. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article, the CMAR shall ensure that all subcontracts for any part of the Work include provisions requiring each subcontractor to fully comply with this Article.

22. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

The CMAR shall fully comply, to the extent applicable, with the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c) (23 U.S.C. § 512 and as amended by MAP-21, 23 U.S.C. § 517(d), note) and shall fully follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives.

23. PROHIBITION ON COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

The CMAR, by entering into this Contract certifies that, consistent with 2 CFR § 200.216 it will not use "covered telecommunications equipment or services" (as that term is defined in Section 889 of Public Law 115-232) if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system provided under this Contract. The CMAR will include a requirement not to use such "covered telecommunications equipment or services" in any subcontracts for the provision of "covered telecommunications equipment or services" let under this Contract. "

As used in this clause "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Covered telecommunications equipment or services" as used in this clause, includes but is not limited to:

- i. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- iii. Telecommunications or video surveillance services provided by such entities listed in (i) or (ii) of this Article or using such equipment provided by entities listed in (i) or (ii) of this Article.
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

24. NOTICE OF DISPUTES, BREACHES, DEFAULTS, AND LITIGATION

If a current or prospective legal matter that may affect the City or the Federal Government emerges, the CMAR must notify the City. The CMAR must include a similar notification requirement in each of its subcontracts for twenty-five thousand dollars (\$25,000) or more. Legal disputes that require notification under this provision include, but are not limited to:

- i. A major dispute, breach, default, litigation, or naming the City or naming the Federal Government as a party to litigation or a

legal disagreement in any forum for any reason.

- ii. Matters that may affect the Federal Government (and thereby the City) include, but are not limited to, the or the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The CMAR must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for FTA Region 4, if the CMAR has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is the subject of this Contract, another Contract funded by the FTA, or an agreement involving a principal, officer, employee, or agent of the CMAR. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a

criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the CMAR. In this paragraph, "promptly" means to refer information without delay and without change.

25. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the CMAR should, to the greatest extent practicable under the Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). For the purposes of this clause:

- i. "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and
- ii. "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

SUPPLEMENTARY CONDITIONS – PART B

DISADVANTAGED BUSINESS ENTERPRISE TERMS¹

City Of Charlotte: Charlotte Area Transit System (CATS)

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS & FORMS

THE DBE GOAL FOR THIS CONTRACT IS: XX.X%

This Contract is subject to the requirements of 49 CFR Part 26 *Participation by DBE in Department of Transportation Financial Assistance Programs.*

I. POLICY

As a recipient of funds from the Federal Transit Administration (“FTA”), the City has established a Disadvantaged Business Enterprise Program (“DBE Program”) in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 CFR Part 26 and has committed to ensuring compliance on all FTA-funded projects through monitoring, reporting, and goal-setting.

The DBE Program is incorporated into and made a part of the Bidding Documents and resulting Contract. Copies of the DBE Program may be obtained online at: <http://charmeck.org/city/charlotte/cats/about/Business/procurement/Pages/dbesbe.aspx>; under “City of Charlotte’s DBE Program (document)” on the www.ridetransit.org “Doing Business with CATS as a DBE/SBE” page.

It is the policy of the City to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The City’s objectives are as follows:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The CATS Civil Rights Officer has been designated as the DBE Liaison Officer (“DBELO”). In that capacity, he/she is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the DOT.

II. APPLICATION

Pursuant to 49 CFR Part 26 and the DBE Program, all Bidders must affirmatively ensure that in any contract entered into with the City, DBEs will be afforded equal opportunity to participate in subcontracting opportunities.

A Bid will not be considered responsive unless the Bidder complies with 49 CFR Part 26 and the DBE Program. Failure to carry out the pre-award requirements stated in the DBE Contract Provisions will be

¹ Undefined terms in this Part B have the meanings ascribed to them in the Contract.

sufficient grounds to reject the Bid. Moreover, failure by the CMAR to comply with 49 CFR Part 26 and the DBE Program after award shall constitute a breach of Contract.

The Bidder shall thoroughly examine and be familiar with provisions of 49 CFR Part 26 and the DBE Program. Submission of a Bid shall constitute an acknowledgment upon which the City may rely that the Bidder has thoroughly examined, and is familiar with said regulations and contract requirements. Failure or neglect of a Bidder to receive or examine any of these government regulations and contract requirements shall in no way relieve him from any obligations with respect to his Bid or this Contract.

III. REQUIREMENTS

The CMAR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CMAR shall carry out applicable requirements of 49 CFR Part 26 and the DBE Program in the award and administration of this DOT-assisted contract. Failure by the CMAR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate. Each subcontract the CMAR signs with a subcontractor (both DBE and non-DBE subcontractors) must include the assurance in this paragraph. Such contract language is located in Section VIII below. (See 49 CFR § 26.13(b)).

Bidders are required to document sufficient DBE participation to meet the goal established for this Contract or, alternatively, document adequate Good Faith Efforts to do so, as provided for in 49 CFR § 26.55. Specifics regarding Good Faith Efforts is located in Section VI below. Award of this Contract is conditioned upon the submission of the following concurrent with and accompanying the sealed Bid:

1. The names and addresses of DBE firms that will participate in this Contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the Bidder's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;
5. Written confirmation from the DBE that it is participating in the Contract as provided in the CMAR's commitment; and
6. If the Contract goal is not met, evidence of Good Faith Efforts to do so.

Bidders must present the information required above as a matter of responsiveness with the Bid submission. Additional information on all required documentation is specified in Section VII below. (See 49 CFR § 26.53 (3)). By submitting a Bid, the Bidder gives assurances that he/she will meet the Contract goal for DBE participation in performance of this Contract, or as an alternative, that the Bidder has made such Good Faith Efforts as required in Section VI below.

The CMAR is required to pay each subcontractor under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the CMAR receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City. This clause applies to both DBE and non-DBE subcontractors.

The CMAR is required to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

For purposes of this Section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made incremental acceptance of a portion of the Contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The CMAR's failure to pay subcontractors as provided shall be a material breach for which the City may cancel this Contract.

The CMAR may not hold retainage from its subcontractors once the City has provided notice that the work completed by the subcontractors has been completed and has been accepted.

To terminate a DBE subcontractor, the CMAR must follow the procedure stated in Section 26.53(f) of the DBE Program. The CMAR shall not terminate a DBE subcontractor **without prior written consent of the City**. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE Program. In those instances where "good cause" exists to terminate a DBE subcontractor, the City will require the CMAR to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the Contract goal. The CMAR shall notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

If the CMAR fails or refuses to comply, the Contracting Officer will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the CMAR still fails to comply, the Contracting Officer may terminate the Contract.

IV. REQUIRED DOCUMENTATION

A Bid will not be considered responsive unless the Bidder complies with 49 CFR Part 26 and the City's DBE Program. The applicable forms in this section **MUST** be completed and included with the Bid (or specified timeframe) if a Bidder is to be considered responsive. If these forms are not submitted as such, the Bidder will be considered non-responsive and the Bid rejected. The required forms are listed below.

1. LIST OF SUBCONTRACTORS/SUPPLIERS – FORM A

The Bidder must submit its proposed DBE and non-DBE utilization on FORM A (List of Subcontractors/Suppliers) listing **ALL** subcontractors and suppliers that will be providing goods or services under the Contract. This form is to include all subcontractors the Bidder proposes to use, not just the DBE subcontractors. Bidders are required to list the names, contact information, annual gross receipts, age of firm, respective scope of work/service to be performed, NAICS Code, NCDOT Reporting Number, the dollar values of each subcontract that the Bidder proposes for participation in the Contract work, and the dollar value of total DBE participation for the Contract.

Blank forms will be deemed to represent zero participation. Forms without a signature will be considered non-responsive.

2. EVIDENCE OF GOOD FAITH EFFORTS – FORM C

If the information submitted in FORM A indicates that the City's goal will not be met, the Bidder shall also submit evidence sufficient to show to the City's satisfaction that the Bidder has in good faith made every reasonable effort, in the City's judgment, to meet such goal prior to contract award. FORM C (Evidence of Good Faith Efforts) must be completed and all accompanying documentation provided to show DBE firms that were contacted, but were not utilized. More information relating to Good Faiths Efforts is located in Section VI below.

Blank forms will be deemed to represent zero Good Faith Efforts. Completed forms without accompanying documentation will be considered non-responsive.

3. LETTER OF INTENT – FORM D

The Letter of Intent (FORM D) must be completed for **EACH** DBE listed on FORM A. Letters of Intent are not required to be submitted with the Bid, but can be submitted with the Bid. However, the apparent low Bidder will be required to submit Letters of Intent within three (3) business days from the time the City makes the request.

All documentation submitted at time of Bid, as well as additional data provided by the successful Bidder, is considered part of the Contract Documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of Bid must have prior approval of the DBELO.

V. DBE PARTICIPATION TOWARDS DBE GOAL

In accordance with 49 CFR Part 26 and the DBE Program, the City may set contract specific goals. The degree of goal attainment by DBE contractors and DBE suppliers should be calculated as follows:

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE counts toward the DBE goal and shall be calculated as follows:
 - A. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph 2 of this Section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - B. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - C. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
2. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - A. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you

must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - C. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - D. When a DBE is presumed not to be performing a commercially useful function as provided in this Section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - E. Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
4. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - E. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.
 - F. Example: DBE Firm X uses two (2) of its own trucks on a contract. It leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six (6) trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight (8) trucks. With respect to the other two (2) trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- G. For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - 1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - 2) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - 3) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
 - C. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
6. If a firm is not currently certified as a DBE in accordance with the standards of this Section at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 49 CFR § 26.87(i).
7. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

8. Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

VI. DOCUMENTATION OF GOOD FAITH EFFORTS

In order to be responsive, a Bidder must make good faith efforts to meet the DBE participation goal set forth in the Contract. The Bidder must document the good faith efforts it made in that regard. Thus, the Bid submitted to the City must be accompanied by written documentation prepared by the Bidder evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE participation to meet the Contract DBE participation goal. Mere pro forma efforts are not acceptable and will be rejected by the DBELO. The DBELO shall be responsible for determining whether the Bidder satisfied the good faith efforts.

Good faith efforts require that the Bidder consider all qualified DBEs, who express an interest in performing work under the Contract. This means that the Bidder cannot reject a DBE as unqualified unless the Bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation are not legitimate causes for the rejection or non-solicitation of bids in the CMAR's efforts to meet the Contract DBE participation goal. The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a Bidder to meet the DBE goal.

1. Attendance at a pre-bid meeting, if any, scheduled by the City to inform DBEs of subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before Bids are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable.
3. Written notification to capable DBEs that their interest in the Contract is solicited.
4. Documentation of efforts to negotiate in good faith with interested DBEs for specific subcontracts. It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers, so as to facilitate DBE participation. Such documentation includes at a minimum:
 - A. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;
 - B. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 - C. A statement explaining why additional agreements with DBEs were not reached;
 - D. For each DBE the Bidder contacted but rejected as unqualified, the reason for the Bidder's conclusion; and
 - E. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Bidder or the City.

NOTE: A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make GFEs. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Documentation of efforts to utilize the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
6. Documentation that the Bidder has broken out Contract work items into economically feasible units in fields where there are available DBE firms to perform the work in order to increase the likelihood that DBEs goals will be achieved.
7. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the Contract, and that such information was communicated in a timely manner with sufficient time to allow the DBEs to respond to the solicitation.
8. Documentation of efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Bidders must present the information required above as a matter of responsiveness on FORM C together with accompanying documentation. (See 49 CFR § 26.53 (b)(3)(i)).

VII. DBE REPORTING AND RECORD KEEPING REQUIREMENTS

Once a Bidder has been awarded a Contract, there are continuing obligations under the DBE Program. The City shall verify the veracity and accuracy of representations made by the CMAR as well as to ensure their compliance with these requirements. To ensure that all such obligations and representations are met, the City will conduct periodic reviews of the CMAR's DBE involvement efforts during Contract performance. These procedures will include, but not be limited to, the following:

1. The CMAR shall submit a monthly report on DBE Participation with each request for payment from the City. Such information shall be provided on **MONTHLY PAYMENT TO SUBCONTRACTORS/SUPPLIERS – FORM B**. Failure to submit this form with every request for payment will result in delays in payment.
2. The CMAR shall bring to the attention of the DBELO any situation in which regularly scheduled progress payments are not made to DBE subcontractors.
3. The CMAR shall maintain their books, records, and accounts for three (3) years following the performance of this Contract. These records shall be maintained by the CMAR in a fashion, which is readily accessible to the City and shall be made available for inspection upon request by any authorized representative of the City or FTA. This reporting requirement also extends to any subcontractor.
4. The CMAR shall make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. The CMAR shall not terminate a DBE subcontractor without DBELO's prior consent. To terminate a DBE subcontractor, the CMAR must follow the procedure stated in Section 26.53(f) of the DBE Program.
5. Any alterations, substitutions, deletions, etc., to data provided to the City must have prior approval of the DBELO.
6. The City will monitor the progress of DBE work through on-site visits, communication with DBEs, and review reports regarding employment as well as DBE participation.
7. The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.
8. The City will track and report the extent of the CMAR's race-neutral business assistance efforts. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following: (i) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures; (ii) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and (iii) DBE participation through a subcontract from a prime contract that did not consider a firm's DBE status in making the award.

VIII. CONTRACT CLAUSES

The CMAR *shall* include the following in each subcontract the CMAR signs with a subcontractor (both DBE and non-DBE subcontractors):

1. The CMAR, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 46 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
2. The CMAR is required to pay each subcontractor (DBEs and non-DBEs) under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each progress payment or final payment the full amount the CMAR receives from the City for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in Contract Documents. Exceptions may occur only for good cause following written approval by the City.
3. The CMAR is required to return retainage payments to each subcontractor within seven (7) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

IX. INFORMATION

If you have any questions concerning the required documentation listed above, or concerning the DBE requirements in general, contact:

CATS Civil Rights Officer

Arlanda Rouse,
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
704-432-2566
arouse@charlottenc.gov

SUPPLEMENTARY CONDITIONS – PART C

CITY STANDARD PROVISIONS

Undefined terms in this Part C have the meanings ascribed to them in the Contract.

[additional provisions may be added to this part in the final contract]

Article 1: Curb and Gutter Tapers and Transitions

The CMAR shall be responsible for constructing concrete curb and gutter end tapers and concrete curb and gutter transitions as shown on the plans and in the specifications, including Charlotte Land Development Standards Manual No. 10.19 (for curb transitions).

Article 2: Existing Utilities

The City has contacted and notified all involved utility owners of the effect of this Project on their respective utility. Construction plans and anticipated construction schedules have been provided to the utility owners. Each utility owner will be requested to attend the preconstruction conference and/or a preconstruction utility conference to discuss potential conflicts and their schedule for relocation where required. All adjustments or relocations will be made by the utility owner unless otherwise indicated in the Contract Documents.

The owners of utilities in this Project could include, but are not limited to:

1. *[list to be added in final contract]*

The CMAR's work shall be in accordance with the "Underground Utility Safety and Damage Prevention Act," N.C. Gen. Stat. § 87-100 et seq. To assist the CMAR and utility owners in meeting the requirements of this law, there is a service provider called "NC811." Most major utilities with underground facilities in the State subscribe to this service.

From within North Carolina, dial 811. For calls originating outside (or inside) of North Carolina, the toll free number (800) 632-4949 may be used. NC811 can also be accessed via the Internet at <http://nc811.org/homepage.htm>.

The CMAR shall include the cost of any coordination and cooperation of utilities in its bid. No additional compensation shall be allowed for delays or inconvenience sustained by the CMAR due to utility relocation or adjustments. No additional payment will be made for re-mobilization required by the utility's failure to relocate a utility at the request of the CMAR.

Where changes to utility facilities are to be made solely for the convenience of the CMAR, it shall be the CMAR's responsibility to arrange for such changes, and the CMAR shall bear all costs of such changes.

Article 3: Concrete

All concrete used on the Project shall meet the NCDOT Standard Specifications for Roadways and Structures (the "NCDOT Standard Specifications").

Article 4: Reclamation of Waste or Borrow Sources

All removal, disposal, and storage of waste and borrow material for this Project shall be done in compliance with the applicable standards in the NCDOT Standard Specifications. In addition, the following City requirements apply:

If any borrow or waste sites are to be used, the CMAR shall notify the site's property owner that the property owner is responsible for any damage occurring at the site, either as part of an agreement with the

CMAR, or on their own. The cost of all work of securing the borrow site, sediment control, re-grading and seeding shall be the responsibility of the property owner or the CMAR per their separate agreement. The City shall have no liability for, and will not participate in, the cost of this reclamation work on the waste or borrow sites. Prior to final payment for the Project being made, the CMAR shall obtain a release from any property owners of borrow or waste sites used for the Project.

Article 5: Hazardous, Contaminated, and Toxic Materials

The CMAR is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the CMAR encounters materials considered or suspected of being hazardous or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including, but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CMAR, the CMAR shall, upon recognizing the condition, immediately

- .1 Stop Work in the affected area;**
- .2 Secure the affected area;**
- .3 Contact the Charlotte-Mecklenburg Hazardous Materials Coordinator, telephone 704.336.2461 for further instructions; and**
- .4 Report the condition to the City in writing.**

All activities shall be done in compliance with Section 107-25 of the NCDOT Standard Specifications.

Upon receipt of the CMAR's written notice, the City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the CMAR and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the City shall furnish in writing to the CMAR the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the CMAR. Any appropriate adjustment to Contract Time and/or compensation will be addressed by Change Order.

The City shall not be responsible under this Section for materials or substances the CMAR brings to the site unless such materials or substances are required by the Contract Documents. The City shall be responsible for materials or substances required by the Contract Documents, except to the extent of the CMAR's fault or negligence in the use and handling of such materials or substances.

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

If, without negligence on the part of the CMAR, the CMAR is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the City shall indemnify the CMAR for all cost and expense thereby incurred.

The CMAR shall certify in writing that no materials used in the Work contain lead, asbestos materials or other hazardous materials in excess of amounts allowed by applicable law, including any environmental law. The CMAR shall comply with all applicable laws, including environmental law.

Article 6: Control of Erosion, Siltation and Pollution

§ 6.1 General

The CMAR shall take whatever measures are necessary or appropriate to minimize soil erosion and siltation, water pollution, and air pollution caused by its Work or other activities and operations. The CMAR shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations governing pollution prevention and control. The CMAR shall keep itself fully informed of all such laws, ordinances, rules and regulations that in any way might affect the conduct of the Work and shall at all times observe and comply with the same. In the event of conflict between such laws, ordinances, rules, and regulations and this Contract, the more restrictive requirements will apply.

The City may limit the area over which clearing and grubbing, excavation, borrow, and embankment operations are performed whenever the CMAR's Work, activities, or other operations do not make effective use of construction practices and temporary measures that shall minimize erosion, or whenever construction operations have not been coordinated to effectively minimize erosion, or whenever permanent erosion control features are not being completed as soon as permitted by construction operations. The City's exercise of its authority under this paragraph will not entitle the CMAR to any remedy.

Following completion of any construction phase or operation, on any graded slope or any area greater than one acre, the CMAR shall provide ground cover sufficient to restrain erosion within fourteen (14) days or within a time period specified by any permit governing the Work, whichever is most restrictive. The ground cover must be of the type specified in this Contract.

§ 6.2 Erosion and Siltation Control:

1. The CMAR shall exercise every precaution throughout the life of the Project to prevent the eroding of soil and the siltation or sedimentation of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property.
2. Before suspension of operations on the Project or any portion thereof, the CMAR shall stabilize denuded areas and take any and all other necessary measures to protect the Project site, including, but not limited to, borrow sources, soil type base course sources, and waste areas from erosion during the period of suspension.
3. Unless otherwise approved in writing by the City, construction operations in rivers, streams and water impoundments must be restricted to those areas where channel changes are shown in the plans and allowed by federal and state permits and to those areas which must be entered for the construction or removal of temporary or permanent structures.
4. Excavated materials must not be deposited, nor shall earth dikes or other temporary earth structures be constructed, in rivers, streams, or impoundments. As an exception to the above, confined earth materials may be permitted when approved in writing by the City.
5. Fording of live streams with construction equipment must not be permitted; therefore, temporary bridges or other structures must be used wherever frequent stream crossings are necessary. Unless otherwise approved in writing by the City, mechanized equipment must not be operated in live streams except as allowed by permit or as may be necessary to construct channel changes and to construct or remove temporary or permanent structures.

§ 6.3 Coordination of Erosion Control Operations

The CMAR shall comply with the following:

1. Temporary and permanent erosion control measures must be provided as shown in the Contract Documents or as directed by the City. All permanent erosion control work must be incorporated into the Project at the earliest practicable time. Temporary erosion control measures must be coordinated with permanent erosion control measures and all other Work on the Project to assure economical, effective and continuous erosion control throughout the construction and post construction period and to minimize siltation of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces, or other property.
2. Temporary erosion control measures must include, but not be limited to, the use of temporary berms, dikes, dams, drainage ditches, silt basins, silt ditches, slope drains, structures, vegetation, mulches, mats, netting, gravel, or any other methods or devices that are necessary. Temporary erosion control measures may include work outside the construction limits where such work is necessary as a result of construction such as borrow operations, haul roads, plant sites, equipment storage sites and disposal of waste or debris. The CMAR will be liable for all damages to public or private property caused by silting or slides originating in waste areas furnished by the CMAR.
3. Materials for temporary erosion control measures must have been approved by the City in writing before being used or must be as directed by the City in writing. The CMAR must acceptably maintain the erosion control measures installed.

§ 6.4 Water and Air Pollution

The CMAR shall exercise every reasonable precaution throughout the life of the Project to prevent pollution of ground waters and surface waters, such as rivers, streams and water impoundments. The CMAR shall not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens and any other petroleum products. The CMAR shall operate and maintain equipment on the Project site in a manner as to prevent the potential or actual pollution of surface or ground waters. The CMAR shall dispose of spent fluids in accordance with applicable federal, state, and local laws, ordinances, rules, and regulations. The CMAR shall immediately clean up any spilled fluids to the extent practicable and dispose of them properly.

The CMAR shall manage, control, and dispose of litter on the Project site such that no adverse impacts to water quality occur, and the CMAR shall comply with all federal, state or local air pollution laws, ordinances, rules, or regulations throughout the life of the Project.

§ 6.5 Dust Control

The CMAR shall control dust throughout the life of the Project within the Project site and at all other areas affected by the construction of the Project, including, but not limited to, unpaved secondary roads, haul roads, access roads, disposal sites, borrow and material sources and production sites. Dust control will not be considered effective where the amount of dust creates a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property.

§ 6.6 The CMAR will not be entitled to any remedy because of its obligations under this Article 6.

§ 6.7 This Article 6 will apply to all Work. Further references and detailed requirements concerning erosion, siltation, and pollution prevention and control may be provided in other parts of the Contract Documents, as well.

§ 6.8 In the event that temporary erosion or pollution control measures become necessary due to the CMAR's negligence, carelessness, or failure to incorporate permanent erosion control measures into the Project at the earliest practicable time, such measures must be performed by the CMAR as directed by the City at no cost to the City. If the CMAR fails to perform such measures as directed, the City may have such work performed by others at the CMAR's expense. Failure of the CMAR to fulfill any of the requirements of this Article may result in the City ordering the suspension of Work until such failure has been corrected. Such suspension will not entitle the CMAR to any remedy. Failure on the part of the CMAR to perform the necessary measures to control erosion, siltation, and pollution may result in the City notifying the CMAR to take such measures. In the event that the CMAR, within twenty-four (24) hours of receiving that notification, fails to perform such measures with adequate forces and equipment, the City may suspend the Work as provided above or may proceed to have such measures performed with other forces and equipment, or both. The City's exercise of any of its rights under this paragraph will not entitle the CMAR to any remedy.

§ 6.9 The CMAR shall comply with any and all approved sediment and erosion control permits for the Work. Additionally, for any elements or areas not covered by such an approved permit, the CMAR shall comply with the following requirements:

1. When the CMAR's means and methods require removal of existing Project site improvements such as pole foundations, or other practices causing soil disturbance in areas not protected by the erosion control measures shown on the plans, the CMAR shall (a) provide erosion control measures complying with N.C. Department of Transportation and N.C. Department of Environmental Quality (DEQ) guidelines, specifications, and requirements and (b) correct such disturbances on the same day in compliance with DEQ requirements. For corrective work not completed in a single day, erosion control measures and permits must be required as part of the CMAR's means and methods, with no additional compensation and with no additional time for the CMAR to complete the Work or any part of it.
2. If the CMAR elects to perform Work on days when rain occurs, additional erosion control measures and permits must be required as part of the CMAR's means and methods, with the CMAR being entitled to no remedy as a result.
3. If soils are disturbed within 500' of a wetland or jurisdictional stream, erosion control measures that comply with the NCDOT Standard Specifications shall be used.

§ 6.10 If the Work of this Project is subject to the "North Carolina Sediment Pollution Control Act of 1973" and requires an erosion control permit, the City has already acquired the permit. The CMAR, upon recommendation of award shall complete Part B of the Financial Responsibility/Ownership form provided by the City. The City will then transfer financial responsibility of the erosion control permit to the CMAR. The City will pay the cost of the DEQ application fees. The CMAR will be responsible for all fees and any fines levied for violating the approved erosion control plan or requirements of the erosion control permit.

§ 6.11 Site monitoring must be done by either a PE or Charlotte-Mecklenburg Certified Site Inspector (CMCSI) person employed by the CMAR.

§ 6.12 Nothing in this Article relieves the CMAR from complying with all federal, state, and local laws, ordinances, rules, and regulations and with all permits governing the Work or any part of it. To the extent of a conflict between the requirements of this Article and the requirements of any such law, ordinance, rule, or regulation or of any such permit, such that the CMAR cannot comply with both requirements, the CMAR shall fully comply with the requirements of such law, ordinance, rule, regulation, or permit while complying with this Article to the extent reasonably possible.

Article 7: Construction Stakes, Lines, and Grades

Construction stakes, lines and grades shall be provided by the CMAR.

Article 8: Sustainable Practices

The CMAR shall perform Work to ensure minimal impact on the environment. Environmentally sustainable requirements shall be incidental to the Work and not require separate or additional measurement or payment. Environmentally sustainable practices shall be put into effect, including but not limited to the following:

1. Shield and aim night work lights directly at work zone to prevent light pollution.
2. Protect existing vegetation to prevent erosion.
3. Water areas of exposed soils lightly to prevent creation of dust and to prevent erosion.
4. Do not waste water resources.
5. Cover open body trucks that transport materials.
6. Implement measures to minimize noise, air pollution, and energy consumption during construction; include limiting the idling of construction equipment and employee vehicles, as well as locating staging areas and material processing facilities as close as practical to work sites.
7. Dispose of hazardous materials according to applicable federal, state and local guidelines.
8. No burning of cleared or demolished materials shall be permitted on-site or off-site.
9. Shut off equipment when not in use.
10. Divert waste from landfills.
11. Route trucks away from schools and residential communities when possible.
12. Repave and/or replant exposed areas as soon as possible following construction.
13. In work areas with contaminated soils, clean construction vehicles to prevent off-site contamination.
14. Stage construction activities to limit the duration of impacts at individual properties.

Article 9: Maintenance of the Project and Protection of Improvements

Maintenance of the Project shall be done in compliance with the standards of Section 104-10 of the NCDOT Standard Specifications.

The CMAR shall furnish and erect, at no additional cost to the City, whatever sidewalks, bridges, culverts, or other works are necessary for the protection of the public, including, but not limited to, barricades, fences, etc. and for the safe and proper execution of other public utility lines so as not to interfere therewith or damage or cause damage thereto. The CMAR shall be responsible for all damages to persons or property that occur as a result of its fault, omission, or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all work performed

hereunder until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the City.

To the extent that the Work involves planned cuts or disruptions of any train track (including, by example, a light rail track) or other transportation facility, the CMAR and its subcontractors may make only as many cuts or disruptions as are expressly and unambiguously permitted by the Specifications. Any additional cut or disruption made by the CMAR or by any subcontractor will be a material breach of this Contract by the CMAR, and the City will be entitled because of that breach to Liquidated Damages as specified by the Specifications and to any other damages or remedies to which the City is entitled under this Contract or otherwise by law.

Article 10: Protection of Persons and Property

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The CMAR shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the CMAR or the CMAR's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The CMAR shall provide a safety and security plan to the City for information prior to beginning Work. The CMAR shall submit site safety and security plans to the City for review and have a designated safety officer assigned to the Project. The CMAR shall prepare and submit a Construction Safety Inspection Report (known as the C-21 report) weekly. Additional C-21 reports must be submitted whenever a significant safety violation is observed or when minor violations of a repetitive nature are observed.

§ 10.2.3 Site safety and security shall be included in the CMAR's means and methods with no separate measurement and payment. Receipt of safety and security plans by the City does not absolve the CMAR of responsibility to protect workers, City employees, properties, and the general public from harm. Prevention and correction of damage, theft, or vandalism to Work, materials, equipment, or property included in the Work of this Project shall be the responsibility of the CMAR. No additional Contract Time or compensation will be awarded to the CMAR for safety and security related issues.

§ 10.2.4 The CMAR's employees shall abide by the Occupational Safety and Health Administration (OSHA) and industry standards while performing the Work. Workers on the Project shall follow OSHA 1926 (or 1910 if applicable) Safety and Health Regulations for Construction safe work practices and comply with applicable safety, health, and fire loss prevention standards, and conduct their personal work activities in a manner which does not place themselves, other employees, or the public in a hazardous position. If a safety issue is identified by a contractor on the Project, the CMAR shall immediately contact the City and shall follow the existing CATS Safety and Security policy.

The CMAR shall provide evidence to City that employees have received required OSHA training.

§ 10.2.5 All CMAR employees shall have not less than the necessary protective equipment to perform their job safely in accordance with the CMAR's means and methods for safety and shall utilize such appropriate safety equipment when performing any portion of the Work. The following are a minimum:

- .1 Hard hat with an electrical protection rating if working under overhead loads, or in or around the lift of a bucket truck;
- .2 Safety toe shoes/boots;
- .3 High visibility yellow ANSI II vest, or approved outer garment while in the construction area;
- .4 Safety glasses;
- .5 Other protective gear as appropriate for functions performed and as required by OSHA; and
- .6 Asbestos Abatement Gear as required by OSHA and other Federal, State, and local authorities, including respirators with HEPA filters, disposable coveralls with built-in head coverings and boots, rubber boots, eye protection, rubber gloves, and waste containment.

§ 10.2.6 The City and its representatives will complete a safety and security certification (Safety and Security Certificate of Compliance) of the Project before the Work is accepted. The CMAR shall provide requested information to the City as necessary to complete the safety and security certification.

§ 10.2.7 The CMAR shall be responsible for security at the site; however, security breaches shall be reported to CATS Safety and Security (CATS S&S) within twenty-four (24) hours of occurrence. The CMAR shall provide construction barriers and fencing to secure construction sites and staging areas and to prevent unauthorized entry.

§ 10.2.8 The CMAR shall abide by the following Safety and Security Procedures:

Preliminary Work: Prior to the start of and during the course of the Work (above and below ground), the CMAR shall make a thorough survey of the entire worksite to determine all potential hazards and threats and vulnerabilities on the worksite. Workers shall be made aware of those hazards, and they shall be instructed in procedures and the use of equipment for their protection. The CMAR shall verify the location and condition ("live" or "dead") of all utilities on and near the worksite and take precautions to protect its employees, the public, and property.

Imminent Danger: CATS may stop those operations that create an imminent danger to employees (as defined by the North Carolina Department of Labor, Occupational Safety and Health Division (NCDOL/OSH), to the public, and to property; or any operations which CATS deems to be an unacceptable safety risk until such time that the CMAR has mitigated the safety risk. The CMAR shall not be awarded additional Contract Time for such mitigation.

Cooperation: The CMAR shall cooperate with all the safety representatives from local, state or federal agencies, including those of CATS.

Safety Regulations and Requirements: The Federal Transit Administration (FTA) requires that transit agencies that accept FTA funding for major capital projects develop and implement a Safety and Security Management Plan (SSMP). The SSMP stipulates that CATS require its contractors to develop and implement a Site-Specific Safety and Security Plan to describe how the contractor will ensure the safety of the contractors' employees and visitors and ensure their security and the security of property on the Project site. The CMAR shall ensure that all employees, visitors, subcontractors' employees, and the

suppliers' employees, while on the Project site, comply with the requirements of the North Carolina Department of Labor, Occupational Safety and Health Division (NCDOL/OSH). NCDOL/OSH implements a United States Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA) approved state plan that enforces compliance with Federal OSHA regulations: 29 CFR § 1910, General Industry Standards; 29 CFR § 1926, Construction Standards and 29 CFR § 1904, Recordkeeping Standards. North Carolina has a limited number of state-specific standards. NCDOL/OSH state specific rules are contained in title 13 of the North Carolina Administrative Code. A list of these standards is below:

NCDOL/OSH state-specific standards for general industry include:

- .1 Hazardous Materials: title 13 NCAC 07F.0103, Hazardous Waste Operations and Emergency Response; and
- .2 Electric Power Generation, Transmission, and Distribution: 13 NCAC 07F. 0105, Fall Protection.

NCDOL/OSH state-specific standards for construction industry include:

- .1 General Safety and Health Provisions: title 13 NCAC 07F. 0202, PPE;
- .2 Occupational Health and Environmental Controls: title 13 NCAC 07F. 0203, Non-ionizing Radiation;
- .3 Personal Protective and Life Saving Equipment: title 13 NCAC 07F .0204, Snaphooks;
- .4 Steel Erection: title 13 NCAC 07F. 0205, Fall Protection;
- .5 Power Transmission and Distribution: title 13 NCAC 07F. 0206, PPE; and
- .6 Toxic and Hazardous Substances: title 13 NCAC 07F. 0207, Bloodborne Pathogens.

Additional NCDOL/OSH state-specific standards:

- .1 Communication Towers: title 13 NCAC 07F .0600;
- .2 Blasting and Use of Explosives: title 13 NCAC 07F .0700; and
- .3 Access to Medical Records: title 13 NCAC 7A .0900.

Additional CATS Safety and Security requirements are for the CMAR to:

- .1 Immediately advise CATS of inspections conducted by NCDOL/OSH at the Project site and transmit any copies of citations and alleged violations;
- .2 Submit monthly to CATS a copy of OSHA Form No. 300 and include in the upper left corner the total staff-hours worked for that month;
- .3 Authorize immediate action to correct substandard safety and security conditions;
- .4 Review and act to ensure compliance with safety and security procedures with the CMAR's supervisors, Subcontractors, and suppliers;
- .5 Take an active part in all supervisory safety meetings;

- .6 Cooperate with safety representatives of CATS and the Owner's Rep;
- .7 Notify CATS whenever a contractor's employee sustains an injury that requires more than first aid. In those cases when an employee needs medical attention but is treated and released, CATS must be notified within the next business day. A business day is considered Monday through Friday, 8:00 a.m. until 5:00 p.m. In those cases when the injury is serious and the employee is hospitalized, CATS must be notified within three (3) hours of the incident. The same immediate notification requirement would be required for a fatality. The CMAR must contact the CATS General Manager for Safety and Security.

The CMAR's designated safety officer shall:

- .1 Be dedicated full-time to the Project;
- .2 be currently certified in First Aid, CPR and Automated External Defibrillators (AED) by the American National Red Cross or equal. At least one AED is required to be at the project site;
- .3 have the required current NCDOL/OSH or OSHA certifications for providing required training to employees;
- .4 have heavy construction experience of not less than three years, one of which must have been in a supervisory capacity;
- .5 be familiar with job safety laws and regulations;
- .6 have accident prevention experience;
- .7 ensure compliance with job safety requirements;
- .8 maintain the CMAR's safety and security plan and the Site-Specific Safety and Security Plan (SSSP);
- .9 enforce safe practices; use of safety equipment and personal protective equipment, and other such activities as may be required by NCDOL/OSH, the SSMP safety requirements, and the safety precautions contained in these specifications;
- .10 make thorough daily safety and security inspections of the worksite and immediately act to eliminate unsafe acts and unsafe and unsecure conditions, and record all suggestions made and corrective action taken;
- .11 investigate worksite accidents and recommend immediate corrective action;
- .12 furnish job supervisors with appropriate material for use in conducting weekly "tool box" safety meetings;
- .13 review safety meeting reports submitted by job supervisors and act to ensure that meaningful weekly safety meetings are held by the job supervisors;
- .14 attend supervisor "tool box" safety meetings and evaluate effectiveness and discuss improvement opportunities with the supervisor;
- .15 assist in the preparation of accident investigation and reporting procedures;

- .16 implement training programs for supervisors and employees as they apply to their specific responsibilities;
- .17 be responsible for the control, availability, and use of safety equipment, including employee personal protective equipment;
- .18 coordinate its activities with those of the CATS' safety representatives and immediately implement their safety suggestions;
- .19 coordinate public relations aspects of the CMAR's safety plan; and
- .20 attend and participate in safety meetings held by CATS.

If the designated safety officer is not effective in executing their duties, CATS may require, in writing, that the CMAR furnish a new designated safety officer. If the CMAR, independent of any direction of CATS, desires to replace the designated safety officer, the CMAR shall so notify CATS, in writing, and shall submit the name, experience, and qualifications of the proposed designated safety officer for approval.

The CMAR's Job Supervisor shall:

- .1 Instruct workers regarding safe work practices and work methods at the time workers are given work assignments;
- .2 furnish and enforce the use of personal protective equipment and suitable tools for the job;
- .3 continuously check to see that no unsafe practices and conditions are allowed to exist on his/her portion of the work;
- .4 set a good example for his/her personnel;
- .5 make a complete investigation of accidents to determine facts necessary to take corrective action to prevent a recurrence;
- .6 promptly supply information for, or complete, the Accident Report and Investigation Form as directed by the designated safety officer and the CMAR's superintendent;
- .7 hold weekly "tool box" safety meetings with assigned personnel to:
 - .a discuss observed unsafe work practices and unsafe conditions;
 - .b review the accident experience of the crew and discuss the correction of the accident causes; and
 - .c encourage safety suggestions from the crew and report those suggestions to the designated safety officer;
- .8 ensure that first aid is promptly administered to an injured employee by a qualified person; and
- .9 report immediately, to the CMAR's superintendent or designated safety officer, potential violations of job safety and security.

Subcontractor's Job Superintendent shall:

- .1 Plan and execute assigned work to comply with all applicable safety requirements;
- .2 furnish and enforce the use of personal protective equipment;
- .3 attend supervisory personnel safety meetings scheduled by the CMAR;
- .4 schedule and attend weekly "tool box" safety meetings to be held by job supervisor for all employees;
- .5 report to the CMAR's designated safety officer or the CMAR's superintendent all observed unsafe conditions, unsafe practices and violations of job security; and
- .6 cooperate with the CATS' safety and security representatives.

Smoking Prohibition:

- .1 No smoking is allowed in CATS' facilities or vehicles;
- .2 No smoking is allowed in CATS' or the CMAR's trailers; and
- .3 Smoking in hazardous areas is restricted per occupational safety and health standards and jurisdictional fire codes.

§ 10.2.9 Each contractor is required to develop and submit a Construction Site-Specific Safety and Security Plan (SSSP) to CATS' project management for review and approval as part of the contract submittal process. It is the responsibility of the CMAR and its employees to abide by the terms of the Contract i.e., Safety and Security Procedures, and its SSSP, and Environmental Health and Safety Plan (EHSP) (if required). Coordination and reporting requirements will also be detailed and coordinated with the Owner's Rep as required by CATS.

The SSSP shall include the name, experience, and qualifications of the CMAR's proposed designated safety and security officer and appropriate contact information to provide required notifications and reporting of emergencies, injuries and accidents. Implementation and enforcement of the SSSP for the forces of the CMAR and all subcontractors shall be the responsibility of the CMAR.

The SSSP requirements have been developed in accordance with applicable federal, state, and local regulatory requirements. Specific federal regulations include:

- .1 29 CFR part 1910, Occupational Safety and Health Standards (General Industry) as adopted by NCDOL/OSH;
- .2 29 CFR part 1926, Safety and Health Regulations for Construction as adopted by NCDOL/OSH;
- .3 29 CFR part 1904, Recordkeeping as adopted by NCDOL/OSH
- .4 49 CFR part 214, Railroad Workplace Safety;
- .5 49 CFR part 217, Railroad Operating Rules;
- .6 49 CFR parts 219 & 655, Control of Alcohol and Drug Use; and

.7 49 CFR part 239, Passenger Train Emergency Preparedness.

Specific NCDOL/OSH standards are included in sections 1.2.8.4.1, 1.2.8.4.2 and 1.2.8.4.3.

Responsibilities:

- .1 It is the responsibility of all project contractor personnel to meet the requirements of its SSSP and to adhere to all applicable federal, state, and local codes, safety standards, regulations, CATS' procedures, SSMP requirements and industry practices;
- .2 If warranted by the project, the CATS General Manager for Safety and Security (or designee) may assume management oversight of the day-to-day administration of the CMAR's SSSP for the project;
- .3 Job-site safety and compliance with NCDOL/OSH, DOT, FRA, FTA and state and local codes and regulations is the responsibility of the CMAR performing the work. The CMAR's designated safety and security officer is the main point-of-contact for discussions on construction site safety and security matters including issues of non-conformance with project and regulatory requirements. To ensure these requirements are met, it is the project's policy that the CMAR's personnel who repeatedly fail to adhere to site safety and security requirements be considered unqualified to perform the contracted services or work and as such, will be denied site access. Contractors who fail to control personnel actions regarding safety and security will have their contract terminated, if CATS determines that the contractor or subcontractor is not adhering to the applicable safety requirements;
- .4 CATS reserves the right to require the CMAR to modify, at any time, any portion of the SSSP that is not in conformance with federal, state, or local codes and regulations, or with CATS's safety policies and procedures; and
- .5 All supervisors, when notified of an unsafe or hazardous situation, condition, or practice are obligated to take the appropriate response. No contractor, employee or other person involved with or supporting the project shall have their safety compromised through intimidation or fear of reprisal for reporting any of the aforementioned items.

The SSSP shall be formulated based on the following assumptions:

- .1 The CMAR's management and supervision are charged with the responsibility of preventing the occurrence of incidents or conditions that could lead to occupational injuries or illnesses;
- .2 Safety and security must never be sacrificed for production and should be considered to be an integral part of risk management, quality control, cost reduction, and job efficiency;
- .3 A good safety and security record reflects the quality of management, supervision, and the work force;
- .4 The established policy shall be designed to accomplish the work in the safest and most secure possible manner consistent with good work practices. Management at every level shall be charged with the task of translating this policy into positive actions;
- .5 The plan established for the Project shall outline management safety and security policies and procedures and be in compliance with, and be supplemented by, all applicable federal, state and

local safety, security and health regulations and standards. In case of a conflict between standards or regulations, the stricter requirement will apply; and

- .6 The CMAR shall ensure that safety and security awareness exists at all levels of the construction organization so that all employees on and off the site are aware of the required safety and security measures.

Contents of a Site-Specific Safety and Security Plan

The SSSP shall include information on how each contractor will design its safety and security plan. The SSSP must be simple to follow and implement. The plan shall be submitted for review to CATS S&S for conformance with the specifications, SSMP, applicable laws, codes, rules, and regulations and the adequacy of coverage.

Each contractor shall identify the name and title of the individual responsible for implementing the SSSP, the scope of his/her authority, and the title of the person to whom he/she reports. The SSSP shall address the following:

- .1 Construction safety and health guidelines promulgation and execution responsibility, including job site inspection responsibility, job site first aid medical treatment responsibility, and emergency first aid program;
- .2 Safety education of new employees for general safety regulations and specifically for accident prevention;
- .3 Proposed “tool box” safety meetings;
- .4 Job site inspections, including scope and frequency;
- .5 Policies pertaining to employee hazard assessments and personal protective equipment (PPE) that are required (i.e., hard hats, eye and face protection, safety harnesses, foot protection, respiratory protection, hearing protection, hand protection) and specification of other equipment that is available (i.e., wet weather gear and protective gear required for specialized tasks);
- .6 Safety devices and equipment required and available, including local ventilation and exhaust equipment, warning horns, lockout devices, noise meters, light meters, oxygen detectors, particulate detectors, hazardous gas and vapor detectors;
- .7 Protection of the public, including pedestrian control, traffic control, and protective devices available such as barricades, cones, lights, and warnings;
- .8 Accident investigation procedures, including details of job site medical facilities, doctor/hospital arrangements, and emergency and non-emergency policies; availability of job-site accident response and rescue equipment; and policies for accident investigation and paperwork handling;
- .9 Policies for subcontractor safety, including responsibility for subcontractor safety, inclusion of safety plan requirements in subcontracts, and specific requirements of subcontractor to promote safety and health awareness;
- .10 Adverse weather plans;

- .11 Other safety and health features, including site conditions/security, housekeeping procedures, parking facilities for employees, restrooms and changing rooms for employees; and
- .12 Provisions for implementation, approval, and modification of the SSSP.

The SSSP must address the following OSHA and NCDOL/OSH standards as applicable to the project and if the project involves more than one work site, a site-specific SSSP must address at a minimum the following standards specific to each site:

- .1 Rules of Construction - 29 CFR part 1926.16;
- .2 General Safety and Health Provisions - 13 NCAC 07F. 0202, PPE;
- .3 General Safety and Health Provisions – 29 CFR part, 1926 subpart C;
- .4 Permit Required Confined Spaces - 29 CFR part 1910.146;
- .5 Safety Training - 29 CFR part 1926.21;
- .6 Recordkeeping – 29 CFR part 1904;
- .7 Access to Medical Records 13 NCAC 7A .0900;
- .8 First Aid and Medical Attention – 29 CFR part 1926.23 and part 1926.50;
- .9 Fire Protection and Prevention – 29 CFR part 1926.24 and subpart F;
- .10 Housekeeping – 29 CFR part 1926.25;
- .11 Personal Protective Equipment – 29 CFR part 1926.28;
- .12 Personal Protective and Life Saving Equipment: 13 NCAC 07F .0204, Snaphooks;
- .13 Competent Person - 29 CFR part 1926.32;
- .14 Employee Emergency Action Plans – 29 CFR part 1926.35;
- .15 Occupational Health and Environmental Controls – 29 CFR part 1926, subpart D;
- .16 Occupational Noise Exposure – 29 CFR part 1926.52;
- .17 Occupational Health and Environmental Controls: 13 NCAC 07F. 0203, Non-ionizing Radiation;
- .18 Ionizing Radiation – 29 CFR part 1926.53;
- .19 Gases, Vapors, Fumes, Dusts and Mists - 29 CFR part 1926.55;
- .20 Illumination – 29 CFR part 1926.55;
- .21 Ventilation - 29 CFR part 1926.57;
- .22 Hazard Communication 29 CFR part 1926.59 and part 1910.1200;

- .23 Retention of DOT Markings, Placards, and Labels – 29 CFR part 1926.61;
- .24 Personal Protective and Lifesaving Equipment – 29 CFR part 1926, subpart E;
- .25 Fire Protection and Prevention - 29 CFR part 1926, subpart F;
- .26 Temporary Heating Devices - 29 CFR part 1926.154;
- .27 Signs, Signals, Barricades and Traffic Control – 29 CFR part 1926, subpart G;
- .28 Materials Handling, Storage, Use and Disposal – 29 CFR part 1926, subpart H;
- .29 Tools (hand and power) - 29 CFR part 1926, subpart I;
- .30 Welding and Cutting - 29 CFR part 1926, subpart J;
- .31 Electrical - 29 CFR part 1926, subpart K;
- .32 Scaffolds - 29 CFR part 1926, subpart L;
- .33 Fall Protection - 29 CFR part 1926, subpart M;
- .34 Communication Towers: 13 NCAC 07F .0600;
- .35 Motor Vehicles, Mechanized Equipment and Marine Operations - 29 CFR part 1926, subpart O;
- .36 Excavations - 29 CFR part 1926, subpart P;
- .37 Concrete and Masonry Construction - 29 CFR part 1926, subpart Q;
- .38 Steel Erection - 29 CFR part 1926, subpart R;
- .39 Steel Erection: 13 NCAC 07F. 0205, Fall Protection;
- .40 Underground Construction, Caissons, Cofferdams and Compressed Air - 29 CFR part 1926, subpart S;
- .41 Demolition - 29 CFR part 1926, subpart T;
- .42 Blasting and the Use of Explosives - 29 CFR part 1926, subpart U;
- .43 Blasting and Use of Explosives: 13 NCAC 07F .0700;
- .44 Power Transmission and Distribution - 29 CFR part 1926, subpart V;
- .45 Power Transmission and Distribution - 13 NCAC 07F. 0206, PPE;
- .46 Rollover Protective Structures: Overhead Protection - 29 CFR part 1926, subpart W;
- .47 Ladders - 29 CFR part 1926, subpart X;
- .48 Cranes and Derricks in Construction - 29 CFR part 1926, subpart CC;

- .49 Cranes and Derricks Used in Demolition and Underground Construction - 29 CFR part 1926, subpart DD;
- .50 Toxic and Hazardous Substances: 13 NCAC 07F. 0207, Bloodborne Pathogens; and
- .51 Aerial Lifts - 29 CFR part 1926.453.

The following security elements, listed in the SSMP, shall be reviewed and included in the SSSP as necessary for the specific job site:

- 1 Purpose, mission and objectives of the plan, including identification of the job site Supervisor and designated site safety/security officer(s), scope of their responsibilities, how they will be kept aware of issues, and how the Owner's Rep will be able to contact them regularly, during non-business hours, or during an emergency situation;
- 2 Plans for site security, including inventory and placement of physical security systems (i.e., intrusion detection, fencing, barriers, lighting, CCTV);
- 3 Plans for human security (guard patrols, visitor access control points, roving patrols), to include hours of work and explanation of coverage during working hours and non-working hours, including the location of any fixed posts and the hours those posts are to be staffed and the routes of any walking posts and the security checks that are to be made along those routes with appropriate verification processes to ensure security patrols are conducted;
- 4 Designation of security processes and procedures as Sensitive Security Information (SSI) per 49 CFR part 1520 is required to safeguard and secure CATS facilities and property;
- 5 Plans for identifying specific hazards or risks and mitigation strategies, including the methods for investigating and reporting incidents and accidents, including who is responsible for investigation and reporting and to whom reports will be circulated (can be addressed under safety);
- 6 Access control and control of non-public areas, including securing the construction site field office(s);
- 7 Emergency procedures for such events as fire, earthquake, flood, chemical spills, and accidents with injuries, including review of decontamination methods and procedures; who is trained, what equipment is available, and how incidents will be reported to appropriate oversight and regulatory agencies (can be addressed under safety);
- 8 Communications capabilities (landline and cell phones, beepers, portable-two way radios);
- 9 Local emergency and medical addresses/phone numbers (including all fire/police and emergency services that might respond to the site) (can be addressed under safety);
- 10 Whether personal protective equipment is required for any specific job activity; whether it has been provided and whether employees are trained in its use (can be addressed under safety);
- 11 Locks and key control to be used during construction;
- 12 Inspection of and deliveries of goods and equipment, including the inspection procedures for delivery/departure of equipment, and personal vehicles;

- .13 Document control procedures to include handling of blueprints, public utility drawings, transit system diagrams, and other security-sensitive documents that may be filed at the site to include designation as SSI and appropriate Configuration Management best management practices;
- .14 Personnel identification systems and policies (ID badges, cards, etc.) including policies on background investigations if required and any sign in/sign out policies;
- .15 Security awareness training; and
- .16 Coordination with outside agencies.

§ 10.2.10 For those work-sites which have been identified as requiring environmental remediation, the CMAR shall develop and implement a Site-Specific Environmental, Health and Safety Plan (EHSP), also known as a Site-Specific Health and Safety Plan (HASP). The EHSP or HASP is usually incorporated into, or is a companion document to, the environmental remediation plan developed and implemented by the CMAR pursuant to environmental regulations.

A site-specific EHSP or HASP is intended to assist in ensuring the health and safety of those employees engaged in environmental remediation activities (addressed in a separate environmental section of the Contract specifications) and to ensure compliance with specific NCDOL/OSH (and/OSHA) regulations. In addition to the applicable regulations in section 10.2.9, the following NCDOL/OSH and/OSHA employee health and safety standards and regulations must be included in an EHSP or HASP depending on the hazardous waste or toxic or hazardous substances identified on the site by an independent environmental study:

- .1 Hazardous Materials: 13 NCAC 07F.0103, Hazardous Waste Operations and Emergency Response;
- .2 Lead – 29 CFR part 1926.62;
- .3 Asbestos – 29 CFR part 1926.1101; and
- .4 Toxic and Hazardous Substances – 29 CFR part 1926, subpart Z

§ 10.2.11 The following items should be included and adhered to in the SSSP:

Personal Protective Equipment: The SSSP and the aforementioned federal and state regulations encompass requirements for the hazard assessment, provision, training, use, and maintenance of personal protective equipment (PPE). At a minimum, all employee and contractor personnel performing work in support of the Project are required to meet the PPE requirements of title 49 CFR part 214 and wear hard hats, safety-toe shoes, safety glasses, and CATS approved fluorescent safety vests while performing work along a rail alignment.

The CATS General Manager of Safety and Security (or designee) reviews all safety and security related rules, procedures and training programs for conformance with applicable federal and state regulations as well as to assess that all project personnel have received the appropriate training applicable to their position and possess the knowledge, skills, and abilities necessary for performing their work safely and effectively. This includes the use of PPE.

Personnel Training Requirements: Project safety training programs, such as those required by 49 CFR part 214, and 29 CFR parts 1910 & 1926 are reviewed by the CATS S&S for conformance with applicable federal, state, local and project requirements. At a minimum, training of CMAR personnel must include:

- .1 On-track worker protection;
- .2 Equipment familiarization;
- .3 Railway and facility security policies and procedures;
- .4 Personal safety, housekeeping and material control procedures
- .5 Hazardous materials handling and employee “right to know”;
- .6 Emergency response training;
- .7 Control of alcohol and drug use; and
- .8 Accident/incident investigation and reporting.

All training, testing and certification records, including course outlines and examinations are maintained by the CMAR in a secure location. All contractors shall provide records of the successful completion of all contractually required and regulatory mandated safety training provided to their personnel, prior to their employees being assigned work on the Project. All proposed changes to the SSSP, safety and security rules, procedures, policies, practices, and training programs established for the Project must be submitted to the City and forwarded to the CATS Safety and Security Review Committee (CATS SSRC) for safety and security review and acceptance.

Contractor Training Requirements: It is the responsibility of all contractors on the Project to establish written safety and security orientation, awareness, and training plans. These plans must provide contractor employees with the information required to execute their duties safely under the scope of the Contract and in compliance with OSHA and NCDOL/OSH standards. The plans will address employee responsibilities at all levels.

All employees trained and certified as railroad workers must successfully complete Roadway Worker Protection training annually as required by 49 CFR part 214. Records of all training must be maintained by the CMAR and made available for review by the Owner’s Rep and CATS S&S upon request. All contractor employees who are assigned to work in or adjacent to a railroad alignment must be issued and display at all times while working, CATS identification cards with an endorsement that they have completed Roadway Worker Protection training, including the date of the training. Persons who are working in or adjacent to the railroad alignment, without their CATS issued ID card/Roadway Worker Protection training endorsement, will be considered to be trespassing and subject to prosecution.

All contractors must know, understand and follow the appropriate safety procedures while performing work on CATS’ project property. All contractors must therefore comply with all applicable rules, regulations, and requirements of NCDOL/OSH (including OSHA Standards 29 CFR parts 1910, 1926 and 1904), DOT, FRA, and FTA, as well as all other applicable federal, state, and local regulations. These requirements include, but may not be limited to employee and passenger safety, fire and emergency response procedures, security procedures, and safe work practices related to the project, facilities, equipment, systems, vehicles, and/or other project properties.

First Aid: Adequate first aid supplies must be provided on-site at all times. The supplies must be easily accessible to all employees for immediate use. Written procedures must also be developed and implemented by the CMAR to ensure that all first aid supplies are replaced promptly if used, and are not missing or depleted. In addition, the CMAR is responsible for ensuring that sufficient personnel having valid and verifiable CPR and First Aid certification (received in accordance with the American Red Cross, or an equivalent training program) are made available at the work site(s) to render first aid during

all hours of work. In addition, contractors must ensure that an AED (Automated External Defibrillator) and persons trained in its use are available at each work site.

Hazardous Materials Plan: The objective of the hazardous materials plan is to ensure that employees, contractors, customers, the public, and the environment are provided with adequate safeguards from injury/illness and environmental destruction that could result from the improper use, storage, disposal or contact with hazardous materials. As part of the plan, all contractors of the project receiving, storing, handling or using hazardous materials at construction sites, must have and properly administer their hazardous materials plan, which shall be reviewed and approved by CATS S&S.

Any product brought onto CATS' property by the CMAR that requires a Material Safety Data Sheet (MSDS) must be used and stored in accordance with the MSDS. Copies of the MSDS must be submitted to the CATS Engineer and forwarded to CATS S&S. CATS S&S reserves the right to require the CMAR to provide a less hazardous substitute for any chemical product or material deemed to be carcinogenic or highly toxic.

It is the responsibility of the CMAR to assess which environmental and occupational safety requirements are applicable to its operation and to create a hazardous materials plan outlining the management process and procedures to be administered by the CMAR to meet or exceed federal, state and local requirements. At a minimum, the CMAR's hazardous materials plan must contain procedures for reporting and responding to hazardous material spills, releases, and other accidents/incidents, and must be submitted to the CATS S&S for review and acceptance as part of the SSSP, prior to the start of work. Additionally, a list of bulk hazardous chemicals will be provided to CATS S&S and shall be maintained up to date. A Risk Management Plan (RMP) may be required dependent on the chemical on site.

Hazardous materials incidents occurring on the Project site must be immediately reported to the City and CATS S&S. It is the responsibility of area supervision to notify the appropriate emergency response agencies, including:

- .1 Appropriate railroad control center;
- .2 Fire and police departments;
- .3 Emergency medical response service;
- .4 Environmental Protection Agency (EPA); North Carolina Department Of Environment and Natural Resources;
- .5 Public Works department;
- .6 Sanitation department;
- .7 Utility companies - gas, electricity, telephone;
- .8 Water department;
- .9 NC Department of Transportation; and
- .10 Chemical Transportation Emergency Center (CHEMTREC).

Contractor Drug and Alcohol Programs: It is CATS policy that the use of and persons working under the influence of drugs and alcohol are strictly prohibited on all project properties. The CMAR and

all subcontractors are responsible for implementing and maintaining their own effective Substance Abuse Program. The Substance Abuse Program will be subject to review by CATS.

Safety Audits of Contractor Work Sites: Periodic audits of Project properties, including construction sites, will be conducted by CATS S&S to ensure safety and security rules and procedures are being followed and to identify potential hazards and unsafe work conditions or practices. The audits are also performed to enhance hazard detection and safety awareness among project personnel and to eliminate or mitigate identified hazards prior to their resulting in an accident/incident.

CATS S&S will perform and verify CMAR performance of maintenance and inspections in accordance with the relevant regulatory criteria and standards and established contractual requirements. This applies to inspections and maintenance actions, and the associated documentation thereof performed on the project, including facilities, signals, structures, equipment and systems.

CATS S&S shall promptly and accurately report all deficiencies detected during the inspection. Hazards that cannot be resolved or reduced to an acceptable level by the CMAR must be submitted to the CATS SSRC and resolved through the Hazard Management Process.

Accident/Incident Reporting: CATS S&S shall implement the CATS Accident/Incident Reporting Policy and associated procedures applicable to the project, for which the CMAR is responsible for following. Should an accident/incident occur, immediate and full care of any injured party is first priority. The CMAR shall immediately (and concurrently if possible) notify the following agencies and individuals in the event of an accident/incident:

- .1 Applicable emergency response units:
 - .a Emergency Medical Services;
 - .b Appropriate law enforcement;
 - .c Fire department; and
 - .d Any other appropriate emergency response agency.
- .2 CATS Project personnel:
 - .a General Manager of Safety and Security (or designee);
 - .b South End Station Project Manager; and
 - .c Other individuals as directed by any of the above.

§ 10.2.12 Failure to Comply: If the CMAR fails to adhere to the requirements of NCDOL/OSH, OSHA, the SSMP, the safety and security requirements, and the safety and security precautions contained in the safety specification sections of the Contract, CATS may modify or stop the Work, and portions thereof, until such failure is remedied. Willful and repeated failure to adhere to safety and security requirements and regulations may result in the shutdown of the Work, or portions of the Work in which unacceptable hazardous conditions exist. No additional compensation or Contract Time will be granted due to any modification of operations or stop orders.

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

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

Article 11: Overhead High-Voltage Line Safety

The CMAR shall note that Work may be located near existing high voltage lines. The CMAR shall adhere to the provisions of Overhead High-Voltage Line Safety Act, N.C. Gen. Stat. § 95-229.5-.13, as amended. The purpose of this Act is to promote the safety and protection of persons engaged in Work in the vicinity of high-voltage overhead lines and the general public. This Act defines the conditions under which Work may be carried on safely and provides for the precautionary safety arrangements to be taken when any person engages in Work in proximity to overhead high-voltage lines.

There will be no separate measurement or payment for “Overhead High-Voltage Line Safety.” All costs associated with this item, including equipment, labor and material, shall be considered incidental and included in the costs of the various pay items in the Bid.

Article 12: Storage of Materials and Equipment

Materials and equipment shall be stored in compliance with Section 106-5 of the NCDOT Standard Specifications.

The CMAR shall be responsible for locating and providing storage areas for construction materials and equipment. The material and equipment storage shall comply with all local and state ordinances throughout the construction period. The CMAR shall restore the storage area to its original condition upon completion of the Project or upon such time as directed by the City. Such restoration shall be at no additional cost to the City.

The CMAR shall be responsible for the safeguarding of materials and equipment against fire, theft and vandalism and shall not hold the City responsible in any way for the occurrences of same. Prior to final payment for the Project being made, the CMAR shall obtain a release from any property owners of any storage areas used for the Project.

There will be no separate measurement or payment for storage of materials and equipment. All costs associated with this item, including equipment, labor and material, shall be considered incidental and included in the costs of the various pay items in the Bid.

Article 13: Equipment Signage

Motorized construction equipment, trucks, vehicles, and storage trailers that are used, owned, leased, rented or borrowed by the CMAR on this Project shall be equipped with a pair of identification signs. Delivery vehicles furnished by manufacturers or suppliers for delivery of construction materials or equipment to the construction site are excluded from this requirement.

Signs are intended to provide public awareness of the CMAR’s involvement in this Project. The signs shall be permanently or magnetically attached to both sides of the equipment at all times. Signs shall conform to the following general requirements:

1. Size - one (1.0) square foot minimum
2. Vinyl lettering shall be appropriately sized, based on sign size
3. Commercially produced for outdoor use

4. Lettering or background shall be reflective with sufficient contrast to promote readability
5. Contain at least:
 - a. The CMAR's Name,
 - b. The CMAR's City and State of Business,
 - c. The CMAR's Business Phone Number (including area code).

The signs shall include all information indicated above. Any leased equipment or vehicles shall include a header statement such as follows: "THIS EQUIPMENT UNDER CONTRACT TO", or "UNDER CONTRACT TO". Signs which are defaced, vandalized, removed, or damaged, or which become obsolete shall be replaced within 48 hours.

No separate measurement or payment shall be awarded for "Equipment Identification Signs." All costs associated with this item, including equipment, labor and material, shall be considered incidental and included in the costs of the various pay items in the Bid.

Article 14: Parking

The CMAR shall limit on-site parking and vehicle access to company and commercial vehicles with markings on exterior surface of vehicle indicating company name and company contact information. Parking personal vehicles shall not be permitted on-site.

The CMAR shall establish and pay for off-site parking for workers and furnish means to deliver workers to site. City shall bear no responsibility for vehicles parked off-site.

Vehicles parked on-site shall have full insurance coverage as required by the Contract Documents. The CMAR shall bear full responsibility for safety and security as part of the CMAR's means and methods for vehicles accessing the Project site and for vehicles parking on-site.

No separate measurement or payment shall be awarded for parking-related requirements.

Article 15: Quantity Tickets and Landfill Records

All quantity tickets for items not measurable in place shall be submitted in duplicate to the City within seventy-two (72) hours after receipt of the material on the job. Each ticket shall indicate the date, contractor, job location and name, type of material, quantity of material, truck number and signature of the CMAR or its authorized representative. No payment will be made for these items unless the quantity tickets are submitted.

No tickets will be accepted after seventy-two (72) hours have elapsed between the time of delivery and the submittal of tickets to the City.

All landfill records shall be submitted in duplicate to the City within seventy-two (72) hours of delivery of material to the landfill.

Article 16: Commercial Non-Discrimination Policy

The CMAR shall fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the CMAR shall not discriminate on the basis of race, gender,

religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the CMAR retaliate against any person or entity for reporting instances of such discrimination. The CMAR shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The CMAR understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the CMAR from participating in City contracts, or other sanctions.

The CMAR shall also:

1. Promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract;
2. Upon request, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the CMAR has used on City contracts in the past five years, including the total dollar amount paid by the CMAR on each subcontract or supply contract; and
3. Fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The CMAR understands and agrees that violation of these clauses in this Article 16 shall be considered a material breach of the Contract and may result in contract termination, disqualification of the CMAR from participating in City contracts and other sanctions.

The CMAR further agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the CMAR to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format provided by the City.

Article 17: E-Verify

As a condition for receiving payment under this Contract, the CMAR at all times shall: (i) comply with the requirements in Article 2 of Chapter 64 of the North Carolina General Statutes, as they may be amended from time to time (the "E-Verify Requirements"); and (ii) ensure that each subcontractor under this Contract complies with the E-Verify Requirements. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this E-Verify Article, the CMAR shall ensure that each subcontract includes provisions requiring that the subcontractor comply with the E-Verify Requirements.

Article 18: Prohibition on Contracting with Companies that Invest in Iran or Boycott Israel

The CMAR represents and warrants that:

1. The CMAR has reviewed the most recent versions of all lists created by the North Carolina State Treasurer under N.C.G.S. 147-86.58 (collectively, the "Iran List");

2. The CMAR has reviewed the most recent versions of all lists created by the North Carolina State Treasurer under N.C.G.S. 147-86.81 (collectively, the “Israel List”); and
3. As of the Effective Date, the CMAR is not on the Iran List or Israel List.
4. The CMAR will not take any action causing it to appear on the Iran List or Israel List during the term of this Contract; and
5. The Contract will not use any subcontractor that is identified on the Iran List or Israel List to provide goods or services hereunder.

Article 19: Waste Stream Management Plan

Upon the City’s issuance of the Notice to Proceed, the CMAR shall provide to the City a detailed Waste Management Plan. The CMAR’s Waste Management Plan must include a Solid Waste Disposal and Diversion document that shall include the following:

1. Types and estimated volumes of waste that will be generated by the Work.
2. A separate section detailing the use of each waste stream (e.g., landfill disposal, recycling, reuse, salvage, reclamation).
3. Identification of materials to be recycled or otherwise diverted from landfills.
4. Target percentage of total non-hazardous waste to be diverted from landfills, methods of diversion, and methods of documenting diversion percentages.
5. Identification of materials to be disposed of at landfills.
6. Identification of landfills to be used for non-hazardous waste disposal. The CMAR shall submit certificates showing compliance of these landfills with all applicable federal, state, and local laws, ordinances, rules and regulations.
7. Identification of hazardous wastes that the CMAR anticipates being produced and the CMAR’s plan for disposing of them.
8. Identification of hazardous waste disposal facilities and landfills to be used, including National Emission Standards for Hazardous Air Pollutants (NESHAP) and other applicable information to document compliance with federal, state, and local legal requirements.
9. Locations of sorting and temporary waste storage facilities.
10. Final documentation of subcontractor and supplier waste management and recycling data.
11. Final documentation of hazardous waste disposal plan.

Waste Management Plan Implementation:

1. The CMAR shall designate an on-site party (or parties) responsible for instructing workers concerning, and overseeing and documenting, implementation of the Waste Management Plan.

2. The CMAR shall complete and submit a summary of construction waste disposal and diversion, including delivery ticket documentation, each month, along with the CMAR's application for a Progress Payment for that month.
3. All materials identified in the summary must be reported by weight or volume.
4. Reporting must be consistent, either using weight or volume for the entire Project; the CMAR shall not mix reporting between weight and volume.
5. Non-Hazardous Waste Removal and Documentation: the CMAR shall procure delivery tickets, receipts, or other validation of waste management procedures, including landfill records, recycling center records, and other receipts or documentation showing diversion from landfills for non-hazardous waste materials. In all, the CMAR shall document one hundred percent (100%) of the non-hazardous waste removed from the Project site.
6. The CMAR shall determine and document the percentage of non-hazardous waste diverted from landfills. The CMAR shall show the actual percentage of diversion compared to the projected percentage in a summary of construction waste disposal and diversion to be submitted by the CMAR to the City with each payment request.

The CMAR shall distribute copies of the Solid Waste Disposal and Diversion document to subcontractors, along with instructions (which the CMAR's contracts with subcontractors will require the subcontractors to follow) regarding requirements to maximize diversion of non-hazardous waste from landfills.

The CMAR shall provide on-site instruction and enforce appropriate separation, handling, and recycling, salvage, reuse and return methods to be used by all parties at appropriate stages of the Work, all in compliance with the following:

Separation facilities:

1. The CMAR shall define specific areas to facilitate separation of materials for recycling, salvage, re-use or return.
2. Recycle and waste bin areas must be maintained in an orderly manner and clearly marked to avoid contamination of materials.
3. The CMAR shall not allow mixing of recyclable materials.
4. The CMAR shall store hazardous wastes in secure areas.

Hazardous wastes must be separated, stored, and disposed of in accordance with local, state, and federal laws, ordinances, rules, and regulations and in accordance with the following:

1. Building products manufactured with PVC or containing chlorinated compounds must not be incinerated.
2. Disposal of fluorescent tubes in open containers is not permitted.
3. Unused fertilizers must not be co-mingled with construction waste.

All profits from recycling of construction waste will be granted to the CMAR.

Waste types may vary. Examples of types of waste include:

1. Construction and demolition (C&D) debris
2. Old light bulbs
3. Ballasts
4. Lead paint
5. Piping
6. Roofing material, possibly containing asbestos; refer to City survey information
7. Discarded equipment
8. Land Clearing and Inert Debris (LCID)
9. PCBs
10. Asbestos

The CMAR shall comply with the requirements, policies, and practices specified by:

1. The most recent edition of the City of Charlotte Waste Stream Management Plan
2. The most recent edition of the Mecklenburg County Solid Waste Management Plan:
3. All federal, state and local laws, ordinances, rules, and regulations regarding the reuse, recycling, or proper disposal of waste materials, including but not limited to sanitary, construction and demolition, toxic and hazardous wastes

The CMAR shall conform to the following waste management hierarchy:

1. Reduce
2. Reuse
3. Recycle
4. Lastly, dispose of what remains.

28.5 The CMAR shall comply with the following:

CITY OF CHARLOTTE
WASTE STREAM MANAGEMENT PLAN
FOR DECONSTRUCTION PROJECTS

The City of Charlotte places source reduction and reuse at the top of its hierarchy in managing solid waste, followed by recycling and composting and, lastly, incineration or disposal in landfills. Source reduction is defined as a reduction in the amount and toxicity of waste entering the waste stream or waste

prevention. While all components of a Waste Stream Management Plan are important, reduction of waste at its source should be applied prior to implementation of other techniques, creating less waste to be recycled, reused, composted, incinerated, or landfilled. The following paragraphs describe several source reduction and recycling approaches currently being employed in Charlotte and Mecklenburg County.

A. Current Waste Reduction and Recycling Programs and Opportunities

1. Landfills: For information on landfills accepting non-hazardous waste, see the following:
 - a. <http://charmeck.org/mecklenburg/county/SolidWaste/LandfillInformation/Pages/Landfills.aspx> (C&D Landfills)
 - b. <http://charmeck.org/MECKLENBURG/COUNTY/SOLIDWASTE/LANDFILLINFORMATION/Pages/inert.aspx> (LCID Landfills)
2. Recycling:
 - a. For C&D Recycling Info, see the following:
<http://charmeck.org/mecklenburg/county/SolidWaste/ConstructionRecycling/Pages/default.aspx> (C&D Recycling Info)
 - b. The CMAR will endeavor to maximize diversion of non-hazardous demolition and construction wastes from landfills by means of recycling, reusing, or salvaging materials.
 - c. The CMAR will document non-hazardous waste stream management, including quantities of waste recycled, reused, salvaged, and brought to landfill based on weight or volume by means of submitting delivery tickets to the Owner's Rep. The CMAR will identify proposed measures and goals in a Waste Stream Management Plan before beginning Work. Only one basis will be used to determine percentage of waste diverted, either by weight or by volume.
3. The CMAR is advised that some landfills may reduce tipping fees for concrete, brick and block that are source separated and delivered to the landfill.
 - a. The CMAR will document quantities of items that are to be ground and used on site for roadbeds or in erosion control measures that divert items from landfills. No adjustments to the Contract Price will be made in the event of changes in tipping fees.
4. The CMAR is advised that some landfills may reduce tipping fees for untreated, unpainted wood waste, if separated and delivered to the landfill.
 - a. The CMAR will document wood products that are ground for reuse as boiler fuel or other uses that divert wood products from landfills. No adjustments to the Contract Price will be made in the event of changes in fees.
5. Any financial benefit resulting from landfill diversion activities such as recycling, reclamation, salvage, and reuse will revert to the CMAR.
6. Don't Dispose-Donate It

- a. The Donate-It program provides a service to link residents desiring to donate reusable items with non-profit charitable organizations that accept items on a donated basis.

7. Food Waste

- a. Mecklenburg County has two privately operated options at this time for food waste delivery for composting:
 - 1) Wallace Farms in Mecklenburg County
 - 2) Tri-County/Stanley Septic in Gaston County

8. Internet Homepage: www.wipeoutwaste.com

- a. This Internet page has become vital in keeping the public updated about solid waste management programs. Information on the homepage includes: County operated Recycling Centers, County operated composting and mulch facilities, Metrolina Recycling Center, landfill information, business waste reduction and recycling programs and information, school recycling, household hazardous waste management, construction and demolition debris recycling and disposal, Wipe Out Waste Guide, residential waste reduction, classes and workshops, and upcoming events. Visitors can sign up for classes and email staff.
- b. Information found at www.wipeoutwaste.com provides information to assist residents in donating items. Also, this website directs citizens to Freecycle, a web group where one can network with others looking to give-away or accept items, and provides tips for a successful yard sale. For those involved in business and industry, the website offers a link to NC Waste Trader, a marketplace for usable discarded or surplus materials and products.

9. Publications

- a. Mecklenburg County provides a yearly guide called the Wipe Out Waste Guide. This guide is a printed publication which appears electronically on www.wipeoutwaste.com as well.

B. Waste Stream Management

1. The CMAR will categorize materials, equipment, and other products to be removed into one of the following classifications and dispose of waste as specified below:
 - a. Salvageable
 - b. Non-salvageable
 - c. Hazardous waste
2. Salvageable
 - a. Information below lists “potentially recoverable” (salvageable) items in the C&D waste streams in Mecklenburg County. These materials are recyclable in their entirety and currently have existing markets in the Mecklenburg County region.
 - b. Potentially Recoverable
 - 1) Corrugated Cardboard

- 2) Appliances
- 3) Other Ferrous Metals
- 4) HVAC Ducting
- 5) Other Non-ferrous Metal
- 6) Land Clearing, Limbs, Stumps, Other Yard Waste
- 7) Concrete, Block, Brick, Stone, and Tile
- 8) Pallets
- 9) Unpainted gypsum board/Drywall
- 10) Untreated Wood

c. Salvageable materials will be determined by available markets at the time of commencing Work. All salvageable metals will be containerized at the Project site until a sufficient quantity is accumulated to warrant transport to a reputable scrap metal vendor. Bills of lading will be used to document the materials taken and the weight or volume salvaged to be used in determining overall percentage of non-hazardous waste diverted from landfills.

- 1) All materials containing refrigerants will be handled with care to prevent the involuntary release of hazardous gases. Refrigerants will be recovered whenever possible in accordance with the Clean Air Act requirements. Once recovered, the remaining metals will be salvaged and quantities recorded.
- 2) Fluorescent tubes not containing PCBs will be carefully stored and packaged to prevent breakage prior to transport by a reputable recycling vendor. Do not transport loose fluorescent tubes. Bills of lading will be used to document the quantity and size of tubes recycled.

3. Non-salvageable

a. Information below lists “currently unrecoverable” (Non-salvageable) items in the C&D waste streams in Mecklenburg County. These are materials that do not appear to have near term potential for recycling in existing markets in or near the Mecklenburg County region or that occur in such small quantities in the C&D waste stream that it is unlikely they will ever be recycled.

b. Currently Unrecoverable

- 1) PVC Pipe, Vinyl Siding, Dirt/Sand/Gravel, Asphalt Roofing, Ceiling Tiles, Carpet and Carpet Backing, Electronics, Bulky Wastes/Furniture, Other Paper, Film Plastic, Other Plastic, All Glass, Oriented Strandboard (OSB), Treated/Painted/ Processed Wood, Drywall – Painted, Insulation, Mixed Municipal Solid Waste (MSW), Mixed C&D/Other Unclassified

- c. Care will be taken to segregate building materials from putrescible wastes. The CMAR will follow all federal, state and local laws, ordinances, rules, and regulations regarding the proper disposal of waste materials.
 - d. Delivery tickets will be used to document final disposal for all non-salvageable wastes.
4. Hazardous
- a. Hazardous materials may include but are not limited to asbestos-containing materials, PCB-containing light ballasts and transformers, lead-based paint, refrigerant, and used oil. The CMAR will follow all federal, state, and local laws, ordinances, rules, and regulations regarding the proper disposal of such waste materials.
 - b. Proper waste disposal in accordance with this Contract will be certified by the CMAR to the City. Acceptable forms of certification include bills of lading, weight tickets, waste manifests, or other approved documentation. Certification will include quantities and final salvage or disposal locations.

Article 20: Coordination with Third Parties

No additional measurement and payment will be awarded for compliance with public or private utility company requirements or requirements identified by the City, such as requirements, standards, codes, or manuals published by the City or the State. No additional compensation or Contract Time will be awarded to the CMAR resulting from enforcement of “Coordination with Third Parties.”

The CMAR shall:

1. Coordinate Work to ensure timely disconnection and relocation of utility services.
2. Relocate, remove, and protect existing utility services that are to remain. No utility outages on nearby properties will be permitted.
3. Coordinate Work to ensure maintenance of utility services to surrounding and adjacent facilities not subject to Work.
4. Establish means to reroute utility services or arrange with utility owners to ensure continuity of services.
5. Comply with instructions of the City in the event outages cannot be avoided.

Article 21: Violation of Federal Contracting Requirements

§ 22.1 A violation, or failure to avoid a violation, of any of the Federal contracting requirements, FTA Terms, or any other term of Federal law or regulations applicable to this Project and Contract shall constitute a material breach of this Contract and shall entitle the City to:

- .1 Exercise all rights and remedies that it may have at law or at equity for violation of the Contract;
- .2 Terminate the Contract for default;
- .3 Suspend the Contract for default;

- .4 Withhold all payments due to the CMAR under the Contract until such violation has been fully cured or the City and the CMAR have reached a mutually agreeable resolution;
- .5 Assess Liquidated Damages; and/or
- .6 Offset any Liquidated Damages and/or any amounts necessary to cure any such violation from any retainage being held by the City on the Contract, or from any other amounts due to the CMAR under the Contract.

§ 22.2 The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedy.

§ 22.3 The City and the CMAR acknowledge and agree that the City will incur damages if the CMAR or any subcontractor of any tier to the CMAR, violates the Federal contracting requirements, FTA Terms, or any other term of Federal law or regulations applicable to this Project and Contract. Those damages will include, without limitation, loss of goodwill popularly and specifically with the FTA and other Federal agencies, detrimental impact on economic development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages the City might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the CMAR agrees to pay the Liquidated Damages assessed by the City at the rates set forth below for each specified violation of the DBE Program or other violations. The CMAR further agrees that for each specified violation, the agreed upon Liquidated Damages are reasonably proximate to the loss the City will incur as a result of such violation:

Failure to Meet DBE Goal: If the City determines upon completion or termination of a Contract that the CMAR did not meet the committed DBE Goal and that such failure is not otherwise excusable, the City may assess: (a) an amount up to thirty thousand dollars (\$30,000.00) or (b) the dollar difference between the committed DBE Goal and the CMAR's actual DBE dollars; or (c) any amount between (a) and (b) that the City deems fair and equitable;

Using DBE as a Conduit: If the CMAR lists a DBE to receive credit toward a committed DBE Goal with knowledge that the DBE will be acting as a conduit or will not be performing a commercially useful function reasonably commensurate with the payment amount for which the CMAR will be seeking credit, the City may assess the lesser of: (a) twenty thousand dollars (\$20,000.00) or (b) the dollar amount the CMAR indicated that it would pay such DBE in the DBE's contract (or if no contract has been signed, the DBE's letter of intent);

Wrongful Termination or Replacement of DBE Services: If the CMAR terminates or replaces a DBE in violation of the DBE regulations and program applicable to this contract, the City may assess the lesser of:

- .1 twenty thousand dollars (\$20,000.00) or
- .2 the dollar amount of the work remaining to be performed by the terminated DBE at the time it was terminated (or if the DBE was not terminated because it was never retained, then, the dollar amount that the CMAR indicated it would pay the DBE in the DBE's letter of intent);

False Statements and Misrepresentations: If the CMAR makes a false statement, material misrepresentation, or material misleading omission regarding any matter relevant to the DBE regulations and program or the Buy America provisions applicable to this Contract the City may assess the lesser of: (1) twenty-five thousand dollars (\$25,000.00); or (2) if the misrepresentation relates to payment, the

dollar difference between what the CMAR represented and the truth;

Failure to Respond to Request for Information: If the CMAR fails to provide any report, documentation, affidavit, certification or written submission required under the DBE regulations and program, within the time period set forth therein, the City may assess twenty-five dollars (\$25.00) per day for each day that such report, documentation or written submission is overdue; and

All Other Violations: If the CMAR causes or fails to avoid any other violation of any of the Federal contracting requirements, FTA Terms, or any other term of Federal law or regulations applicable to this Project and Contract, specifically including but not limited to all certification of compliance and reporting requirements of any nature, as well as violations of Article 8 of this Contract the City may assess: (a) twenty-five thousand dollars (\$25,000.00); or (b) the remaining retainage due the CMAR if less than (a). This amount shall increase by ten percent (10%) for each subsequent violation, excluding the continuing violations subject to Liquidated Damages of this Section.

Article 22: Project Signs, Publicity and Advertising

Except for the right reserved by the City to erect a sign in connection with the Project and unless otherwise provided in the Contract Documents, the CMAR shall not display or permit to be displayed on or about the Project, any sign, trademark, poster or other advertising device, without prior written approval of City. The CMAR shall not make any announcement or release any information concerning this Contract or the Project or any part thereof to any member of the public, press or any official body, unless prior written consent is obtained from the City.

Article 23: Use & Organization of E-Builder Project Control System

The CMAR shall use the City's web-based project control software ("e-Builder") for records retention and management of all Project documentation. Information on e-Builder can be found at www.e-builder.net. Documents, forms, and processes that will be used in e-Builder by the City and the CMAR include, but are not limited to: construction drawings (including as-builts), submittals (quality plan, safety plan, schedules, etc.), reports (accident, Inspection, non-conformance, etc.), project photos, transmittals, requests for information, change notices, change requests, change orders, change directives, design change, field change notices, letters, meeting notifications, meeting minutes and Buy America certifications. If an item is not covered by e-Builder, submittal shall be as directed by the City. For shop drawing submittal documents larger than 11x17, submittal shall be as directed by the City.

City will provide access and technical service for five (5) e-builder licenses at no cost to the CMAR. Any additional e-Builder licenses will be the responsibility of the CMAR to purchase as needed. The City will provide training at no cost to the CMAR.

Article 24: Historical, Scientific & Archaeological Discoveries

If any items are uncovered or discovered during the Work that might reasonably be expected to have any historic, scientific, or archaeological interest or value, the CMAR shall ensure that:

1. Each item, and the area where it was uncovered or discovered, is carefully preserved and protected until and unless the City instructs otherwise in writing;
2. The City is promptly notified when each item is uncovered or discovered;
3. Neither the CMAR, nor any subcontractor, nor any supplier, or nor any individual or anyone else involved in the Work ever asserts any claim of any nature that they own or otherwise have any rights in or to any such item;

4. Neither the CMAR, nor any subcontractor, nor any supplier, or nor any individual or anyone else involved in the Work ever asserts any claim of any nature that disputes or seeks to limit or interfere with the City's right, in its sole discretion, to decide what should be done with any such item; and
5. All of the City's written instructions about any such item are followed by the CMAR, by all subcontractors, by all suppliers, and by all individuals and anyone else involved in the Work.

In addition to taking all other necessary and appropriate steps to satisfy its obligations under this Article, the CMAR shall ensure that each subcontract and each supplier contract includes provisions requiring the subcontractor or the supplier to fully comply with the requirements of this Article just as the CMAR must do so.

Article 25: Identification of Personnel & Security

§ 26.1 The CMAR shall ensure that anyone who enters the Project site or other property owned or controlled by the City wears a distinctive identification badge that must be clearly and prominently displayed on his or her person the entire time that they are present at the Project site or other property. The CMAR shall ensure that each identification badge clearly displays its wearer's name, the name of the wearer's employer, the wearer's photograph, the wearer's job title, and any employee identification number assigned to the wearer.

§ 26.2 The City may bar or remove any person who is at the Project site or at other property owned or controlled by the City who is not wearing an identification badge in accordance with this Article, and the CMAR will not be entitled to any remedy because the City does so.

§ 26.3 The City may require the CMAR: (1) to conduct background checks on any or all of the CMAR's employees who perform any of the Work and (2) to remove from the Project site or other City property any of the CMAR's employees whom the City determines are incompetent, careless, security risks, or safety hazards. The City's exercise of any of its rights under this Article will not entitle the CMAR to any remedy.

§ 26.4 The CMAR shall ensure that the contract for each subcontractor gives the City the right to require that subcontractor: (1) to conduct background checks on any or all of the subcontractor's employees who perform any of the Work and (2) to remove from the Project site or other City property any of the subcontractor's employees whom the City determines are incompetent, careless, security risks, or safety hazards. The CMAR shall further ensure that each subcontractor's contract provides that the subcontractor will have no claim or other remedy against the City because the City exercises any of these rights.

§ 26.5 As a condition of being able to access the Project site or other City property, a person must: (1) possess any documentation that the City determines is necessary and (2) at all times satisfy any and all security requirements imposed by the federal Department of Homeland Security, the FTA, or any other federal or state agency. The CMAR shall ensure that the requirements of this subsection are satisfied by the CMAR's own employees and by the employees of all suppliers and of all subcontractors. In addition to taking all other necessary and appropriate steps to satisfy its obligations under this subsection, the CMAR shall ensure that each supplier contract and each subcontract includes provisions requiring the supplier or subcontractor to comply with the requirements of this Article.

Article 26: Confidential Information

“Confidential Information” means any information, in any medium (whether written, oral, or electronic), obtained from the City or any of its suppliers, contractors, or licensors: (i) that is not a public record under North Carolina law, (ii) the disclosure of which by the City is prohibited or limited by applicable law, or (iii) that the City informs the CMAR is confidential.

The CMAR shall keep Confidential Information in the strictest confidence in the manner set forth below:

1. The CMAR shall comply with the City’s Restricted Data Policy, a copy of which is posted on the City’s website, and with any instructions or procedures issued by the City from time to time regarding the protection of specific types of Confidential Information.
2. The CMAR shall not copy, modify, enhance, compile, or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
3. The CMAR shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor, or vendor of the City or the CMAR who: (a) has a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the CMAR, and (b) has executed a confidentiality agreement containing substantially the same protections set forth herein. Notwithstanding the forgoing, the CMAR shall not directly or indirectly, disclose, divulge, reveal, report, or transfer Highly Restricted Information to any third party without the City’s prior written consent.
4. The CMAR shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized in writing by the City, or is for the purpose for which such Confidential Information is being disclosed.
5. The CMAR shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
6. The CMAR shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents, and subcontractors from using or disclosing the Confidential Information in a manner not permitted under the Contract.
7. If any demand is made in litigation, arbitration, or any other proceeding for disclosure of Confidential Information, the CMAR shall (a) immediately notify the City, (b) assert the Contract as a ground for refusing the demand, and (c) reasonably assist any effort by the City to seek a protective order or other appropriate relief to prevent or restrict any disclosure of Confidential Information.
8. All materials which constitute, reveal, or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise authorized by the City in writing, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
9. The CMAR shall restrict employee access to Confidential Information to those employees having a need to know such information for purposes of their jobs.
10. The CMAR shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by the Contract. The CMAR shall have

each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees, and taxpayers the same level of protection as provided by the Contract, including compliance with the City's Restricted Data Policy.

11. The CMAR shall ensure that each person who obtains access to Confidential Information through the CMAR (including but not limited to the CMAR's employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to the Contract and the City's Restricted Data Policy.

The City agrees that the CMAR shall have no obligation with respect to any Confidential Information that the CMAR can establish:

1. Was already known to the CMAR prior to being disclosed by the City;
2. Was or becomes publicly known through no wrongful act of the CMAR;
3. Was rightfully obtained by the CMAR from a third party without similar restriction and without breach of this Article;
4. Was used or disclosed by the CMAR with the prior written authorization of the City;
5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence; provided that, in such instance, the CMAR shall first give notice to the City of such requirement or request; or
6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena; provided that the CMAR shall immediately notify the City prior to disclosure, and reasonably assist the City in seeking a protective order providing that the terms of the Contract will apply to all disclosures under the court order or subpoena.

Article 27: Gratuities & Conflicts of Interest

The CMAR represents and warrants that neither the CMAR nor anyone acting on the CMAR's behalf has ever offered or given any gratuity (in the form of a gift, entertainment, or otherwise) with the intent or purpose of securing this Contract or of securing favorable treatment with respect to the award of this Contract, to any director, officer, official, or employee of: (1) the City or (2) any architectural, engineering, or other consultant or contractor retained by the City.

The CMAR represents and warrants that neither the CMAR nor anyone acting on the CMAR's behalf will ever offer or give any gratuity (in the form of a gift, entertainment, or otherwise) with the intent or purpose of securing favorable treatment with respect to any change or amendment to the Contract or of securing any other action with respect to this Contract, to any director, officer, official, or employee of: (1) the City or (2) any architectural, engineering, or other consultant or contractor retained by the City.

The CMAR represents and warrants that:(1) while this Contract is in effect and for one (1) year afterwards, none of the Government Parties (defined below) will have any interest, direct or indirect, in this Contract or in any part of the funds paid under it and (2) until final acceptance by the City of all Work, the CMAR shall not enter into any contract, whether or not related to the Work or to performance of this Contract, with any of the Government Parties. The Government Parties are: The City of Charlotte's Mayor and all members of the Charlotte City Council; all officials and employees of the City; all officials and employees of any City representatives or agents involved in this Contract's administration; all

members of or delegates to the U.S. Congress or the North Carolina legislature; and all county commissioners, officials, and employees of Mecklenburg County, North Carolina.

Article 28: Organizational Plan

Before starting any of the Work, the CMAR must obtain the City's written approval of the CMAR's organizational and personnel plan (the "Organizational Plan") for the Work Site. Before the CMAR can change a City-approved Organizational Plan in any way, the CMAR must obtain the City's written approval of the proposed changes.

The Organizational Plan must contain a chart detailing the CMAR's plan for organizing the people who will work on the Project. This chart must identify the person to whom each worker or class of workers will report, and it must specify which people at the Project site will report to which people in the CMAR's home office. This chart must specify the name, qualifications, and experience of the person who will serve in each role on the chart.

The Organizational Plan must also include current resumes for key personnel listed in the Organizational Plan, including the superintendent, project manager, resident engineer, and other managers, and any other work responsibilities for such key personnel beyond the Project. Finally, the Organizational Plan must include a succession plan in the event that key personnel leave their position during the Project, including a requirement that the applicable key personnel's position will be filled by a qualified replacement promptly after the position becomes open.

After the City approves an Organizational Plan, the City at any time may require the CMAR to promptly modify the Organizational Plan as needed. For example, at any time the City may disapprove any person serving in any role in the Organizational Plan and may require the CMAR to assign a new person to that role.

The CMAR shall ensure that the Work is always performed in full compliance with the Organizational Plan most recently approved by the City in writing. The City's exercise of any of the authority granted to it by this Article will not entitle the CMAR to any remedy.

Article 29: Non-Appropriation of Funds

If the Charlotte City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the CMAR of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

Article 30: Track Access and Allocation Process

The CMAR shall abide by all CATS guidelines and requirements concerning access to the light-rail right of way ("Transit Corridor") and track allocation, including those listed below. Any violations of such guidelines and requirements impacting the CATS light-rail operations may result in the immediate removal of the CMAR from the Transit Corridor.

A. Access to the Transit Corridor

The CMAR shall contact CATS at least two (2) weeks before entering the Transit Corridor or beginning any work within the Transit Corridor in order to request access approval. The CMAR must attend the

weekly CATS Track Allocation Meeting. During this meeting, the CMAR shall describe the proposed work within and/or adjacent to the Transit Corridor including the CMAR's proposed schedule for Transit Corridor access. Prior to the meeting, the CMAR shall submit a completed "CATS ROW Access Form" to CATS Rail Operations. The CMAR's proposed work schedule and requested Transit Corridor access is not approved until the Access Form has been signed and returned to the CMAR by CATS Rail Operations. The CMAR should contact Essence Douglas at Essence.Douglas@charlottenc.gov (704.432.6614) for copies of the "CATS ROW Access Form" and if there are any questions related to the weekly Track Allocation Access meeting.

The CMAR shall NOT lift or swing any materials over the Transit Corridor AT ANY TIME. CATS's Rail Operations will make every reasonable effort to work with the CMAR to coordinate the implementation of flagging personnel. Only with special written permission from CATS Rail Operations and CATS Safety & Security may loads be lifted over the Transit Corridor during non-revenue service.

B. Safety Measures

All safety measures required by CATS shall be implemented by the CMAR prior to the commencement of any work within the Transit Corridor. Prior to entering the Transit Corridor to commence the work outlined in these plans, Roadway Worker Protection Program ("RWPP") Training must be completed by all personnel (contractor or sub-contractors) that will perform work or be present in the Transit Corridor. This training is conducted by CATS Safety & Security at no cost to the CMAR. Spot inspections by CATS Safety and Security personnel that result in RWPP violations shall cause workers to be removed from the Transit Corridor and the possible temporary suspension of work. Contact Jon-Keith Hawkins at Jonkeith.Hawkins@charlottenc.gov (704.582.3820) to schedule RWPP Training.

C. Flagging & OCS

The CMAR is advised that flagging protection is required by CATS when the CMAR is working within 15 feet of the nearest light rail track. The need for flaggers should be discussed and coordinated with CATS at the weekly Track Allocation Meeting to determine if the project depicted in these plans warrants the use of flaggers. If it is deemed that flaggers are required, CATS will schedule and provide the flaggers. In order to reduce the amount of time that flagging services are required, the CMAR should consider the installation of a temporary protective fence (chain link or other similar type) between the work area and the light-rail tracks. The CMAR shall maintain the fence, once installed, so that it does not cause any impact to light-rail vehicle movement or operation of the light-rail system. Additionally, if the CMAR is working within 10 feet of the light-rail overhead catenary system ("OCS") (which includes messenger wire, catenary wire, span wire, and poles), special arrangements to de-energize the OCS shall be made in advance with CATS through a separate Red Tag Permit.

Article 31: Utility Street Cut Regulations (CDOT Street Maintenance Division)

All street-cut permits for this Project have already been obtained. The current edition at the time of Bid of the Charlotte Department of Transportation, Street Maintenance Division (CDOT/SMD); Regulations, Fee Schedule and Procedures for Working in Asphalt and Concrete Pavements, shall apply on all portions of the Project unless otherwise specified herein.

The CDOT/SMD requires that any utility company, the CMAR, developer, or agents thereof engaged in utility excavation in Charlotte street rights-of-way must ensure that a CDOT/SMD excavation certified company representative be present on the Project.

Excavation certification requires a utility crew foreman/lead person to attend a 5-hour class to become familiar with these policies/specifications and CDOT/SMD's procedures for excavating in Charlotte street rights-of-way. Once these foremen/lead persons obtain certification, they are placed on an approved Utility Certification List maintained by CDOT/SMD.

Article 32: Holiday Work Restrictions

No Work shall be performed on the Project which is subject to measurement or payment when City offices are closed for observed City holidays. This restriction does not relieve the CMAR from the responsibility of ensuring the safety and well-being of pedestrian and vehicular traffic, and for the protection of public and private property.

In emergencies and certain other conditions deemed necessary by the City, the CMAR may be directed to Work on weekends or holidays. There will be no additional compensation or Contract Time for Work done under these directives other than those established in the Contract.

Article 33: Regulatory and Code Enforcement Inspections

The CMAR shall be responsible for scheduling regulatory and code enforcement inspections (such as NCDENR, NCDOT, CMUD, and Mecklenburg County Code Enforcement, etc.) well in advance and make reasonable accommodations necessary to facilitate the said inspections to avoid delay in processing or completing the work. Furthermore, the CMAR shall realize that even scheduled inspections may be cancelled by the regulatory and code enforcement agencies without warning.

The inspections will include but not limited to erosion and sediment control, water and sewer, retaining walls, station foundations, elevated platform, water meters and backflow preventers, fire hydrants, conduits, fencing, etc.

The CMAR shall not receive any additional Contract Time for the regulatory and code enforcement inspections. There will be no separate measurement or payment for coordinating and facilitating with regulatory and code enforcement inspections.

Article 34: Project As-Built Documents

The work specified in this Article includes the activities associated with the preparation, maintenance and submittal of Project as-built documents. The CMAR shall do the following:

Preparation of As-built Documents

- A. Prepare and maintain a set of redline Specifications and full-sized plans to reflect actual as-built conditions.
- B. Use the most current version of all revised and reissued plans and Specification sections for preparation of the redline plans and Specifications.
- C. Record actual as-built conditions concurrently with construction progress. Do not conceal work until required information is recorded.
- D. Plans: Legibly mark each sheet as required to record actual as-built conditions, including, but not limited to, the following:
 - 1) Measured depths of elements of foundation in relation to finish first floor datum.
 - 2) Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
 - 3) Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of construction.
 - 4) Field changes of dimension and detail.

- 5) Changes made by Change Orders.
 - 6) Details not on original plans
 - 7) References to related shop drawings and modifications.
- E. Specifications: Legibly mark each section as required to record actual as-built conditions, including, but not limited to, the following:
- 1) Manufacturer, trade name and catalog number of each product actually installed, particularly optional items and substitute items.
 - 2) Changes made by Change Orders.
- F. Maintain a complete and current set of the redline plans and Specifications for inspection by the City at all times throughout construction.
- G. Submit the redline plans and Specifications in accordance with paragraph titled "Submittal of As-built Documents" of this Article.

Maintenance of As-built Documents

- A. Maintain at the Project site for the City's use one as-built copy of:
- 1) Plans
 - 2) Specifications
- B. Store as-built documents apart from documents used for construction. Provide files, racks, and secure storage for as-built documents.
- C. Label and file as-built documents in accordance with section number listings in the Table of Contents of this Project Manual. Label each document "PROJECT AS-BUILT DOCUMENTS" in neat, large, printed letters.
- D. Maintain as-built documents in a clean, dry and legible condition. Do not use as-built documents for construction purposes.
- E. Keep as-built documents available for inspection by the City at all times throughout the construction.

Submittal of As-built Documents

Submit printed copy of one (1) complete set of full-size redline plans and Specifications and one (1) DVD containing the complete set of electronically scanned redline plans and Specifications in PDF format to the City before final payment pursuant to section 9.10.2 of the General Conditions.

Article 35: ORGANIZATIONAL CONFLICTS OF INTEREST

This Contract is subject to the restrictions against organizational conflicts of interest promulgated by the Federal Transit Administration in FTA Circular 4220.1F or successor circulars. The CMAR and its subcontractors shall at all times comply with such restrictions in connection with the services it provides to and on behalf of the City. The CMAR shall not provide Services to the City, under this Contract, which would constitute or create an organizational conflict of interest, including but not limited to any of the following that could result in a lack of impartiality or impaired objectivity, unequal access to information, and biased ground rules, for this Contract or any other contract for the City:

Influenced Specifications or Scope of Work. The CMAR's prior work product, whether it is performed on behalf of the City or another public or private entity, has been relied upon in establishing, or significantly influenced, the Specifications or Work under this Contract.

Opportunity to Create Contracting Opportunities. The CMAR's prior work product, whether it is performed on behalf of the City or another public or private entity, afforded an opportunity for the CMAR to make or influence findings with respect to this Contract.

Evaluation of Prior Work Product. The CMAR would be in position to evaluate its own prior work product as part of this Contract, whether the prior work product is performed on behalf of the City or another public or private entity; or, as part of this Contract, the CMAR would be in a position to assess its prior work product whether or not it was performed on behalf of the City or another public or private entity.

Access To Information. The CMAR received confidential or other information as part of the services performed for the City or another public or private entity which provides the CMAR with an unfair advantage to obtain this Contract or another contract with the City.

Lack of Impartiality or Impaired Objectivity. The CMAR is unable, or potentially unable, to provide impartial and objective assistance or advice to the City due to other activities, relationships, contracts or circumstances.

Article 36: QUALITY REQUIREMENTS

Description

CMAR shall implement a Quality Program complying with CATS Quality Management System (QMS), CATS Project Quality Plan (PQP) and FTA Quality Management System Guidelines. See <https://www.transit.dot.gov/funding/grant-programs/capital-investments/quality-management-system-guidelines> to access a copy of FTA Guidelines. The CMAR’s Quality Program shall include administrative and procedural requirements for QA/QC as well as the services of a full time QC Officer for the duration of the Project.

Testing and inspecting services are required to verify compliance with requirements specified or indicated. Any testing or inspecting performed by the City does not relieve CMAR of responsibility for compliance with the Contract Document requirements.

Specific QC requirements for individual construction activities are specified in the sections that describe those activities (see table below). Requirements in those Sections may also cover production of standard products.

*Test	Reference	Primary Responsibility
Concrete Testing	TBD	TBD
Noise and Vibration Tests	TBD	TBD
Corrosion Monitoring System Test	TBD	TBD
Insulator Tests at Test Stations	TBD	TBD
Materials Density Testing	TBD	TBD
Inspection/Testing of Water Lines	TBD	TBD
Inspection/Testing of Sewer Lines	TBD	TBD
Crosshole Sonic Logging Testing (CSL)	TBD	TBD
Pile Integrity Testing (PIT)	TBD	TBD
Pile Driving Analyzer (PDA)	TBD	TBD
Standard Penetration Test (SPT)	TBD	TBD
Shaft Inspection Device (SID)	TBD	TBD

* List may not be all-inclusive. City’s failure to include in the table all test activities required by the Contract Documents does not relieve the CMAR from the test requirements in the Contract Documents.

**CMAR shall set-up/fill/fix/restore testing locations

Specified tests, inspections, and related actions do not limit CMAR’s QC procedures that facilitate compliance with the Contract Document requirements.

Requirements for CMAR to provide QC services required by the Owner's Rep, the City, or authorities having jurisdiction are not limited by provisions of this Article.

Definitions

Quality-Assurance (QA): QA involves all those planned and systematic actions necessary to provide adequate confidence to the management that a product or service will satisfy given requirements for quality. It emphasizes planned and systematic actions and are necessary to provide adequate confidence that preventive/continual improvement actions at a management level will result in a product or service that meets requirements. QA includes ensuring the project requirements are developed to meet the needs of all relevant internal and external agencies, planning the processes needed to assure quality of the project, ensuring that equipment and staffing is capable of performing tasks related to project quality, ensuring that contractors are capable of meeting and carrying out quality requirements, and documenting the quality efforts.

Quality-Control (QC): Techniques that are used to assure that a product or service meets requirements and that the work meets the product or service goals. Generally, QC refers to the act of taking measurements, testing, and inspecting a process or product to assure that it meets specification. It also includes actions by those performing the work to control the quality of the work. Products may be design drawings/calculations or specifications, manufactured equipment, or constructed items. QC also refers to the process of witnessing or attesting to, and documenting such actions.

Quality Plan: The typical form of the main document used in developing and implementing a QMS. The Quality Plan should contain the Quality Policy, objectives, and written procedures.

Quality Control Officer: The person responsible for implementing the Quality Management Program. Appointment of the Quality Control Officer will be communicated by a letter from an officer of the CMAR.

Quality Control Program: The program plan which describes the methods and means to be employed in implementing the requirements of the Program set forth in the specifications.

Mockups: Full-size, physical example assemblies to illustrate finishes and materials. Mockups are used to verify selections made under Sample submittals, to demonstrate aesthetic effects and, where indicated, qualities of materials and execution, and to review construction, coordination, testing or operation; they are not Samples.

Testing Agency: An entity engaged to perform specific tests, inspections, or both. Testing laboratory shall mean the same as testing agency.

Submittals

CMAR Quality Control Officer Qualifications: A graduate engineer having construction experience with not less than seven years Quality Management experience, or a non-graduate with no less than ten years construction experience plus three years or more of Quality Control supervisory experience. Submit CMAR Quality Control Officer resume for approval by the City and Owner's Rep within 28 days after the effective date of the Notice of Award.

CMAR's Quality Plan: Encompassing those activities to be performed by the CMAR to ensure that the Work conforms to the Contract Document requirements. Submit the Quality Plan for approval by the City and Owner's Rep within 28 days after the effective date of the Notice of Award. Submit revisions to the Quality Plan not less than ten days before the effective date thereof.

Testing Agency Qualification Data: For Testing Agencies specified in section 1.1.4 below to demonstrate their capabilities and experience. Provide proof of qualifications with a certification as a Construction and Materials Testing laboratory to operate in the state of North Carolina.

Delegated-Design Submittal: In addition to Shop Drawings, Product Data, and other required submittals, submit a statement, signed and sealed by the responsible design professional, for any product and system specifically assigned to CMAR to be designed or certified by a design professional, indicating that the products and systems are in compliance with performance and design criteria indicated. Include list of codes, loads, and other factors used in performing these services.

Permits, Licenses, and Certificates: For City's records, submit copies of permits, licenses, certifications, inspection reports, releases, jurisdictional settlements, notices, receipts for fee payments, judgments, correspondence, records, and similar documents, established for compliance with standards and regulations bearing on performance of Work. Where appropriate, upload documents in the City's web-based project control software.

Quality Assurance

CMAR is responsible for the quality of Work under the Contract, including their suppliers and subcontractors, and for providing QA/QC in accordance with Contract Documents and their approved Quality Plan.

Fabricator Qualifications: A firm experienced in producing products similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.

Factory-Authorized Service Representative Qualifications: An authorized representative of manufacturer who is trained and approved by manufacturer to inspect installation of manufacturer's products that are similar in material, design, and extent to those indicated for this Project.

Installer Qualifications: A firm or individual experienced in installing, erecting, or assembling work similar in material, design, and extent to that indicated for this Project, whose work has resulted in construction with a record of successful in-service performance.

Manufacturer Qualifications: A firm experienced in manufacturing products or systems similar to those indicated for this Project and with a record of successful in-service performance.

Professional Engineer Qualifications: A professional engineer who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installation of the system, assembly, or product that is similar to those indicated for this Project in material, design and extent.

Testing Agency Qualifications: An agency with the experience and capability to conduct testing and inspecting indicated, as documented by ASTM E 329, and that specializes in these types of tests and inspections to be performed.

Mockups: Before installing portions of the Work requiring Mockups, build Mockups for each form of construction and finish required to comply with the following requirements, using materials indicated for the completed Work:

Build mockups in location and of size indicated or, if not indicated, as directed by Owner's Rep.

Notify Owner's Rep three days in advance of dates and times when Mockups will be constructed.

Demonstrate the proposed range of aesthetic effects and workmanship.

Obtain the Owner Rep's approval of Mockups before starting Work, fabrication, or construction.

Maintain Mockups during construction in an undisturbed condition as a standard for judging the completed Work.

Demolish and remove Mockups when directed, unless otherwise indicated.

Quality Control

City Responsibilities: Where QC services are indicated as City's responsibility, City will engage a qualified Testing Agency to perform these services.

City will furnish CMAR with names, addresses, and telephone numbers of Testing Agencies engaged and a description of the types of testing and inspecting they are engaged to perform.

Owner will conduct tests as prescribed by NCDOT / Charlotte Water standards or as deemed necessary.

Costs for retesting and reinspecting for construction that replaces or is necessitated by Work that failed to comply with the Contract Documents will be the responsibility of the CMAR.

CMAR Responsibilities: Unless otherwise indicated, provide QC services specified and required by authorities having jurisdiction. CMAR shall cooperate with agencies performing tests, inspections, and similar QC services, including City-hired agencies, and provide reasonable auxiliary services as requested. Additionally:

Testing and inspecting requested by CMAR and not required by the Contract Documents are CMAR's responsibility.

Testing and inspections identified in the technical sections as being required by the CMAR shall be included in CMAR's Quality Program.

Coordinate sequence of activities to accommodate required QC services, schedule times for tests, inspections, obtaining samples, and similar activities

Notify Testing Agencies at least 24 hours in advance of time when Work that requires testing or inspecting will be performed.

Provide incidental labor, materials and facilities necessary to facilitate tests and inspections

Provide adequate quantities of representative samples of materials that require testing and inspecting. CMAR shall furnish samples and shall assist Testing Agency in obtaining samples when requested.

Provide facilities for storage and field-curing of test samples.

Provide preliminary design mix proposed for use for material mixes that require control by Testing Agency.

Provide security and protection for samples and for testing and inspecting equipment at Project site.

Submit additional copies of each written report directly to authorities having jurisdiction, when they so direct.

Repair and protection are CMAR's responsibility, regardless of the assignment of responsibility for QC services.

Protect construction exposed by or for QC service activities.

On completion of testing, inspecting, sample taking, and similar services, repair damaged construction and restore substrates and finishes.

- a. Provide materials and comply with installation requirements specified in other Sections of these specifications. Restore patched areas and extend restoration into adjoining areas in a manner that eliminates evidence of patching.

CMAR's QC Officer: In order to ensure that the Work conforms to the Contract Documents, the QC Officer will develop and supervise the Quality Program for the CMAR's and subcontractor's forces.

Inspect and audit the Work daily. Immediately act to eliminate unacceptable materials, equipment, and workmanship. Ensure nonconformances are identified, documented, and evaluated to determine appropriate disposition. Recommend immediate corrective action and, if applicable, preventive action and report the action in the appropriate QC form provided in the City's web-based project control software.

Attend and participate in weekly Quality meetings and Special Quality meetings as directed by the Owner's Rep. Evaluate the effectiveness of these meetings and submit an evaluation to the Owner's Rep; when appropriate, recommend improvements.

Compile, maintain current, and submit to the Owner's Rep a list of CMAR and subcontractor personnel and firms requiring certification as directed by the Owner's Rep. The list, when submitted, is to be accompanied by the associated certifications.

Perform, in conjunction with the Owner's Rep, on-site Quality Assurance, or Technical Services representatives, inspections of off-site facilities and QC procedures, such as metal panel suppliers, prior to their products being fabricated or incorporated into the Work.

Prepare a Weekly Quality Control Summary Report of all QC activities including but not limited to the following:

- a. Briefly outline the activities and actions of the QC Officer.
- b. Summarize test activities including tests which resulted in actions taken to correct or preclude activities of the CMAR or subcontractor which are contrary to the Contract Documents.

- c. Identify CMAR and subcontractor activities or conditions adverse to quality, the corrective action taken, and actions taken to preclude recurrence.
- d. Describe subcontractors QC performance and, if applicable, improvements needed.
- e. Record off-site inspections and audits, highlighting QC measures in effect and to be implemented which will assure that quality requirements will be met.

Manufacturer's Field Services: Where indicated, CMAR shall engage a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. Report results to the Owner's Rep in writing.

CMAR's Quality Plan

The Quality Program encompasses those activities to be performed by the CMAR to ensure that the Work conforms to the Contract Document requirements. The Quality Plan shall contain an index and each page shall be numbered and uniquely identified with a revision number and date of issue. The Quality Plan will be signed by the CMAR's Leadership.

The Quality Plan shall, as a minimum, meet the requirements of the FTA Quality Management Guidelines and CATS QMS: (NOTE: Procedures referred to herein shall be made available for the Owner's Rep to review and approve.)

Element 1 - Management Responsibility: Identify CMAR's personnel who have quality responsibilities and describe their responsibility and authority.

Element 2 - Documented Quality Management System: Describe detailed operating procedures and forms that will be used to implement the Quality Program. Include use of forms and workflows provided in the City's web-based project control software where appropriate.

Element 3 - Design Control: If applicable, describe the procedure that defines the requirements for control, verification, and documentation of design activities. (Recognize that the CMAR is responsible for ensuring that the Work meets design requirements and that requested changes or modifications to the design are appropriately submitted and approved by the Owner's Rep prior to commencing Work.)

Element 4 - Document Control: Describe the procedure which will ensure that the latest issue of documents and information, as required by the Contract Documents, shall be used to govern the Work. The procedure shall provide for the removal from use of obsolete or suspended information in a timely fashion.

Element 5 - Purchasing: Recognize that the CMAR is responsible for ensuring that supplies and services procured or provided conform to the Contract. Whenever the CMAR provides a product, the CMAR shall first ensure that the product is of domestic manufacture or origin. *See* Article 3 of Part A of Supplementary Conditions. (The Owner's Rep reserves the right of access to the CMAR and/or subcontractor facilities to inspect, reject, audit or otherwise verify requirements for any supplies furnished or services rendered under the Contract are met.)

Element 6 - Product Identification and Traceability: Describe the procedure used to ensure that products and material are properly identified and controlled to prevent the use of incorrect or defective items.

Element 7 - Process Control: Describe the following:

- a. Means of assuring accuracy and consistency in production and installation processes
- b. Identification of special processes and associated work plans that provide for work sequence, working environment, and equipment
- c. Appropriate certifications for special processes
- d. Appropriate qualifications and certifications for personnel performing or inspecting special processes

Element 8 - Inspection and Testing: Describe the means of assuring that foremen, subcontractors, and others are inspecting the Work adequately and in a timely manner.

- a. Describe the procedure used to ensure compliance with testing requirements in the Contract Documents. Where CMAR-employed testing laboratory services are required, the name and address of each laboratory shall be identified.
- b. Describe a procedure for documenting and monitoring test results and how appropriate and timely responses to adverse test results will be ensured.
- c. Describe how the quality and testing of subcontractor Work, such as mechanical and electrical will be accomplished and verified.
- d. Describe a program to accomplish the following inspections:

Receiving Inspections: Inspect products and materials as soon as they are delivered to the job site ensuring that they meet Contract Document requirements, agree with the shipping documentations and, as applicable, are accompanied by material certifications and test reports. Ensure that accepted material and equipment is properly stored until needed in accordance with the manufacturer's recommendations and Article 12 of Part C of the Supplementary Conditions. Promptly remove rejected materials from the job site.

Preparatory Inspections: Ensure that preliminary or prerequisite Work has been satisfactorily completed. Ensure that products and material are in good condition and conform to the Contract Document requirements and are in sufficient quantities. Ensure that materials, products, and equipment have been satisfactorily tested, and test reports have been submitted and approved. If the manufacturer's installation instructions conflict with the Contract Documents, immediately notify the CMAR's Project Manager and the Owner's Rep. Permit installation to proceed only after the conflict has been documented for the Weekly Quality Control Summary Report, resolved, and approved by the Owner's Rep.

In-process Inspections: Inspect when Work is being started, and periodically as Work progresses; on a representative portion of a particular feature of the Work. Review testing for compliance with the Contract Documents.

Final Inspection: Coordinate and support final inspection and testing; ensure that the completed Work is in accordance with the Contract Documents and that previously identified discrepancies have been satisfactorily resolved.

- e. Identify specific Work stages for critical inspection points, commonly referred to as witness and hold points, and describe the procedure to be used for initiating, conducting and documenting the status of these inspections. Typical critical inspection points include receipt and installation of unique materials or products, locations, or structures having stringent tolerances, installations requiring special sequences or methods, or where Work will be covered up by other Work.

Element 9 - Inspection, Measuring, and Test Equipment: Describe a procedure for ensuring that inspection, measuring, and test equipment are appropriate for their use and how their accuracy will be ensured by calibration.

Element 10 - Inspection and Test Status: Describe a procedure for positively identifying the inspection status of the Work. It should include documentation which provides verification the Work has been inspected in accordance with the Plans.

Element 11 - Nonconformance: Describe a procedure for controlling nonconforming materials or deliverables, including its identification, segregation and disposition as required. The procedure shall provide for use of the City's web-based project control software where appropriate.

Element 12 - Corrective Action: Describe a tracking system procedure to ensure timely actions are taken to address any nonconformances identified. The procedure shall include identification of root cause(s) of the nonconformance and implementation of appropriate corrective and preventive actions. In the event actions are not forthcoming in a timely manner, the need for action is escalated in a step-by-step fashion to increasingly higher levels of management.

- a. Describe the method of ensuring the Owner Rep's approval of required remedial action procedures prior to the start of such actions.

Element 13 - Quality Records: Describe a procedure for providing verifiable objective evidence in the form of complete and reliable records, and ensuring the quality of materials, equipment, facilities, and workmanship. The procedure shall provide for the use of the City's web-based project control software where appropriate.

Element 14 - Quality Audits: Describe the program to ensure that the elements of the Quality Plan are functioning as intended. Such program shall identify frequency of the audit program and the audit report will be submitted to the City at completion of the audit.

Element 15 - Training: Describe the program by which employees will be trained, briefed; have feedback acknowledged, skills verified, and also provide documentation of such training.

SUPPLEMENTARY CONDITIONS – PART D

PROJECT SPECIAL PROVISIONS

Undefined terms in this Part D have the meanings ascribed to them in the Contract.

[additional provisions will be added to this part in the final contract]

Article 1: General Requirements

1.1 Contract Time

- A. The Contract Time for Substantial Completion will begin upon the issuance of the Notice to Proceed (NTP) and will extend **[to be completed] calendar days** thereafter.

1.2 Liquidated Damages

- A. The Parties agree that the City will suffer compensable damages as a result of a failure on the part of the CMAR to complete the Work in a timely fashion in full compliance with the Project Schedule. Liquidated Damages for this Contract shall be assessed at the below rates:
1. Failure to reach Substantial Completion, specifically including the completion of all work and satisfactory completion of stand-alone testing making the site available for pre-revenue operations:
 - 1-60 calendar days late = **[\$to be completed]** per calendar day
 - Each calendar day beyond 60 calendar days late = **[\$to be completed]** per calendar day
 2. Failure to reach final completion date such that the City cannot complete pre-revenue operations and certify for revenue operations:
 - Each calendar day late = **[\$to be completed]** per calendar day.
- B. The Liquidated Damages set forth above are intended to compensate the City only for the below specific damages the City will sustain, but which are difficult to ascertain:
1. The cost and burden of operating a bus bridge to replace the service of the CATS Blue Line near the Project while it is not in operation;
 2. The administrative and financial costs of management and coordination of the extended Work efforts; and
 3. The costs of all efforts necessary to mitigate the effects of the delay.
- Regardless of any liquidated damages assessed, the CMAR shall be obligated to remedy any noncompliance with the Federal Contracting clauses, specifically including but not limited to Buy America, at no cost to the City.
- C. *[additional liquidated-damage provisions to be inserted in final contract, including for issues concerning track access]*
- D. The City's right to Liquidated Damages in this Contract is in addition to, and not in lieu of, all other rights and remedies other than compensatory damages that the City has under this Contract or otherwise according to law for such late completion. Any such Liquidated Damages assessed and collected shall compensate the City only for its damages resulting from such late completion of Work, and the City shall be entitled to recover, in addition, all other damages resulting from the CMAR's default from which such late completion results, and from any and all other defaults by the CMAR, and to pursue all other rights and remedies the City has under this Contract or otherwise according to law for all such defaults.

PROJECT DRAWINGS AND/OR SPECIFICATIONS

[drawings and specifications to be added in the final contract]

THE ADDENDA

[any addenda will be added in the final contract]

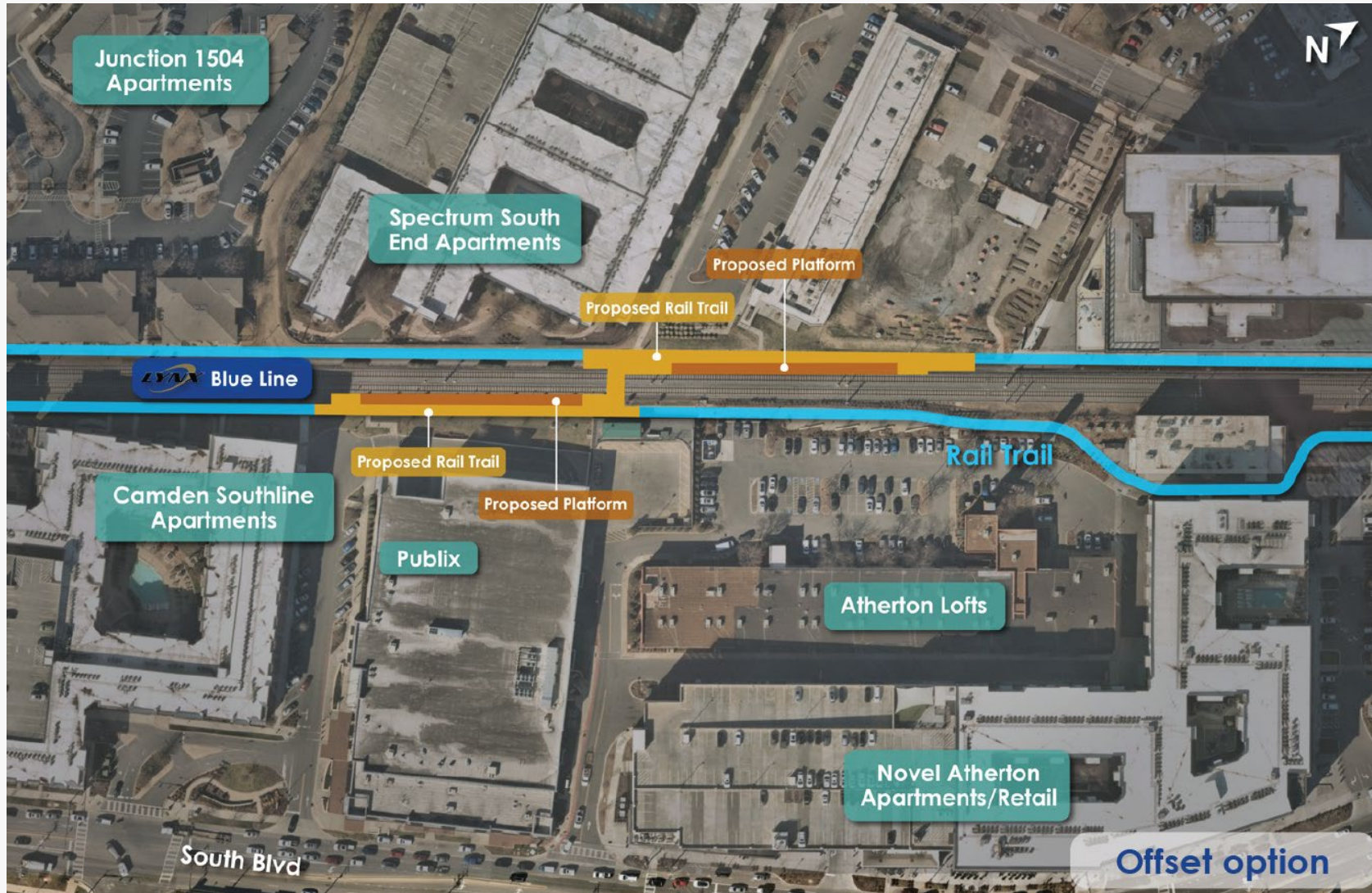
EXHIBIT C: SITE PLAN, SCHEDULE AND COST ESTIMATE

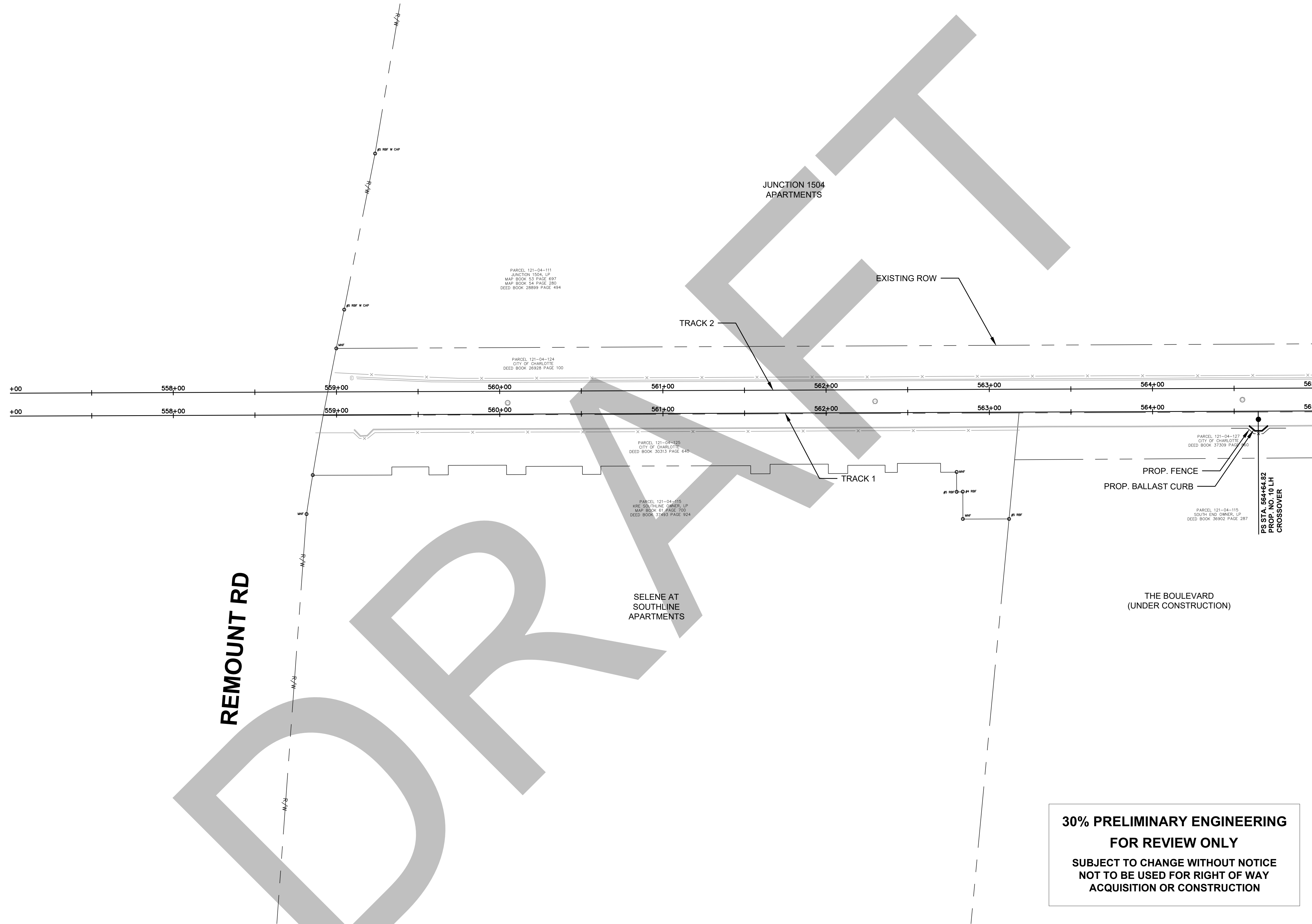
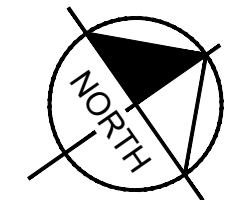
PROJECT OVERVIEW

Project Context & Scope



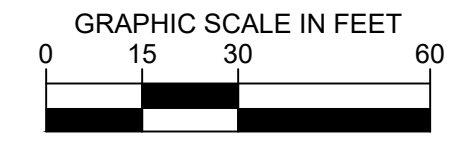
Locally Preferred Alternative (LPA)





DRAFT

**30% PRELIMINARY ENGINEERING
FOR REVIEW ONLY**
SUBJECT TO CHANGE WITHOUT NOTICE
NOT TO BE USED FOR RIGHT OF WAY
ACQUISITION OR CONSTRUCTION



MATCHLINE STA 565+00

NO.	DATE	REVISION	BY	DWN	CHK	APP

Kimley»Horn

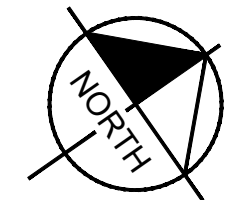


PREPARED BY: CRS
DRAWN BY: CMM
CHECKED BY: JMM
APPROVED BY: PGP

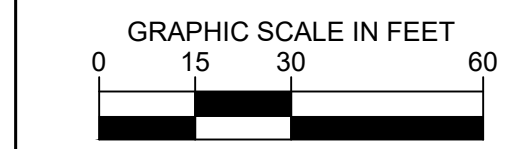
**LYNX BLUE LINE
SOUTH END STATION PROJECT**

SITE PLAN
STA. 557+00 TO STA. 565+00

DATE: 6/19/2023
SHEET: 15 OF ##
DRAWING: P-R-ALN-PLN-001
CATS NO: XXXXX



MATCHLINE STA 573+00



**30% PRELIMINARY ENGINEERING
FOR REVIEW ONLY**
SUBJECT TO CHANGE WITHOUT NOTICE
NOT TO BE USED FOR RIGHT OF WAY
ACQUISITION OR CONSTRUCTION

DATE: 6/19/2023
SHEET: 16 OF ##
DRAWING: P-R-ALN-PLN-002
CATS NO: XXXXX

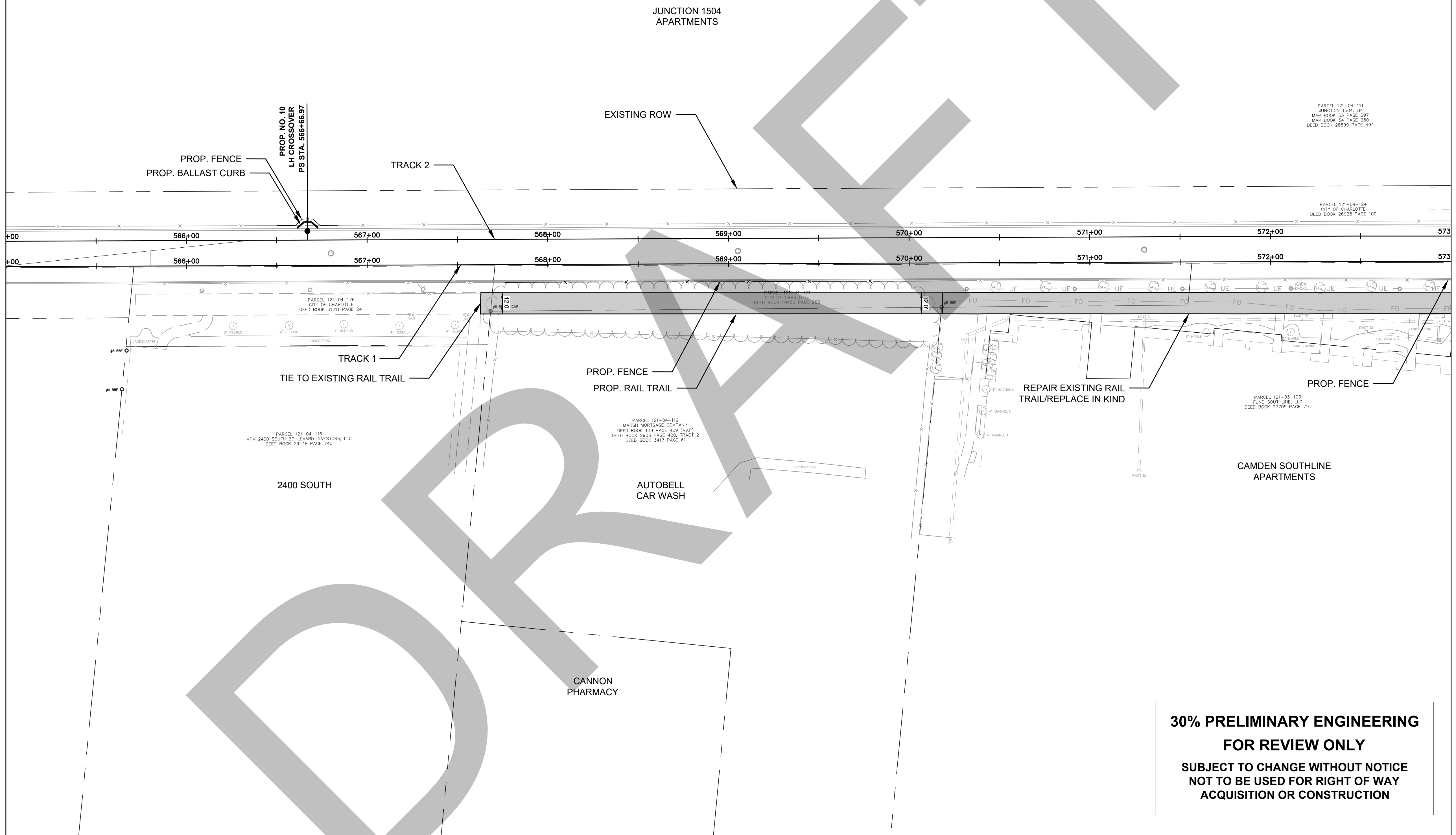
PREPARED BY: CRS
DRAWN BY: CMM
CHECKED BY: JMM
APPROVED BY: PGP

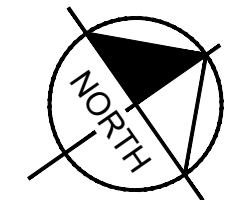
**LYNX BLUE LINE
SOUTH END STATION PROJECT**
SITE PLAN
STA. 565+00 TO STA. 573+00



NO.	DATE	REVISION	BY	DWN	CHK	APP

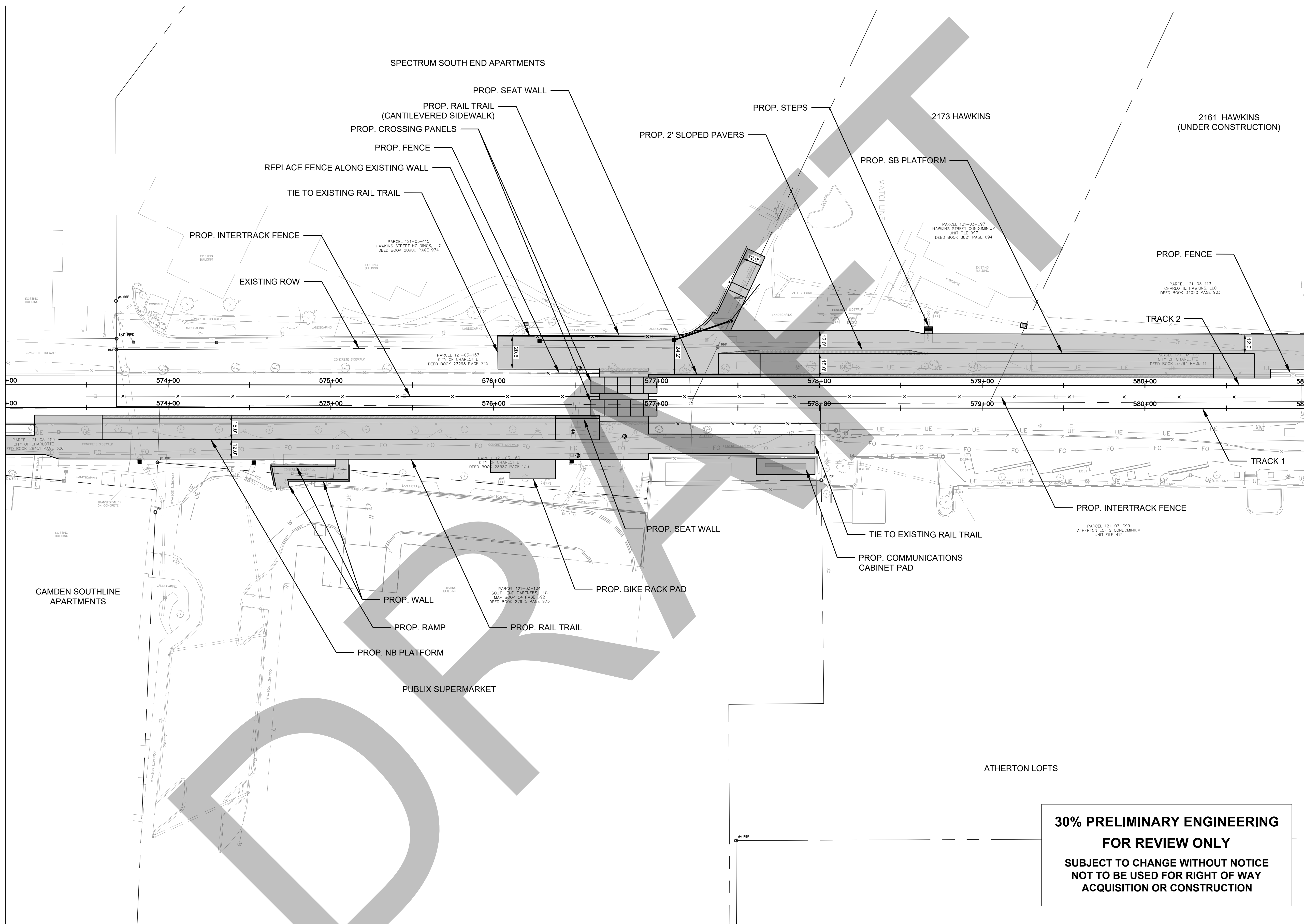
MATCHLINE STA 565+00





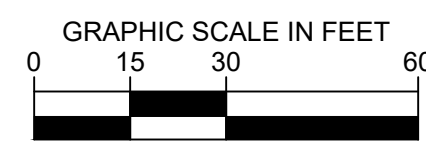
MATCHLINE STA 573+00

MATCHLINE STA 581+00



**30% PRELIMINARY ENGINEERING
FOR REVIEW ONLY**

SUBJECT TO CHANGE WITHOUT NOTICE
NOT TO BE USED FOR RIGHT OF WAY
ACQUISITION OR CONSTRUCTION



NO.	DATE	REVISION	BY	DWN	CHK	APP

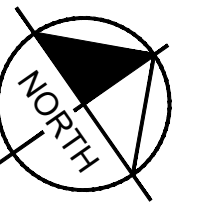


PREPARED BY: CRS
 DRAWN BY: CMM
 CHECKED BY: JMM
 APPROVED BY: PGP

**LYNX BLUE LINE
SOUTH END STATION PROJECT**

**SITE PLAN
STA. 573+00 TO STA. 581+00**

DATE: 6/19/2023
 SHEET: 17 OF ##
 DRAWING: P-R-ALN-PLN-003
 CATS NO: XXXXX



2161 HAWKINS
(UNDER CONSTRUCTION)

THE LINE

GROUNDCREW
SOUND

ASHTON SOUTH END
APARTMENTS

TIE TO EXISTING RAIL TRAIL

EXISTING ROW

PROP. JACK AND BORE (24" PIPE)

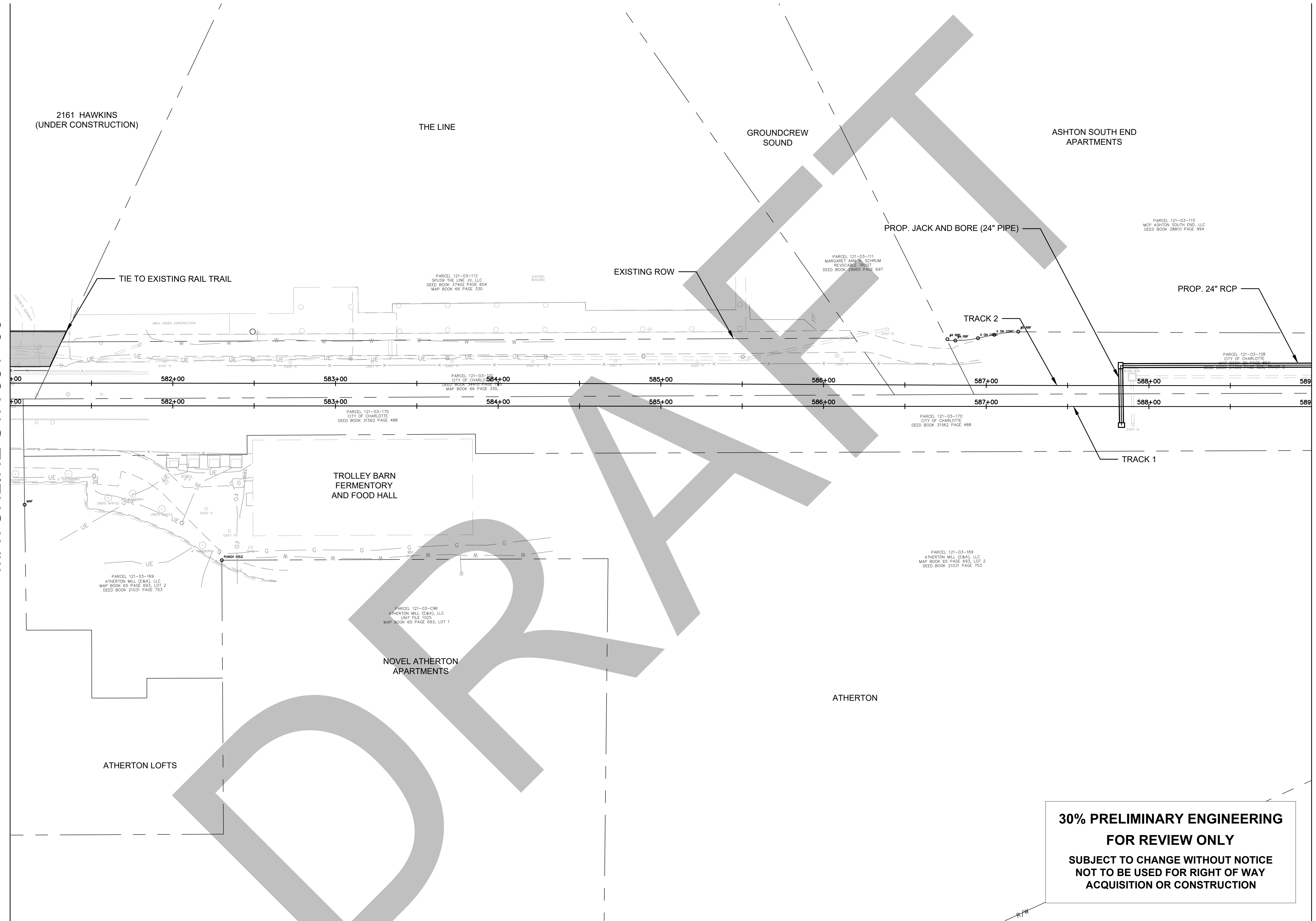
PROP. 24" RCP

TRACK 2

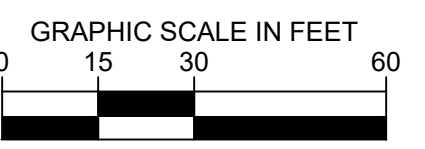
TRACK 1

MATCHLINE STA 581+00

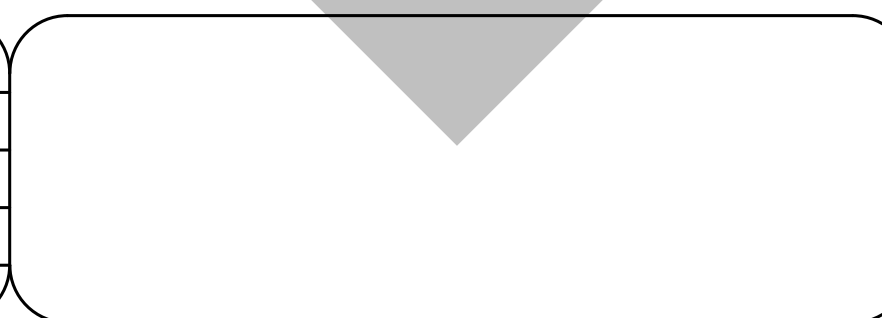
MATCHLINE STA 589+00



**30% PRELIMINARY ENGINEERING
FOR REVIEW ONLY**
**SUBJECT TO CHANGE WITHOUT NOTICE
NOT TO BE USED FOR RIGHT OF WAY
ACQUISITION OR CONSTRUCTION**



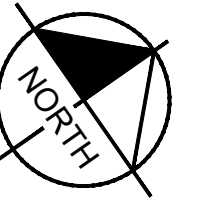
NO.	DATE	REVISION	BY	DWN	CHK	APP



PREPARED BY:	CRS
DRAWN BY:	CMM
CHECKED BY:	JMM
APPROVED BY:	PGP

**LYNX BLUE LINE
SOUTH END STATION PROJECT**
**SITE PLAN
STA. 581+00 TO STA. 589+00**

DATE:	6/19/2023
SHEET:	18 OF ##
DRAWING:	P-R-ALN-PLN-004
CATS NO:	XXXXX



MATCHLINE STA 589+00

ASHTON SOUTH END APARTMENTS

W TREMONT AVE

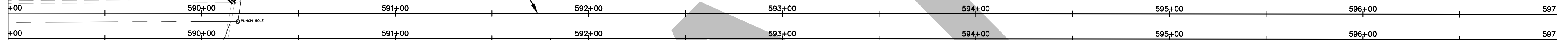
EXISTING ROW

PROP. 24" RCP

PROP. 24" RCP

TRACK 2

CAMDEN RD

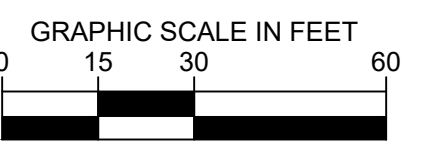


TRACK 1

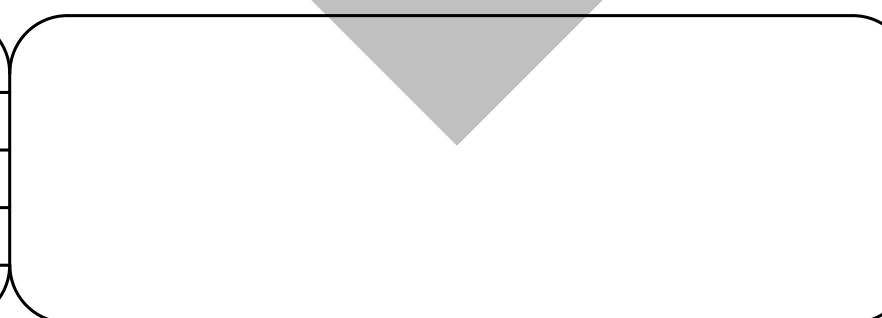
E TREMONT AVE

SOUTH BLVD

30% PRELIMINARY ENGINEERING
FOR REVIEW ONLY
SUBJECT TO CHANGE WITHOUT NOTICE
NOT TO BE USED FOR RIGHT OF WAY
ACQUISITION OR CONSTRUCTION



NO.	DATE	REVISION	BY	DWN	CHK	APP



PREPARED BY:	CRS
DRAWN BY:	CMM
CHECKED BY:	JMM
APPROVED BY:	PGP

LYNX BLUE LINE
SOUTH END STATION PROJECT

SITE PLAN
STA. 589+00 TO STA. 597+00

DATE:	6/19/2023
SHEET:	19 OF ##
DRAWING:	P-R-ALN-PLN-005
CATS NO:	XXXXX

South End Station

30% Cost Estimate

2023 Base year
 2025 Year of Expenditure
 3.5% Escalation

FTA SCC Code	YOE SUB-CATS	YOE SSC
10 GUIDEWAY & TRACK ELEMENTS		
10.11 SUBTOTAL Track: Ballasted	\$ 169,882	\$ 1,268,776
10.12 SUBTOTAL Track: Special (switches, turnouts)	\$ 1,098,894	
20 STATIONS, STOPS, TERMINALS, INTERMODAL		\$ 2,271,234
20.01 SUBTOTAL At-grade station, stop, shelter, mall, terminal, platform	\$ 2,271,234	
40 SITEWORK & SPECIAL CONDITIONS		\$ 4,913,843
40.01 SUBTOTAL Demolition, Clearing, Earthwork	\$ 202,636	
40.02 SUBTOTAL Site Utilities, Utility Relocation	\$ 364,069	
40.03 SUBTOTAL Haz. mat'l, contam'd soil removal/mitigation, ground water treatments	\$ 25,875	
40.04 SUBTOTAL Environmental mitigation, e.g. wetlands, historic/archeologic, parks	\$ 104,406	
40.06 SUBTOTAL Pedestrian / bike access and accommodation, landscaping	\$ 1,377,656	
40.08 SUBTOTAL Temporary Facilities and other indirect costs during construction	\$ 2,839,200	
50 SYSTEMS		\$ 6,785,927
50.01 SUBTOTAL Train control and signals	\$ 747,396	
50.02 SUBTOTAL Traffic signals and crossing protection	\$ 1,299,222	
50.04 SUBTOTAL Traction power distribution: catenary and third rail	\$ 1,560,454	
50.05 SUBTOTAL Communications	\$ 2,121,865	
50.06 SUBTOTAL Fare collection system and equipment	\$ 456,683	
50.07 SUBTOTAL Central Control	\$ 600,306	
60 ROW, LAND, EXISTING IMPROVEMENTS		\$ 352,369
60.01 SUBTOTAL Purchase or lease of real estate	\$ 352,369	
80 PROFESSIONAL SERVICES (applies to Cats. 10-50)		\$ 3,028,876
79 80.01 Project Development	\$ 271,613	
80 80.02 Engineering	\$ 1,650,283	
81 80.03 Project Management for Design and Construction	\$ 457,875	
82 80.04 Construction Administration & Management	\$ 319,232	
83 80.07 Surveys, Testing, Investigation, Inspection	\$ 329,873	
90 UNALLOCATED CONTINGENCY	\$ 2,173,945	\$ 2,173,945
PROJECT TOTAL		\$20,794,970