Town of Clayton
Regular Town Council Meeting Agenda
Tuesday, January 18, 2022 @ 6:00 PM
Council Chambers

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOU TUBE CHANNEL:
https://www.youtube.com/TownofClaytonNC

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

- ALL persons attending must wear a mask.
- We will be following proper social distancing at all times.
- All council/board members will be socially distanced in the council chambers and wearing face masks.*
- All staff and visitors will be socially distanced while within the council chambers. Face masks will be worn.*
- Hand sanitizer will be available, both in the lobby and council chambers.
- Podium/microphone will be sanitized after each speaker.

**Masks may be lowered when speaking.*

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. ADJUSTMENT OF THE AGENDA

3. CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a. Resolution Awarding Badge & Service Weapon (Officer Pounds)
Resolution #2022-01

b. Proclamation
- School Choice Week in Clayton

Proclamation

c. Proclamation
- Student Art Month

Proclamation

d. Warranty Acceptance
- The Shoppes at Glen Laurel, Lot 2

The Shoppes at Glen Laurel, Lot 2

e. Draft Minutes
- January 3, 2022 - Regular Session
- January 3, 2022 - Closed Session

DRAFT Minutes

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

a. Advisory Boards

Presenter: Kimberly A. Moffett, Town Clerk

- Planning Board Recommendations
- Vacancy on DDA

Cover

POTENTIAL ACTION: Appointment of Planning Board Members as Presented

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

a. Employee Introduction & Acknowledgements
Presenters: Ben Howell, Planning Director & William Simpson, Water Reclamation Superintendent

- Bruce Venable - Planner I Trainee
- Stefania Marroquin
- Chad Wallace - Grade 2 & Grade 3 Biological WW Operator Certifications
- Mattie Frazier - Grade 1 & Grade 2 Biological WW Operator Certifications

b. Presentation of Badge & Service Weapon to Retired Officer Brian Pounds
Presenter: Greg Tart, Police Chief

c. Life Saving Awards
Presenter: Greg Tart, Police Chief

- Lt. John LeQuire
- Sgt. Timothy Mims
- Officer Kavon Banks
- Officer Jeffrey Demarest

d. Downtown Parking Task Force Update
Presenters: Patrick Pierce, Economic Development Director & Ruth Anderson, Task Force Member
Cover

6. PUBLIC HEARINGS

a. 2021-126-OA - Resource Conservation Area /Steep Slopes - Text Amendment
Presenter: Ben Howell, Planning Director
This hearing is continued from January 3, 2022
Cover
Staff Report
Section 155.500 - Existing UDC Text
Section 155.500 - Text Amendment Option 1_5000 Sq Ft
Section 155.500 - Text Amendment Option 2_Direct Connection
Section 155.500 - Text Amendment Option 3_100 ft
Section 155.500 - Text Amendment Option 4_Connected 20 ft
Map of Slope Areas in Clayton Planning Jurisdiction
Other Jurisdictions Steep Slopes Ordinance Language
November 15 2021 and January 3 2022 Staff Presentations
Exhibit Maps of Steep Slope Options
DRAFT Ordinance with Option 1
DRAFT Ordinance with Option 2
DRAFT Ordinance with Option 3
DRAFT Ordinance with Option 4

POTENTIAL ACTION: Adoption of Ordinance #2022-01-01

b. 2020-98-SUP- Champion East - Special Use Permit *(Quasi-Judicial)*
Presenter: Ben Howell, Planning Director
This hearing is continued from January 3, 2022
Cover
Application
Staff Report
Staff Report Map
Neighborhood Meeting Material
Site Plan
Elevation
Adjacent Property Owner Letter
Newspaper Ad
Revised Conditions of Approval
Approval - Potential
Motion Form

POTENTIAL ACTION: Approval/Denial 2020-98-SUP

7. OLD BUSINESS

a. Award Design/Build River Walk on the Neuse
Presenter: Joshua Baird, Town Engineer
Cover
General Location Map
Previous Budget Ordinance
Memo
RFQ
Crowder Construction
Proposed Contract Document
Resolution

POTENTIAL ACTION: Adoption of Resolution #2022-02

b. Mid Year Budget Discussion
Presenter: Rich Cappola, Interim Town Manager
Cover

8. NEW BUSINESS

9. STAFF REPORTS

a. Town Manager

b. Town Attorney

c. Town Clerk

d. Other Staff
- Public Works - Street Division - Vehicle Purchase

Presenter: Rusty Clawson, Street Maintenance Supervisor

10. OTHER BUSINESS

a. Informal Discussion & Public Comment

b. Council Comments

11. ADJOURNMENT

Quasi-Judicial (evidentiary) – These hearings are different from other public hearings in that they resemble a court hearing where testimony is presented and the Town Council acts like a court of law. During evidentiary hearings, the Town Council receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented. Citizens may give testimony in an evidentiary hearing after they have taken an oath.

Resolution #2022-01

Resolution

AWARDING BADGE AND SERVICE WEAPON TO RETIRING POLICE OFFICER

WHEREAS, NCGS § 20-187.2 provides that retiring members of municipal law enforcement agencies may receive, at the time of their retirement, the badge worn or carried by them during their service with the municipality; and

WHEREAS, NCGS § 20-187.2 further provides that the governing body of the municipal law enforcement agency may, in its discretion, award to a retiring member the service weapon of such retiring member; and

WHEREAS, Police Officer Brian Pounds has served as a sworn law enforcement officer in North Carolina for 20 years with 11.5 of those years as a member of the Clayton Police Department. Officer Pounds retired from the Clayton Police Department on December 1, 2021.

NOW, THEREFORE, BE IT RESOLVED by the Clayton Town Council that the badge and service weapon worn and/or carried by Officer Brian Pounds be awarded to him on his retirement.

Duly adopted this the 18th day of January, 2022 while in regular session.

_____
Jody McLeod
Mayor

ATTEST:

_____
Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Proclamation

School Choice Week

Whereas, all children in the Town of Clayton should have access to the highest-quality education possible; and,

Whereas, the town recognizes the important role that an effective education plays in preparing all students in Clayton to be successful adults; and,

Whereas, quality education is critically important to the economic vitality of the Town of Clayton; and,

Whereas, Clayton is home to a multitude of high quality public and nonpublic schools from which parents can choose for their children, in addition to families who educate their children in the home; and

Whereas, educational variety not only helps to diversify our economy, but also enhances the vibrancy of our community; and,

Whereas, Clayton has many high-quality teaching professionals in all types of school settings who are committed to educating our children; and,

Whereas, School Choice Week is celebrated across the country by millions of students, parents, educators, schools and organizations to raise awareness of the need for effective educational options;

NOW, THEREFORE, I, Mayor Jody McLeod on behalf of the Clayton Town Council, do hereby recognize January 23 – 29, 2022 as Clayton School Choice Week, and call this observance to the attention of all of our citizens.

Duly adopted this the 18th day of January, 2022 while in regular session.

_____

Jody McLeod
Mayor

Proclamation

Student Art Month

WHEREAS, the arts, in its many forms, constitute an important part of the community and contribute to the development of our youth; and,

WHEREAS, participation in and enjoyment of the arts can take many forms, including the visual arts, fine arts and performing arts; and,

WHEREAS, the Woman's Club of Clayton has sought to promote the involvement of our youth in various art projects to the betterment of their minds and the community as a whole.

NOW, THEREFORE, LET IT BE PROCLAIMED by the Honorable Mayor and Town Council of the Town of Clayton that the month of February each year, be recognized as:

STUDENT ART MONTH

Let it also be proclaimed that all businesses, industries and citizens in the Clayton community are urged to support and encourage the school aged children of Clayton to participate in the arts.

Duly proclaimed by the Clayton Town Council this the 18th day of January 2022, while in regular session.

_____

Jody L. McLeod
Mayor

TOWN OF CLAYTON
Engineering & Inspections
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

MEMORANDUM

To: Kimberly Moffett, Town Clerk

From: Chris Rowland, Construction Project Administrator

Copy: Jeff Foster, CE Group
Jonathan Jacobs, Assistant Town Engineer
Karen Durham, Engineering & Inspections Coordinator

Date: January 4, 2022

Subject: The Shoppes at Glen Laurel, Lot 2

Please place a warranty acceptance request for the subject public water and sewer utilities along with all pertinent easements on the next available agenda. Record drawings have been reviewed and accepted. Following acceptance, the utilities will be subject to a one-year warranty period. Following warranty expiration, a final inspection will be done with all deficient items corrected by the developer prior to final acceptance.

Town of Clayton
Regular Town Council Meeting Minutes
Monday, January 3, 2022 @ 6:00 PM
Council Chambers

COUNCIL PRESENT:
Mayor McLeod
Mayor Pro Tem Thompson
Council Member Archer
Council Member Casey
Council Member Everett
Council Member Sims

STAFF PRESENT:
Rich Cappola, Interim Town Manager
Dolores Gill, D/Town Manager
Lee Barbee, Interim D/Town Manager
Jim Cauley, Town Attorney
Heidi Holland, D/Town Clerk
Ben Howell, Planning Director
Joshua Baird, Engineering Director
Patrick Pierce, Economic Development Director
Louis Duffie, Asst. Program Manager
Matt Sutphin, Deputy Fire Chief

COUNCIL ABSENT:

1 CALL TO ORDER
Pledge of Allegiance and Invocation

a) Mayor McLeod called the meeting to order at 6:04 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

3 CONSENT AGENDA
(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a) Warranty Acceptance - Phase 1 Asphalt
- Village at Little Creek Subdivision - Phase 1 Asphalt

b) Draft Minutes
- December 20, 2021

ACTION: Adoption of Consent Agenda as Presented

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

4 ADMINISTRATIVE ITEMS

a) Advisory Board Appointment Recommendations
Presenter: Kimberly A. Moffett, Town Clerk

Heidi Holland, Deputy Town Clerk, presented recommendations to council. Mayor Pro Tem Thompson stated, due to the number of applications for the Planning Board, he would like additional time to review those applications. He stated he would approve recommendations for the other advisory boards.

ACTION: Appointments as Presented with Exception of Planning Board

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

6 PUBLIC HEARINGS

a) 2021-126-OA - Text Amendment - Steep Slopes
Presenter: Ben Howell, Planning Director

Mr. Howell stated this is very similar to the presentation shared in December. He stated this is a text amendment regarding adding steep slopes into the definition of resource conservation areas (RCA). He stated currently resource conservation areas are defined as a 100-year flood plain stream buffer area and jurisdictional wetlands, which have prohibited uses in those areas. Provided was information from 2045 Growth Plan regarding RCA which stated Strategy NR 1.1.1, continue to discourage development in Primary Resource Conservation Areas (PRCAs), which include floodplains, protected stream buffers, slopes above 20% of at least 5,000 sq. ft. contiguous areas, slopes above 15% within 100 ft. of blue line streams and wetlands.

Provided was a comparison of other jurisdictions' steep slope regulations. He stated this comparison was prepared on the earlier version of the text that was in place prior to November when any slopes over 25% and 5000 sq. ft. or more be protected. The current language does not reference steep slopes at all. He discussed the language of the four different options. Option 2 was recommended by Planning Board on December 21, 2021.

Council Member Casey asked when comparing to other jurisdictions, some towns that are a little larger have requirements from 15 to 25% but it says less strenuous, he stated we don't have any 15 to 25% ordinances, Mr. Howell stated that is correct. Council Member Casey stated we are looking at 15 to 25% higher, he asked if that had been proposed, Mr. Howell stated it has not been proposed to include slopes less than 25% in any of the options provided. Council Member Casey stated when this originally went to the Planning Board, 5000 sq. ft. was in option 2 and then when voted the second time in option 2, the 5000 sq. ft. language had been taken out, he asked for clarification on that. Mr. Howell stated the reasoning behind that was in looking back at the original option proposed, only 1 or 2 options included the 5000 sq. ft. minimum size and when staff reviewed it, it was decided to remove that from options 2, 3 and 4. If that was in one of

those options, there still could be a chance some steep slopes that were directly contiguous to one of the other RCA areas would not be protected.

This was noted as a public hearing, Mayor McLeod asked if anyone wished to speak. Alsey Gilbert, Clayton resident, spoke about the 100-year floodplain. He discussed the differences between the small and larger subdivisions. He also discussed wetlands. He asked council to be mindful about these subjects and of future jobs.

Steve Farrell, Clayton resident, spoke in opposition. He stated he reached out to a couple builders and they were not aware of this as land-owners. He stated it seemed like we are going backwards.

Steve Smith, Clayton resident, brought in a 2'x4' that referenced steep slopes. He stated if option 2 were to be adopted, that would restrict a lot of land. He asked council to consider looking at another way of doing this.,

Johnny Hassell, Clayton resident, stated he had seen projects with steep slopes and activity in the slopes itself. He stated from the presentation tonight, it looks like there are a lot of holes and that causes him concern.

With no one further wishing to speak the public hearing was closed at 6:36 p.m. and turned over to council for deliberation.

Council Member Archer stated one portion of the discussion that didn't get represented were the citizens she heard from with regard to steep slope issues. Council Member Casey stated he would like to research more into what other comparable towns are doing. Council Member Everett stated he feels the planning board has done their due diligence and we should rely on staff. He stated he was in favor of option 2. Mayor McLeod stated it is very important that whatever verbiage chosen, needs to be clear and concise and is not open to several interpretations. There was further discussion among council members. Council Member Archer stated she does not feel comfortable right now choosing from the current options. There was further discussion on continuing this item until the next meeting.

Mayor McLeod requested to council that if there are concerns on verbiage, to reach out to town manager or staff and share their concerns. Mr. Howell asked council if there is specific information they would like to help with this subject or do if more time was needed to think this through and discuss the current options. He also asked if they would like additional options, staff would need additional guidance. Town Manager Rich Cappola referenced back to the slide that showed different examples pertaining to option 3, he stated it appeared once you got beyond the 100' line, it would not be subject to conservation, Mr. Howell confirmed that.
Town Attorney Jim Cauley stated he would take a closer look at other jurisdictions' ordinances.

ACTION: - Continue to January 18, 2022 Meeting

Motion: Council Member Archer

Second: Council Member Sims
Vote: Unanimous

b) 2020-98-SUP - Champion East - Special Use Permit (Quasi-Judicial)
Presenter: Ben Howell, Planning Director

Attorney Cauley provided information about the process for a quasi-judicial. He stated only certain types of evidence could be considered when making the decision. All testimony must be given under Oath. All those who wished to offer testimony were offered the Oath of Affirmation by the Deputy Town Clerk.

Mr. Howell stated this request would allow six townhome lots in the R6 zone. The beginning property is .849 acres and is located east of Champion Street near the intersection of Amos Street. Presented was the proposed site plan. He stated request is consistent with the Comprehensive Plan 2040 and with surrounding land uses. Applicant has addressed the Findings of Facts. If approved, staff recommends conditions of approval which are outlined in the staff report. Mr. Howell asked if there were any questions.

Donnie Adams, Engineer with Adams & Hodge, was present and stated he was here to speak on behalf of the owner/developer/applicant who was unable to attend this evening. He stated they are seeking Town of Clayton water, sewer and electric. He stated this developer is the same developer who was recently approved for project Champion West and is working on the townhomes at the intersection of Shotwell and Amelia. He stated the difference between the two is Champion West has a larger parcel. He stated the elevations were requested for this project, but he does not have them available tonight. He stated the elevations for this project would be similar to above mentioned projects.

The applicant addressed each of the Findings of Facts, which are outlined in the staff report. Mr. Adams stated he is not able to testify on the value of the property but does have information that was submitted and accepted in regard to the value of Champion West. He stated the value was provided by Barry Woodard, developer of Champion West, who did a market analysis in December 2020. He stated Mr. Woodard concluded there is not a negative impact of the sales in that area. Mr. Adams asked if there were any questions.

Council Member Sims asked if these townhomes would look like Champion West, Mr. Adams replied he spoke with the owner today and Champion East would look somewhere between Champion West and the Amelia Project plans. He stated it would be a two-story garage product. Mr. Adams stated he did not have any aesthetic pictures to share. Council Member Sims stated with the two plans being different, he could not get a visual of what Champion East could look like.

Council Member Sims asked about traffic concerns. Mr. Adams stated as far as traffic, they have provided the connection point off of Champion Street at a far enough distance away from the intersection at Hwy 70 that it would not create an issue. He stated they do not anticipate the need for additional turn lanes. He stated the typical expectancy is basically 10 trips per day per unit, so approximately 60 trips per day. Council Member Casey asked if these would be slab mounted homes, Mr. Adams stated he would assume they are but could not answer that.

Mayor McLeod asked for clarification on traffic, he stated with 6 units, 2 cars per unit, for a total of 12 vehicles, in his opinion that is minimal. He stated he didn't see how that would have any negative impact on traffic. He further stated the lack of elevation is a little concerning. He stated one example shown is modern and the other is traditional. He stated elevations need to be presented. Mayor Pro Tem Thompson agreed. He also stated he does not think we have sufficient expert testimony to deliberate on. He asked Attorney Cauley if we could even consider the other projects for making decisions on this project. There was additional discussion to include the hearsay regarding neighborhood values. Attorney Cauley suggested waiting until the applicant could appear before council to address questions before a decision being made.

Mr. Adams stated it has been a long process to get to this point. He stated they have had everything ready to roll through this process and were told by the previous planning staff they needed to pull their Special Use application. He stated this project went through as a rezoning the first of September. He further voiced his concerns about numerous stalls to this project. He further added the developer has been ready with this project and it has been a struggle to get here and felt it was important that council be aware. . Mayor McLeod stated it was important that applicant bring certified documentation and suggested this item be continued.

ACTION: Continue to January 18, 2022 meeting

Motion: Council Member Archer
Second: Council Member Sims
Vote: Unanimous

7 OLD BUSINESS

8 NEW BUSINESS

a) Sole Source Exemption
Presenters: Shaun Mizell, Procurement & Contracts Manager and Louis Duffie, Assistant Program Manager

Mr. Duffie spoke on this subject. He stated the Design Builder for the new Wastewater Reclamation Facility, has identified certain items that would be built at the plant and need to be procured early. They have been advertising these bids and receiving proposals. He stated they have identified four items that they would like to exercise the town's power to approve sole source. . He stated these items are required at both the Biggs Pre-Treatment Facility as well as Little Creek.

ACTION: Approval to Proceed with Sole Source Provider

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

9 STAFF REPORTS

a) Town Manager

Mr. Cappola stated he had distributed documents for council to review. He stated these have been guiding documents to the town with regard to COVID response policies. He discussed the Omicron variant which has caused numbers to rise The executive team met this morning to discuss how to protect staff while continuing services to the town. He stated he is proposing to implement the CDC's updated guidance as well as the Johnston County Health Department guidance. This would instate a new category of leave for staff.

In addition to that, he stated for at least the next couple weeks he would like to move to a remote meeting format for typical staff meetings. He stated the next council meeting in two weeks could possibly be a remote meeting. It was also stated that if employees could work from home that would be encouraged and the responsibility of Department Heads to determine. He stated the town would continue the mask policies that are already in place for both the public and staff.

Mayor Pro Tem Thompson stated the safety of staff is paramount and he supports recommended changes.

ACTION: Approval of Updated COVID Policies and Response Plan

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

b) Town Attorney

c) Town Clerk

d) Other Staff

- Apparatus Replacement
  Presenter(s): Matt Sutphin, D/Fire Chief & Lee Barbee, Fire Chief

Interim Deputy Town Manager Barbee discussed a recent electrical incident on the west side of town. This incident happened shortly after the electrical staff headed home for the day. This was investigated and luckily only ended up being a broken pole. Electrical staff changed the pole out, which explained the current power outage on the west end.

He stated Chief Sutphin, Dolores Gill (Deputy Town Manager), Amy Shearin (Emergency Management Coordinator) and himself, have been working with the schools to come up with an emergency backup plan that could be implemented if a power delay goes longer than what the crews are expecting.

Deputy Fire Chief Matt Sutphin presented information regarding a 2006 Pierce engine that is coming up for replacement in next year's budget. He stated notification was received from Pierce that effective February 1, 2022 there would be a 7% price increase on new apparatus. Current approximate cost of engine is currently $750,000. With the above increase an additional cost $50,000 would be realized if we waited to purchase the engine until July of this year. He stated replacements is based on current rotation

program. He further stated the current engine has some maintenance issues that need to be addressed immediately if were no for replacement. Additionally, he advised there was a chance the department would have to put $40,000 worth of repairs into the engine to keep it operational until July.

He stated if we purchased the engine now we could realize a saving of $50,000 and if prepaid that would also save an additional $25,000, for a potential cost savings of $75,000. He further stated this would be a 50/50 cost share between Claytex and the town. Recommendation was being requested from council and how they wished to proceed. Mayor McLeod asked if it was currently in this year's budget, Chief Sutphin stated it was not. Mayor McLeod stated we needed to get the ball rolling.

Mr. Howell, Planning Director, stated late last year, two projects were submitted to CAMPO. He stated based on the agenda, one project had been recommended to move forward for funding. The project, East Main Street Sidewalk Project, would fill in sidewalk gaps from 2nd Street to Highway Bus. 70. This project cost is estimated at $650,000, with the town match being approximately $200,000. He stated most of the engineering plans are complete and permits are still being worked on. Right-of-way construction should begin this summer. This is all pending final approval from the CAMPO board which is expected February/March.

ACTION: Approval to Move Forward with Apparatus Replacement

Motion: Council Member Casey
Second: Council Member Archer
Vote: Unanimous

10 OTHER BUSINESS

a) Informal Discussion & Public Comment

Tommy Dew, was present and shared concerns regarding a drainage problem on his property located at 308 W. Main Street... He stated he came to a council meeting two years ago to speak on this same issue. He stated he has been to council two times as well as speaking with previous Planning Director/Economic Development Director He stated that trash has washed down Front Street and along both sides of the railroad tracks, and ended up in his backyard and in his drains. When his drain fills up, it blocks all the water which then ends up under his building. He stated he estimated it to be around a couple hundred thousand gallons of water under his building. He further stated that additional town staff promised to return back to his building in 60 days. He stated that was 2 years ago. He stated could provide photographs. He also discussed trying to install a tap on his sewer for over 3 months. He stated he was told he could not do that because his building was commercial. He would like clarification on this. He stated he has advised of the drainage problem several times and has not received any assistance. Mayor McLeod thanked Mr. Dew or sharing this information and stated he would have Mr. Cappola contact him to help resolve these issues.

b) Council Comments

11 CLOSED SESSION

a) Closed Session Pursuant to NCGS 143-318.11.(a)(3) &(6)

ACTION: Motion to Go into Closed Session at 7:44 p.m.

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

12 ADJOURNMENT

a) Adjourn the Meeting

With there being nothing further, the meeting was adjourned at 8:13 p.m.

ACTION: Motion to Adjourn

Motion: Mayor Pro Tem Thompson
Second: Council Member Everett
Vote: Unanimous

Duly adopted this the 18th day of January 2022 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Administrative

Item Title
Advisory Boards

Presenter:
Kimberly A. Moffett, Town Clerk

Summary/Description
Advisory Board recommendations were presented to council at the January 3, 2022 meeting. At that time appointments to advisory boards, with the exception of the Planning Board, were made. Council was requested additional time to review all applications for the Planning Board.

A record number of applications were received by a group of outstanding applicants. All terms, unless otherwise noted will expire on 12/31/2024). Based on interviews, the following recommendations are presented for council consideration as appointments to the Planning Board:

Planning Board:
PB9 – Jodie Dupree (ETJ) – Term Exp. 12/31/2022
PB4 – Ronald Williams
PB 5 – James Moore*
PB6 – Kevin Lee*
PB7 – Ethan Bennett – Term Exp. 12/31/2022
PB8 – James Lipscomb (ETJ)*

*Denotes Re-appointment

Additionally a board member of the DDA is unable to continue serving their term and that seat will now be deemed vacant. Per the By-Laws, notification is being made council and the vacancy will be noticed.

Requested Action
Approval

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet

Meeting Timeline

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Introductions & Special Presentations

Item Title
Mayor's Downtown Parking Taskforce

Presenters: Ruth Anderson, Downtown Parking Taskforce; Patrick Pierce, Economic Development Director/Staff Liaison to Taskforce

Summary/Description

Town Council held a special meeting in July 2021 to discuss the issue of parking in Downtown Parking. One outcome of that meeting was a Downtown Parking Taskforce created by Mayor McLeod. The Taskforce has met regularly since September and is ready to report back to Town Council on their progress and recommendations for next steps by staff.

Requested Action
Provide Direction to Staff

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet

Meeting Timeline
Click or tap here to enter text.

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Public Hearings

Item Title
2021-126-OA Resource Conservation Areas Steep Slopes Text Amendment

Presenter:
Ben Howell, Planning Director

Summary/Description
Request to amend the Unified Development Code, Title XV, §155.500. This amendment seeks to revise the Resource Conservation Area section of the Unified Development Code to include steep slopes in the definition of Resource Conservation Areas. Staff has provided four options for the proposed text amendment, and the Planning Board met on December 21, 2021 and recommended one of the options.

As a follow-up from the January 3, 2022 meeting, staff has provided additional information as requested by Council: steep slope ordinance language form other jurisdictions, additional exhibit maps showing how the different options would protect steep slopes, and the staff powerpoint presentations provided at the November 15, 2021 and January 3, 2022 Town Council meetings. Also included is a map showing the steep slopes that would be protected under Option 2 (Planning Board recommended option), if the 5,000 square feet of contiguous area language was included as proposed in October and November.

Requested Action
Approval

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet
Staff Report
Existing Unified Development Code text – Section 155.500 Resource Conservation Areas
Strikethrough Text Amendment Option 1
Strikethrough Text Amendment Option 2 – Recommended by Planning Board
Strikethrough Text Amendment Option 3
Strikethrough Text Amendment Option 4
Map of Slope Areas in Clayton Planning Jurisdiction
Steep Slope Ordinance Language from other Municipalities
November 15 2021 and January 3 2022 Staff Presentations
Additional Exhibit Maps of Steep Slopes Options

Meeting Timeline
Planning Board – December 21, 2021
Town Council Public Hearing – January 3, 2022
Town Council Continued Public Hearing – January 18, 2022

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

Planning Board, December 21, 2021
Town Council Public Hearing, January 3, 2022

STAFF REPORT

Application Number: 2021-126-OA
Project Name: Resource Conservation Area – Steep Slopes Text Amendment

Applicant: Town of Clayton

Public Noticing:
Newspaper ad for Town Council Public Hearing published December 22nd and December 29th

REQUEST: Request to amend the Unified Development Code Title XV, §155.500. This amendment seeks to revise the Resource Conservation Area section of the Unified Development Code to include steep slopes in the definition of Resource Conservation Areas.

SECTIONS PROPOSED FOR AMENDMENT:

The following section of Title XV, Chapter 155, is proposed for amendment:

- Article V, Section 500 – Resource Conservation Areas

STAFF ANALYSIS AND COMMENTARY:

Overview
The proposed text amendment(s) would add a definition and require protection of Steep Slopes as Resource Conservation Areas in the Unified Development Code. The current language in the Unified Development Code does not define steep slopes as Resource Conservation Areas, so these features are not required to be protected during development. Engineering and Planning staff have reviewed the section and the requirements, and have provided several text options for amending this section to add steep slopes to the definition of Resource Conservation Areas. The Planning Board reviewed and discussed the proposed text amendment at their meeting on December 21, 2021 and recommended Option 2. All options considered by the Planning Board are provided below:

- Option 1: Steep Slopes (defined as 25% or greater) and at least 5,000 square feet of contiguous area in size considered RCAs;

- Option 2: Steep Slopes (25% or greater) directly connected to 100-year floodplain, wetlands or stream buffer(s) considered RCAs;
- Option 3: Steep Slopes (25% or greater) within 100 feet of 100-year floodplain, wetlands or stream buffer(s) considered RCAs; or
- Option 4: Stee Slopes (25% or greater) directly connected to 100-year floodplain, wetlands or stream buffer(s) by a width of at least 20 feet considered RCAs.

The four options are provided as Attachments 1-4, with changes shown in underline and ~~strikethrough~~. A map has also been provided as Attachment 5 showing the areas in the Town of Clayton Planning Jurisdiction where there are 25% or greater slopes.

Approval Criteria:

- **Consistency with remainder of the Chapter**
  The request is consistent with the remainder of Chapter 155.

- **Novelty of the request**
  The request does not represent novel changes to the Code. The code is being revised to add requirements to protect steep slopes.

CONSIDERATIONS

The Town Council should take the following criteria into consideration when reviewing the proposed text amendment:

- The extent to which the proposed text amendment is consistent with the remainder of the chapter, including, specifically, any purpose and intent statements, and must adopt a statement describing whether the action is consistent or inconsistent with approved plans;
- The extent to which the proposed text amendment represents a new idea not considered in the existing chapter, or represents a revision necessitated by changing circumstances over time;
- Whether or not the proposed text amendment corrects an error in the chapter; and
- Whether or not the proposed text amendment revises the chapter to comply with state or federal statutes or case law; and
- Any adopted plans of the Town.

In deciding whether to adopt a proposed text amendment to this chapter, the central issue before the Town Council is whether the proposed amendment advances the public health, safety or welfare and is consistent with the adopted plans and policies of the Town and the specific intent of this chapter.

STAFF RECOMMENDATION:

Staff recommended that the Planning Board recommend one of the 4 text amendment options to the Town Council for Public Hearing. The Planning Board reviewed and discussed the options at their meeting on December 21, 2021.

PLANNING BOARD RECOMMENDATION:

The Planning Board reviewed the proposed UDC text amendment options at their meeting on December 21, 2021. After discussion, the Planning Board recommended the Council approve Text Amendment Option 2: Require steep slopes to be protected if directly connected to 100-year floodplain, wetlands or stream buffer(s), provided as Attachment 2 in the Council Packet.

ATTACHMENTS:

1) Existing UDC Text: 155.500 – Resource Conservation Areas
2) Strikethrough Text Amendment Option 1
3) Planning Board Recommended Text Amendment Option 2
4) Strikethrough Text Amendment Option 3
5) Strikethrough Text Amendment Option 4
6) Strikethrough Text Amendment Option 5
7) Map of Slope Areas in Clayton Planning Jurisdiction
8) Town Council Public Hearing Newspaper Ad

ARTICLE 5: NATURAL RESOURCE PROTECTION

CONTENTS:

§ 155.500 RESOURCE CONSERVATION AREAS 1
§ 155.501 WATERSHED PROTECTION ..... **Error! Bookmark not defined.**
§ 155.502 STREAM BUFFERS ..... **Error! Bookmark not defined.**

§ 155.500 RESOURCE CONSERVATION AREAS

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(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers.

(B) **DEFINED**

(1) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots in such areas, provided that adequate lot area outside the resource conservation area is provided to meet the minimum lot area requirements of §§ 155.200 through 155.204.

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(C) **RESOURCE CONSERVATION AREAS SHOWN ON PLAT**

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(D) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

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(1) Conservation areas for natural, archeological or historical resources;

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(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(E) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

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(1) Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized through the appropriate governing body (DEQ, USACE, ect); and

(3) Golf courses, agricultural and forestry activities not conducted according to accepted best management practices.

(F) **OWNERSHIP AND MAINTENANCE**

(1) **Ownership**

Resource conservation areas shall be accepted and owned by one of the following entities:

(a) Land conservancy or land trust. The responsibility for maintenance shall be borne by a land conservancy or land trust.

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(3) **Legal Instrument for Permanent Protection**

(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)

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N

25% Slope and Area >= 5,000 Square Feet
Streams
ETJ Boundary
Clayton Town Limits

Streets

Town of Clayton
Planned
NC DOT
Under Construction
Private

0 0.5 1 2 3 Miles

APEX, NC

ARTICLE 8 GENERAL DEVELOPMENT STANDARDS

8.1 RESOURCE CONSERVATION

8.1.1 General

A) ***Purpose***
Protection of the Town's existing natural and cultural resources is intended to preserve the visual and aesthetic qualities of the Town; to encourage site design techniques that preserve the natural and cultural environment and enhance the developed environment; to control erosion, slippage, and sediment run-off into streams and waterways; to increase slope stability; and to protect wildlife habitat and migration corridors.

B) ***Applicability***
These resource conservation standards shall apply to all new development in the Town, except for development on lots of record that were approved for single-family residential use prior to the effective date of this UDO.

C) ***Structure of this Section***
This Section 8.1 requires applicants for development in the Town to protect a variety of types of sensitive natural and cultural resources. The Resource Conservation Area (RCA) provisions of Sec. 8.1.2 require delineation of a protected area for every development site, and provide a general framework within which other, more specific types of protection must take place. Subsequent sections (8.1.3 through 8.1.4) provide specific rules for protecting specific types of resources.

8.1.2 Resource Conservation Area

A) ***Establishment of RCA***
RCA required. For every development subject to administrative approval, Site Plan review**,** Master Subdivision Plan review, and/or planned development plan review, the applicant shall propose, and the Director of Planning and Community Development shall establish, a "resource conservation area" (RCA) according to the criteria set forth below. The plan shall indicate the specific area(s) of a lot, lots, or site to be protected (the RCA), outside of which the developed project (including buildings, accessory structures, driveways, parking, and private utilities) and all development activity shall be contained. The landscaping of non-vegetated RCA is governed by Sec. 8.2.3.C.3 and the *Town of Apex Design and Development Manual*.

1) *Off-site RCA.* RCA may be established outside of the limits of the development site provided that all of the following criteria are met by the off-site RCA:

a) The area shall include one or more of the RCA categories listed below:

(i) Undisturbed area within Zone 2 and/or Zone 3 of riparian buffers as defined in Sec. 6.1.11 *Riparian Buffers*.

(ii) Undisturbed steep slopes equal to or greater than 3:1 (30%) and other erosion prevention and control measures, including, but not limited to, protection of natural drainage channels.

(iii) Preservation of undisturbed forested areas (including trees less than 18" caliper in size), or individual specimen (hardwood) trees 18" caliper and larger.

(iv) Undisturbed wildlife and plant habitat areas.

(v) Preservation of other significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.

(vi) Undisturbed, non-vegetated land that meets the minimal size standards for RCA and that is planted to achieve a diversified indigenous plant population including a large canopy tree layer and a small understory tree layer by one of the following methods:

(a) Within 50 feet of a property line or public right-of-way, the large canopy layer must consist of large-type native deciduous and large-type native evergreen trees and must represent at least 75% of the planted area; the understory tree layer must represent the remaining 25% of the planted area. Planted RCA must be completely mulched with triple-shredded hardwood mulch at least two (2) inches, but no more than three (3) inches thick. Plants must meet or exceed the following minimum container sizes and quantities (each unit represents a planted area of 200 square feet):

(1) One (1) large type deciduous tree: 15-gallon and at least 5 feet tall

(2) Two (2) large type evergreen trees: 5-gallon and at least 3 feet tall

(3) Two (2) small understory trees: 5-gallon and at least 3-feet tall

(b) For areas more than 50 feet from a property line or public right-of-way, a reforestation plan prepared by a SAF (Society of American Foresters) Certified Forester shall be approved by the Planning Director or designee. The plan shall provide between 400-700 bare root seedlings per acre that includes a mix of deciduous and evergreen tree species. The number of seedlings per acre shall be based on the existing nearby tree canopy as well as the slope, size, and width of the area to be planted. The seedlings shall be planted during the months of October to December.

b) The area shall be located within the Town of Apex's corporate limits or extra-territorial jurisdiction.

c) The area shall meet one of the following criteria:

(i) Located directly adjacent to existing RCA, existing public parks, existing conservation easements, or other publicly held land with environmental preservation or wildlife habitat preservation as its primary function (such as wetland mitigation);

(ii) A minimum size of two (2) acres and a minimum width of 30 feet; or

(iv) Adjacent to a control of access highway with an average width of at least 30 feet.

d) The area shall not be located within an existing public or private easement or within a future transportation or utility corridor as identified on the *Advance Apex: The 2045 Transportation Plan*, Master Sewer Plan, and Water System Master Plan.

e) Off-site RCA shall be provided at a rate equal to the on-site RCA requirement. If the off-site RCA is located adjacent to an existing or planned public park facility and the land is deeded to the Town of Apex, the rate of off-site RCA shall be reduced to 0.75 times the on-site RCA. In no case shall the on-site RCA be reduced more than 50% through the provision of off-site RCA.

f) Prior to the approval of the Master Subdivision Final Plat or Site Plan Final Plat for the development, the off-site RCA must either be 1) deeded to the Town of Apex or another qualified land management agency, such as but not limited to the Triangle Land Conservancy, or 2) recorded as a conservation easement in favor of the State of North Carolina or another qualified land management agency.

B) ***Criteria for Establishing RCA***
In establishing the RCA, the Director of Planning and Community Development shall take into account the criteria listed below:

1) *Categories of RCA:*

a) Undisturbed floodplains, floodways, flood fringes, and flood hazards.

b) Undisturbed riparian streams, wetland protection, and riparian buffering.

c) Undisturbed steep slopes equal to or greater than 3:1 (30%) and other erosion prevention and control measures, including, but not limited to, protection of natural drainage channels.

d) Preservation of undisturbed forested areas (including trees less than 18” caliper in size), or individual significant trees 18” caliper and larger.

e) Undisturbed significant wildlife and plant habitat areas.

f) Preservation of other significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.

g) Private recreation area, including but not limited to, privately-owned play lawns, open space, pools, tennis courts, tot lots, ball fields, and village greens shall be allowed to be counted as partial credit toward the RCA requirement. In order to qualify as RCA, the private recreation area must be located on a lot .3 acre or larger in size. The credit for the private recreation area shall be 50% of the acreage provided in the private recreation area. (For example, 1 acre of private recreation area counts as .5 acre of RCA).

h) Solar panels and all associated equipment when installed on the dam of a SCM.

i) When an insufficient amount of RCA in categories 8.1.2.B.1.a-h is available for designation as RCA, then undisturbed, non-vegetated land that meets the minimal size standards for RCA and that is planted to achieve a diversified indigenous plant population by including a large canopy tree layer, a small understory tree layer, and a shrub layer shall be allowed.

The large canopy layer must consist of large-type native deciduous or large-type native evergreen trees and must represent at least 75% of the planted area; the understory tree and shrub layer must represent the remaining 25% of the planted area. Planted RCA must be completely mulched with triple-shredded hardwood mulch at least two (2) inches, but no more than three (3) inches thick. Plants must meet or exceed the following minimum container sizes and quantities (each unit represents a planted area of 200 square feet):

(i) One (1) large type deciduous tree: 15-gallon and at least 5 feet tall

(ii) Two (2) large type evergreen trees: 5-gallon and at least 3 feet tall

(iii) Two (2) small understory trees: 5-gallon and at least 3-feet tall

(iv) Six (6) native type shrubs: 3-gallon

2) *Site and Tree Survey Required.*
In order to determine which categories of RCA shall be established on a site, the applicant shall provide a site and tree survey to the Director of Planning and Community Development as part of the submission of an application for development approval. The site and tree survey shall map the following items:

a) Provide boundaries of the site in metes and bounds.

b) Provide field verified topography of the area located within the limits of disturbance (including stormwater retention areas within RCA) at a minimum of 2’ contours is required at the site plan stage and subdivision construction plan stage of plan review or 2013 topography generated from the 2013 LiDAR Project over Wake County, NC, and acquired on February 21-24, 2013, as updated from time to time. Topographic coverage may be obtained from the Town of Apex, the Town of Cary, or Wake County, depending on the site location.

c) Call out location of slopes equal to or greater than 3:1 (30%) and rock outcroppings.

d) Provide tree survey locating all specimen (hardwood) trees 18" caliper and larger within RCA and buffers on site. For North Carolina Certified Sites, the tree survey shall only be required within buffers. Fifty (50) feet outside of the perimeter of the site, document location of all trees 18" caliper and larger by providing an aerial photograph, registered forester's or certified arborist's report, tree survey, or other appropriate means.

e) Document that all proposed RCA areas meet the Criteria for Establishing RCA (per Sec. 8.1.2.B.1) by means of a tree survey or other appropriate means, including but not limited to a registered forester's or certified arborist's report referenced to-scale digital photos, a registered forester's or certified arborist's report referenced to aerial photographs. Aerial photographs are not an acceptable stand-alone means of documentation for trees in RCA.

f) Document that buffers meet the required "A", "B", "C", "D" or "E" type standards by means of a tree survey or other appropriate means, including but not limited to a registered forester's or certified arborist's report referenced to-scale digital photos, a registered forester's or certified arborist's report referenced to aerial photographs. Aerial photographs are not an acceptable stand-alone means of documentation for trees in buffers.

g) Show location of wetlands as determined by a licensed soil scientist, the Army Corps of Engineers (ACOG), or the NC Department of Environmental Quality (DEQ).

h) Show location of all creeks, streams, ponds, and dams.

i) Note whether the site is in the Primary or Secondary Watershed Protection Overlay District and show required riparian buffers on both sides of perennial and intermittent streams.

j) Show location of the 100 year floodplain and 100 year floodway based upon the FIRM maps, the FEMA detailed study, and field measurements (if applicable). If not applicable, certify that there is no FEMA floodplain on the subject property by giving FIRM map # and date. Provide non-FEMA flood study information on floodplains, floodways, flood fringes, and flood hazards at the construction plan stage of plan review.

k) Provide location of existing fencing, roads, and structures.

l) Provide locations of significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.

m) Indicate clearly on the plans the location of all existing utilities (water, sewer, natural gas, electric, telephone, cable, fiber optic, etc.) above and/or below ground as well as existing utility easements.

n) Identify location of any underground storage tanks, hazardous waste and debris, abandoned wells, septic tanks or similar structures.

C) ***Size of the RCA***
The size of the RCA for each development site shall be calculated by the applicant and staff based on the following:

1) *Planned Developments*
The RCA for all planned developments shall be determined by the Town Council per Sec. 2.3.4.F.1.c and per Sec. 8.1.2.C.4, 5, 6, 7, or 10 as applicable, based on the criteria set forth in subsection B. above.

2) *Small Town Character Overlay District*
All development meeting the criteria of Sec. 6.3 *Small Town Character Overlay District* shall be exempt from Sec. 8.1 *Resource Conservation.*

3) *Low Density Single-Family Residential Developments (maximum of two dwelling units per gross acre)*
Low density single-family residential developments with a maximum of two (2) dwelling units per gross acre shall be exempt from Sec. 8.1 *Resource Conservation*.

4) *Development located north and east of NC 540 and outside Apex Peakway*
All developments which do not meet the criteria of subsections 8.1.2.C.2, 3, or 10 and which are located north and east of NC 540 and outside existing and future Apex Peakway shall provide buffers and RCA equal to or greater than 20% of the gross site acreage.

5) *Development located south and west of NC 540*
All developments which do not meet the criteria of subsections 8.1.2.C.3 or 10 and which are located south and west of NC 540 shall provide buffers and RCA equal to or greater than 30% of the gross site acreage for single-family and townhome uses and 25% of the gross site acreage for multi-family, mixed-use, and non-residential uses.

6) *Development located inside Apex Peakway*
All developments which do not meet the criteria of subsections 8.1.2.C.2, 3, or 10 and which are located inside existing and future Apex Peakway shall provide buffers and RCA equal to or greater than 10% of the gross site acreage.

7) *Resource Conservation Area Exchanged for Reduced Width Buffers*
Resource Conservation Areas (RCA) may be established in lieu of portions of otherwise required perimeter, streetfront, thoroughfare, and fully- and limited-controlled access highway buffers, provided that all of the following criteria are met:

a) RCA established in lieu of buffers shall be undisturbed forested areas or individual significant trees 18” caliper and larger, meeting the category described in Sec. 8.1.2.B.1.d *Categories of RCA*.

b) RCA established in lieu of buffers shall be located directly adjacent to existing or proposed RCA, or shall be a minimum of ½ acre in size.

c) RCA established in lieu of buffers shall have a minimum width of 30 feet; the minimum width can be measured in combination with other RCA and buffers.

d) The exchange rate for RCA established in lieu of buffers shall be at a 1 to 1 (1:1) ratio.

e) The reduced width buffers must still meet the screening (opacity) requirement for the type of buffer required.

f) No required perimeter or streetfront buffer can be reduced to less than one half of the required buffer width or less than 10 feet (whichever is greater).

g) A required thoroughfare buffer may be reduced to no less than 15 feet when an encroachment is due to public street improvements.

h) Required fully- and limited-controlled access highway buffers can only be reduced per Sec. 8.2.6.B.5.f *Buffers Along Fully- and Limited-Controlled Access Highways*.

8) *Maximum Built-Upon Area*
The overall site (including RCA), shall not exceed the applicable maximum built-upon area limitations set forth in Sec. 5.1 *Table of Intensity and Dimensional Standards* and Sec. 6.1 *Watershed Protection Overlay Districts*.

9) Notwithstanding any other provisions in the UDO, if a public utility line or easement counts toward buffer requirements, then the Public utility line or easement shall be allowed to be counted in RCA calculations (see Secs. 8.2.2.C.2.a and 8.2.6.C.4).

10) *North Carolina Certified Sites*
Any development designated as a North Carolina Certified Site by the North Carolina Department of Commerce shall provide RCA equal to or greater than the area located within required perimeter and street buffers, riparian buffers, and preserved wetlands, but shall not be less than 15%. On properties where the combined acreage of required perimeter and street buffers, riparian buffers, and preserved wetlands exceeds 35% of the gross acreage of the site, RCA may be reduced to no less than 35% to permit grading in portions of riparian buffers where state regulations and UDO Sec. 6.1 *Watershed Protection Overlay Districts* allow and to reduce buffer widths where permitted by UDO Sec. 8.1.2.C.7 *Resource Conservation Area Exchanged for Reduced Width Buffers*.

D) ***Ownership of RCA in Subdivisions***
No portion of the RCA in a planned development or residential or non-residential subdivision shall be part of an individual building lot. The RCA shall be designated so that the RCA is not removed, modified or damaged. The RCA shall be a separate lot or lots and be owned in common by the building lot owners or owned by a separate entity or entities (e.g. property owner's association, development corporation, building lot owner or owners, etc.) In no case shall the RCA for one (1) subdivision be owned by more than three (3) entities.

E) ***Designation of RCA on Plans and Plats***

1) *Master Subdivision Plan and Plats.* The approved RCA shall be shown on the Master Subdivision Plan as a separate lot (or lots) from the individual residential or non-residential building lots. The RCA (with metes and bounds description) shall be shown on the Final Plat, to be preserved in perpetuity.

2) *Site Plans and Plats.* The approved RCA shall be shown on the Site Plan for each development site. The RCA (with metes and bounds description) shall be shown on the Final Plat, to be preserved in perpetuity.

F) ***Development Activity Inside of the RCA***

1) No development, including grading or vegetation removal or alteration, shall occur as part of the development project or associated construction activity inside the RCA except as provided in subsections 3 and 4 below.

2) No private utility easements shall be allowed within RCA. Existing and proposed private easements must be excluded from the RCA calculation.

3) Disturbance or construction activity may occur inside the RCA when construction is done in such a way as to protect significant resources with approval of the Director of Planning and Community Development for the following limited purposes:

a) Emergency public safety activities when such activities and installations cannot reasonably be restricted to areas outside the RCA or other nearby developed areas. Measures shall be required to mitigate the impact of the disturbed area;

b) The portion of stormwater wetlands and wet detention basins that include the constructed and planted wetland, basin area, vegetated, littoral shelf, and the surrounding interior embankments up to the top of dam elevation*;*

c) Construction of a trail, pedestrian walkway, or passive recreational amenity (e.g. picnic tables, benches, gazebo, etc.) that will provide public access for educational or recreational purposes when such trails, walkways, or amenities cannot reasonably be restricted to areas outside the RCA or nearby developed areas and where construction is done in such a way as to protect significant resources;

d) The enhancement of the habitat values and/or other natural resource values of an identified natural area; or

e) The removal of noxious species, such as kudzu or poison ivy for general maintenance of the area; see the *Town of Apex Design and Development Manual* for details.

4) Construction of solar panels on the dams of a SCM.

G) ***Standards for Protection During Construction***
The owner of the property, the developer, and contractors shall be responsible for protecting all existing natural resources, including trees, vegetation, streams, wetlands, ponds, wildlife habitats, historic/cultural sites and structures, that are designated as RCA or as areas to be preserved. Natural areas shall be protected and maintained in a healthy, viable condition. The following minimum standards shall apply throughout the site and/or subdivision approval process:

1) *Protective Fencing*

a) The RCA shall be designated in the field prior to commencement of excavation, grading, or construction with construction barrier fencing or other methods approved by staff. Protective fencing shall also be placed around all other designated save areas

identified by the Director of Planning and Community Development. Fence placement shall be based on the following minimum standards:

(i) *Trees and Vegetation:* Fencing shall enclose all stands of trees or vegetation within a buffer or other save area that meet the base buffer standard (trees with calipers of 2 ½ inches or greater). Where significant trees exist (18-inch caliper or greater), the fencing shall protect the critical root zone of such trees and shall be located no less than one (1) foot from the trunk of the tree for each one inch of tree caliper (diameter at breast height). Both applicant and staff shall consider the existing site conditions in determining the exact location of any tree protection fencing. For the protection of trees and clusters of trees to be preserved outside the RCA, tree protection specifications as required in Sec. 8.1.2.G.2.c below shall be followed.

(ii) *Floodplains:* Fencing shall be placed along the line representing the 100-year floodplain.

(iii) *Streams:* Fencing shall be placed at the outside edge of the required riparian buffer in accordance with Sec. 6.1 *Watershed Protection Overlay Districts*.

(iv) *Other Resources*: Fencing shall be placed at least 10 feet from the edges of other saved or protected features identified by the Director of Planning and Community Development. Such features may include, but are not limited to, wetlands, ponds, rock outcroppings, steep slopes and historic structures.

b) No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced protection area, and the fencing shall remain in place until all land alteration, construction, and development activities are completed.

2) *Other Requirements*

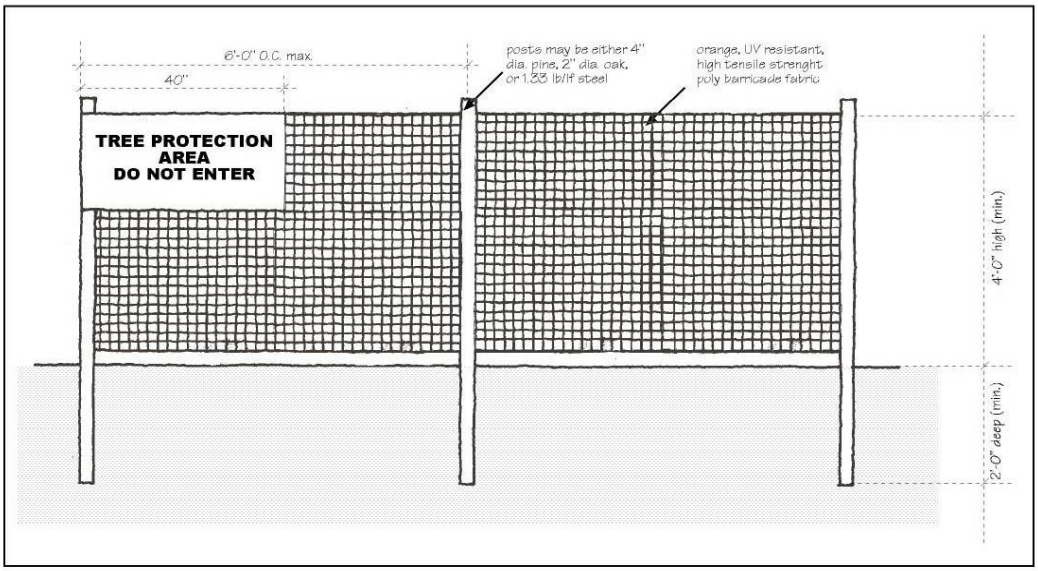
a) The owner shall keep all saved areas within the RCA free of refuse, debris, equipment, and supplies throughout the entire site development process.

b) The owner shall be responsible for replacing trees and/or vegetation if they are destroyed or substantially damaged and for paying any civil penalties associated with the encroachment into any protected area according to the standards set forth in Sec. 8.2.3.

c) The proposed methods for protection shall be reviewed and approved as part of the Site Plan and/or Master Subdivision Plan approval process and must be clearly indicated on plans. If construction is proposed within any saved area, a registered architect, engineer, or landscape architect, certified arborist, or horticulturalist, must submit detailed plans indicating how the sensitive area will be protected, and shall supervise all construction activity within such areas. Protection measures must adhere to generally accepted good design standards and practices.

d) Out parcels that are graded shall be seeded, mowed, and maintained until development occurs on the parcel.

H) *Setback from Resource Conservation Area*
All buildings shall be set back 10 feet and all vehicular use areas shall be set back five (5) feet from any area designated as RCA.



TREE PROTECTION FENCE

Warning signs to be made of durable waterproof material all letters to be at least 3" high, clearly legible
Signs to be placed 200' on center, max.
Signs to be placed at each end of linear tree protection area and 200' on center thereafter
For tree protection areas less than 200' in perimeter, provide no less than one sign per protection area and/or side
Attach signs securely to fence posts and fabric
Fabric must be attached to approved posts only - do not attach to trees
Maintain tree protection fence throughout duration of project - fencing must remain upright and slack free
Additional signs and/or protection measures may be required by Planning Department based upon actual field conditions
Failing to maintain tree protection measures may result in fines and/or permit revocation

Figure 8.1.2.G.1: Tree Protection Fencing

8.1.3 Tree and Vegetation Conservation

A) ***Purpose***

1) For all development sites, the Town requires both the conservation of existing trees and vegetation, and also the installation of new landscaping. This Section sets forth requirements for the conservation of existing trees and vegetation, and new landscaping requirements are set forth in Sec. 8.2 *Landscaping, Buffering, and Screening*.

2) The Town encourages and supports saving all types of existing vegetation. This includes small caliper, mixed hardwood stands of trees to large significant vegetation. The intent of this section is to save not only large, significant vegetation, but also existing, small vegetation that over time will mature into stable, healthy stands of large trees.

B) ***Exemptions for Specific Activities***
The following activities shall be exempt from this section:

1) The removal, by hand, of dead or naturally fallen trees or vegetation, or the removal, by an approved method, of trees or vegetation that are found by the Town to be a threat to the public health, safety, or welfare;

2) The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways, intersections, or within sight triangles;

3) The selective and limited removal of trees less than 2-inch caliper for the purpose of performing authorized field survey work;

4) The removal of trees or vegetation on land zoned or lawfully used for:

a) Agricultural, forestry, and horticultural uses as classified by Wake County, including normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes.

However, if a Tree Removal Permit is not issued, per NCGS 160D-921, no approval of a site or subdivision plan or issuance of a building permit shall occur for a period of three (3) or five (5) years from the date the tree removal activities are completed, based on the following:

(i) Three (3) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.

(ii) Five (5) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

b) The removal of trees or vegetation for the purpose of sale by established commercial garden centers, greenhouses, or nurseries. Such land shall be classified by Wake County as horticultural use in order to meet this exemption.

C) ***Tree/Vegetation Removal***

1) *Inside the RCA*
No trees or vegetation shall be removed inside the approved RCA, except as specifically exempted in this section or article. Significant trees or vegetation removed from inside the RCA, including those removed for installation of utility lines, but not including those removed pursuant to exempted activities, shall be replaced as set forth in Sec. 8.2.3 *Maintenance Responsibility and Replacement of Damaged Vegetation.*

2) *Outside the RCA*

a) To the maximum extent feasible, significant trees or vegetation outside the RCA shall be preserved.

b) Any existing trees or vegetation outside the RCA that are in appropriate locations, in sufficient quantities, and of acceptable quality to be utilized to fulfill landscaping or buffering requirements of this Ordinance, including the "base buffer" as defined in Article 12, shall be preserved to the maximum extent feasible. All existing vegetation which meets the landscape buffer requirements of this article, or which is located in a preservation area (plant communities, groves and selected individual trees) designated on the approved site plan, subdivision plan, or PD plan shall be preserved on the site. Existing vegetation that is to remain on the site, as well as off-site vegetation to be protected, shall be clearly delineated and identified on all site plans, subdivision plans, and PD plans.

c) *Tree/Vegetation Removal for Views Prohibited*
No trees or vegetation shall be removed for the sole purpose of providing open views to or from structures on a site, except for the selected and limited removal of trees or vegetation necessary to obtain clear visibility at driveways, intersections, or within sight triangles.

d) *Site and Tree Survey Required.*
The applicant shall provide a site and tree survey to the Director of Planning and Community Development as part of the submission of an application for development approval. The site and tree survey shall follow the requirements of Sec. 8.1.2.B.2.

D) ***Tree Protection During Construction and Grading Activities***
In addition to the general requirements for protection of natural resources during construction and grading activities set forth in Sec. 8.1.2.F, the following specific standards shall apply to protect all trees and vegetation on a development site throughout the site development and construction process:

1) If it is necessary to fill over the critical root zone, compacted soils shall be avoided by sandwiching fabric, rocks, and more fabric under the area to be filled.

2) Fill placed directly on the roots shall not exceed a maximum of six inches in depth.

3) If fill creates a tree well or depression around a tree or shrubs, such area shall be drained so that the vegetation is not drowned by the pooling of rainfall or irrigation.

4) If a tree's roots must be cut, the branches shall be trimmed by an amount equal to the percent of roots that were lost. Roots shall be pruned cleanly prior to digging and not ripped off by heavy equipment. Cutting more than 30% of the roots endangers the health of the tree, and over 40% affects the tree's stability.

5) Utility trenches near trees should be avoided. If a line must be near a tree, tunneling, auguring, or other mitigation measures shall be used.

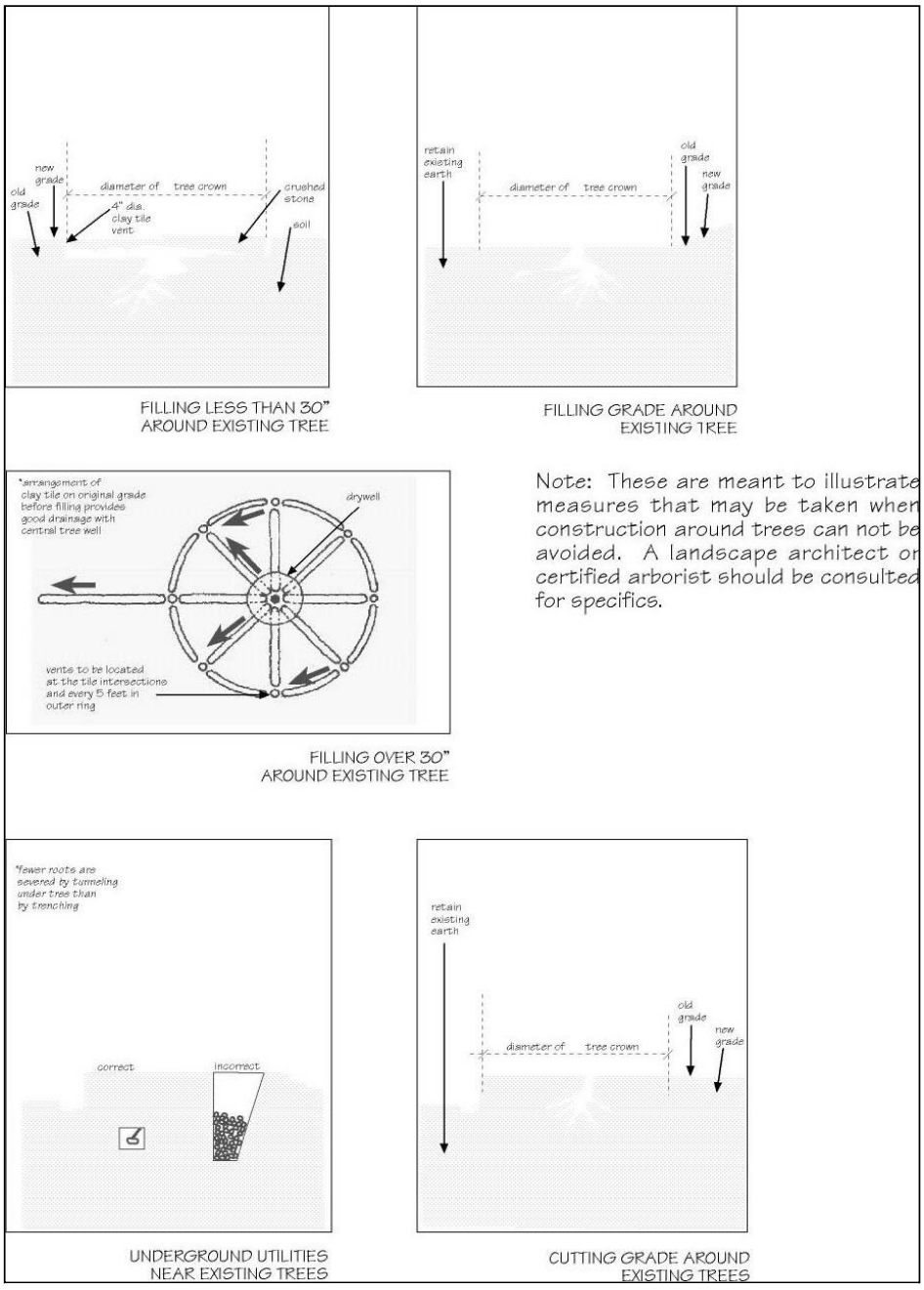


Figure 8.1.3.D: Filling and Cutting Around Trees

8.1.4 Development Restrictions on Steep Slopes

A) ***Staff Review Criteria***
Staff shall review all Site Plans and/or Subdivision Plans and evaluate them according to the following standards:

1) Site disturbance shall be minimized to the maximum extent practicable;

2) Cuts for utilities and access driveways shall be shared to the maximum extent feasible;

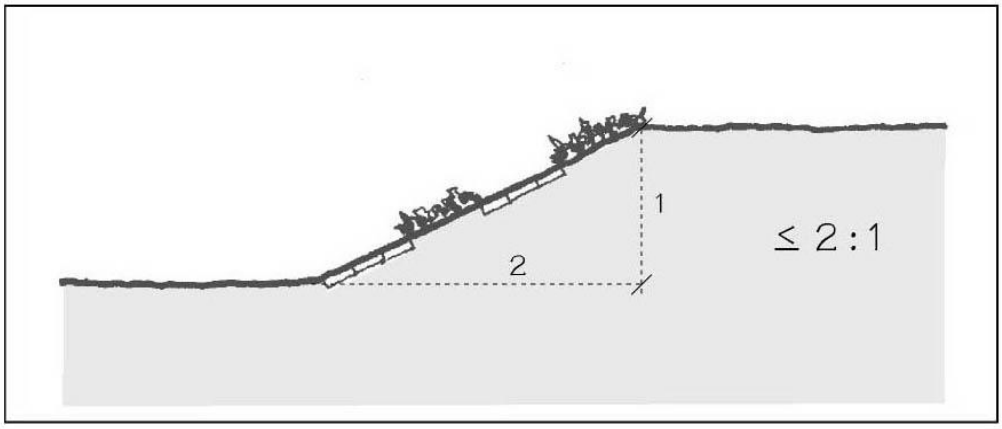
3) To the maximum extent feasible, new construction shall not take place on any portion of a parcel that shows slope instability, flooding, or other natural or man-made hazards;

4) The applicant shall demonstrate that the slope's ground surface and subsurface are not unstable, that the proposed development will not cause instability or increase the potential for slope failure, and that the development of the slope will not increase the degree of hazard both on-site and on adjacent properties.

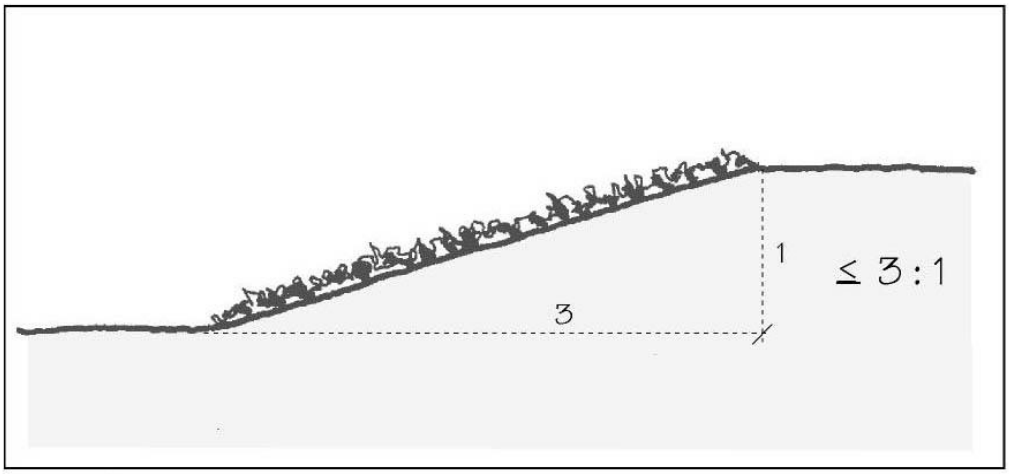
5) Slopes greater than a ratio of two to one (2:1) shall not be permitted.

B) ***Stabilization Measures***
On all sites containing steep slopes on which development is allowed pursuant to this subsection, the following stabilization measures shall be required:

1) All slopes equal to 2:1 shall be stabilized with a suitable combination of plantings and permanent slope retention devices. Slopes equal to or greater than 3:1 shall not be stabilized with turf grasses, but shall be stabilized with other permanent ground cover referenced in the *Town of Apex Design and Development Manual*.



Stabilize 50 per cent or slopes greater than 2:1 with permanent slope retention devices or a suitable combination of plantings (ground cover, shrubs, etc.) and retention devices.



Stabilize slope greater than 3:1 with permanent ground covers rather than turf grasses

Figure 8.1.4: Steep Slope Stabilization Measures

8.1.5 Reserved

8.1.6 Retaining Structures

Retaining structures are permitted as elements of site design and shall meet the following requirements:

A) Retaining structures providing a cumulative vertical relief greater than five (5) feet in height within a horizontal distance of 50 feet or less must be designed, inspected, and certified by a licensed professional engineer. Additionally, retaining structures meeting this provision must be constructed under a building permit from the Building Inspections and Permitting Department.

B) All grading and support structures associated with the retaining structure shall not encroach into any required buffer or protected area (such as, but not limited to, RCA and critical root zones of buffer trees), and shall be contained entirely on site.

C) Retaining structures on land developed for single-family and duplex residences shall not exceed six (6) feet in height and shall not exceed two (2), six (6) feet tall terraced sections.

D) Terraced sections must be spaced a minimum of three (3) feet horizontally to allow for planting of small shrubs and groundcovers between the terraces.

E) Wood lag retaining structures shall be prohibited for all uses.

F) Retaining structure materials must meet one of the following standards:

1) *Permitted Materials*

i) Single-family residential lots shall use either wood or masonry materials.

ii) For all locations other than single-family lots, masonry materials shall be used.

2) *Permitted Colors*

i) Segmental masonry retaining structure materials must be an integrally tinted medium or dark brown or rust color.

ii) Gravity and cast in place structures must be integrally tinted or stained a medium or dark brown or rust color or be covered with a masonry veneer that is a medium or dark brown or rust color.

8.2 LANDSCAPING, BUFFERING, AND SCREENING

8.2.1 Purpose and Intent

The intent of this Section is to establish standards to protect and enhance the Town's appearance by the installation of appropriate landscaping and buffering materials; to encourage the preservation of native plant communities and ecosystems; to maintain and increase the value of land by providing for restoration of disturbed areas and by incorporating adequate landscaping into development; to restrict the spread of invasive plant species that disrupt and destroy native ecosystems; to encourage skilled installation and continued maintenance of all plant materials; and to establish procedures and standards for the administration and enforcement of this section.

8.2.2 General Landscaping Design Standards

A) ***Aesthetic Enhancement Requirements***

Landscaping shall be utilized in the design to enhance the aesthetic quality of the property by adding color, texture, and visual interest while obscuring views of parking and unsightly areas and uses. In locations where new development alters visually attractive and distinctive natural landscapes, the selection and arrangement of new plantings shall be designed to complement and enhance the natural landscape character of the site. All areas not covered by parking, drives, streets, or structures shall be improved with landscape elements in accordance with this section.

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Sec. 34-1120. - Lot regulations, general.

(a) *Frontage requirement.* Every lot shall have its principal frontage on a street or place (i) that has been accepted by the city for maintenance, or (ii) that a subdivider or developer has been contractually obligated to install as a condition of subdivision or site plan approval and for which an adequate financial guaranty has been furnished to the city. Except for flag lots, stem lots, and cul-de-sac lots, or other circumstances described within the city's subdivision ordinance, no lot shall be used, in whole or in part, for any residential purpose unless such lot abuts a street right-of-way for at least the minimum distance required by such subdivision ordinance for a residential lot.

(b) *Critical slopes.*

(1) *Purpose and intent.* The provisions of this subsection (hereinafter, "critical slopes provisions") are intended to protect topographical features that have a slope in excess of the grade established and other characteristics in the following ordinance for the following reasons and whose disturbance could cause one (1) or more of the following negative impacts:

a. Erosion affecting the structural integrity of those features.

b. Stormwater and erosion-related impacts on adjacent properties.

c. Stormwater and erosion-related impacts to environmentally sensitive areas such as streams and wetlands.

d. Increased stormwater velocity due to loss of vegetation.

e. Decreased groundwater recharge due to changes in site hydrology.

f. Loss of natural or topographic features that contribute substantially to the natural beauty and visual quality of the community such as loss of tree canopy, forested areas and wildlife habitat.

These provisions are intended to direct building locations to terrain more suitable to development and to discourage development on critical slopes for the reasons listed above, and to supplement other regulations and policies regarding encroachment of development into stream buffers and floodplains and protection of public water supplies.

(2) *Definition of critical slope.* A critical slope is any slope whose grade is 25% or greater and:

a. A portion of the slope has a horizontal run of greater than twenty (20) feet and its total area is six thousand (6,000) square feet or greater; and

b. A portion of the slope is within two hundred (200) feet of any waterway as identified on the most current city topographical maps maintained by the department of neighborhood development services.

Parcels containing critical slopes are shown on the map entitled "Properties Impacted by Critical Slopes" maintained by the department of neighborhood development services. These critical slopes provisions shall apply to all critical slopes as defined herein, notwithstanding any subdivision, lot line adjustment, or other action affecting parcel boundaries made subsequent to the date of enactment of this section.

(3) *Building site required.* Every newly created lot shall contain at least one (1) building site. For purposes of this section, the term building site refers to a contiguous area of land in slopes of less than 25%, as determined by reference to the most current city topographical maps maintained by the department of neighborhood development services or a source determined by the city engineer to be of superior accuracy, exclusive of such areas as may be located in the flood hazard overlay district or under water.

(4) *Building site area and dimensions.* Each building site in a residential development shall have adequate area for all dwelling unit(s) outside of all required yard areas for the applicable zoning district and all parking areas. Within all other developments subject to the requirement of a site plan, each building site shall have adequate area for all buildings and structures, parking and loading areas, storage yards and other improvements, and all earth disturbing activity related to the improvements.

(5) *Location of structures and improvements.* The following shall apply to the location of any building or structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to Article VII of this chapter:

a. No building, structure or improvement shall be located on any lot or parcel within any area other than a building site.

b. No building, structure or improvement, nor any earth disturbing activity to establish such building, structure or improvement shall be located on a critical slope, except as may be permitted by a modification or waiver.

(6) *Modification or waiver.*

a. Any person who is the owner, owner's agent, or contract purchaser (with the owner's written consent) of property may request a modification or waiver of the requirements of these critical slopes provisions. Any such request shall be presented in writing and shall address how the proposed modification or waiver will satisfy the purpose and intent of these provisions.

b. The director of neighborhood development services shall post on the city website notice of the date, time and place that a request for a modification or waiver of the requirements of these critical slopes provisions will be reviewed and cause written notice to be sent to the applicant or their agent and the owner or agent for the owner

of each property located within five hundred (500) feet of the property subject to the waiver. Notice sent by first class mail to the last known address of such owner or agent as shown on the current real estate tax assessment books, postmarked not less than five (5) days before the meeting, shall be deemed adequate. A representative of the department of neighborhood development services shall make affidavit that such mailing has been made and file the affidavit with the papers related to the site plan application.

c. All modification or waiver requests shall be submitted to the department of neighborhood development services, to be reviewed by the planning commission. In considering a requested modification or waiver the planning commission shall consider the recommendation of the director of neighborhood development services or their designee. The director, in formulating their recommendation, shall consult with the city engineer, the city's environmental manager, and other appropriate officials. The director shall provide the planning commission with an evaluation of the proposed modification or waiver that considers the potential for soil erosion, sedimentation and water pollution in accordance with current provisions of the Commonwealth of Virginia Erosion and Sediment Control Handbook and the Virginia State Water Control Board best management practices, and, where applicable, the provisions of chapter 10 of the City Code. The director may also consider other negative impacts of disturbance as defined in these critical slope provisions.

d. The planning commission shall make a recommendation to city council in accordance with the criteria set forth in this section, and city council may thereafter grant a modification or waiver upon making a finding that:

(i) The public benefits of allowing disturbance of a critical slope outweigh the public benefits of the undisturbed slope (public benefits include, but are not limited to, stormwater and erosion control that maintains the stability of the property and/or the quality of adjacent or environmentally sensitive areas; groundwater recharge; reduced stormwater velocity; minimization of impervious surfaces; and stabilization of otherwise unstable slopes); or

(ii) Due to unusual size, topography, shape, location, or other unusual physical conditions, or existing development of a property, one (1) or more of these critical slopes provisions would effectively prohibit or unreasonably restrict the use, reuse or redevelopment of such property or would result in significant degradation of the site or adjacent properties.

No modification or waiver granted shall be detrimental to the public health, safety or welfare, detrimental to the orderly development of the area or adjacent properties, or

contrary to sound engineering practices.

e. In granting a modification or waiver, city council may allow the disturbance of a portion of the slope, but may determine that there are some features or areas that cannot be disturbed. These include, but are not limited to:

(i) Large stands of trees;

(ii) Rock outcroppings;

(iii) Slopes greater than 60%.

City council shall consider the potential negative impacts of the disturbance and regrading of critical slopes, and of resulting new slopes and/or retaining walls. City council may impose conditions as it deems necessary to protect the public health, safety or welfare and to insure that development will be consistent with the purpose and intent of these critical slopes provisions. Conditions shall clearly specify the negative impacts that they will mitigate. Conditions may include, but are not limited to:

(i) Compliance with the "Low Impact Development Standards" found in the City Standards and Design Manual.

(ii) A limitation on retaining wall height, length, or use;

(iii) Replacement of trees removed at up to three-to-one ratio;

(iv) Habitat redevelopment;

(v) An increase in storm water detention of up to 10% greater than that required by city development standards;

(vi) Detailed site engineering plans to achieve increased slope stability, ground water recharge, and/or decrease in stormwater surface flow velocity;

(vii) Limitation of the period of construction disturbance to a specific number of consecutive days;

(viii) Requirement that reseeding occur in less days than otherwise required by City Code.

(7) *Exemptions.* A lot, structure or improvement may be exempt from the requirements of these critical slopes provisions, as follows:

a. Any structure which was lawfully in existence prior to the effective date of these critical slopes provisions, and which is nonconforming solely on the basis of the requirements of these provisions, may be expanded, enlarged, extended, modified and/or reconstructed as though such structure were a conforming structure. For the purposes of this section, the term "lawfully in existence" shall also apply to any structure for which a site plan was approved or a building permit was issued prior to the effective

date of these provisions, provided such plan or permit has not expired.

b. Any lot or parcel of record which was lawfully a lot of record on the effective date of this chapter shall be exempt from the requirements of these critical slopes provisions for the establishment of the first single-family dwelling unit on such lot or parcel; however, subparagraph (5)(b) above, shall apply to such lot or parcel if it contains adequate land area in slopes of less than 25% for the location of such structure.

c. Driveways, public utility lines and appurtenances, stormwater management facilities and any other public facilities necessary to allow the use of the parcel shall not be required to be located within a building site and shall not be subject to the building site area and dimension requirements set forth above within these critical slopes provisions, provided that the applicant demonstrates that no reasonable alternative location or alignment exists. The city engineer shall require that protective and restorative measures be installed and maintained as deemed necessary to insure that the development will be consistent with the purpose and intent of these critical slopes provisions.

(9-15-03(3); 11-21-05; 1-17-06(7); 1-17-12; 7-16-12; 9-7-21(1) , § 2)

DURHAM, NC

8.8.3 Steep Slope Areas

A. Applicability

1. Steep slope areas refer to natural grades and shall not include man-made grades.

2. Slope is the relationship of vertical rise to horizontal run, expressed as a percentage.

a. Except in the CSD District, steep slope areas shall be defined as land areas that:

(1) Have a grade of 25% or more;

(2) Have an area of 5,000 square feet or greater; and

(3) Are located within 200 feet of any floodway fringe or perennial stream or within 100 feet of an intermittent stream.

b. In the CSD District, steep slope areas shall be defined as land areas that:

(1) Have a grade of 15% or more;

(2) Have an area of 2,500 square feet or greater; and

(3) Are located within 200 feet of any floodway fringe or perennial stream or within 100 feet of an intermittent stream.

B. Slope calculations shall use the smallest contour interval for which maps are available. Steep slope areas shall be determined irrespective of tract boundaries.

C. Steep slope areas shall be clearly indicated on all site plans, development plans, preliminary plats and final plats. When a property owner or developer believes that the presence or location of a steep slope area is different than what is shown on the appropriate topographic map, the property owner or developer shall provide a field survey to determine the location or presence of the moderate or steep slope area for purposes of meeting the requirements of this section.

The Durham Unified Development Ordinance is current through legislation effective:
Durham County: December 1, 2021
City of Durham: December 1, 2021

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: durhamnc.gov
Code Publishing Company

GARNER, NC

8.6. OPEN SPACE AND RECREATIONAL FACILITIES.

8.6.1. Open space.

A. The Town Council finds that, when land is developed for residential purposes, the public health, safety, and welfare are best served if a portion of the land so developed remains as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

1. Preservation of open vistas, providing relief from an urban landscape;
2. Preservation of environmentally sensitive lands;
3. Preservation of habitat for wildlife;
4. Preservation of historically or archaeologically significant areas; and
5. Provision of areas for passive recreation, such as walking or jogging.

B. For purposes of this section:

1. Open space refers to an area that:a. Is not encumbered with any substantial structure;

b. Is not exclusively devoted to use as a roadway, parking area, or sidewalk;

c. Is not part of any privately owned lot that is used or intended for use for residential purposes;

d. Is private, is legally and practicably accessible to the residents of the subdivision or development it is designed to serve; and

e. If publicly dedicated, is legally and practicably accessible to the general public.

C. Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:

1. Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

2. Are configured and improved in a manner acceptable to the permit issuing authority (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.

D. The following areas shall be regarded as open space where such areas satisfy the criteria set forth a.(1), a.(2) and a.(3) of this section:

1. Utility easements located outside of street rights-of-way;
2. Cemeteries located on a tract prior to its development;

3. Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and the homeowners association approves such uses; and

4. Golf courses as private open space.

E. The term "primary conservation areas" shall mean:

1. Areas shown as greenways on the adopted Garner Open Space and Greenways Plan or other applicable policies or plans;
2. Wetlands as defined pursuant to Section 404 of the Clean Water Act;
3. Floodplains;
4. Lakes and ponds; or
5. Areas containing slopes greater than 25 percent.

F. The term "secondary conservation areas" shall mean:

1. Areas containing slopes greater than 15 percent but not more than 25 percent;
2. Other areas containing unique vistas or unusual natural features (such as major rock formations); or
3. Other environmentally, historically or archaeologically significant or unique areas.

G. Except as otherwise provided herein, every residential development shall be developed so that at least ten percent of the total area of the development remains permanently as open space.

1. The Town Council recognizes that, the smaller the development, the less practical value open space areas set aside under this section may have. Therefore, developments of less than one acre in overall size shall be exempt from the open space provisions of this section.

2. For purposes of this section, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the development is constructed in phases or stages.

H. If a tract where a residential development is proposed contains any areas defined above as primary or secondary conservation areas, then such areas shall be designated as open space, subject to the following:

1. In no case shall the developer be required to set aside as open space more than the minimum required percentage of open space specified in this section.

2. If the development tract contains primary or secondary conservation areas, then the specific areas to be set aside as open space shall be determined by the permit issuing authority, with priority given to primary conservation areas over secondary conservation areas.

3. If the total of primary and secondary conservation areas on a development tract is less than the minimum required percentage of open space specified in this section, then the choice of additional open space areas to be set aside to satisfy this minimum percentage shall remain with the developer, provided the location meets the standards of this UDO.

I. Notwithstanding the other provisions of this section, where a developer agrees to dedicate land to the Town that is intended to be used by the Town for open space purposes such dedication shall be credited to the developer in satisfaction of the open space requirements.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.2. Park land dedication and fee in-lieu requirement.

A. Purpose.

1. The Town Council finds that all new residential development places a demand on existing Town park and recreational facilities and creates the need for the expansion of existing park and recreation facilities and the development of new park and recreation facilities.

2. The Council further concludes that the need for such new or expanded parks and recreation facilities is directly related to the number of persons expected to reside in such new development and is also affected by the housing type (single-family detached or multifamily and all other residential units) as well as the extent to which such developments provide their own recreational facilities.

3. The Council concludes that it is appropriate for such new developments to contribute to the cost of such new or expanded parks and recreational facilities in a manner that is roughly proportional to the need generated by such developments either through public dedication of land or by the payment of fees in-lieu-of dedication.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.3. Use of fees.

A. The Town Council hereby establishes a park and recreational facilities capital improvement fund that is distinct from the general fund of the Town, the purpose of which shall be to accumulate the fees generated by this section.

B. The park and recreational facilities capital improvement fund shall contain only those funds collected pursuant to this section plus any interest which may accrue from time to time on such amounts.

C. The monies in such fund shall be used only for the acquisition of additional park land or for the construction of new recreational facilities in areas that will benefit the residents of the development that contributed to the fund. The Town Council may consider granting a credit against required fee-in-lieu of parkland dedication when a developer constructs public recreation facilities dedicated for public use and ownership as part of an approved residential development provided such facilities are designed and constructed a manner that is approved by the Town.

D. The Town Council may establish more than one fund, and divide the Town into districts, each served by a separate fund, if the Council concludes that the establishment of such multiple districts and multiple funds will best serve the objectives of this section.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3801, § 7, 12-7-15; Ord. No. 4031, § 2, 11-19-19; Ord., 3-16-21)

8.6.4. Dedication or fee-in-lieu.

The procedure for determining if a subdivider is to dedicate land or pay a fee in-lieu of dedication shall be as follows:

A. Subdivider. At the time of filing any subdivision plan, the subdivider shall, as part of such submission, indicate whether dedication of the property for park and recreational purposes is proposed, or whether the subdivider proposes to pay a fee in-lieu thereof. If the subdivider proposes to dedicate land for this purpose the subdivider shall designate the area thereof on the master subdivision plan as submitted.

B. Action of Town. At the time of the subdivision plat review, the parks and recreation advisory Committee shall recommend and the Planning Commission shall determine as a part of its subdivision plat approval, whether to require a dedication of land within the subdivision, payment of a fee in-lieu thereof or a combination of both. In cases where there is any disagreement on the question of dedication or fee in-lieu, the Planning Commission shall refer the matter to the Town Council for a final decision.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.5. Park land dedication.

Where it is determined that park land dedication is appropriate to satisfy the recreational requirements of the UDO, the amount of the park land to be dedicated shall be as follows:

Housing Type	Acres/Unit
Single-family detached	0.0354

All other residential	0.0287

Acceptance of dedicated park land. The Parks and Recreation Advisory Committee and the Planning Commission shall have the opportunity to review the proposed land dedication and recommend on its acceptability within the guidelines of this UDO and Town plans, and on the preferability of land dedication or payment of a fee-in-lieu of dedication.

B. Required Open Space Cannot be Used by Another Building or Use. No part of a lot, yard, off-street parking area, or other required open space shall be reduced below the minimum required by this Ordinance. No part of a lot, yard, off-street parking area, or other open space required for a building or use shall be used to satisfy the requirements of another building or use. These prohibitions shall not be interpreted to prevent the granting of a variance by the Zoning Board of Adjustment.

C. Standards for dedicated park land. All park land proposed for dedication shall meet the following criteria:

1. Unity. The dedicated park land shall form a single parcel of land except where the Parks and Recreation Advisory Committee recommends, and the Town Council finds, that two parcels or more would be in the public interest. Where two or more parcels exist, any connecting path or strip of land shall not be less than 30 feet in width.

2. Shape. The shape of the dedicated parcel of land shall be a shape to be sufficiently usable for recreational activities generally associated with a public recreation park.

3. Location. The dedicated land shall be located so as to reasonably serve the recreation area needs of the development and surrounding area for which the dedication was made.

4. Access. Public access to the dedicated land shall be provided either by adjoining street frontage or public easement at least 30 feet in width.

5. Topography. Slope on areas dedicated for parks shall not exceed five percent.

6. Utility. The dedicated land shall be usable for active recreation, or could be improved so as to be so usable without exceeding the amount of the fee in-lieu.

7. Consistency with adopted plans. The acceptance of dedication shall be consistent with the officially adopted open space and greenway plan, parks and recreation master plan or other applicable policies or plans.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.6. Fee-in-lieu of dedication.

A. Where determined appropriate, all residential development shall pay a fee-in-lieu of dedication to the Town in an amount equal to the fee set annually by the Town Council in the miscellaneous fees and charges schedule based on the number of dwelling units in the proposed development.

B. The amount of the fee-in-lieu shall not exceed the cost per acre to acquire new park land multiplied by the acreage demand per housing unit, as set forth in Article 8.4.B.4.

C. Fees-in-lieu are payable at the time of building permit issuance.

(Ord. No. 3558, § 2, 7-7-09; Ord. No. 3723, § 1, 12-17-13; Ord. No. 4031, § 3, 11-19-19; Ord., 3-16-21)

8.6.7. Prerequisites for approval of final plat.

A. Where park land dedication is required, such dedication shall be shown on the final plat for the subdivision submitted for approval.

B. Where a fee in-lieu is required, the fee in-lieu shall be deposited with the Town before issuance of a building permit.

C. Covenants for private open space areas shall be submitted to the Town prior to approval of the final plat and shall be recorded with the final plat.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.8. Refunds.

Any monies in the park and recreational facilities capital improvement fund that have not been spent within ten years after the date on which such fee was paid shall be returned to the current owners with any accumulated interest since the date of payment.

A. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within 30 days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

B. The refund shall be made on a pro rata basis, and shall be paid in full within 90 days of the date certain upon which the refund becomes due.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

8.6.9. Private ownership and maintenance.

A. Recreational facilities or open space not dedicated to the Town shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization. Such recreational facilities and open space shall be made available to all residents of the development where they are located under reasonable rules and regulations established to

encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification.

B. The person or entity identified in subsection 1. as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

C. Homeowners' associations or similar legal entities that are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

1. Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;

2. The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;

3. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and

4. The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years.

(Ord. No. 3558, § 2, 7-7-09; Ord., 3-16-21)

SYLVA, NC

- ## ARTICLE XII. - HILLSIDE AND STEEP SLOPE DEVELOPMENT OVERLAY

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

- ### Sec. 38-335. - Purpose.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

The purpose of this section is to regulate development on hillside and steep slope areas in order to preserve the Town of Sylva's unique character, conserve the public health, safety and general welfare and to promote environmentally sound design and planning.

(Ord. of 5-1-1998, § 1201)

- ### Sec. 38-336. - Goals and objectives.

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

This section is intended to achieve the following goals and objectives:

(1)

To promote public safety by ensuring that development on hillside areas addresses slope stability issues in an effective manner;

(2)

To provide greater design flexibility and efficiency in the location of development and infrastructure, including the opportunity to reduce length and width of roads, utility runs, and the amount of grading and paving;

(3)

To reduce erosion and sedimentation by the retention of existing vegetation, and the minimization of development on steep slopes.

(4)

To provide for the conservation and maintenance of hillside areas within city jurisdiction to achieve the above-mentioned goals;

(5)

To provide opportunities for developers to minimize impacts on hillside areas;

(6)

To provide standards reflecting the varying circumstances and interests of individual landowners, and the individual characteristics of their properties;

(7)

To preserve scenic views and vistas that are inherent to Sylva's character and to minimize perceived density by minimizing views of new development from within and outside of the development.

(Ord. of 5-1-1998, § 1202)

- **Sec. 38-337. - Establishment of the Hillside/Steep Slope Overlay.**

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The "Official Zoning Map" of the Town of Sylva is hereby amended to establish a Hillside/Steep Slope Overlay for the Town of Sylva's land use and planning jurisdictions.

(Ord. of 5-1-1998, § 1203)

- **Sec. 38-338. - Application.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

Unless specifically exempt, the provisions of the article shall apply to all slopes with a natural average grade of 15 percent or greater.

(1)

Any portion of a lot, parcel, or tract of land which has been approved for development or subdivision prior to the date of adoption of (the ordinance from which this chapter is derived) shall not be required to comply with the provisions of this section if no further development or change to the approved subdivision or development plan is proposed within that portion of the lot, parcel, or tract of land. For the purpose of applying this provision, approval of a subdivision plat shall not constitute approval of a development plan for the individual lots in the subdivision.

(2)

New development where the average natural slope is 15% or greater.

(3)

Additions to structures greater than 1,000 square feet or new site disturbances encompassing more than 1,000 square feet of disturbed area.

(4)

Substantive amendments to an approved subdivision or development plan on slopes fifteen (15) percent or greater shall require full compliance with the requirements of this Article. For the purpose of this section, "substantive amendments" shall include increases in the number of lots or density or intensity of development by more than 10% over that previously approved, location of a structure or structures in areas of steeper slopes than originally approved, and similar amendments that substantively increase the extent of development impact.

(Ord. of 5-1-1998, § 1204)

- **Sec. 38-339. - Definitions.**

SHARE LINK TO SECTIONPRINT SECTIONDOWNLOAD (DOCX) OF SECTIONSEMAIL SECTIONCOMPARE VERSIONS

For the purposes of this section, the following terms shall have the meaning to them as described below:

Artificial slope shall mean any land-disturbing activity that creates or changes any slope or attempts to do so.

Cut slope shall mean the exposed ground surface resulting from excavation of material.

Existing grade shall mean the vertical elevation of the land as it exists.

Fill slope shall mean the exposed ground surface resulting from deposition of material.

Hillside Area shall mean areas where the average natural slope is 15% to 29%.

Ridgeline shall mean the line along which two sloping surfaces meet which diverge towards the ground.

Slope shall mean the extent to which a land form deviates from the perfectly horizontal as expressed in percent, degree or ratio. To ensure consistent conversion between these separate methods of expressing the extent of slope, the following explanatory table is provided as part of this definition.

COMMUNITY DEVELOPMENT

Resource Conservation Area Text Amendment – 2021-126-OA

- **Unified Development Code Reference:** 155.500 – Resource Conservation Areas
- **Purpose of Proposed Text Amendment:** Revise definition of Steep Slopes required to be protected under Resource Conservation Areas
- **Reason for Request:** Staff recommends a re-organization of the Resource Conservation Areas Section of the UDC; Staff has also developed 4 additional options to provide clarity and refine definition of steep slopes that are required to be protected (one option removes steep slopes from RCA definition
  - Refining of definition of steep slopes has been requested by development community
  - Variances have been requested for 2 developments with steep slopes – text amendment could reduce or remove need for variances

COMMUNITY DEVELOPMENT

Resource Conservation Areas

Resource Conservation Areas

- 100-year Floodplain
- Stream buffer areas
- Slopes above 25% of at least 5,000 square feet contiguous area; and
- Jurisdictional wetlands under federal law that meet the definition applied by USACE

Intent of Resource Conservation Area

- Protect natural resources
- Preserve visual and aesthetic qualities of the Town
- Encourage site design techniques that preserve natural environment
- Enhance the developed environment
- Control erosion, slippage, and sediment run-off into streams and waterways
- Protect wildlife and migration corridors

Prohibited uses

- Stormwater control measures
- Roads, parking lots, and impervious surfaces, except as specifically authorized; and
- Golf courses, agriculture and forestry activities not conducted according to accepted best management practices.

COMMUNITY DEVELOPMENT

2040 Growth Plan and 2045 Growth Plan: Resource Conservation Areas

2040 Growth Plan

Objective NR1.1

Preserve key natural areas while accommodating new development.

Strategy NR1.1.1

Continue to discourage development in Primary Resource Conservation Areas (PRCAs), which include floodplains, protected riparian buffers, and wetlands.

Strategy NR1.1.2

Encourage the conservation of Secondary Conservation Areas (SRCA), which includes areas of high biodiversity (identified on the NCDENR Biodiversity and Wildlife Habitat Assessment), Natural Heritage Natural Areas, mature forest, un-protected riparian areas (>50 ft away from perennial streams), rock outcrops, vernal pools, seeps, heath bluffs, steep slopes, vistas, and other unique natural features.

Strategy NR1.1.3

Encourage the incorporation of SRCAs as passive recreational amenities into the design of new developments.

2045 Growth Plan

Policy NR 1.1

Preserve key natural areas while accommodating new development.

Strategy NR 1.1.1

Continue to discourage development in Primary Resource Conservation Areas (PRCAs), which include floodplains, protected stream buffers, slopes above 20% of at least 5,000 square feet contiguous areas, slopes above 15% within 100ft of blue line streams, and wetlands.

Strategy NR 1.1.2

Encourage the conservation of Secondary Resource Conservation Areas (SRCAs) as passive recreational amenities into the design of new developments.

- SRCAs include areas of high biodiversity (identified on the NCDENR Biodiversity and Wildlife Habitat Assessment), Natural Heritage Natural Areas, mature forest, unprotected riparian areas (up to 150 ft away from perennial streams), rock outcrops, vernal pools, seeps, heath bluffs, other steep slopes, vistas, and other unique natural features, and areas within 150ft of existing or planned greenways.

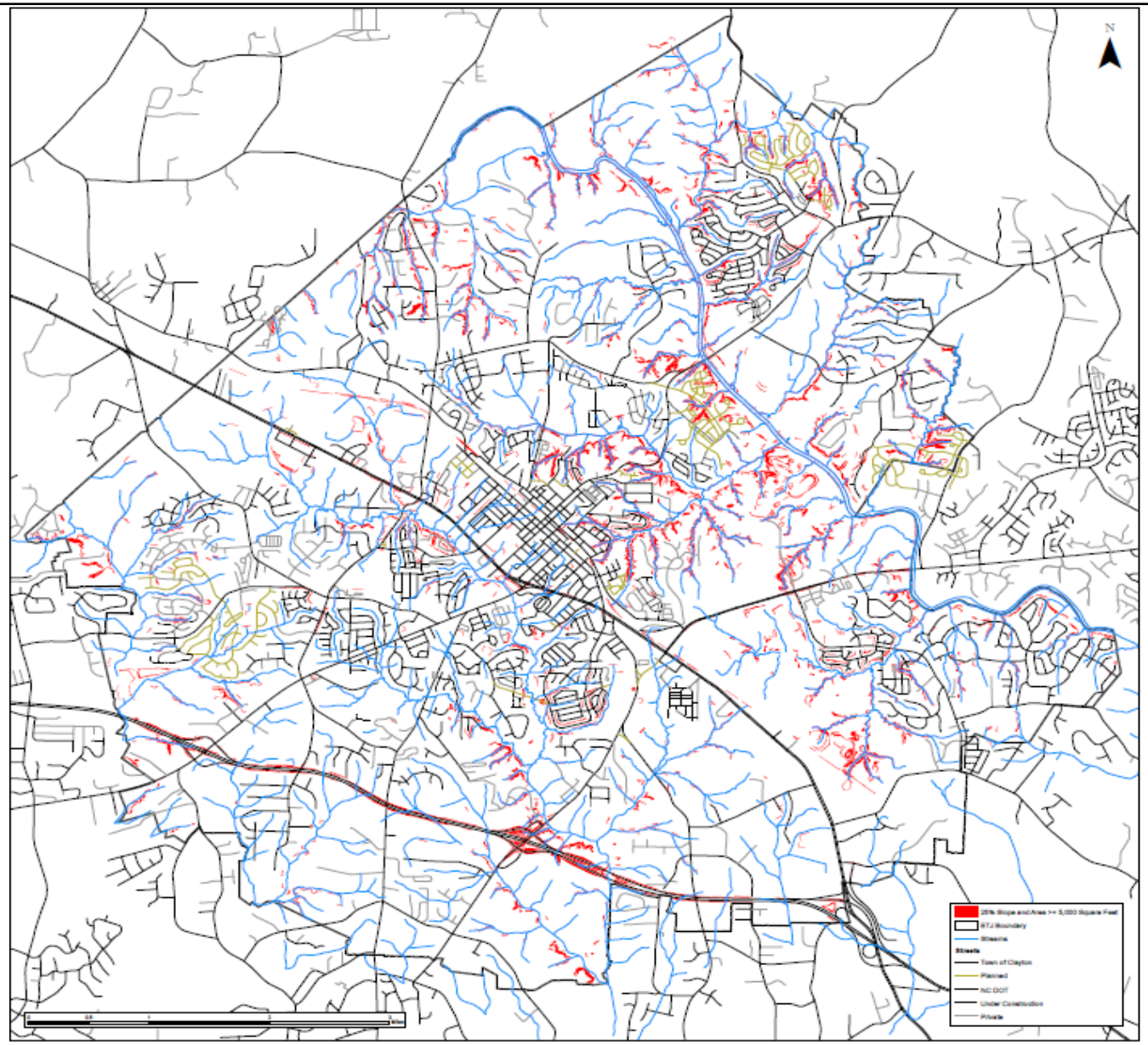
Open space priorities should be refined and specified in future updates to the UDC.

Other Jurisdictions

Municipality	Slope condition	Area condition	Distance condition	Notes
City of Charlottesville	25% or more	6,000 square feet or more	less than 200 feet from a waterway identified on city topographical maps	
City of Durham	15% or more	2,500 square feet or more	less than 200 feet from a floodway fringe or perennial stream, or less than 100 feet from an intermittent stream	located in the Compact Suburban Design (CSD) District
	25% or more	5,000 square feet or more		
City of Raleigh	over 25%	5,000 square feet or more		
Durham County	25% or more	10,000 square feet or more	less than 200 feet from a floodway fringe or perennial stream, or less than 100 feet from an intermittent stream	
Town of Apex	30% or more	2 acres or more		
Town of Chapel Hill	15% or more, but less than 25%	400 square feet or more		less stringent regulations
	25% or more	400 square feet or more		more stringent regulations
Town of Clayton	**over 25%**	**5,000 square feet or more**		
Town of Fuquay-Varina	15% or more, but less than 25%			less stringent regulations
	25% or more			more stringent regulations
Town of Garner	over 15%, through 25%			less stringent regulations
	over 25%			more stringent regulations
Town of Knightdale	15% through 25%			less stringent regulations
	over 25%			more stringent regulations
Town of Sylva	30% or more			

COMMUNITY DEVELOPMENT

GIS Map of Steep Slopes



COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Text Amendment Options

Option 1

- Re-organize section, clarify definition of steep slopes (no substantive changes)

Option 2

- Steep Slopes must be 25% or greater and directly connected to 100-year floodplain, wetlands or stream buffer(s) and at least 5,000 square feet of contiguous area in size to be considered RCAs

Option 3

- Steep Slopes must be 25% or greater and within 100 feet of 100-year floodplain, wetlands or stream buffer(s) to be considered RCAs

Option 4

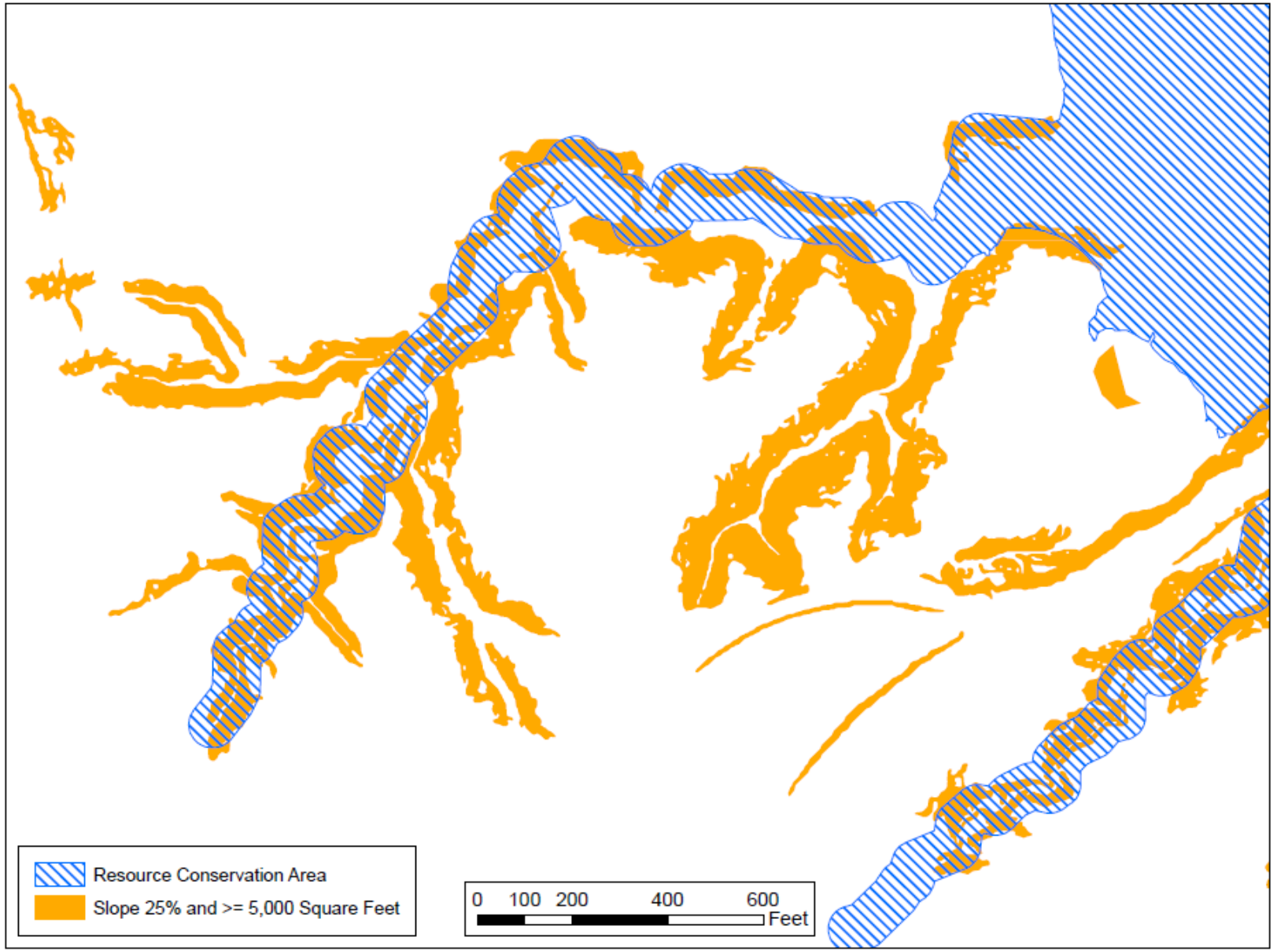
- Steep Slopes must be 25% or greater and directly connected to 100-year floodplain, wetlands or stream buffer(s) by a width of at least 20 feet

Option 5

- Remove Steep Slopes from Resource Conservation Areas (no protection required)

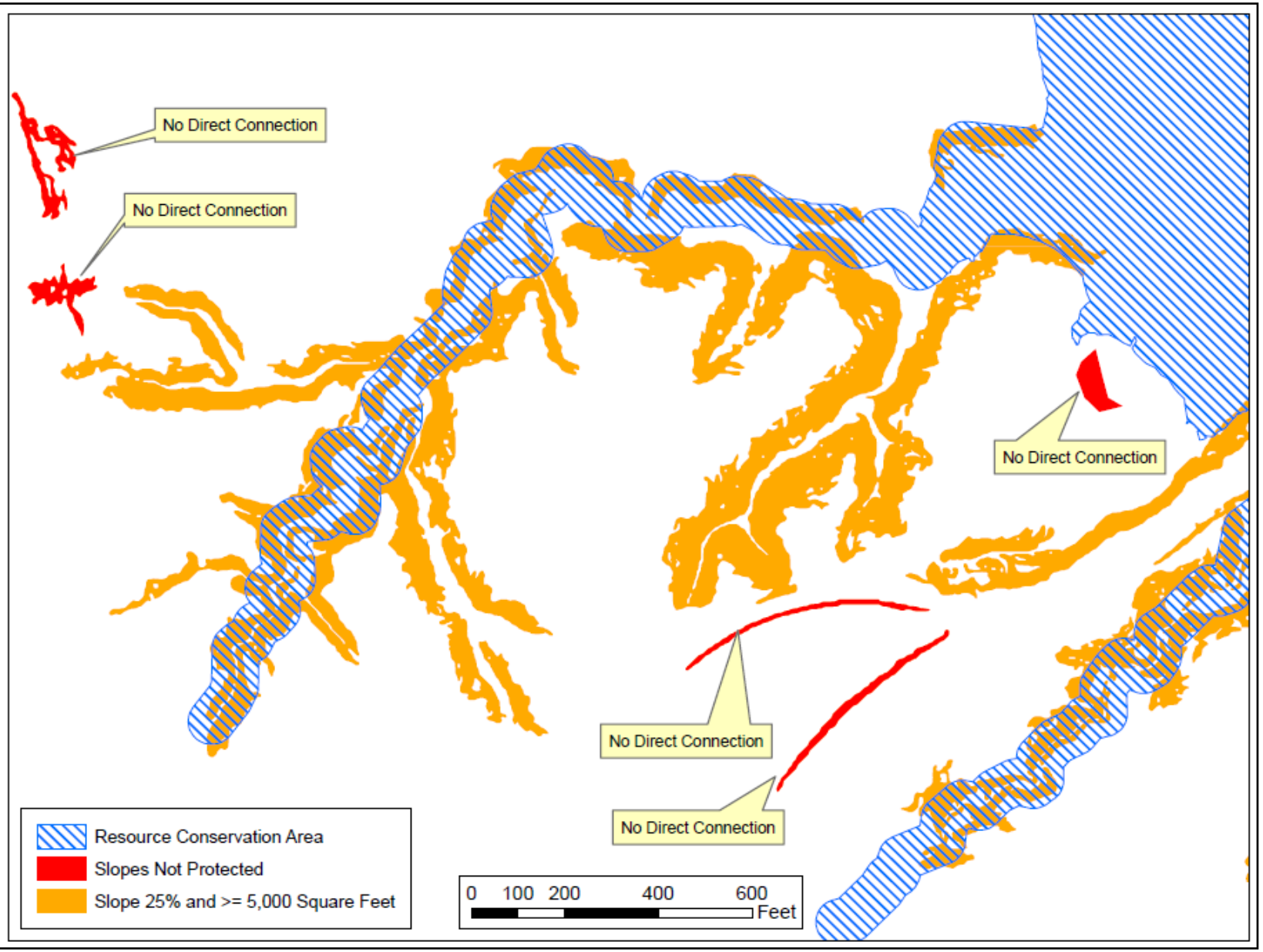
COMMUNITY DEVELOPMENT

Option 1



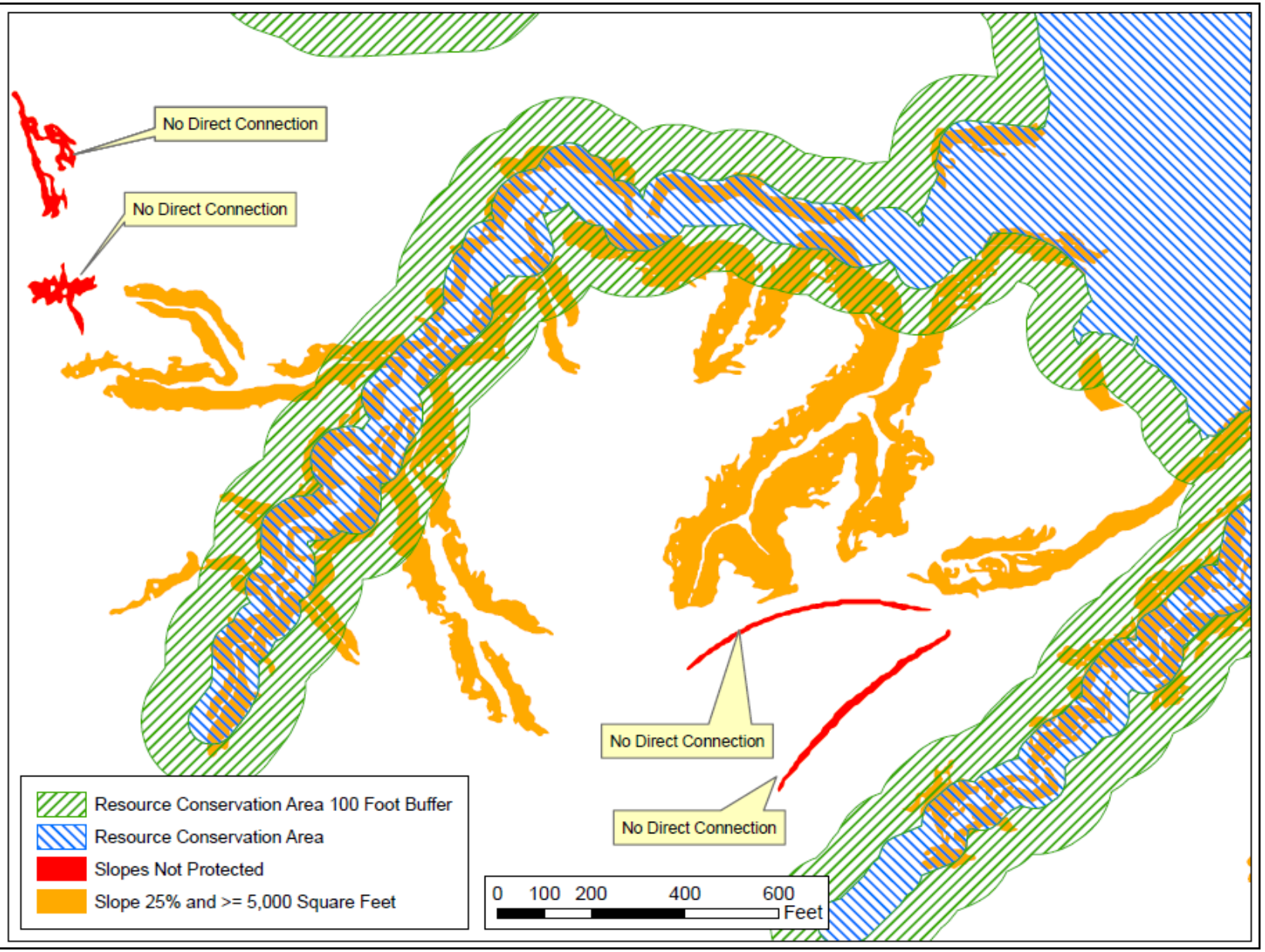
COMMUNITY DEVELOPMENT

Option 2



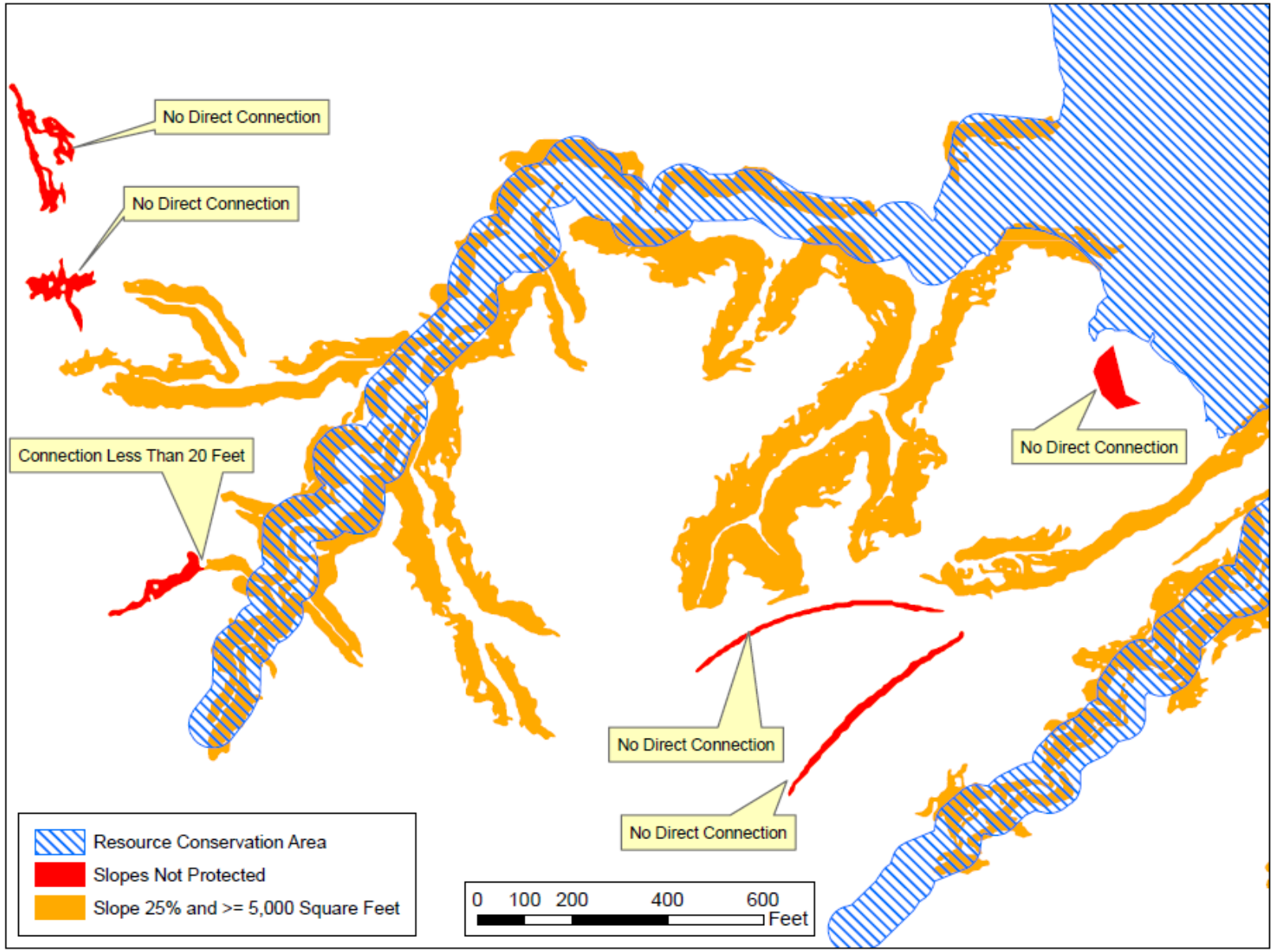
COMMUNITY DEVELOPMENT

Option 3



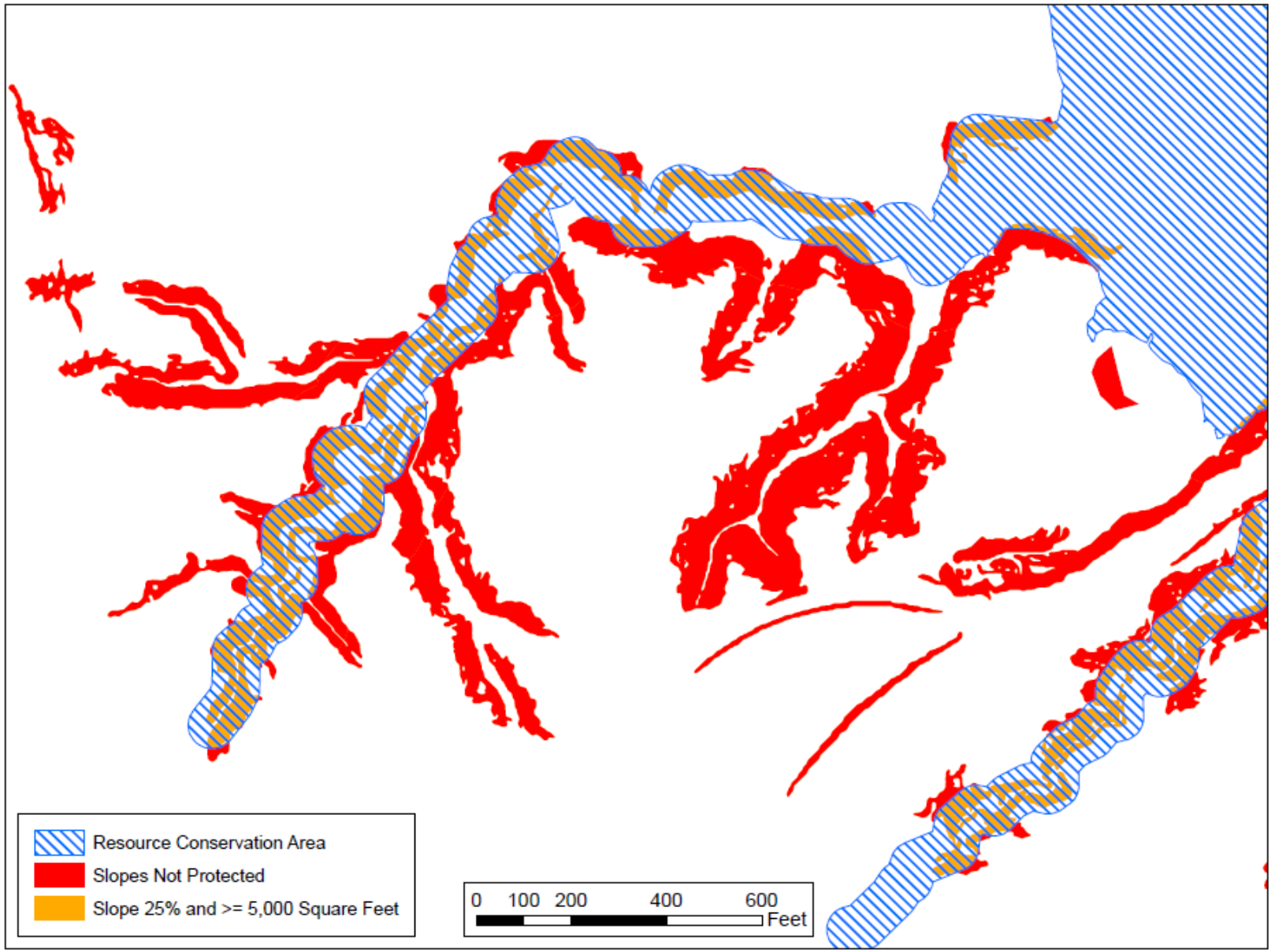
COMMUNITY DEVELOPMENT

Option 4



COMMUNITY DEVELOPMENT

Option 5



COMMUNITY DEVELOPMENT

Planning Board Action

At October 25th Meeting, Planning Board recommended Council approve Text Amendment Option 2: Require steep slopes to be protected if directly connected to 100-year floodplain, wetlands or stream buffer(s) and at least 5,000 square feet of contiguous area in size.

COMMUNITY DEVELOPMENT

Resource Conservation Area Text Amendment – 2021-126-OA

- **Unified Development Code Reference:** 155.500 – Resource Conservation Areas
- **Purpose of Proposed Text Amendment:** Request to amend the Unified Development Code, Title XV, §155.500. This amendment seeks to revise the Resource Conservation Area section of the Unified Development Code to include steep slopes in the definition of Resource Conservation Areas.
- **Reason for Request:** Consider whether natural steep slopes, defined as slopes 25% or greater in slope, should be defined as Resource Conservation Areas and protected from development activity.

COMMUNITY DEVELOPMENT

Resource Conservation Areas

Resource Conservation Areas

- 100-year Floodplain
- Stream buffer areas
- Jurisdictional wetlands under federal law that meet the definition applied by USACE

Prohibited uses

- Stormwater control measures
- Roads, parking lots, and impervious surfaces, except as specifically authorized; and
- Golf courses, agriculture and forestry activities not conducted according to accepted best management practices.

Intent of Resource Conservation Area

- Protect natural resources
- Preserve visual and aesthetic qualities of the Town
- Encourage site design techniques that preserve natural environment
- Enhance the developed environment
- Control erosion, slippage, and sediment run-off into streams and waterways
- Protect wildlife and migration corridors

COMMUNITY DEVELOPMENT

2045 Growth Plan
Resource Conservation Areas

Policy NR 1.1

Preserve key natural areas while accommodating new development

Strategy NR 1.1.1

Continue to discourage development in Primary Resource Conservation Areas (PRCAs), which include floodplains, protected stream buffers, slopes above 20% of at least 5,000 square feet contiguous areas, slopes above 15% within 100 ft of blue line streams, and wetlands.

Strategy NR 1.1.2

Encourage the conservation of Secondary Resource Conservation Areas (SRCAs) as passive recreational amenities into the design of new developments.

- SRCAs include areas of high biodiversity (identified on the NCDENR Biodiversity and Wildlife Habitat Assessment), Natural Heritage Natural Areas, mature forest, unprotected riparian areas (up to 150 ft. away from perennial streams), rock outcrops, vernal pools, seeps, heath bluffs, other steep slopes, vistas, and other unique natural features, and areas within 150 ft. of existing or planned greenways.

COMMUNITY DEVELOPMENT

Resource Conservation Areas

Steep Slopes

- Often associated with environmental features (riparian buffers, floodplains, rock outcroppings, shallow soils, groundwater seeps)
- Typically stable in their natural state
- Can become unstable when modified (vegetation, grading, hydraulics)
- Located in municipal codes to extend protection of environmental sensitive areas.

COMMUNITY DEVELOPMENT

Protecting Steep Slopes

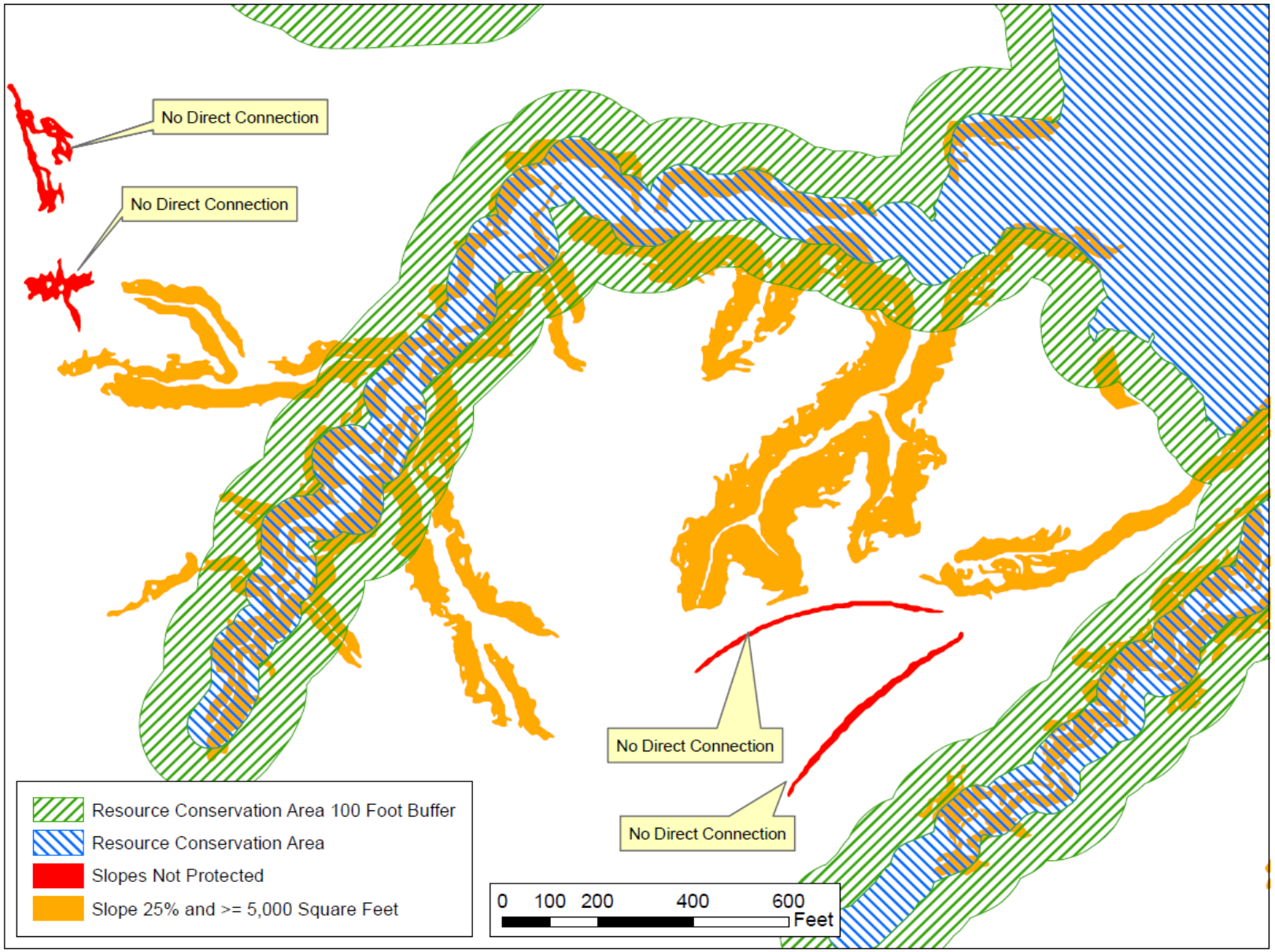
Advantages

- Preserve environmentally sensitive areas
- Provide additional habitat for wildlife
- Preserve existing vegetation

Disadvantages

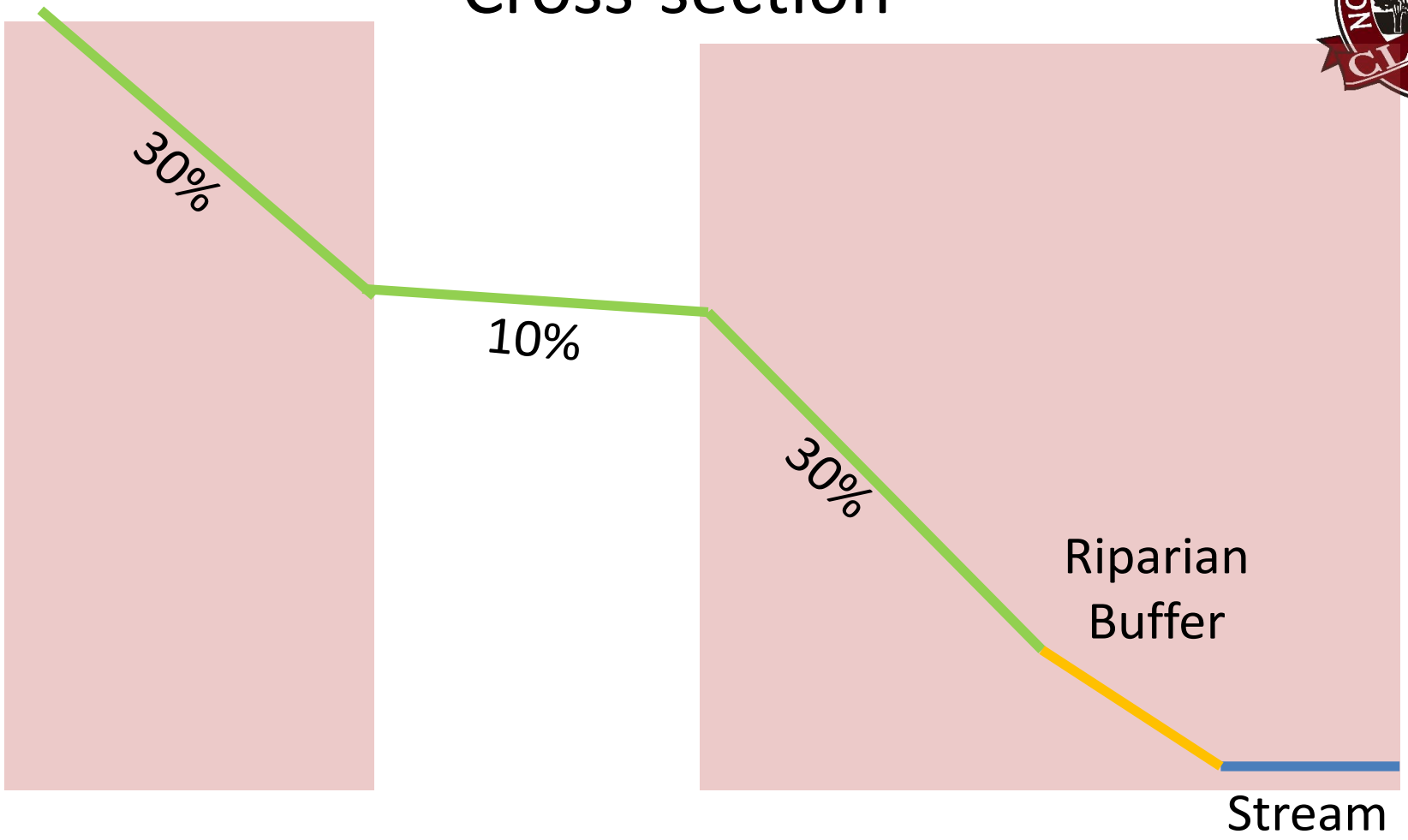
- Less developable land
- Increased administrative responsibilities

COMMUNITY DEVELOPMENT



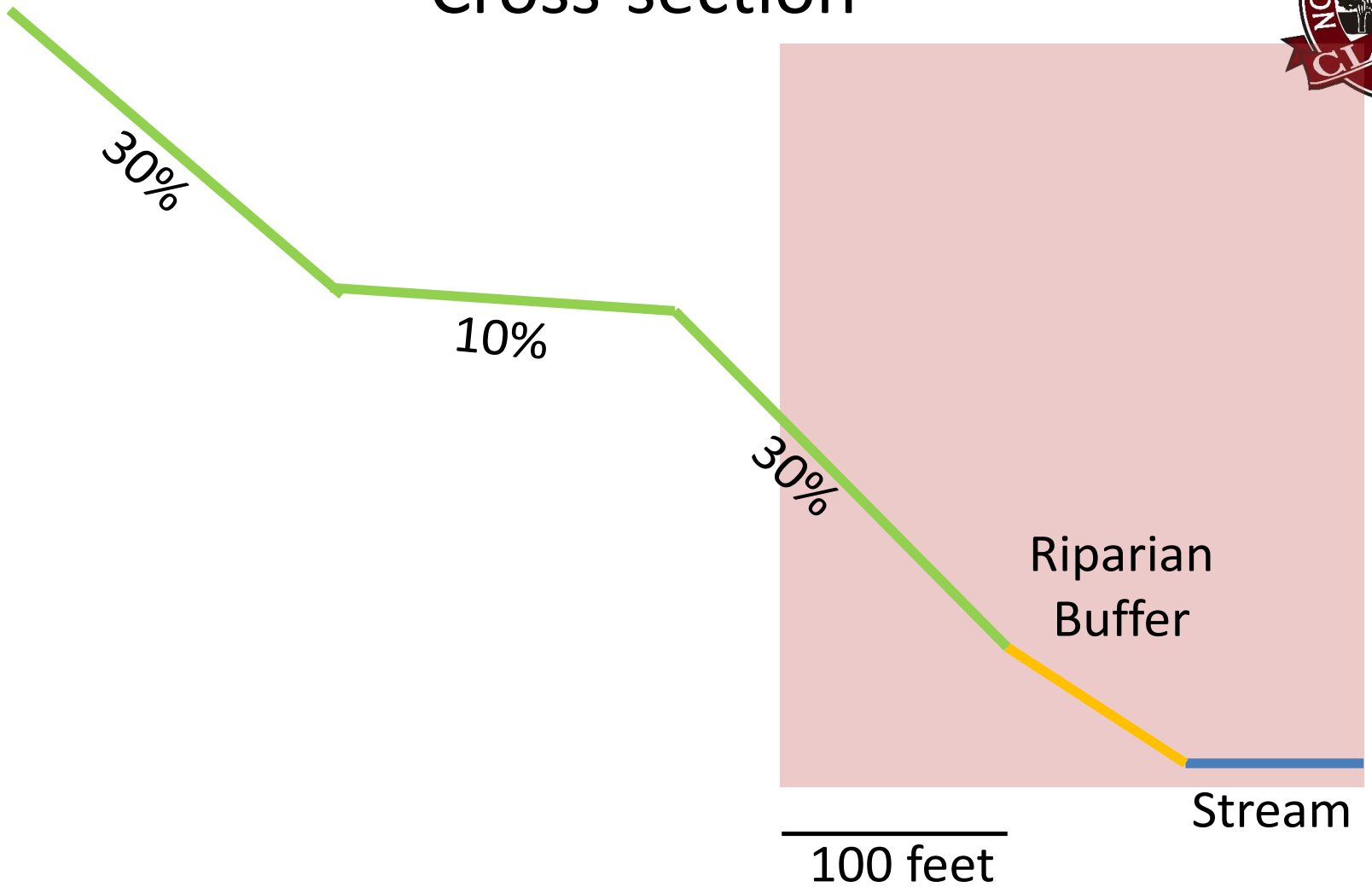
COMMUNITY DEVELOPMENT

Cross-section



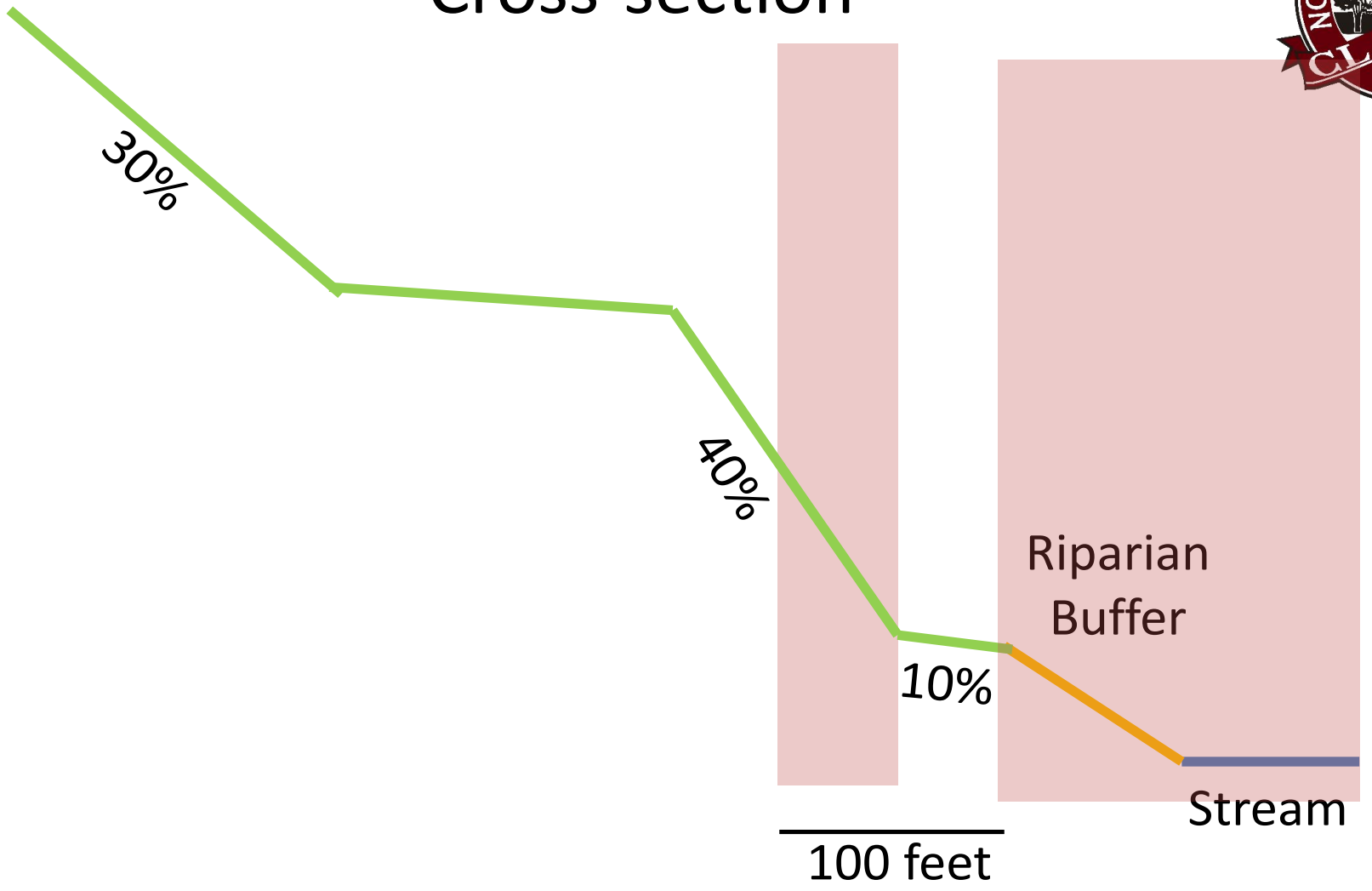
COMMUNITY DEVELOPMENT

Cross-section



COMMUNITY DEVELOPMENT

Cross-section



Other Jurisdictions

Municipality	Slope condition	Area condition	Distance condition	Notes
City of Charlottesville	25% or more	6,000 square feet or more	less than 200 feet from a waterway identified on city topographical maps	
City of Durham	15% or more	2,500 square feet or more	less than 200 feet from a floodway fringe or perennial stream, or less than 100 feet from an intermittent stream	located in the Compact Suburban Design (CSD) District
	25% or more	5,000 square feet or more		
City of Raleigh	over 25%	5,000 square feet or more		
Durham County	25% or more	10,000 square feet or more	less than 200 feet from a floodway fringe or perennial stream, or less than 100 feet from an intermittent stream	
Town of Apex	30% or more	2 acres or more		
Town of Chapel Hill	15% or more, but less than 25%	400 square feet or more		less stringent regulations
	25% or more	400 square feet or more		more stringent regulations
Town of Clayton	**over 25%**	**5,000 square feet or more**		
Town of Fuquay-Varina	15% or more, but less than 25%			less stringent regulations
	25% or more			more stringent regulations
Town of Garner	over 15%, through 25%			less stringent regulations
	over 25%			more stringent regulations
Town of Knightdale	15% through 25%			less stringent regulations
	over 25%			more stringent regulations
Town of Sylva	30% or more			

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Current Language (Amended 11/15/21)

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas; and

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers.

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Text Amendment Options

Option 1

- Steep slopes of 25% or greater and at least 5,000 square feet of contiguous area in size to be considered RCAs

Option 2 – Recommended by Planning Board on December 21, 2021

- Steep Slopes must be 25% or greater and directly connected to 100-year floodplain, wetlands or stream buffer(s) to be considered RCAs

Option 3

- Steep Slopes must be 25% or greater and within 100 feet of 100-year floodplain, wetlands or stream buffer(s) to be considered RCAs

Option 4

- Steep Slopes must be 25% or greater and directly connected to 100-year floodplain, wetlands or stream buffer(s) by a width of at least 20 feet

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Text Amendment Option 1

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas; ~~and~~

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

~~(3)~~(4) Natural steep slopes defined as slopes 25% (4:1) or greater of at least 5,000 square feet contiguous area.

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas
Text Amendment Option 2
Recommended by Planning Board

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas; ~~and~~

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

~~(3)~~(4) Natural steep slopes defined as slopes 25% (4:1) or greater that are directly connected to one of the above features.

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Text Amendment Option 3

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas; ~~and~~

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

~~(3)~~(4) Natural steep slopes defined as slopes 25% (4:1) or greater within 100 feet of one of the above features.

COMMUNITY DEVELOPMENT

Section 155.500 – Resource Conservation Areas Text Amendment Option 4

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas; ~~and~~

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

~~(3)~~(4) Natural steep slopes defined as slopes 25% (4:1) or greater that are directly connected to one of the above features by a width of at least 20 feet.

COMMUNITY DEVELOPMENT

Planning Board Recommendation

At the December 21, 2021 meeting, the Planning Board recommended Text Amendment Option 2 (steep slopes are defined as Resource Conservation Areas if directly connected to the 100-year floodplain, stream buffer(s) or wetlands) by a vote of *5 – 2.*

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

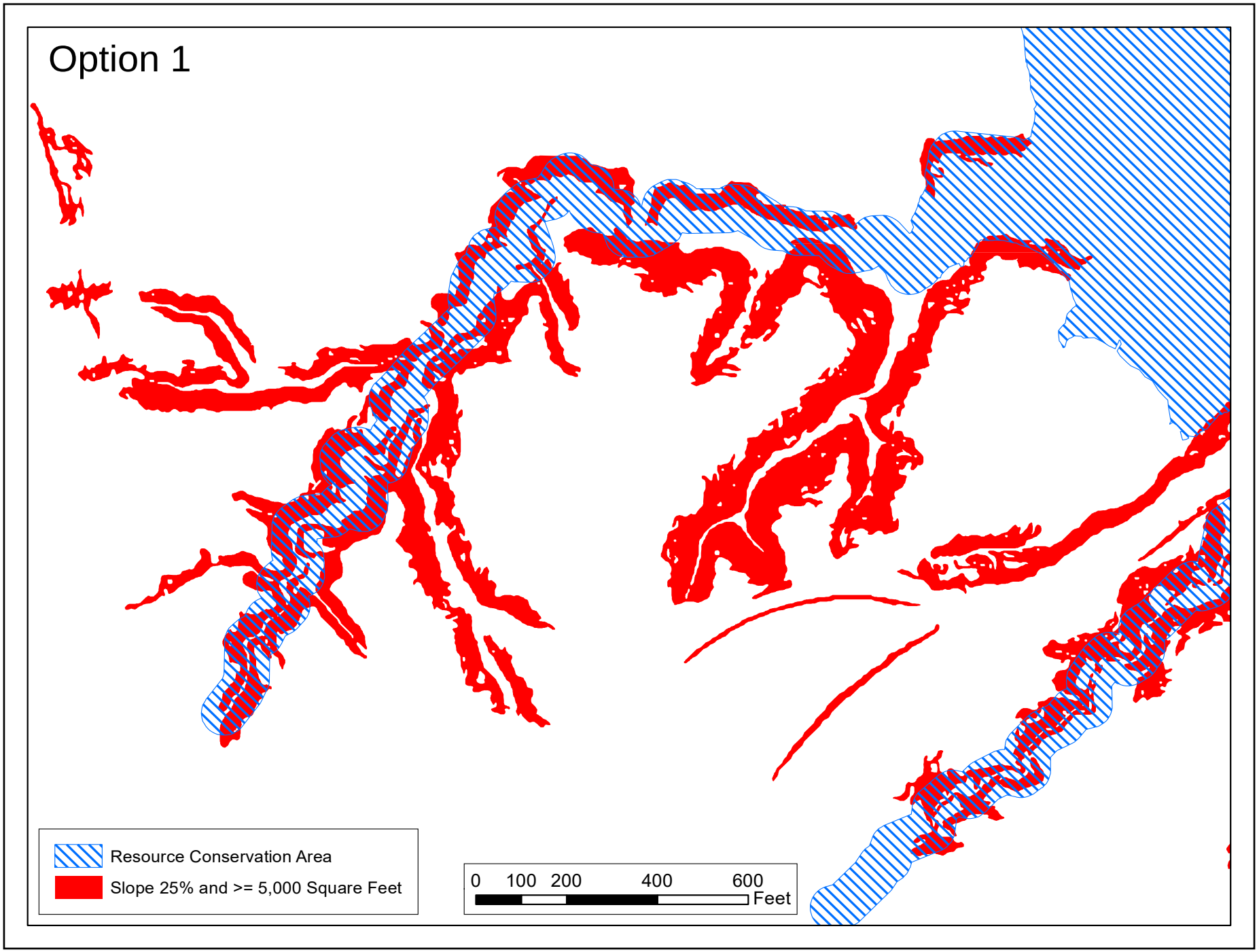
The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

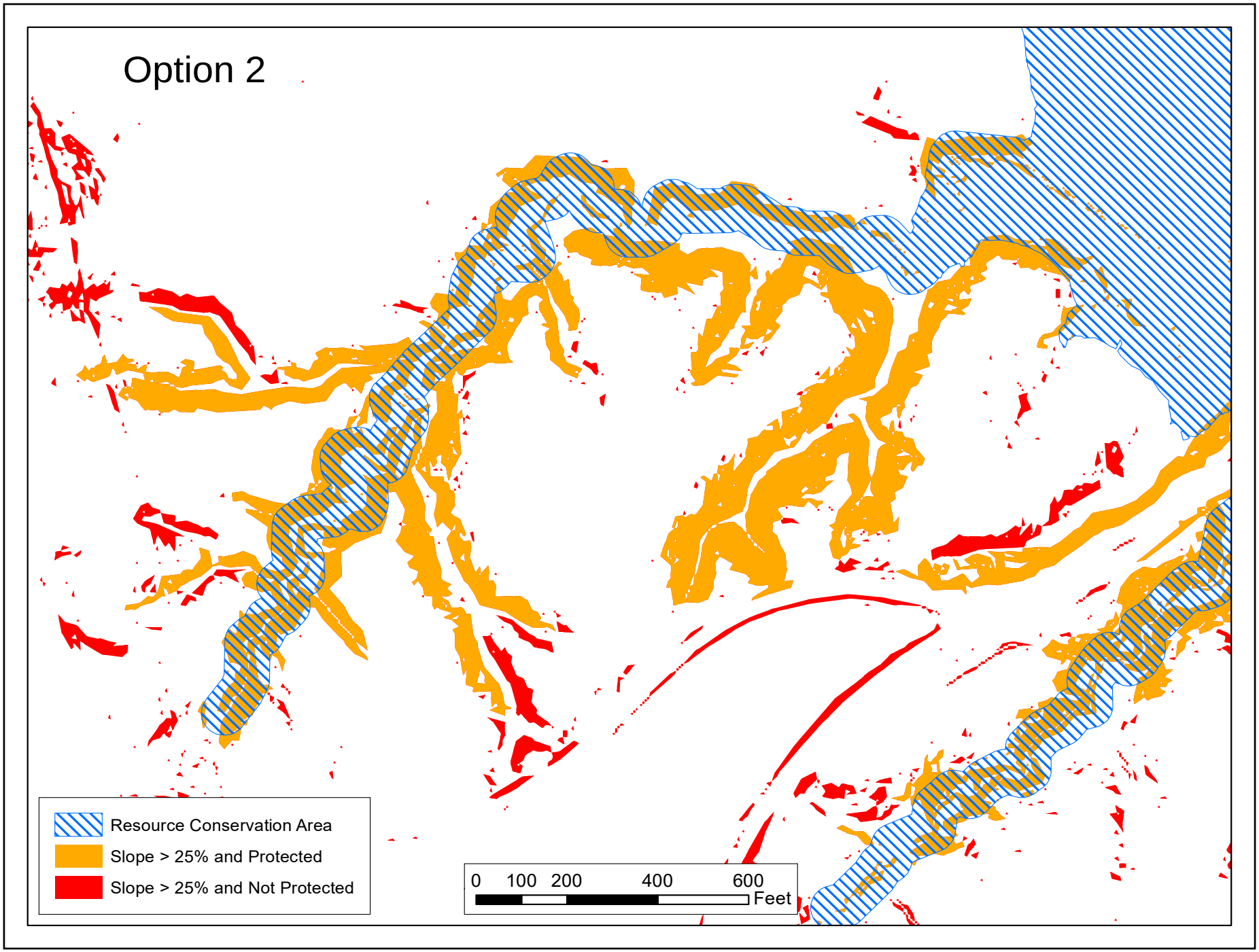
(1) The 100-year floodplain;

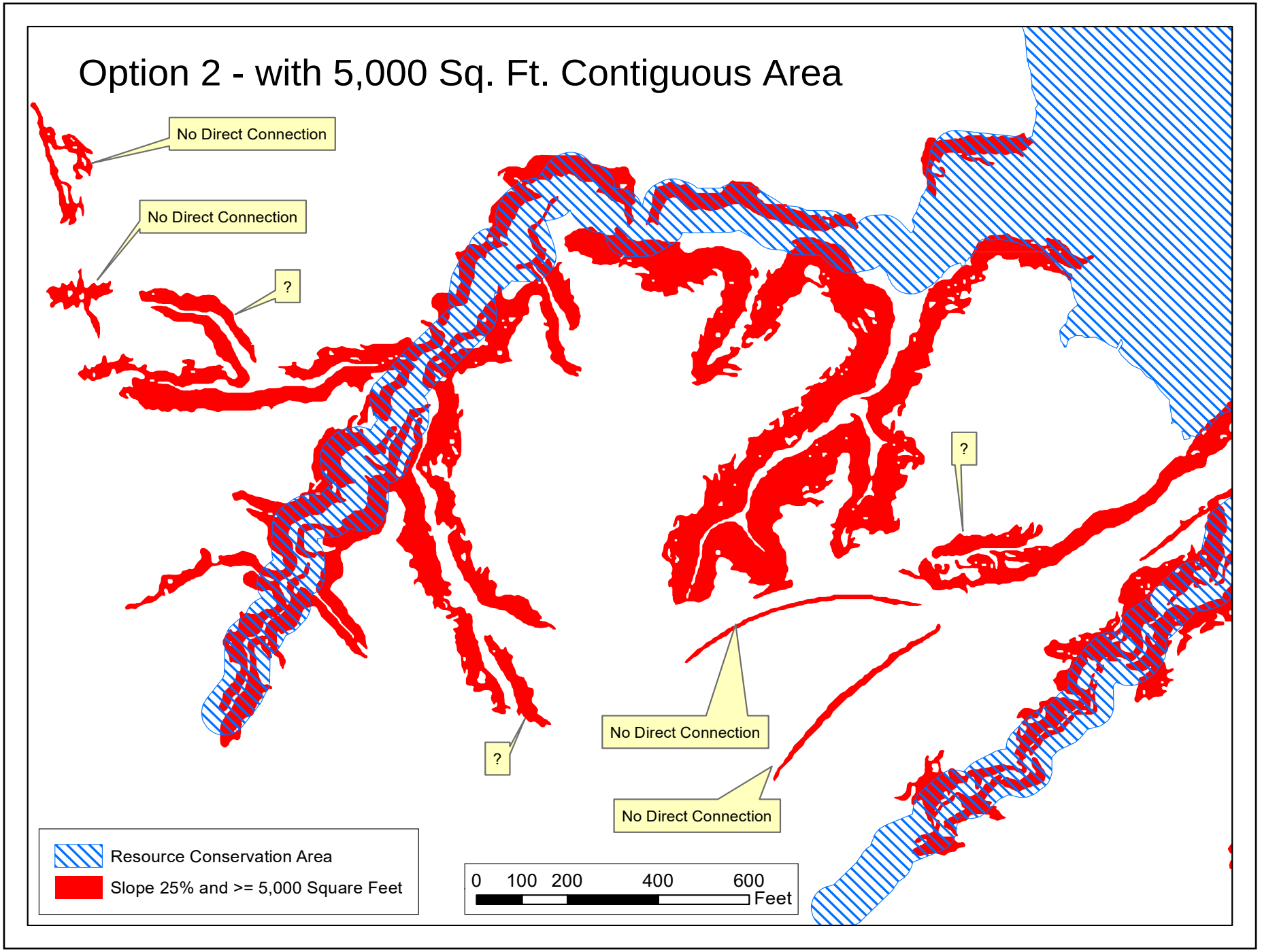
(2) Stream buffer areas; ~~and~~

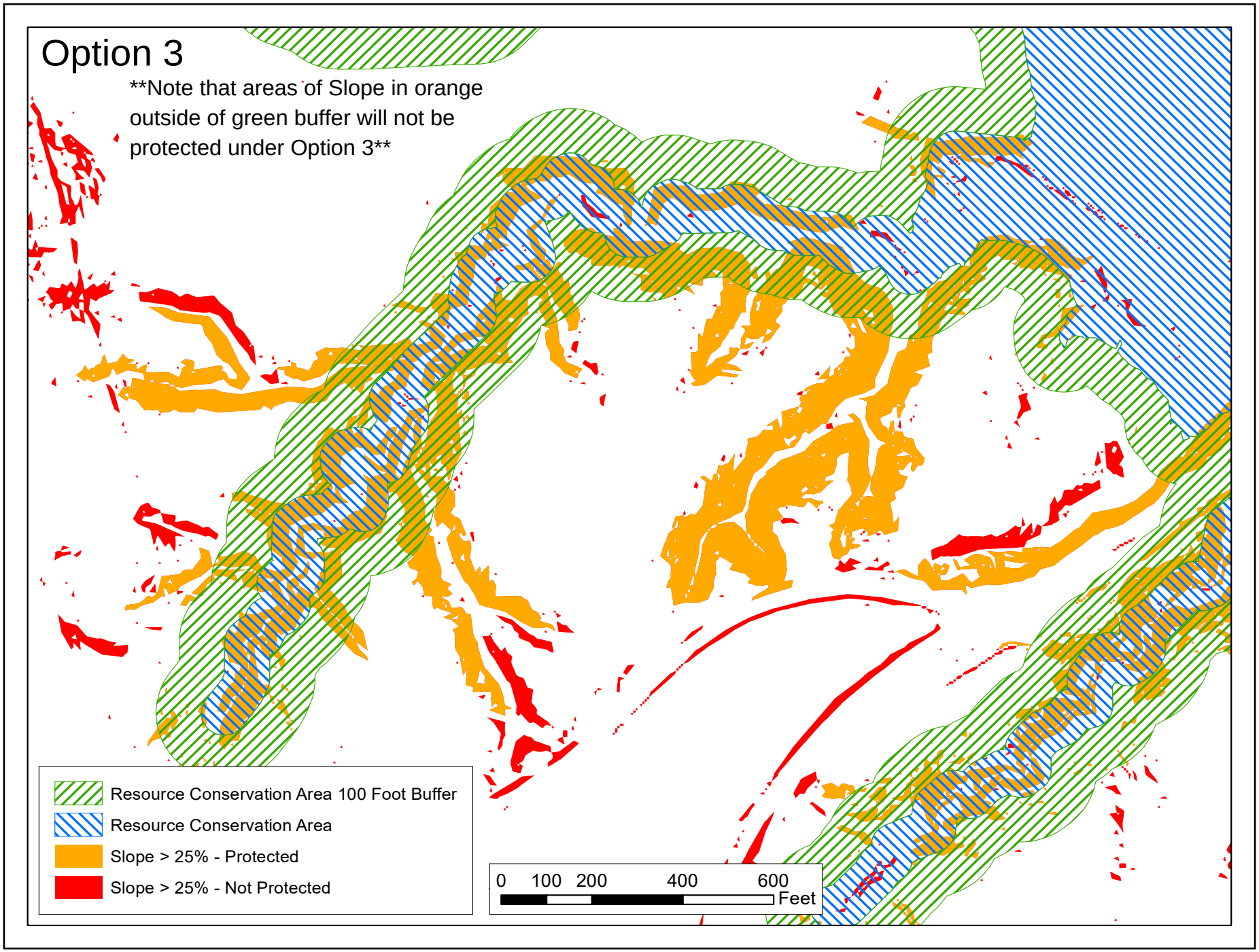
(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

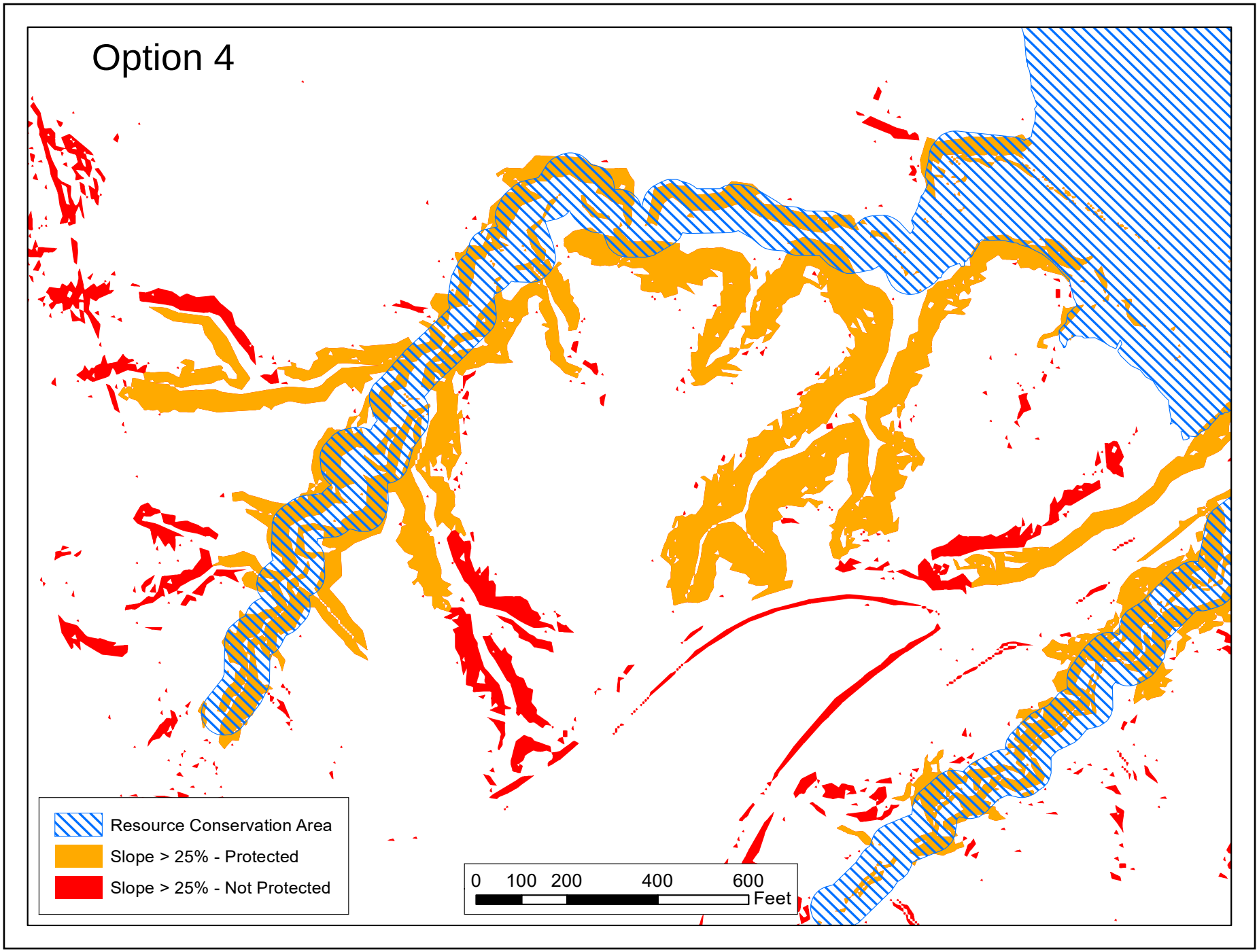
~~(3)~~(4) Natural steep slopes defined as slopes 25% (4:1) or greater that are directly connected to one of the above features.


Option 1
Resource Conservation Area
Slope 25% and >= 5,000 Square Feet
0 100 200 400 600
Feet


Option 2
Resource Conservation Area
Slope > 25% and Protected
Slope > 25% and Not Protected
0 100 200 400 600
Feet


Option 2 - with 5,000 Sq. Ft. Contiguous Area
No Direct Connection
No Direct Connection
?
?
?
No Direct Connection
No Direct Connection
Resource Conservation Area
Slope 25% and >= 5,000 Square Feet
0 100 200 400 600
Feet


Option 3
Note that areas of Slope in orange outside of green buffer will not be protected under Option 3
Resource Conservation Area 100 Foot Buffer
Resource Conservation Area
Slope > 25% - Protected
Slope > 25% - Not Protected
0 100 200 400 600
Feet


Option 4
Resource Conservation Area
Slope > 25% - Protected
Slope > 25% - Not Protected
0 100 200 400 600
Feet

Ordinance #2022-01-01

Option #1

TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
AMENDING CHAPTER 155

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amend the Clayton Code of Ordinances Chapter 155.500 to read as follows:

155.500 RESOURCE CONSERVATION AREAS

(A) **§ DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings orother impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas;

(3) Jurisdictional wetlands under federal law that meet the definition applied by the UnitedStates Army Corps of Engineers; and

(4) Natural steep slopes defined as slopes 25% (4:1) or greater of at least 5,000 square feet contiguous area.

(B) **DEFINED**

(1) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptionsfor stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots insuch areas, provided that adequate lot area outside the resource conservation area is providedto meet the minimum lot area requirements of §§ 155.200 through 155.204.

(2) No resource conservation area shall be counted towards the recreation and open space requirements as set forth in §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A; developed greenway, greenway-access or water-access facilities may be counted provided they are developed to the standards of this Ordinance.

(C) **RESOURCE CONSERVATION AREAS SHOWN ON PLAT**

All resource conservation areas shall be shown on any preliminary or final plat approved afterJanuary 1, 2006.

(D) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

Uses of resource conversation areas may include the following:

(1) Conservation areas for natural, archeological or historical resources;

(2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;

(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(E) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

Use of resource conservation areas may not include the following:

(1) Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized through theappropriate governing body (DEQ, USACE, ect); and

(3) Golf courses, agricultural and forestry activities not conducted according to accepted bestmanagement practices.

(F) **OWNERSHIP AND MAINTENANCE**

(1) Ownership

Resource conservation areas shall be accepted and owned by one of the following entities:

(a) Land conservancy or land trust. The responsibility for maintenance shall be borne by aland conservancy or land trust.

(b) Homeowners association. A homeowners association representing residents of the subdivision shall own the resource conservation areas. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintenance shall be borneby the homeowner's association.

(c) Private landowner. A private landowner may retain ownership of the resource conservation areas. The responsibility for maintenance shall be borne by the private landowner.

(2) Maintenance

Resource conservation area maintenance is limited to removal of litter, dead tree and plantmaterials and brush. Natural water courses are to be maintained as free-flowing and devoidof debris. Stream channels shall be maintained so as not to alter floodplain levels. Unless otherwise specified by the Town Council, maintenance is limited to insuring that there existno hazards, nuisances or unhealthy conditions.

(3) Legal Instrument for Permanent Protection

(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)

Duly adopted this the 18th day of January, 2022 while in regular session.

_____

Jody McLeod
Mayor

ATTEST:

_____

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Ordinance #2022-01-01

Option #2

TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
AMENDING CHAPTER 155

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amend the Clayton Code of Ordinances Chapter 155.500 to read as follows:

155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings or other impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas;

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

(4) Natural steep slopes defined as slopes 25% (4:1) or greater that are directly connected to one of the above features.

(B) **DEFINED**

(1) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots in such areas, provided that adequate lot area outside the resource conservation area is provided to meet the minimum lot area requirements of §§ 155.200 through 155.204.

(2) No resource conservation area shall be counted towards the recreation and open space requirements as set forth in §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A; developed greenway, greenway-access or water-access facilities may be counted provided they are developed to the standards of this Ordinance.

(C) **RESOURCE CONSERVATION AREAS SHOWN ON PLAT**

All resource conservation areas shall be shown on any preliminary or final plat approved after January 1, 2006.

(D) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

Uses of resource conversation areas may include the following:

(1) Conservation areas for natural, archeological or historical resources;

(2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;

(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(E) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

Use of resource conservation areas may not include the following:

(1) Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized through theappropriate governing body (DEQ, USACE, etc.); and

(3) Golf courses, agricultural and forestry activities not conducted according to accepted bestmanagement practices.

(F) **OWNERSHIP AND MAINTENANCE**

(1) Ownership

Resource conservation areas shall be accepted and owned by one of the following entities:

(a) Land conservancy or land trust. The responsibility for maintenance shall be borne by aland conservancy or land trust.

(b) Homeowners association. A homeowners association representing residents of the subdivision shall own the resource conservation areas. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintenance shall be borneby the homeowner's association.

(c) Private landowner. A private landowner may retain ownership of the resource conservation areas. The responsibility for maintenance shall be borne by the private landowner.

(2) Maintenance

Resource conservation area maintenance is limited to removal of litter, dead tree and plantmaterials and brush. Natural water courses are to be maintained as free-flowing and devoidof debris. Stream channels shall be maintained so as not to alter floodplain levels. Unless otherwise specified by the Town Council, maintenance is limited to insuring that there existno hazards, nuisances or unhealthy conditions.

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(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)

Duly adopted this the 18th day of January, 2022 while in regular session.

_____

Jody McLeod
Mayor

ATTEST:

_____

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Ordinance #2022-01-01

Option #3

TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
AMENDING CHAPTER 155

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amend the Clayton Code of Ordinances Chapter 155.500 to read as follows:

155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings orother impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas;

(3) Jurisdictional wetlands under federal law that meet the definition applied by the UnitedStates Army Corps of Engineers; and

(4) Natural steep slopes defined as slopes 25% (4:1) or greater within 100 feet of one of the above features.

(B) **DEFINED**

(1) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptionsfor stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots insuch areas, provided that adequate lot area outside the resource conservation area is providedto meet the minimum lot area requirements of §§ 155.200 through 155.204.

(2) No resource conservation area shall be counted towards the recreation and open space requirements as set forth in §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A; developed greenway, greenway-access or water-access facilities may be counted provided they are developed to the standards of this Ordinance.

(C) **RESOURCE CONSERVATION AREAS SHOWN ON PLAT**

All resource conservation areas shall be shown on any preliminary or final plat approved afterJanuary 1, 2006.

(D) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

Uses of resource conversation areas may include the following:

(1) Conservation areas for natural, archeological or historical resources;

(2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;

(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(E) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

Use of resource conservation areas may not include the following:

(1) Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized through theappropriate governing body (DEQ, USACE, ect); and

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(3) Legal Instrument for Permanent Protection

(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)

Duly adopted this the 18th day of January, 2022 while in regular session.

_____

Jody McLeod
Mayor

ATTEST:

_____

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Ordinance #2022-01-01

Option #4

TOWN OF CLAYTON
AMENDMENT TO THE CODE OF ORDINANCES
AMENDING CHAPTER 155

BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA amend the Clayton Code of Ordinances Chapter 155.500 to read as follows:

155.500 RESOURCE CONSERVATION AREAS

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied by buildings orother impervious surfaces unless permitted below.

(1) The 100-year floodplain;

(2) Stream buffer areas;

(3) Jurisdictional wetlands under federal law that meet the definition applied by the United States Army Corps of Engineers; and

(4) Natural steep slopes defined as slopes 25% (4:1) or greater that are directly connected to one of the above features by a width of at least 20 feet.

(B) **DEFINED**

(1) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptionsfor stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots insuch areas, provided that adequate lot area outside the resource conservation area is providedto meet the minimum lot area requirements of §§ 155.200 through 155.204.

(2) No resource conservation area shall be counted towards the recreation and open space requirements as set forth in §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A; developed greenway, greenway-access or water-access facilities may be counted provided they are developed to the standards of this Ordinance.

(C) **RESOURCE CONSERVATION AREAS SHOWN ON PLAT**

All resource conservation areas shall be shown on any preliminary or final plat approved afterJanuary 1, 2006.

(D) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

Uses of resource conversation areas may include the following:

(1) Conservation areas for natural, archeological or historical resources;

(2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;

(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(E) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

Use of resource conservation areas may not include the following:

(1) Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized through theappropriate governing body (DEQ, USACE, ect); and

(3) Golf courses, agricultural and forestry activities not conducted according to accepted bestmanagement practices.

(F) **OWNERSHIP AND MAINTENANCE**

(1) Ownership

Resource conservation areas shall be accepted and owned by one of the following entities:

(a) Land conservancy or land trust. The responsibility for maintenance shall be borne by aland conservancy or land trust.

(b) Homeowners association. A homeowners association representing residents of the subdivision shall own the resource conservation areas. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintenance shall be borneby the homeowner's association.

(c) Private landowner. A private landowner may retain ownership of the resource conservation areas. The responsibility for maintenance shall be borne by the private landowner.

(2) Maintenance

Resource conservation area maintenance is limited to removal of litter, dead tree and plantmaterials and brush. Natural water courses are to be maintained as free-flowing and devoidof debris. Stream channels shall be maintained so as not to alter floodplain levels. Unless otherwise specified by the Town Council, maintenance is limited to insuring that there existno hazards, nuisances or unhealthy conditions.

(3) Legal Instrument for Permanent Protection

(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)

Duly adopted this the 18th day of January, 2022 while in regular session.

_____

Jody McLeod
Mayor

ATTEST:

_____

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Public Hearings

Item Title
2020-96-SUP Champion East Special Use Permit

Presenter:
Ben Howell, Planning Director

Summary/Description
The applicant is requesting approval of a Special Use Permit with five (5) conditions for a 6-unit townhome development on Champion Street near Amos Street. Special Use Permits follow a quasi-judicial process for review and approval, requiring evidentiary testimony and swearing-in of anyone providing testimony. Additional information provided following the January 3rd meeting include proposed architectural elevations and revised conditions.

Requested Action
Approval with Conditions

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet
Staff Report
Application
Staff Report Maps
Neighborhood Meeting Materials
Site Plan
Adjacent Property Letter
Newspaper Ad
Architectural Elevations
Revised Recommended Conditions of Approval – Signed by Applicant

Meeting Timeline
January 3, 2022 – Continued to January 18, 2022

TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

SPECIAL USE PERMIT APPLICATION COVER SHEET

Name of Project: Champion East **Date:** 10/13/21

Applicant Name: Adasm& Hodge Engineering, PC

The following checklist to be completed by applicant:

[✓] Pre-Application Meeting on: 1/12/2020

[✓] Application Review fee

[✓] Advertisement Fee

11 copies of the following:

[✓] Completed Application

[✓] Owner's Consent Form

[✓] Adjacent Property Owner's List

[✓] Neighborhood Meeting Notice Letter (1 copy)

[✓] Wastewater Allocation Request Form (if applicable)

[✓] Set of stamped, addressed, empty envelopes for adjacent property owner notification

[✓] Associated Site Plan (separate application required for major site plans, must be submitted concurrently)

Reviewed by: _____

TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

SPECIAL USE PERMIT APPLICATION

Application Fee: $400.00
Advertisement Fee: $200.00

☒ **New Special Use Permit** ☐ **Major Modification to an approved SUP**
Permit Modified: _____

SITE INFORMATION

Name of Project: Champion East

Acreage of Property: 0.849 **Zoning District:** R-6

County Tag #: 05003003 **NC Pin #:** 166806-38-1375

Address/Location: 310 Champion Street

Existing Use: Vacant **Proposed Use:** Single Family Townhomes

Is project within a Planned Development? ☐ **Yes** ☒ **No If yes, which:** _____

Is project within an Overlay District? ☐ **Yes** ☒ **No If yes, which:** _____

APPLICANT INFORMATION

Applicant: Adams & Hodge Engineering, PC

Mailing Address: 314 E Main St., Clayton, NC 27520

Phone Number: 919-243-1332 **Fax:** N/A

Contact Person: Donnie Adams / Amy Stancil

Email Address: donnie@adamsandhodge.com / amy@adamsandhodge.com

OFFICE USE ONLY

Date Received: _____ Amount Paid: _____ File Number: _____

PROPERTY OWNER INFORAMTION

Name: Cluodbreak Investments, LLC

Mailing Address: PO Box 189, Clayton, NC 27528

Phone Number: 919-345-6729 **Fax:** N/A

Email Address: nathan@nlevans.com

EXPLANATION OF PROJECT

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

See Exhibit B

REQUIRED FINDINGS OF FACT

Section 155.711(I) of the Unified Land Development Code requires applications for a Special Use to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

1. That the application will not materially endanger the public health or safety if located where proposed, and developed according to the plans as submitted and approved.

   See Exhibit B

2. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances and other applicable regulations.

See Exhibit B

3. That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.

See Exhibit B

4. That the application will not adversely affect the adopted plans and policies of the Town, or violate the character of existing standards for development of the adjacent properties.

See Exhibit B

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Town Council of the Town of Clayton to approve the subject Special Use Permit. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Amy D. Stancil
Print Name

Signature of Applicant

10/13/21
Date

Exhibit B

Explanation of Project
Required Findings of Fact

ADAMS & HODGE ENGINEERING, PC

Explanation of Project

Champion East townhomes are proposed to be constructed on 0.849 acres of land located on Champion Street and zoned R-6. The development is comprised of 6 two story townhomes located on a shared access road that will be constructed to Town of Clayton standards.

The adjacent zonings are a mixture of R-6, R-8 and B-3. The uses range from single family houses and medical offices. The townhomes will require a special use permit that request a maximum density of 12 units per acre (7.07 units/ac actual).

Water, sewer and electric will be provided by the Town of Clayton.

There are no active or passive recreational facilities proposed on-site. The project is proposed that a fee in lieu of on-site recreational facilities will be paid to the Town of Clayton.

Item No. 1 **That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approval.**

The distribution of traffic has been given much consideration when laying out the site access point and the internal shared access road that serve the townhomes. Additional considerations were given to simplifying the traffic pattern in the vicinity of Champion Street in order to focus on safety. Care has been exercised in the townhome subdivision to protect the environment by prudent use of buffers and landscaping. The public's safety and health have been addressed by providing public water and sewer that meet the Town and State requirements. The shared access road is designed as to be safe for pedestrians and vehicles alike by providing adequate separation, traffic control and lighting. The public's health and welfare are further addressed by the townhome subdivision providing passive and active recreation opportunities offsite utilizing municipal recreation facilities via recreation assessment fees.

Item No. 2 **That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances and other applicable regulations.**

The subdivision meets or exceeds all applicable development standards that are established in the Subdivision Regulations and the Unified Development Code. The shared access road is designed so as to provide a development with safe streets for both vehicles and pedestrians. Public utilities are designed so as to provide adequate water for consumption as well as fire protection while the sewer collection system is designed to protect the health and welfare of the public. Area lighting is provided so as to provide a safe environment for the residents. Passive and active recreation opportunities have been provided through open space, and indirectly through recreational assessment fees. By incorporating buffers, open space and landscaping the aesthetic quality of the development and as well as adjacent properties is maintained.

Item No. 3 **That the application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.**

The Champion East development will be a development of single family townhomes and will continue to address the high-density residential component envisioned in the Comprehensive Plan 2040 and will complement the surrounding areas on Champion Street.

Item No. 4 **That the application will not adversely affect the adopted plans and policies of the Town or violate the character of existing standards for development of the adjacent properties.**

The proposed townhome development meets the requirements of the UDO. The property is currently zoned R-6. Townhomes are an allowable use in R-6 by special use permit. In the Plan, the area of the townhome subdivision is designated as High Density Residential (HDR) land use. The HDR land use encourages higher density residential development by using multifamily developments (apartments and townhomes) that have high density (up to 12 units/ac). The proposed development has a total acreage of 0.849 acres with 0.36 acres of open space. When the density is calculated at build out using 6 units, the density ration is 7.07 units per acre of developable land. The proposed townhome development will continue to address the high-density residential component envisioned in the Comprehensive Plan 2040 and will complement the surrounding areas on Champion Street.

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002

Town Council
January 3, 2022

STAFF REPORT

Application Number: 2020-98-SUP
Project Name: Champion East – Special Use Permit

Tag #: 05003003
Location: Located east of Champion Street near the intersection of Amos Street, south of US HWY 70 Business
Overlay: N/A
Applicant: Adams & Hodge, PC
Owner: Cloudbreak Investments, LLC
Project Planner: Ben Howell, AICP, CZO

Public Noticing Dates:

- **Neighborhood Meeting:** July 21, 2020
- **Sign Posted:** December 16, 2021
- **Newspaper Ad Published:** December 22, 2021 & December 29, 2021
- **Letters Mailed:** December 16, 2021

REQUEST: Construct 6 townhomes in the R-6 zoning district. This SUP request is to allow the use of townhomes on the subject properties. It is running alongside a Major Subdivision (Preliminary Plat) application.

SITE DATA:

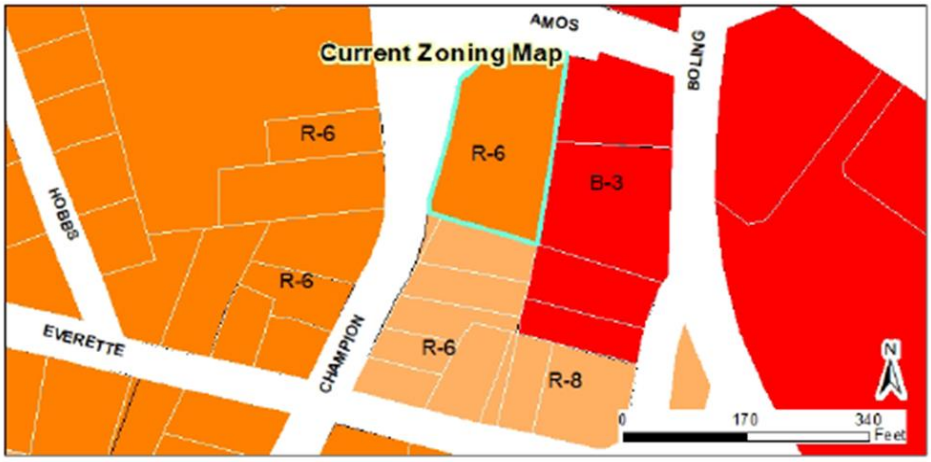
Acreage: 0.849 acres in total

Zoning: R-6

Existing Use: Vacant Land

ADJACENT ZONING AND LAND USES:

Direction	Zoning	Existing Use
North	B-3	Commercial/Restaurant (Burger King)
South	R-6	Vacant
East	B-3	Commercial (Doctor Office)
West	R-6	Residential



DEVELOPMENT DATA:

Proposed Uses: Townhomes

Lot Count: 6 units

Impervious Surface: 36% (13,242 sf / 0.849 ac)

Required Parking: 2 spaces per unit (12 spaces total)

Proposed Parking: 3 spaces per unit (18 spaces total)

Access/Streets: The site will be accessed via a private shared access road off of Champion Street near the intersection of Champion and Amos Streets.

STAFF ANALYSIS AND COMMENTARY:

Overview

The applicant is requesting a Special Use Permit to allow the use of townhomes on the site. Per UDC requirements, townhomes are only permitted in R-6 via issuance of a Special Use Permit. This Special Use Permit also sets the proposed dimensional standards for the proposed townhome development. There is an associated Preliminary Plat application running alongside this request to develop a 6 unit townhome subdivision. The site is located east of Champion Street near the intersection of Amos Street and is vacant.

See Proposed Dimensional Standards below, as outlined on the associated subdivision plan:

CHAMPION EAST LOT STANDARDS

ZONING	UNIT TYPE	LOT STANDARDS				MINIMUM SETBACKS (FT.)				BUILDING STANDARDS	
		Min. Lot Area (sq.ft.)	Min. Lot Width (LF)	Max. Lot Coverage (%)	Max. Lot Impervious Surface (%)	Front	Side	Side Interior	Rear	BUILDING SEPARATION	Max. Height (ft.)
R-6	TOWNHOMES	2,000	22	55	90	25	3	0	5	20	30

NOTE:
1. GARAGE TO SET BACK 25' FROM BACK OF CURB
2. DRIVEWAYS ON PROPERTY LINE - 0' SETBACK
3. DRIVEWAYS TO BE 18' WIDE.

PARKING REQUIREMENTS
1. § 155.401(C)(2) FOR TOWNHOMES, (2) SPACES REQUIRED PER UNIT.
2. PROVIDED (2) SPACES IN DRIVEWAY, (1) SPACE IN GARAGE; TOTAL OF (3) SPACES PROVIDED PER UNIT.

REQUIRED SPACES = 12
PROPOSED SPACES = 18

Associated Site Plan

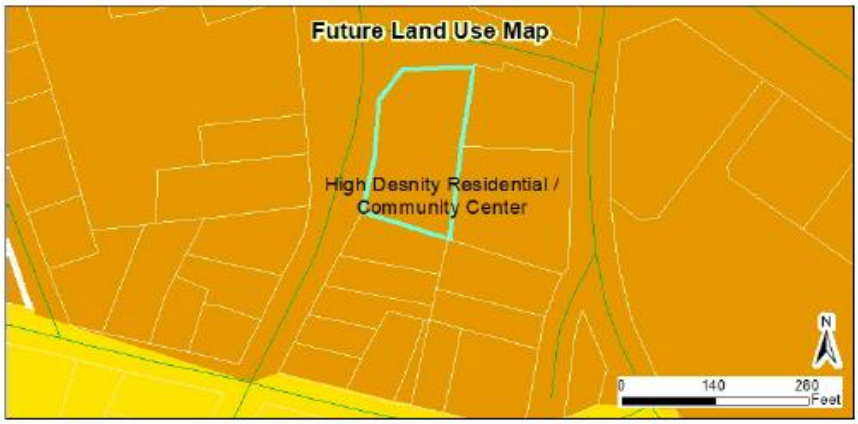
Pursuant to §155.711(D)(1), concurrent with a request for a Special Use Permit, an applicant is required to submit a subdivision plan for review and approval. This plan is processed as any other subdivision plan (in this case as a

Major Subdivision file # 2020-96-SD Champion East), with a final decision made by the applicable reviewing body. The details of the subdivision plan are outlined partially herein.

Consistency with Adopted Plans:

- **Comprehensive Plan 2040**
  The Future Land Use Map (below) shows that this area is designated as High density Residential. This designation may include townhome development. The applicant has proposed a density of 7.07 units/acre. This is consistent with the note in the comprehensive plan identifying High Density Residential designations to have densities up to 12 dwelling units/acre.

- **Unified Development Code**
  If the Special Use Permit is approved, the townhome development will meet the code requirements as outlined in the Unified Development Code. The site meets landscape buffer requirements and general design requirements including parking, stormwater, and open space. The dimensional standards for the townhomes is set via this SUP.



CONSIDERATIONS

- The Town Council shall make final decisions regarding Special Use Permits.
- Special Use Permits shall address specific Findings of Fact. The burden of proof is on the applicant. These Findings all must be met for a Special Use Permit to be approved.
- Staff does not make recommendations on Quasi-Judicial applications in regards to approval/denial.

FINDINGS OF FACT

Special Use Permits shall address the following findings. The burden of proof is on the applicant. Please see below for the applicant's response to each finding, as well as staff's commentary.

1. *That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.*

   Applicant Response:

The distribution of traffic has been given much consideration when laying out the site access point and the internal shared access road that serve the townhomes. Additional considerations were given to simplifying the traffic pattern in the vicinity of Champion Street in order to focus on safety. Care has been exercised in the townhome subdivision to protect the environment by prudent use of buffers and landscaping. The public's safety and health have been addressed by providing public water and sewer that meet the Town and State requirements. The shared access road is designed as to be safe for pedestrians and vehicles alike by providing adequate separation, traffic control and lighting. The public's health and welfare are further addressed by the townhome subdivision providing passive and active recreation opportunities offsite utilizing municipal recreation facilities via recreation assessment fees.

Staff Commentary:

The proposed development will be accessed via a private, shared access with one access point onto Champion Street. With only 6 townhomes proposed, the density of the proposed project is the same that would be allowed if single-family detached dwelling units were proposed.

2. *That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances and other applicable regulations.*

Applicant Response:

The subdivision meets or exceeds all applicable development standards that are established in the Subdivision Regulations and the Unified Development Code. The shared access road is designed so as to provide a development with safe streets for both vehicles and pedestrians. Public utilities are designed so as to provide adequate water for consumption as well as fire protection while the sewer collection system is designed to protect the health and welfare of the public. Area lighting is provided so as to provide a safe environment for the residents. Passive and active recreation opportunities have been provided through open space, and indirectly through recreational assessment fees. By incorporating buffers, open space and landscaping the aesthetic quality of the development and as well as adjacent properties is maintained.

Staff Commentary:

The proposed development does comply with the Unified Development Code. The design of the proposed townhome project meets landscaping requirements, including all buffer and street tree requirements. The proposed private access will meet engineering standards as well as fire standards. Adequate public utilities are available to serve the site.

3. *That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.*

Applicant Response:

The Champion East development will be a development of single family townhomes and will continue to address the high-density residential component envisioned in the Comprehensive Plan 2040 and will complement the surrounding areas on Champion Street.

Staff Commentary:

The proposed development complies with the existing zoning and future land use plan, and is the same density that would be permitted for single-family detached dwellings.

4. *That the application will not adversely affect the adopted plans and policies of the Town, or violate the character of existing standards for development of the adjacent properties.*

Applicant Response:

The proposed townhome development meets the requirements of the UDO. The property is currently zoned R-6. Townhomes are an allowable use in R-6 by special use permit. In the Plan, the area of the townhome subdivision is designated as High Density Residential (HDR) land use. The HDR land use encourages higher density residential development by using multifamily developments (apartments and townhomes) that have high density (up to 12 units/ac). The proposed development has a total acreage of 0.849 acres with 0.36 acres of open space. When the density is calculated at build out using 6 units, the density ration is 7.07 units per acre of developable land. The proposed townhome development will continue to address the high-density residential component envisioned in the Comprehensive Plan 2040 and will complement the surrounding areas on Champion Street.

Staff Commentary:

The proposed development meets the recommendations in the Future Land Use map in the 2040 Comprehensive Growth Plan, and is the same density that would be permitted for single-family detached dwellings in this zoning district.

RECOMMENDED CONDITIONS OF APPROVAL:

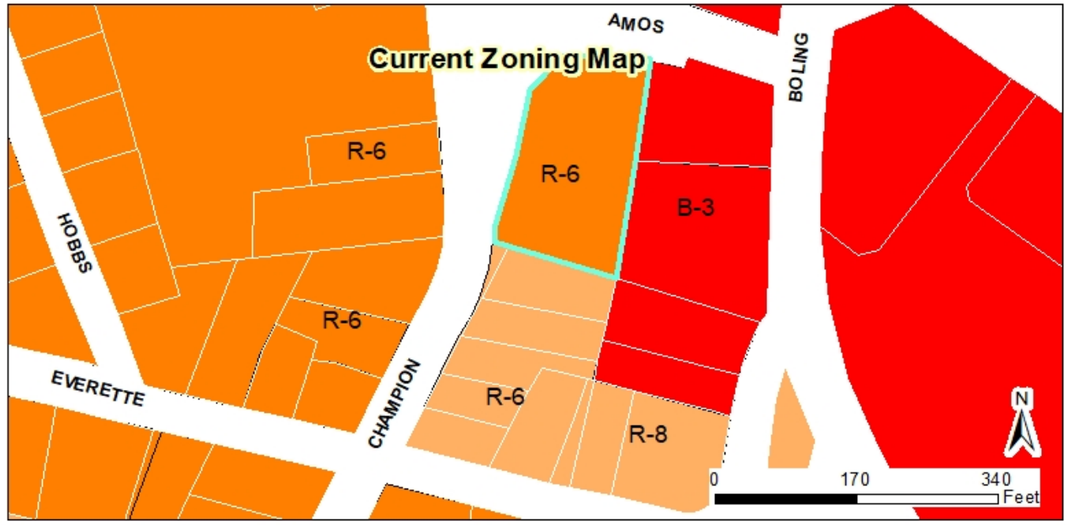
If approved, staff is recommending conditions of approval be placed upon the application. The recommended conditions are listed below, and the applicant's signed acceptance of the recommended conditions is provided as an attachment.

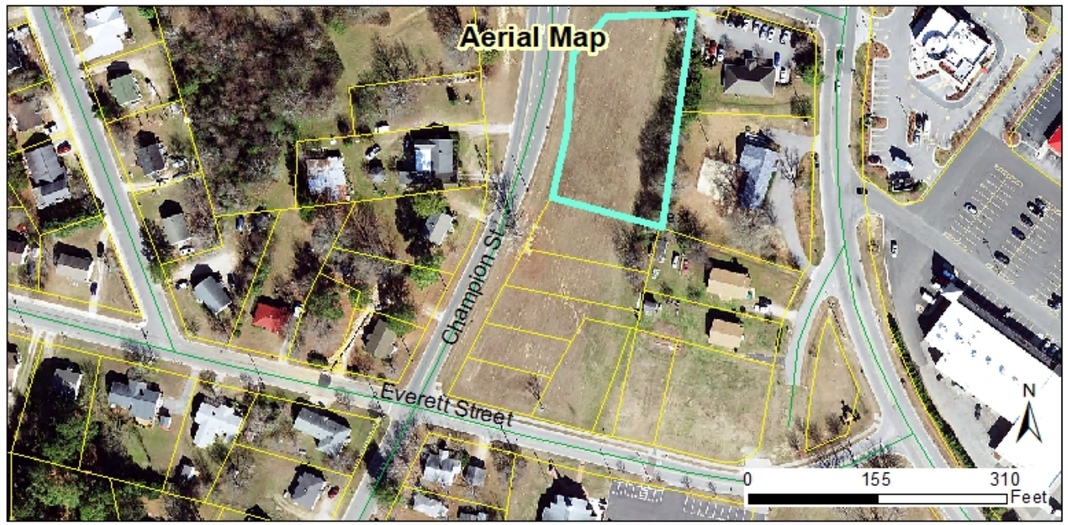
1. These Conditions of Approval, and any others included with the associated Preliminary Plat (2020-96-SD) shall be recorded upon the final plan set, which must be delivered to the Planning Department for review and final approval.
2. Dimensional standards shall be set by those indicated on the associated preliminary plat (2020-96-SD). Any deviations from these standards are pursuant to modifications as outlined in Section 155.711 of the Unified Development Code.
3. A revised Wastewater Allocation Application shall be submitted and approved prior to approval of Construction Drawings.
4. Language shall be included on the Construction Drawings and Final Plat stating that electric facilities may be installed and maintained within the 30-foot wide shared access easement.
5. The 10-foot wide Class A buffer adjacent to Lot 6 (on the south side of the proposed development) shall not be planted until electric service lines have been installed at the site. If the electric service lines have not been installed prior to Final Plat, a performance guarantee shall be submitted and approved for the Class A buffer, and the buffer shall be planted prior to Certificate of Occupancy of Lot 6.

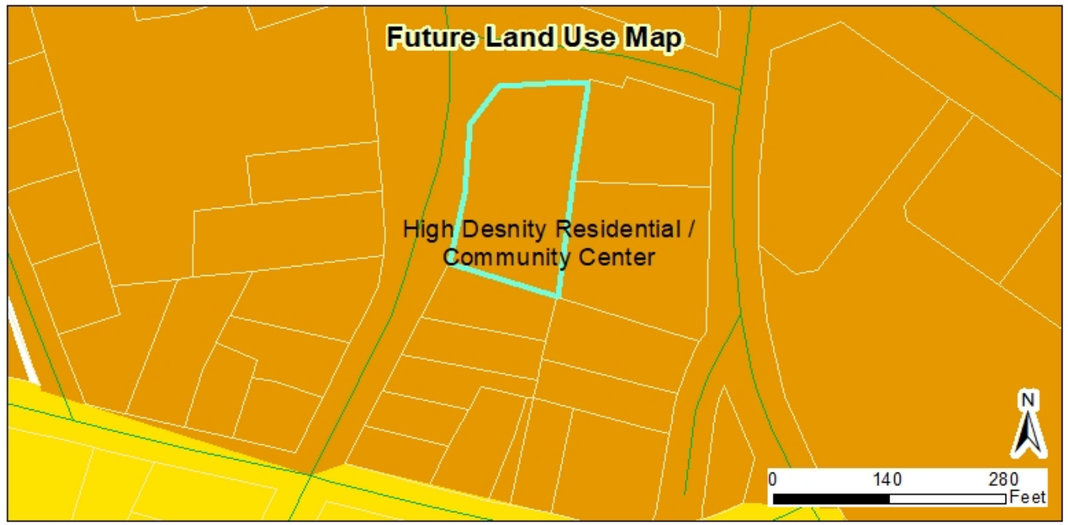
ATTACHMENTS:

1) Application

2) Staff Report Maps
3) Neighborhood Meeting Materials
4) Site Plan
5) Adjacent Property Letter
6) Newspaper Ad
7) Recommended Conditions of Approval – Signed by Applicant







Staff Report Map

Request:
2020-98-SUP, Champion East, Special Use Permit

Applicant: Adams & Hodge Engineering, PC
Property Owners: Cloudbreak Investments, LLC
Tag #: 05003003

07/30/2020
Produced by: TOC Planning
Disclaimer: Town of Clayton assumes no legal responsibility for the quality to the data represented here.

Document Path: O:\PLANNING\SPECIAL USE\2020\2020-98-SUP Champion East\Staff Report Maps\Staff Report Map-2020-98-SUP-Champion Street East.mxd

Legend
100-yr Flood Zone

ADAMS & HODGE ENGINEERING, PC

July 10, 2020

Dear Clayton Area Property Owner:

The purpose of this letter is to notify you of an application filed with the Town of Clayton for a land use change or development proposal involving property adjacent to, or in close proximity to, property shown in your ownership by Johnston County tax records. Per Town of Clayton regulations, a Neighborhood Meeting will be held to provide information to area residents about the nature of the proposal. A representative of the applicant will be present to explain their application, answer questions, and solicit comments.

Meeting Date: **Tuesday, July 21, 2020**

Meeting Time: **7:00 p.m.**

Meeting Location: **314 E. Main St. (Adams & Hodge Engineering – Entrance and Parking in the back of building) We will meet outside.**

Type of Application: **New Major Subdivision Plan Application, Rezoning Application and Special Use Application**

Project/proposal property location: **This project location is 310 Champion Street Clayton, NC 27520**

Description of project/proposal: **Champion East townhomes are proposed to be constructed on 1.853 acres of land located on Champion Street. The development is comprised of 20 two story townhomes located on private one-way alley that will be constructed to Town of Clayton standards.**

At a minimum, the following will be available for your inspection at the Neighborhood Meeting:

1. A copy of the project application.
2. A schedule of all upcoming public meetings for application.
3. A map at scale that is appropriate to the project and shows neighboring properties and roads.
4. A map, drawing, or other depiction of the proposed land use change or development proposal.

A map is enclosed with this letter showing the location of the property that is subject to this application for land use change and/or development proposal.

If you have any questions prior to or after this meeting, you may contact us at ***(919)763-7278***.

You may also contact the Planning Department at 919-553-5002.

Sincerely,

Donald C. Adams, Jr., PE

NORTH CAROLINA PROFESSIONAL SEAL 25469 ENGINEER DONALD C. ADAMS, JR.

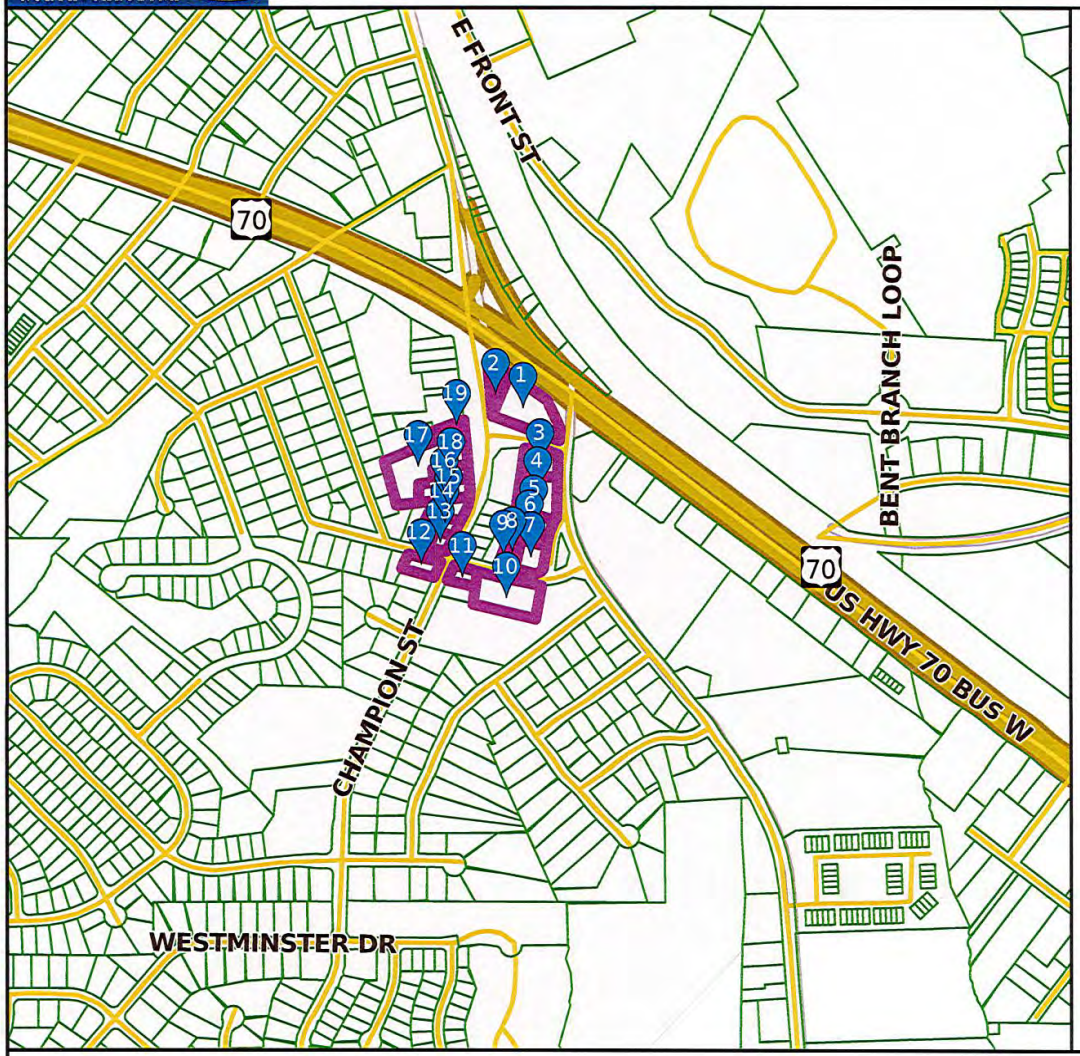
Exhibit C

Adjacent Property Owners List

JOHNSTON COUNTY
NORTH CAROLINA

*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.



Result 1

id:	05003001A
Tag:	05003001A
NCPin:	166806-38-2666
Mapsheet No:	166806
Owner Name 1:	101 BOLING STREET LLC
Owner Name 2:	
Mail Address 1:	1241 NE 83RD ST
Mail Address 2:	
Mail Address 3:	MIAMI, FL 33138-4140
Site Address 1:	101 S BOLING ST
Site Address 2:	CLAYTON, NC 27520-
Book:	05032
Page:	0129
Market Value:	1680120
Assessed Acreage:	1.040
Calc. Acreage:	1.050
Sales Price:	2050000
Sale Date:	2017-09-25

Scale: 1:8827 - 1 in. = 735.55 feet

(The scale is only accurate when printed landscape on a 8 1/2 x 11 size sheet with no page scaling.)

Johnston County GIS
May 28, 2020

*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.

Result 2

id:	05003001
Tag:	05003001
NCPin:	166806-38-1736
Mapsheet No:	166806
Owner Name 1:	IRONWOOD DEVELOPERS, LLC
Owner Name 2:	
Mail Address 1:	442 1/2 EAST MAIN ST
Mail Address 2:	
Mail Address 3:	CLAYTON, NC 27520
Site Address 1:	
Site Address 2:	
Book:	04726
Page:	0573
Market Value:	29400
Assessed Acreage:	0.270
Calc. Acreage:	0.270
Sales Price:	0
Sale Date:	2016-03-01

Result 3

id:	05003002
Tag:	05003002
NCPin:	166806-38-3411
Mapsheet No:	166806
Owner Name 1:	KHUSAYEM, MAZEN DR
Owner Name 2:	
Mail Address 1:	
Mail Address 2:	P O BOX 997
Mail Address 3:	CLAYTON, NC 27528-0000
Site Address 1:	
Site Address 2:	
Book:	01870
Page:	0885
Market Value:	403960
Assessed Acreage:	0.400
Calc. Acreage:	0.430
Sales Price:	88000
Sale Date:	1999-09-22

Result 4

id:	05003004
Tag:	05003004
NCPin:	166806-38-3206
Mapsheet No:	166806
Owner Name 1:	KHUSAYEM, MAZEN
Owner Name 2:	
Mail Address 1:	205 S BOLING ST
Mail Address 2:	
Mail Address 3:	CLAYTON, NC 27520
Site Address 1:	205 S BOLING ST
Site Address 2:	CLAYTON, NC 27520-
Book:	05329
Page:	0604
Market Value:	366940
Assessed Acreage:	0.680
Calc. Acreage:	0.680
Sales Price:	240000
Sale Date:	2019-04-16

Result 5

id:	05003005
Tag:	05003005
NCPin:	166806-38-2195
Mapsheet No:	166806
Owner Name 1:	BYRD, TERESSA P.
Owner Name 2:	JARMIN, DONNA P.
Mail Address 1:	204 FREEDOM RD
Mail Address 2:	
Mail Address 3:	SMITHFIELD, NC 27577-8123
Site Address 1:	209 S BOLING ST
Site Address 2:	CLAYTON, NC 27520-
Book:	02224
Page:	0199
Market Value:	90020
Assessed Acreage:	1.000
Calc. Acreage:	0.300
Sales Price:	0
Sale Date:	2002-04-30

*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.

Result 6

id: 05003006
Tag: 05003006
NCPin: 166806-38-2079
Mapsheet No: 166806
Owner Name 1: BYRD, TERESSA P.
Owner Name 2: JARMIN, DONNA P.
Mail Address 1: 204 FREEDOM RD
Mail Address 2:
Mail Address 3: SMITHFIELD, NC 27577-8123
Site Address 1: 211 S BOLING ST
Site Address 2: CLAYTON, NC 27520-
Book: 02224
Page: 0199
Market Value: 63480
Assessed Acreage: 1.000
Calc. Acreage: 0.200
Sales Price: 0
Sale Date: 2002-04-30

Result 7

id: 05003007
Tag: 05003007
NCPin: 166806-37-2979
Mapsheet No: 166806
Owner Name 1: EVERETT'S CHAPEL FWB CHURCH
Owner Name 2:
Mail Address 1:
Mail Address 2:
Mail Address 3:
Site Address 1:
Site Address 2:
Book: 00598
Page: 0584
Market Value: 28500
Assessed Acreage: 1.000
Calc. Acreage: 0.360
Sales Price: 0
Sale Date: 1962-01-01

Result 8

id: 05003009
Tag: 05003009
NCPin: 166806-38-1091
Mapsheet No: 166806
Owner Name 1: BYRD, TERESSA P.
Owner Name 2: JARMIN, DONNA P.
Mail Address 1: 204 FREEDOM RD
Mail Address 2:
Mail Address 3: SMITHFIELD, NC 27577-8123
Site Address 1:
Site Address 2:
Book: 02224
Page: 0199
Market Value: 28500
Assessed Acreage: 1.000
Calc. Acreage: 0.160
Sales Price: 0
Sale Date: 2002-04-30

Result 9

id: 05010199
Tag: 05010199
NCPin: 166806-37-1959
Mapsheet No: 166806
Owner Name 1: DONALD KEITH POLLARD TRUST
Owner Name 2: BYRD, TERESA P. TRUSTEE
Mail Address 1: 204 FREEDOM RD
Mail Address 2:
Mail Address 3: SMITHFIELD, NC 27577-8123
Site Address 1:
Site Address 2:
Book: 00771
Page: 0302
Market Value: 2850
Assessed Acreage: 1.000
Calc. Acreage: 0.050
Sales Price: 0
Sale Date: 1974-01-01

*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.

Result 10

id: 05004012A
Tag: 05004012A
NCPin: 166806-37-0775
Mapsheet No: 166806
Owner Name 1: EVERETT CHAPEL CHURCH
Owner Name 2:
Mail Address 1: 420 BARBOUR ST
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520-0000
Site Address 1:
Site Address 2:
Book: 00731
Page: 0002
Market Value: 57000
Assessed Acreage: 1.030
Calc. Acreage: 0.973
Sales Price: 0
Sale Date: 1972-01-01

Result 11

id: 05004011
Tag: 05004011
NCPin: 166806-27-9971
Mapsheet No: 166806
Owner Name 1: IRONWOOD DEVELOPERS, LLC
Owner Name 2:
Mail Address 1: 442 1/2 EAST MAIN ST
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520
Site Address 1: 309 EVERETTE AVE
Site Address 2: CLAYTON, NC 27520-
Book: 04726
Page: 0573
Market Value: 87910
Assessed Acreage: 0.200
Calc. Acreage: 0.190
Sales Price: 0
Sale Date: 2016-03-01

Result 12

id: 05004009
Tag: 05004009
NCPin: 166806-27-7808
Mapsheet No: 166806
Owner Name 1: WALTHOM GROUP
Owner Name 2:
Mail Address 1: 442 1/2 EAST MAIN STREET
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520-0000
Site Address 1: 403 CHAMPION ST
Site Address 2: CLAYTON, NC 27520-
Book: 02989
Page: 0776
Market Value: 109740
Assessed Acreage: 1.000
Calc. Acreage: 0.243
Sales Price: 95000
Sale Date: 2005-10-04

Result 13

id: 05003018
Tag: 05003018
NCPin: 166806-28-8076
Mapsheet No: 166806
Owner Name 1: LEE, JAMES W JR
Owner Name 2: LEE, BRAXTON A
Mail Address 1: 401 PATE ST
Mail Address 2:
Mail Address 3: APEX, NC 27520-0000
Site Address 1: 315 CHAMPION ST
Site Address 2: CLAYTON, NC 27520-
Book: 02647
Page: 0212
Market Value: 71660
Assessed Acreage: 0.140
Calc. Acreage: 0.150
Sales Price: 0
Sale Date: 2004-03-05

*** DISCLAIMER ***

Johnston County assumes no legal responsibility for the information represented here.

Result 14

id: 05003018A
Tag: 05003018A
NCPin: 166806-28-8184
Mapsheet No: 166806
Owner Name 1: LEE, BRAXTON A
Owner Name 2: LEE, JAMES W JR
Mail Address 1: 401 PATE ST
Mail Address 2:
Mail Address 3: APEX, NC 27502-0000
Site Address 1:
Site Address 2:
Book: 02840
Page: 0590
Market Value: 11240
Assessed Acreage: 0.190
Calc. Acreage: 0.200
Sales Price: 37000
Sale Date: 2005-02-07

Result 15

id: 05003017
Tag: 05003017
NCPin: 166806-28-8143
Mapsheet No: 166806
Owner Name 1: COATS, MAYNARD MAURICE
Owner Name 2: COATS, VIRGINIA O
Mail Address 1: 307 CHAMPION ST
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520-0000
Site Address 1: 313 CHAMPION ST
Site Address 2: CLAYTON, NC 27520-
Book: 01273
Page: 0439
Market Value: 70320
Assessed Acreage: 1.000
Calc. Acreage: 0.302
Sales Price: 35000
Sale Date: 1992-08-01

Result 16

id: 05003021
Tag: 05003021
NCPin: 166806-28-8299
Mapsheet No: 166806
Owner Name 1: COATS, MAYNARD MAURICE
Owner Name 2: COATS, VIRGINIA O
Mail Address 1: 307 CHAMPION ST
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520-0000
Site Address 1: 307 CHAMPION ST
Site Address 2: CLAYTON, NC 27520-
Book: 00745
Page: 0524
Market Value: 155990
Assessed Acreage: 1.000
Calc. Acreage: 0.430
Sales Price: 0
Sale Date: 1973-01-01

Result 17

id: 05003022
Tag: 05003022
NCPin: 166806-28-8410
Mapsheet No: 166806
Owner Name 1: STEPHENSON, THOMAS ALAN
Owner Name 2: STEPHENSON, ELIZABETH KING
Mail Address 1: 2013 SMITH DR
Mail Address 2:
Mail Address 3: CLAYTON, NC 27520-8253
Site Address 1: 305 CHAMPION ST
Site Address 2: CLAYTON, NC 27520-
Book: 05438
Page: 0549
Market Value: 71250
Assessed Acreage: 1.400
Calc. Acreage: 1.380
Sales Price: 0
Sale Date: 2019-10-02

*** DISCLAIMER ***

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Result 18

id:	05003021A
Tag:	05003021A
NCPin:	166806-28-9326
Mapsheet No:	166806
Owner Name 1:	COATS, MAYNARD MAURICE
Owner Name 2:	COATS, VIRGINIA O
Mail Address 1:	307 CHAMPION ST
Mail Address 2:	
Mail Address 3:	CLAYTON, NC 27520-0000
Site Address 1:	
Site Address 2:	
Book:	00745
Page:	0523
Market Value:	28500
Assessed Acreage:	0.220
Calc. Acreage:	0.220
Sales Price:	0
Sale Date:	1973-02-20

Result 19

id:	05003035
Tag:	05003035
NCPin:	166806-28-9515
Mapsheet No:	166806
Owner Name 1:	JOHNSTON LEE COMMUNITY ACTION
Owner Name 2:	
Mail Address 1:	
Mail Address 2:	
Mail Address 3:	
Site Address 1:	
Site Address 2:	
Book:	
Page:	
Market Value:	28500
Assessed Acreage:	1.000
Calc. Acreage:	0.150
Sales Price:	0
Sale Date:	

ADAMS & HODGE
ENGINEERING, PC

July 21, 2020

Lori Bryant
Development Services Coordinator
Town of Clayton
111 E. Second Street
Clayton, NC 27527

Subject: Champion East
Neighborhood Meeting

Dear Ms. Bryant,

The neighborhood meeting for Champion East was held last night, July 21, 2020. Please find attached the attendance Roster the Meeting Minutes for the Champion East Project, and a letter that we received in the mail from an adjacent property owner.

Please let me know if you need anything else.

Sincerely,

Holland Adams
919-763-2780
holland@adamsandhodge.com

NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Project: Champion East

Application: New Major Subdivision, Rezoning, + Special Use

Location/Date: Adams & Hodge Engineering 314 E. Main St - Clayton 7-21-2020 7:00pm

	NAME	ADDRESS
1	Donnie Adams	404 Swann Trail Clayton
2	Holland Adams	404 Swann Trail Clayton
3	Teresa Byrd	204 Freedom Rd Smithfield 27577
4	Donna Jarman	108 Wilmack DR / Benson, NC 27504
5	Shirley Brett	90 Showy Orchid Ln Smithfield NC 27577
6		
7		
8		
9		
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11		
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13		
14		
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16		
17		
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19		
20		

ADAMS & HODGE ENGINEERING, PC

Champion East Neighborhood Meeting Minutes
Date: July 21, 2020
Time: 7:00pm
Location: 314 E. Main Street (Adams & Hodge Engineering – outside parking lot due to Covid 19)

The Meeting began at 7:10. There were 5 people total at the meeting (see attendance roster).
The plans and applications were on a table for the attendees to view.
Donnie Adams began by explaining the application process with the Town of Clayton and discussing the zoning. The two adjacent property owners, Teresa Byrd and Donna Jarman and their realtor Shirley Brett asked about the zoning areas. Donnie explained what the different zoning areas meant and showed them where they were on the set of plans. Donnie went through the plans with the ladies and showed them the proposed 20 townhome units, what they would look like, the private access from the back, the mail cluster units, and proposed 1 car garage. He also showed them the utilities, stormwater, erosion control and landscape plan. Donna Jarman asked what kind of landscape would be along her property? Donnie showed Donna the buffer area adjacent to her property. Shirley Brett asked if there were going to be any amenities like a clubhouse or pool? Donnie said they had not planned any amenities. Shirley also asked if there was going to be an HOA? Donnie said yes. Shirley wanted to know if the developer would be pre-selling any of these units. Donnie responded that would be a developer question.
The ladies continued to look over the plans. Donnie asked for any other questions and there were none. The meeting adjourned at 7:45.

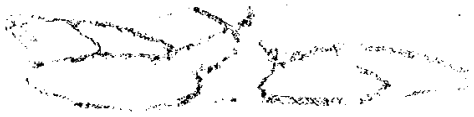
Ironwood Developers
442 ½ East Main Street
Clayton, NC 27520

July 17, 2020

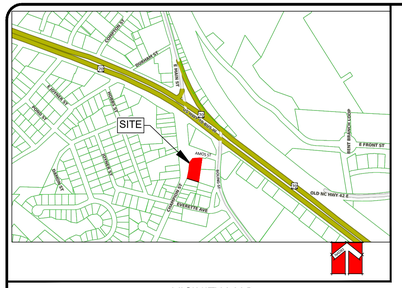
Donald C Adams, Jr
Adams & Hodge
314 E Main Street
Clayton, NC 27520

Donald,

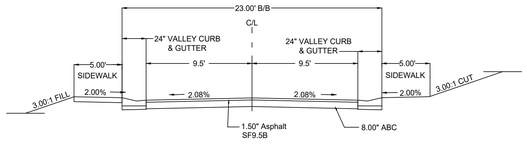
We approve of the project for Champion East Townhomes.



Norwood Thompson



VICINITY MAP
NTS



TYPICAL SHARED ACCESS DRIVE W/ SIDEWALK
NO SCALE

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	834.50'	14.75'	14.75'	N20°28'02"E
C2	834.50'	177.87'	177.53'	N13°51'16"E
C3	318.10'	42.29'	42.26'	S85°33'09"E
C4	318.10'	10.86'	10.86'	S80°45'58"E

L7	N43°05'49"E	57.22'
L8	S89°21'39"E	54.39'

CHAMPION EAST DATA CHART

PARCEL OWNER	CLOUDBREAK INVESTMENTS, LLC
PARCEL OWNER ADDRESS	PO BOX 189, CLAYTON , NC 27528
PARCEL IDENTIFICATION / TAG NO.	166806-38-1375, 05003003
PROPERTY SIZE (SF)	TOTAL 0.849 AC
TOTAL PROPERTY SIZE (SF)	0.849 AC/36,998 SF
PROPERTY LOCATION	TOWN OF CLAYTON / CLAYTON TOWNSHIP
EXISTING/PROPOSED ZONING	O-I /R-6
EXISTING USE	VACANT
PROPOSED USE	TOWNHOMES
EXISITING DENSITY	VACANT
PROPOSED DENSITY	(6)-3 BDRM UNITS /7.07 UNITS PER AC
PROPOSED INTENSITY (GROSS FLOOR AREA IN SF)	EACH UNIT 1010 SF/(6 UNITS = 6,060 SF)
FLOOR AREA RATIO	6,060 /36,998 = 0.16
PROPOSED BUILDING COVER (PERCENTAGE OF TOTAL SITE)	6,060 SF/16%
MAX ALLOWABLE IMPERVIOUS AREA (%OF TOTAL SITE)	75%
PROPOSED IMPERVIOUS AREA (% OF TOTAL SITE)	13,242 SF/ 36%
PROPOSED PERVIOUS AREA (% OF TOTAL SITE)	23,756 SF/ 64%
PROPOSED BUILDING HEIGHT (NUMBER OF STORIES & FEET)	2 STORIES / 30'-0" MAX. EACH
ELECTRIC PROVIDER	TOWN OF CLAYTON
WATER PROVIDER	TOWN OF CLAYTON
SEWER PROVIDER	TOWN OF CLAYTON
WATERSUPPLY WATERSHED PROTECTION AREA	NO

NOTE:
1. THERE ARE NO AREAS OF 100 YEAR FEMA FLOOD ON PROPERTY FLOOD PANEL NO. 3720166800 K eff. DATE 06/20/2018
2. ROLL-OUT TRASH BINS TO BE LOCATED IN THE REAR OF EACH UNIT AND SHALL BE SCREENED FROM VIEW FROM ADJACENT PROPERTIES AND/OR PUBLIC RIGHTS-OF-WAY. OR TRASH BINS MAY BE PUT INTO GARAGES OUT OF SIGHT.
3. HOA TO MAINTAIN OPEN SPACE AND BUFFERS.
4. RETAINING WALL AND CBU REQUIRE A BUILDING PERMIT FROM TOWN OF CLAYTON.

CHAMPION EAST LOT STANDARDS

ZONING	UNIT TYPE	LOT STANDARDS				MINIMUM SETBACKS (FT.)				BUILDING STANDARDS	
		Min. Lot Area (sq.ft.)	Min. Lot Width (LF)	Max. Lot Coverage (%)	Max. Lot Impervious Surface (%)	Front	Side	Side Interior	Rear	BUILDING SEPARATION	Max. Height (ft.)
R-6	TOWNHOMES	2,000	22	55	90	25	3	0	5	20	30

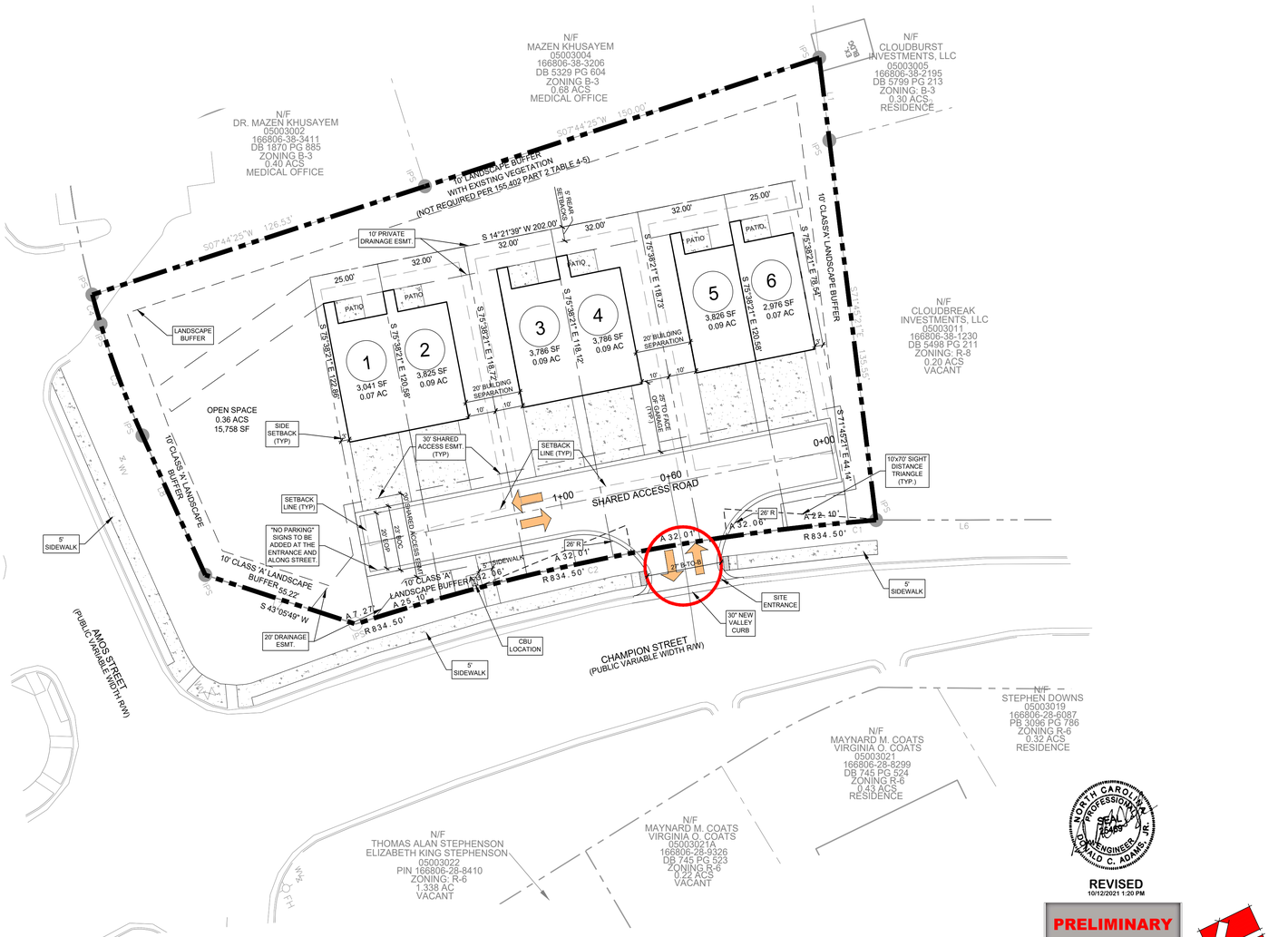
NOTE:
1. GARAGE TO SET BACK 25' FROM BACK OF CURB
2. DRIVEWAYS ON PROPERTY LINE - 0' SETBACK
3. DRIVEWAYS TO BE 18' WIDE.

PARKING REQUIREMENTS
1. § 155.401(C)(2) FOR TOWNHOMES, (2) SPACES REQUIRED PER UNIT.
2. PROVIDED (2) SPACES IN DRIVEWAY, (1) SPACE IN GARAGE; TOTAL OF (3) SPACES PROVIDED PER UNIT.

REQUIRED SPACES = 12
PROPOSED SPACES = 18

OPEN SPACE TABLE

	SQUARE FEET
REQUIRED OPEN SPACE 1,245 SF/LOT (6 LOTS)	7,470
OPEN SPACE PROVIDED	15,758
*NOTE: ACREAGE SHOWN IS APPROXIMATE AS THIS IS A MAJOR SITE PLAN.	



REVISED
10/12/2021 1:20 PM

PRELIMINARY

GRAPHIC SCALE
20 0 10 20 40 80
(IN FEET)
1 inch = 20 ft.

ADAMS & HODGE ENGINEERING, PC
314 EAST MAIN STREET
CLAYTON, NC 27520
info@adamshodge.com
919-243-1332
FIRM # C-4187

BY/DESCRIPTION
10/12/2021 TRC COMMENTS
09/28/2021 TRC COMMENTS
04/27/2021 2ND TRC COMMENTS & SITE PLAN REVISIONS
01/27/2021 1ST TRC COMMENTS
01/13/2021 PRELIMINARY PLAT SUBMITTAL/REZONING

CHAMPION EAST

TOWN OF CLAYTON, JOHNSTON COUNTY, NORTH CAROLINA

SITE PLAN & PRELIMINARY PLAT

DESIGN: DCA
DRAWN: ADS
CHECKED: DCA
HORIZONTAL SCALE: SEE GRAPHIC SCALE
VERTICAL SCALE: N/A
DATE: 06/15/2020
JOB NO.:
SHEET: C2.01

1006
1005

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

December 15, 2021

NOTICE

SUBJECT:	**Project:**	2020-98-SUP Champion East Special Use Permit
	Address:	310 Champion Street
	TAG #:	05003003
	Applicant:	Adams & Hodge Engineering, PC

Dear Clayton Area Property Owner:

Notice is hereby given that the Clayton Town Council will hold a public meeting on ***Monday, January 3rd at 6:00 PM*** at Town Hall, 111 E Second Street, to consider the following land use applications: 2020-98-SUP Champion East Special Use Permit.

The Special Use Permit (2020-98-SUP) is to request the ability to develop 6 townhomes on a property 0.849 acres in size and zoned Residential-6 (R-6). The subject property is located at 310 Champion Street (TAG #: 05003003). Per UDC requirements, townhomes are permitted via issuance of a Special Use Permit in the R-6 zoning district.

Please see the map on the back of this letter.

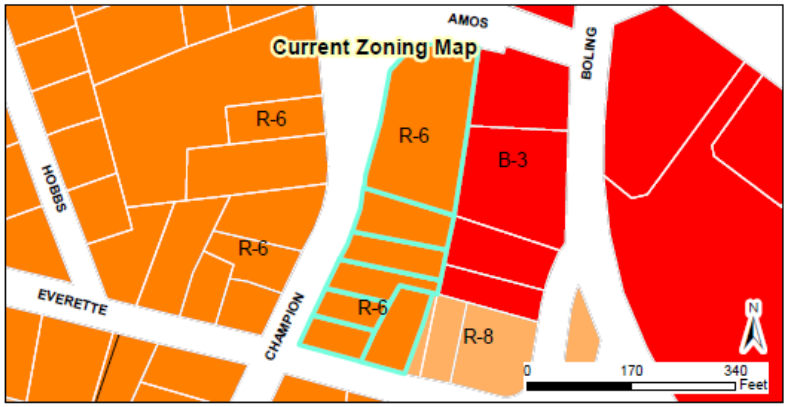
During an evidentiary hearing, the Clayton Town Council must make findings of fact based upon sworn testimony and other credible evidence. Citizens may give testimony in an evidentiary hearing after they have taken an oath.

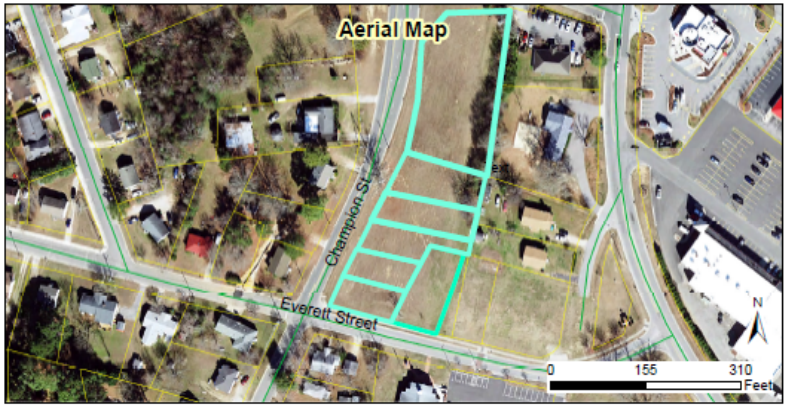
Based upon records in the Johnston County Tax Office, you are the owner of property that is within 100 feet of this proposed rezoning request. You are invited to join this meeting and express your opinions on this request to the Town Council.

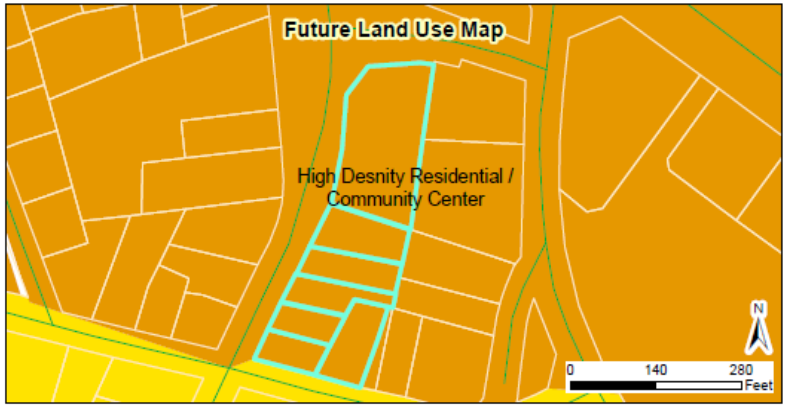
If you should need additional assistance or information, please contact the Planning Department at (919) 553-5002 or email at bhowell@townofclaytonnc.org.

Sincerely,

Ben Howell, AICP, CZO
Planning Director







Request:
2020-96-SD, Champion East, Subdivision
2020-98-SUP, Champion East, Special Use Permit

Applicant: Adams & Hodge Engineering, PC
Property Owners: Cloudbreak Investments, LLC
Tag #: 05003003, 05003011, 05003012, 05003014, 05003015, 05003016, 05003010

Staff Report Map

07/30/2020

Produced by: TOC Planning
Disclaimer: Town of Clayton assumes no legal responsibility for the quality to the data represented here.

Document Path: O:\PLANNING\SPECIAL USE\2020\2020-98-SUP Champion East\Staff Report Maps\Staff Report Map-2020-98-SUP-Champion Street East.mxd

Legend
- Thorough Fare Overlay
- 100-yr Flood Zone

PUBLIC NOTICE

In accordance with NCGS 160D-406, the Clayton Town Council will hold a public hearing on Monday, January 3, 2022, at 6:00 PM, to consider the following request:

- **2020-98-SUP Champion East Special Use Permit; request to develop 6 townhomes on a property 0.849 acres in size zoned Single-Family Residential-6 (R-6). The subject property is located at 310 Champion Street (TAG #: 05003003). Per UDC requirements, townhomes are permitted via issuance of a Special Use Permit in the R-6 zoning district.**

For the Special Use Permit, the Town Council will hold an evidentiary hearing and must make findings of fact based upon sworn testimony and other credible evidence. Citizens may give testimony in an evidentiary hearing after they have taken an oath.

Ben Howell, Planning Director
919-553-5002

_____
The Johnstonian Newspaper

Please advertise on the following dates:
December 22, 2021
December 29, 2021

Affidavit of publication required.

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

January 12, 2022

Donnie Adams
Adams & Hodge, PC
314 East Main Street
Clayton, NC 27520
donnie@adamsandhodge.com

Re: 2020-98-SUP, Champion East Special Use Permit

To Whom It May Concern,

The Town of Clayton Planning staff is recommending to the Town Council that conditions of approval be placed upon the above referenced application, which proceeds to Town Council on Tuesday, January 18, 2022. These recommended conditions of approval are outlined on the back of this letter.

Please read through these potential conditions of approval, and sign below if you are in agreement with the conditions as proposed. If you are not in agreement please respond accordingly in writing. This will be included within the agenda packet for Town Council review.

Thank you.

Sincerely,

Ben Howell, AICP, CZO
Planning Director

Recommend Conditions of Approval (2020-98-SUP, Champion East Special Use Permit):

1. These Conditions of Approval, and any others included with the associated Preliminary Plat (2020-96-SD) shall be recorded upon the final plan set, which must be delivered to the Planning Department for review and final approval.
2. Dimensional standards shall be set by those indicated on the associated preliminary plat (2020-96-SD). Any deviations from these standards are pursuant to modifications as outlined in Section 155.711 of the Unified Development Code.
3. A revised Wastewater Allocation Application shall be submitted and approved prior to approval of Construction Drawings.
4. Language shall be included on the Construction Drawings and Final Plat stating that electric facilities may be installed and maintained within the 30-foot wide shared access easement.
5. The 10-foot wide Class A buffer adjacent to Lot 6 (on the south side of the proposed development) shall not be planted until electric service lines have been installed at the site. If the electric service lines have not been installed prior to Final Plat, a performance guarantee shall be submitted and approved for the Class A buffer, and the buffer shall be planted prior to Certificate of Occupancy of Lot 6.
6. A plan set including the revised architectural elevations presented at the January 18, 2022 Town Council meeting shall be submitted for final approval by the Planning Director following Town Council approval of the Special Use Permit.

APPLICANT AFFIDAVIT

I/We, the undersigned, do herby certify that I have reviewed the recommended conditions of approval and am in agreement with the conditions as they are outlined within this letter.

Nathan Evans		1-12-22
Print Name	*Signature of Applicant*	*Date*

TOWN OF CLAYTON
SPECIAL USE PERMIT
#2020-98-SUP
Champion East
GRANTED

On the date listed below, the Town Council for the Town of Clayton met and held an evidentiary hearing to consider the following application:

Applicant:	Adams & Hodge, PC
Property Owner:	Cloudbreak Investments, LLC
Property Location:	Located east of Champion Street near the intersection of Amos Street, south of US Highway 70 Business
Brief Property Description:	.0849 acres
Tax Parcel Number:	05003003
Proposed Use of Property:	6 Townhomes
Hearing Date(s):	January 3, 2022 & January 18, 2022

Having heard all the evidence and argument presented at the hearing, the Town Council makes the following findings:

(1) That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.

(2) That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances, or other applicable regulations.

(3) That the application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.

(4) That the application will not adversely affect the adopted plans and polices of the Town or violate the character of existing standards for development of the adjacent properties.

ADDITIONAL CONDITIONS:

1. These conditions of approval, and any others included with the associated Preliminary Plat (2020-96-SD) shall be recorded upon the final plan set, which must be delivered to the Planning Department for review and final approval.
2. Dimension standards shall be set by those indicated on the associated preliminary plate (2020-96-SD). Any deviations from these standards are pursuant to modifications as outlined in Section 155.711 of the Unified Development Code.
3. A revised Wastewater Allocation Application shall be submitted and approved prior to approval of Construction Drawings.
4. Language shall be included on the Construction Drawings and Final Plat stating that electric facilities may be installed and maintained within the 30-foot-wide shared access easement.
5. The 10-foot-wide Class A buffer adjacent to Lot 6 (on the south side of the proposed development) shall not be planted until electric service lines have been installed at this site. If the electric service lines have not been installed prior to Final Plat, a performance guarantee shall be submitted and approved for the Class A buffer, and the buffer shall be planted prior to Certificate of Occupancy of Lot 6.
6. A plan set including the revised architectural elevations presented at the January 18, 2022 Town Council meeting shall be submitted for final approval by the Planning Director following Town Council approval of the Special Use Permit.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

TOWN OF CLAYTON

BY: _____
Jody McLeod
Mayor

DATE: _____ [Note: within 14 days of decision per Code Section 155.702(G)]

ATTEST:

_____(SEAL)
Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town of Clayton
Town Council
SUP Motion Sheet

After considering the competent, material, and substantial evidence presented, including the application and materials of record, I move to (PICK ONE):

- ■ Approve
- ■ Deny
- ■ Approve with Conditions

SUP Application 2020-98-SUP Champion East – Special Use Permit

This motion is based on the following findings:

1. The application **WILL NOT** materially endanger the public health or safety if located where proposed, and developed according to the plans as submitted and approved.

OR

The application **WILL** materially endanger the public health or safety if located where proposed, and developed according to the plans as submitted and approved. (State evidence supporting finding.)

****

2. The application **MEETS** all required specifications and **CONFORMS** to the standards and practices of sound land use planning and the Town Code of Ordinances, or other applicable regulations.

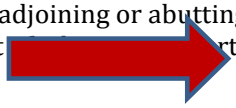
OR

The application **DOES NOT MEET** all required specifications and **DOES NOT CONFORM** to the standards and practices of sound land use planning and the Town Code of Ordinances, or other applicable regulations. (State evidence supporting finding.)

****

Motion Form
Item 6b
2020-98-SUP
Champion East

3. The application **WILL NOT** substantially injure the value of adjoining or abutting property, and **WILL NOT** be detrimental to the use or development of adjacent properties or other neighborhood uses.



OR

The application **WILL** substantially injure the value of adjoining or abutting property, and **WILL** be detrimental to the use or development of adjacent properties or other neighborhood uses. (State evidence supporting finding).

****

4. The application **WILL NOT** adversely affect the adopted plans and polices of the Town, or violate the character of existing standards for development of the adjacent properties.

OR

The application **WILL** adversely affect the adopted plans and polices of the Town, or violate the character of existing standards for development of the adjacent properties. (State evidence supporting finding.)

****

[If approved with conditions] The applicant meets the above findings subject to the following conditions:

Motion Form
Item 6b
2020-98-SUP
Champion East

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Old Business

Item Title
Award Design/Build Riverwalk on the Neuse

Presenter:
Jonathan Jacobs, Assistant Town Engineer

Summary/Description
During routine inspections, three wooden bridges along the Clayton Riverwalk on the Neuse Greenway (Attachment A) were found to be nearing the end of their useful life and need replacement. On November 7, 2021, Town Council approved a Capital Project Budget ordinance (Attachment B) to fund the bridge replacements. Staff have evaluated different project delivery methods and recommend design-build. NC State statute (NCGS 143-128.1A) allows municipalities to utilize design-build, however, requires the establishment of criteria (Attachment C) used for determining why design-build method is the appropriate delivery method for the specific project. On September 27, 2021, staff issued an RFQ (Attachment D) soliciting design-build teams. Staff received a total of four (4) submissions and a selection committee comprised of the Engineering Director, Assistant Town Engineer, Construction Project Administrator, Parks and Recreation Director, and Procurement, Contracts and WMBE Manager evaluated the statements of qualifications. The selection committee found a team led by Crowder Construction Company and design consultant AMT to be the most qualified based on the scoring criteria. Staff recommends entering into design-build contract with the selected design-build team. The contract (Attachment F), which has been reviewed by the Procurement, Contracts, and WMBE Manager, is based on DBIA 544 "Progressive Design-Build Contract" and supplemented by DBIA 535 "General Conditions". The phase 1 pre-construction and design services total fee is $296,086.60. Staff request town council approve the design-build contract, design-build criteria, and authorize Town Manager or designee to execute the contract for phase 1 pre-construction services and any amendments required prior to the Guaranteed Maximum Price (GMP) milestone. Staff will bring formal GMP amendment to Council upon completion of the pre-construction services.

Requested Action
Approval

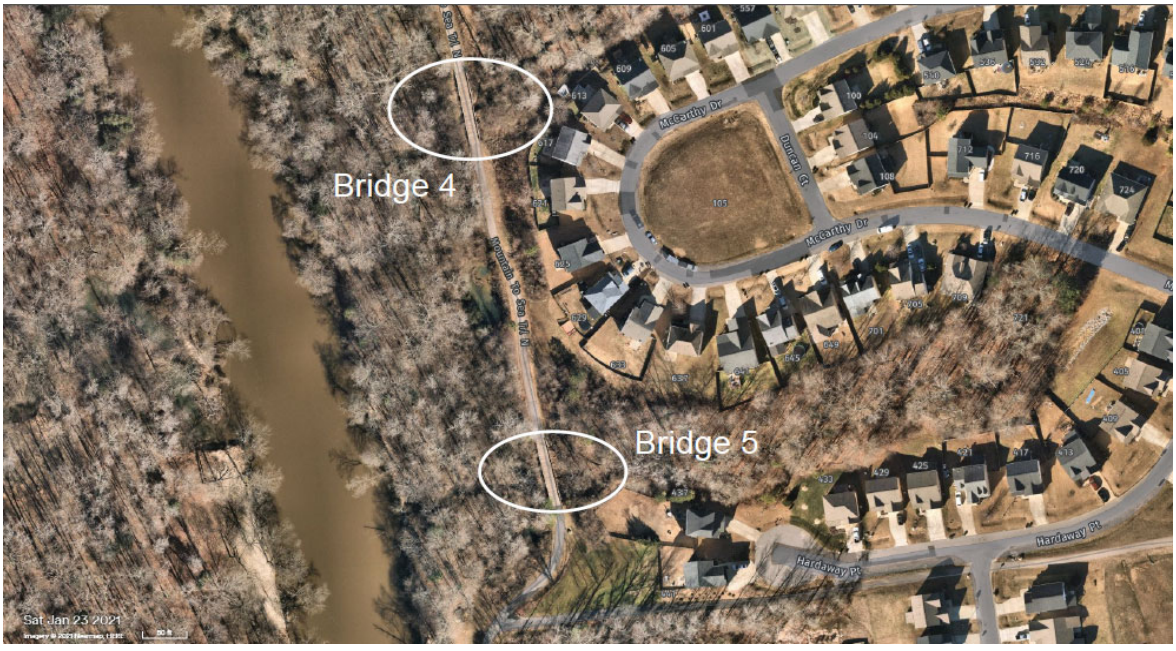
Funding Source (If Applicable):
Existing Budget

Cost: **~1.5 million** **Yes** ☒ **No** ☐

Additional Documents to be Included in Agenda Packet
Attachment A: General Location Map Exhibit
Attachment B: General Fund Budget Amendment – Transfer to Capital Project Fund
Attachment C: Establishment of Design-Build Criteria
Attachment D: Clayton Riverwalk on the Neuse Greenway Bridge Replacements RFQ
Attachment E: Crowder Construction Company Statement of Qualifications
Attachment F: Proposed Design-Build Contract with Crowder Construction Company

Meeting Timeline

Attachment A



Location Coordinates:
Bridge 3: 35.689297, -78.437692 | Bridge 4: 35.686308, -78.436439 |Bridge 5: 35.685142, -78.436125

Ordinance #2021-11-07

TOWN OF CLAYTON
GREENWAY SYSTEM
CAPITAL PROJECT BUDGET ORDINANCE

BE IT HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON that the following ordinance shall be established to make major improvements to the Town's greenway system, including bridge replacements:

Revenues

Line Item	Description	Amount
614-49 80	Due from General Fund	$1,500,000
	Total	$1,500,000

Expenditures

Line Item	Description		Amount
614-58 01	Construction		$1,250,000
614-58 24	Design	$250,000	
	Total		$1,500,000

Duly adopted this 15th day of November 2021 while in regular session.

Jody L. McLeod
Mayor

Attest:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

TOWN OF CLAYTON
INCORPORATED
APRIL 1869
CLAYTON, N.C.

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

To: File

From: Jonathan K. Jacobs, PE – Assistant Town Engineer

Date: September 29, 2021; Amended October 11, 2021

Subject: Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Clayton River Walk on the Neuse Greenway Bridge Replacements

Background: During a recent routine condition assessment of the pedestrian bridges along the Town of Clayton Greenway System, three (3) greenway pedestrian bridges on the River Walk on the Neuse Greenway were found to need immediate replacement due to the nature of repairs and ending of their useful life. In order to expedite the replacement of these bridges, evaluate alternative structures, and minimize the closure of the River Walk on the Neuse Greenway, staff propose utilizing the design-build delivery method. The design-build delivery method will provide the needed flexibility to complete the project on time and within budget.

North Carolina General Statute §143-128.1A authorizes governmental entities to award construction contracts pursuant to the design-build delivery method after having established written criteria to determine the circumstances under which such delivery method is appropriate for a project.

Below are the required written criteria for the Clayton River Walk on the Neuse Greenway Bridge Replacements.

Criteria 1 – *The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* Through the Engineering Department, the Town has professional personnel with the qualifications and experience needed to thoroughly define the project requirements prior to issuance of a RFQ for design-builders. Additionally, professional personnel are available in the areas of purchasing, finance and legal to assist as needed in the development of an RFQ.

Criteria 2 – *The time constraints for the delivery of the project.* The Clayton River Walk on the Neuse is a part of the 1,000-mile Mountains-to-Sea Trail, North Carolina's flagship state trail. Due to the importance of this segment of the trail, the closure of the River Walk on the Neuse Greenway shall last no longer than 180 days with the project being completed by May 2023.

Criteria 3 – *The ability to ensure that a quality project can be delivered.* Within the Engineering Department, the Town has adequate professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by the Town Council.

Criteria 4 – *The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Engineering Department, the Town has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract out the construction management of the design-build contract, there are experienced consultants that are available.

Criteria 5 – *A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.* The Town complies with G.S. § 143-128.2 and G.S. § 142-128.4. The Town has an established M/WBE program which requires contractors to comply with all M/WBE goals set by Town Council.

Criteria 6 – The *criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.* The Town of Clayton desires to have a greenway that is safe and usable its residents and visitors. Due to the nature of repairs, the design-build delivery method enables the Town to meet its desired timing and keep the greenway safe and open to users as much as possible. Additionally, the design-build delivery method allows the Town to evaluate constructability of alternative structures to potentially reduce the construction timeline, environmental impacts, and reduce future maintenance needs by the Town. By reducing the construction timeline, the Town is eliminating any price escalation which could occur in a lengthened project timeline and stay ahead of any manufacturing delays due to the COVID-19 pandemic. The advantages of utilizing design-build delivery method outweigh the disadvantages of traditional delivery regarding budget, creativity, and flexibility in the design and construction project.

REQUEST FOR QUALIFICATIONS

DESIGN-BUILD SERVICES
FOR
CLAYTON RIVER WALK ON THE NEUSE GREENWAY
BRIDGE REPLACEMENTS

Issued: September 29, 2021

Town of Clayton
Engineering Department
Clayton, North Carolina

PPAB 5134690v1

I. General

A. Pursuant to N.C. Statute Sec. 143-128.1(A), the Town of Clayton (the "Town" or "Owner") is soliciting proposals from qualified design-build teams interested in providing professional design-build services for replacement of three (3) pedestrian greenway bridges on the Clayton River Walk on the Neuse.

B. The Town will follow a Qualifications Based Selection process as required by N.C. General Statutes and select the most-qualified team to negotiate a contract for services. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. The Town will follow a Qualifications Based Selection process as required by N.C. General Statutes and select the most-qualified team to negotiate a contract for services. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. Information related to this solicitation, including any addenda, will be posted to the North Carolina Interactive Purchasing System (NC IPS) at: https://www.ips.state.nc.us/IPS/. Interested firms may submit a Statement of Qualifications, meeting the requirements defined in the RFQ to:

Jonathan K. Jacobs, PE
Assistant Town Engineer
Town of Clayton
111 East Second St, Clayton, NC 27520*

PO Box 879 (Via US Mail)
Clayton, NC 27528

Email: jjacobs@TownofClaytonNC.org
*For hand delivery

C. Statements of Qualifications must be received by 4:00 p.m. on 10/27/2021. The Town shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to the NC IPS website. No information, instruction, or advice provided orally, or informally, by any Town personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. Respondents shall be entitled to reply *only* on written material contained in an addendum to this RFQ.

D. Requests for clarification and questions to this RFQ must be received by the Town no later than 4:00 p.m. on 10/06/2021 for the submittal of written inquiries. The Town will not entertain any further questions after the due date. All questions related to this solicitation must be submitted in writing (via email) to Jonathan K. Jacobs, PE at jjacobs@townofclaytonnc.org.

E. This RFQ does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the Town to accept or contract for any expressed or implied services. The Town reserves the right to reject any and all submittals.

II. Background and Project Site

A part of the Town of Clayton Greenway System, the Clayton River Walk on the Neuse ("River Walk") is a beautiful 4-mile, 10-foot-wide paved trail that begins at the Wake/Johnston County line and parallels the Neuse River under Covered Bridge Road. It is part of the 1,000-mile Mountains-to-Sea Trail, which will connect Clingman's Dome in North Carolina's Great Smokey Mountains National Park to Jockey's Ridge State Park all the way at the coast.

The Town recently performed a routine condition assessment of the pedestrian bridges along the River Walk to determine ongoing maintenance and repair needs. During the most recent assessment, it was determined bridges 3, 4, and 5 of the Riverwalk were nearing the end of their useful life and replacement was recommended. Bridges 3, 4, and 5, constructed in 1999, are 12-foot-wide timber bridges ranging between 78 and 82 feet in length. There are three (3) public access points in proximity to the project site within the Riverwood Athletic Club Subdivision; Nelson Lane, Sarazen Drive, and Hardaway Point. See Attachment A for a map of the bridge locations and approximate GPS coordinates.

The Town anticipates utilizing prefabricated weathered steel clear span bridge structures designed to AASHTO or similar standards and designed to handle at least 10,000 lbs. gross weight. Additionally, the Town desires evaluation of alternative structures for each crossing (e.g., concrete box culvert) to potentially increase constructability and reduce construction timeline, costs, and environmental impacts.

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

III. Scope of Work

A preliminary scope of work for the Design-Builder includes but is not limited to:

A. Pre-Planning, schedule and budget review. Pre-construction project planning including preliminary cost estimate.

B. Perform alternative structure evaluation: Present best method of crossing at least location based on cost, constructability, and environmental impacts to Town staff for determination;
C. Completion of any necessary field surveying, subsurface investigation, and geotechnical borings required for design;
D. Completion of any environmental studies and procurement of all required environmental permits (e.g., USACE, NCDEQ) including no rise, if possible, or CLOMR/LOMR.
E. Preparing all appropriate plans, specifications, and construction document based on Owner's criteria and to include:
    a. Clearing and grubbing plans, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, structure plans, greenway closure and signage plans, cross-sections and construction details;
    b. Construction Specifications including line items and bid quantities (no Federal or State Funds will be used for this project);
    c. Procurement of any applicable building permits;
F. Development and refinement of cost estimates and project schedules;
G. Construction administration and observation including, weekly site observations and regularly scheduled progress meetings with the Town;
H. Construction
    a. Site work to include but not be limited to:
        i. Clearing and rough grading with excess dirt and material removed from the site. Tree protection and erosion control measures to be immediately put into place.
        ii. Existing bridge demolition and material removal from the site
        iii. Bank/stream stabilization (as required/permitted)
        iv. Construction of temporary access (as required/permitted)
        v. Preparation of subgrade and bridge/structure approaches
        vi. Removal and replacement of existing greenway asphalt (as required by construction)
        vii. Delivery, setup and installation of pre-fabricated bridge/alternative structure
I. Project closeout, establishment of warranties, and guarantees. All materials, equipment, and workmanship are subject to a one-year guarantee against defects or deficiencies beginning on the day of acceptance by the Town;
J. Provide certified record drawings (site, stormwater and public utilities) as well as electronic copies in both PDF and an approved editable format (.dwg).

IV. Project Budget

The Town anticipates spending approximately $850,000 on the greenway bridge replacements.

V. Schedule

Note: All times are Eastern Standard Time

Sequence of Activity	Schedule
Issue RFQ	09/29/2021
Deadline for written questions and clarifications on RFQ (jjacobs@townoflclaytonnc.org)	10/06/2021
Town of Clayton issues any addenda	10/11/2021
Deadline for submission of Statement of Qualifications (Locations above)	10/27/2021
Notify Shortlisted Teams**	10/29/2021
Interviews**	11/03/2021
Notify selected design-build firm, begin contract negotiations	By 11/05/2021
Complete contract negotiations with selected team and award Contract	11/24/2021
GMP	January 2022
Project Completion	May 2023

**If applicable; the Town may elect to omit this step

VI. Submittal Response Requirements

Provide five (5) bound copies and one electronic copy in pdf format of your submittal. Submittals shall be a maximum of 12 pages (6 if double sided) and on 8.5" x 11" paper bound such that lay flat when opened. Font size shall be no less than 10 pt. Submittals must contain the following information:

Section 1- Letter of Interest: The Letter of Interest should include a synopsis of the firm, the team's qualifications, the project manager and primary contact, the project principal representing the contractual authority of the firm/team.

Section 2 – Project Organization: Provide a project organization chart identifying the team composition. Define key staff members who will be working on the project and explain their roles and their expected commitment to the project as a percentage of their time. Indicate any firm/company qualifying as a minority entity.

Section 3 - Profile(s) of Firm or Team: Provide information about each firm, licensed contractor and licensed subcontractor in the project team. Identify capabilities and experiences, the number of employees and location and number of years in business under its current name. Identify the scope of services to be provided under this project. If contractors and/or subcontractors have not yet been selected, describe the selection strategy to be used and how it is compliant with Article 8, Chapter 143 of

the North Carolina General Statutes.

Section 4 - Resumes: Provide resumes of the key staff, including the project manager and task leaders. Include resumes for staff identified as having a major role in the project.

Section 5 - Project Approach and Schedule: Provide a description of the proposed approach to the project. Include a response to the preliminary scope but do not simply restate the scope. Identify key risks/ challenges/ concerns you anticipate and any mitigation steps to achieve successful delivery. Describe the team's approach to design document quality assurance and quality control. Describe the firm and/or team's track record delivering projects with minimal change orders. Describe the team's level of experience with the major regulatory bodies likely to be project reviewers, whether local, state or federal. Describe the team's use of technology and how it will be used to engage with the owner in each project phase. Provide an outline project schedule, showing tasks, milestones and deliverables, including River Walk closure timelines and review meetings with the Town project team and community groups.

Section 6 - Reference Projects: Please identify recent, representative projects of a similar scope, complexity and size (NO MORE THAN FIVE), performed by the proposed team. At least three should be completed projects. For each project, provide project duration and completion year, references (name, email and phone number), and estimated and completed project cost. Identify which team members performed the work and the role each played in the reference project.

VII. Selection Criteria

A team of Town staff will review the proposals based on the criteria below and may make a recommendation to negotiate a tentative contract. This request for qualifications does not commit the Town to award a contract or enter into an agreement, to pay costs incurred in the preparation of a response to this invitation, or to procure or contract for any services or supplies. The Town reserves the right to reject any or all submittals received as a result of this RFQ. Each RFQ response submitted will be evaluated on their Statement of Qualifications score (100 points maximum) as determined through a qualification review process and the scoring criteria noted as follows:

1. Design-Build Team Experience and Qualifications - 30 Points
2. Design & Engineering Professionals' Experience and Qualifications - 30 Points
3. Project Understanding and Approach - 20 Points
4. Ability to meet Project Schedule - 10 Points
5. Reference Projects – 10 Points

VIII. Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the Owner and use their best efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation, collaboration and a commitment among professional design-build services providers to work in the best interests of the project is of utmost importance.

IX. Minority Business Policy.

In accordance with N.C.G.S. 143-128.2, Engineer shall adhere to Owner's Minority Business Policy for all building construction or repair projects in the amount of $300,000 or more and on Owner building projects involving State funding where the total project cost $100,000 or more.

X. Attachments

Attachment A – Site Locations
Attachment B – Establishment of Design Build Criteria
Attachment C – Minority Business Participation Policy
Attachment D – Insurance Requirements

Attachment A

Location Coordinates:

Bridge 3: 35.689297, -78.437692
Bridge 4: 35.686308, -78.436439
Bridge 5: 35.685142, -78.436125

Attachment B

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

To: File

From: Jonathan K. Jacobs, PE – Assistant Town Engineer

Date: September 29, 2021

Subject: Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Clayton River Walk on the Neuse Greenway Bridge Replacements

Background: During a recent routine condition assessment of the pedestrian bridges along the Town of Clayton Greenway System, three (3) greenway pedestrian bridges on the River Walk on the Neuse Greenway were found to need immediate replacement due to the nature of repairs and ending of their useful life. In order to expedite the replacement of these bridges, evaluate alternative structures, and minimize the closure of the River Walk on the Neuse Greenway, staff propose utilizing the design-build delivery method. The design-build delivery method will provide the needed flexibility to complete the project on time and within budget.

North Carolina General Statute §143-128.1A authorizes governmental entities to award construction contracts pursuant to the design-build delivery method after having established written criteria to determine the circumstances under which such delivery method is appropriate for a project.

Below are the required written criteria for the Clayton River Walk on the Neuse Greenway Bridge Replacements.

Criteria 1 – *The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* Through the Engineering Department, the Town has professional personnel with the qualifications and experience needed to thoroughly define the project requirements prior to issuance of a RFQ for design-builders. Additionally, professional personnel are available in the areas of purchasing, finance and legal to assist as needed in the development of an RFQ.

Criteria 2 – *The time constraints for the delivery of the project.* The Clayton River Walk on the Neuse is a part of the 1,000-mile Mountains-to-Sea Trail, North Carolina's flagship state trail. Due to the importance of this segment of the trail, the closure of the River Walk on the Neuse Greenway shall last no longer than 180 days with the project being completed by March 2023.

Criteria 3 – *The ability to ensure that a quality project can be delivered.* Within the Engineering Department, the Town has adequate professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by the Town Council.

Criteria 4 – *The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Engineering Department, the Town has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract out the construction management of the design-build contract, there are experienced consultants that are available.

Criteria 5 – *A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.* The Town complies with G.S. § 143-128.2 and G.S. § 142-128.4. The Town has an established M/WBE program which requires contractors to comply with all M/WBE goals set by Town Council.

Criteria 6 – The *criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.* The Town of Clayton desires to have a greenway that is safe and usable its residents and visitors. Due to the nature of repairs, the design-build delivery method enables the Town to meet its desired timing and keep the greenway safe and open to users as much as possible. Additionally, the design-build delivery method allows the Town to evaluate constructability of alternative structures to potentially reduce the construction timeline, environmental impacts, and reduce future maintenance needs by the Town. By reducing the construction timeline, the Town is eliminating any price escalation which could occur in a lengthened project timeline and stay ahead of any manufacturing delays due to the COVID-19 pandemic. The advantages of utilizing design-build delivery method outweigh the disadvantages of traditional delivery regarding budget, creativity, and flexibility in the design and construction project.

Attachment C

	TOWN OF CLAYTON POLICY	
	Department: Finance	**Effective:** January 19, 2021
Policy Title: **OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN TOWN OF CLAYTON BUILDING CONSTRUCTION OR REPAIR CONTRACTS** Version #01		**Supersedes:** V.# 1992 Resolution **Prepared By:** J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney **Approved By:** Town Council **Resolution: 2021-04** **Date: JAN. 19, 2021**

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on **Town of Clayton** building construction or repair projects in the amount of $300,000 or more and on Town building projects involving State funding where the total project cost $100,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Town of Clayton has a current verifiable goal of **ten** percent for minority participation for building construction or repair projects. The goal will be reviewed **every five years.**

SECTION A: INTENT

It is the intent of these guidelines that the Town of Clayton, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

A copy of these Guidelines will be issued with each bid package for applicable Town of Clayton building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

SECTION B: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
   a. Black, that is, a person having origins in any of the black racial groups in Africa;
   b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
   c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
   d. American Indian, that is, a person having origins in any of the original peoples of North America; or
   e. Female

2. Minority Business (MBE) - means a business:
   a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
   b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
   c. The business is certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.

3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
4. Public Entity - means the State and all public subdivisions and local governmental units.
5. Owner – Town of Clayton.
6. Designer – Any person, firm, partnership, or corporation which has contracted with the Town of Clayton to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town of Clayton to perform building construction or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.
11. HUB Office – N.C. Department of Administration's Office for Historically Underutilized Businesses.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Owner:

The Owner shall do the following:

1. Implement the attached "Town of Clayton's Minority and Small Business Participation Outreach Plan" to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
2. Attend the scheduled prebid conference and explain the minority goals and objectives.
3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
   (1) A description of the work for which the bid is being solicited.
   (2) The date, time, and location where bids are to be submitted.
   (3) The name of the individual within the public entity who will be available to answer questions about the project.
   (4) Where bid documents may be reviewed.
   (5) Any special requirements that may exist.
4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
5. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
6. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
7. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
8. Forward documentation showing evidence of implementation of Owner's requirements to the State Construction Office and the HUB Office upon request.

In addition, after a contract has been awarded the Owner shall:

a. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

Designer:

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.

5. During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.
6. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the Owner and State officials upon request.

Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods, as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term "contractor(s)" shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

1. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
   (a) A description of the work for which the subbid is being solicited.
   (b) The date, time and location where subbids are to be submitted.
   (c) The name of the individual within the company who will be available to answer questions about the project.
   (d) Where bid documents may be reviewed.
   (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

   If there are more than three (3) minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.
4. During the bidding process, comply with the contractor(s) requirements listed in these Guidelines and any contractor requirements listed in the Town of Clayton's Minority and Small Business Participation Outreach Plan.
5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce," in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.
7. Provide one of the following to Owner upon being named the apparent low bidder:
   (1) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or

   (2) if the percentage is not equal to the applicable goal, then an affidavit (Affidavit D) and documentation of all Good Faith Efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitation, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.

8. Within thirty (30) days after award of the contract, the apparent lowest responsible, responsive bidder shall file with Owner a list of all identified subcontractors that the contractor will use on the project.
9. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in the General Conditions of the Contract to facilitate payments to the subcontractors.
10. Submit with each monthly pay request and final payment request the "MBE Documentation for Contract Payment" - (Appendix E), for Designer's review.
11. If it any time during the construction of a project, if it becomes necessary to replace a minority business subcontractor, immediately advise the Owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor,
12. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

In addition, a construction manager at risk shall submit its plan for compliance with N.C. Gen. Stat. § 143-128.2 for approval by the Town prior to soliciting bids for the project's first-tier subcontractors.

Minority Business Responsibilities:

Certification

The Town of Clayton does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business ("HUB") by the North Carolina Department of Administration Office for Historically Underutilized Businesses ("HUB Office").

Businesses seeking HUB certification are directed to: http://www.doa.state.nc.us/hub/prog-certification.htm.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

1. Attending the scheduled prebid conference.
2. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
3. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
4. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
5. Negotiating in good faith with the Owner or contractors.

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

(To be included in solicitations and contract documents)

APPLICATION:

The Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

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

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. §143-128.2(c) and G.S. 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) Provide Affidavit C that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contact price, which is equal to or more than the applicable goal.

OR

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this type project.

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

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

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

In determining whether a contractor has made good faith efforts, the Town of Clayton will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

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

SECTION E: DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with the Town of Clayton shall be resolved as governed under the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

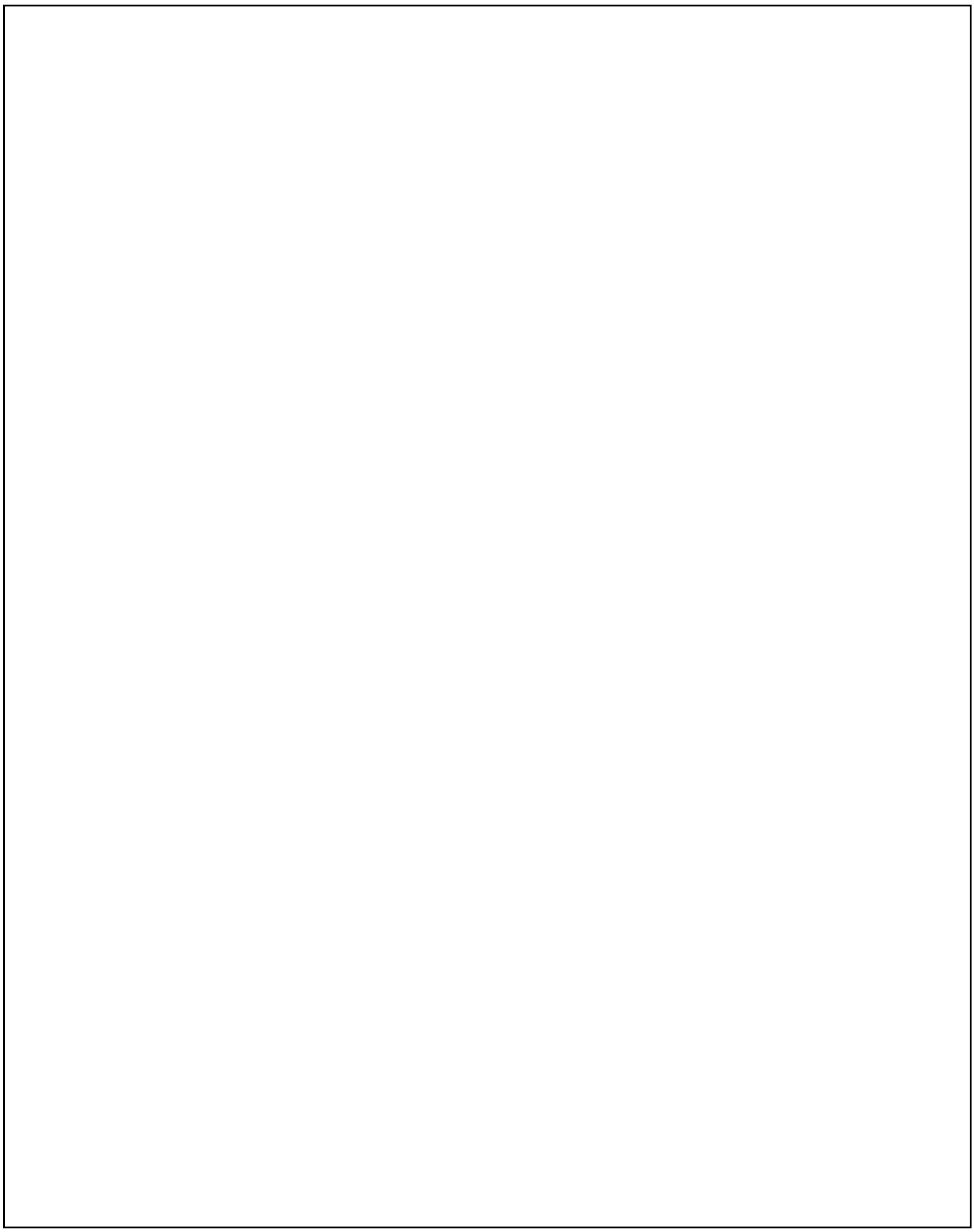
SECTION F: In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in Town of Clayton projects.

SECTION G: The Town Board of Commissioners empowers the Town Manager to enforce and/or amend this policy as may be required by changes in State law or Federal regulation.

TOWN OF CLAYTON'S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts, the Town of Clayton will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. The Town of Clayton shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids.
2. Place more emphasis on the importance of soliciting certified minority businesses and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Town of Clayton Construction Projects and this Outreach Plan (hereinafter referred to collectively as the "MBE Program") and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the "good faith efforts" provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified minority businesses and small businesses that have expressed an interest in Town of Clayton projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how this MBE Program is working and sharing "best practices" and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the Town's Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to minority businesses, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the Town's web page by including the MBE Program, listing good faith efforts, and creating links to minority business resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with the Town of Clayton or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the Town website.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become certified.



Identification of HUB Certified/ Minority Business Participation

I,_____,
(Name of Bidder)
do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work Type	*Minority Category	**HUB Certified (Y/N)

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be ($)_____.

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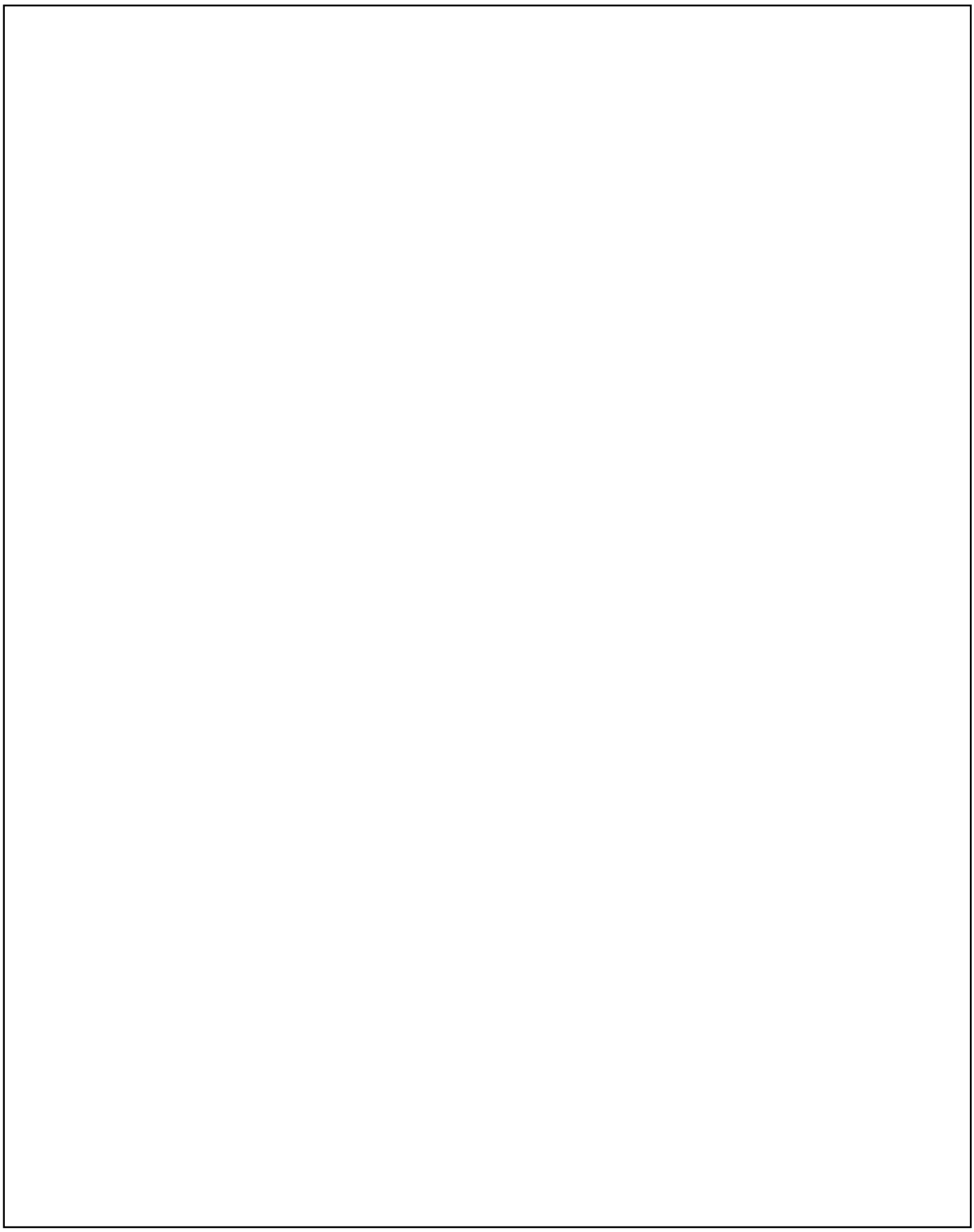

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State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of_____

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

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

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title: _____

SEAL

State of_____, County of _____

Subscribed and sworn to before me this _____day of _____20____

Notary Public _____

My commission expires_____

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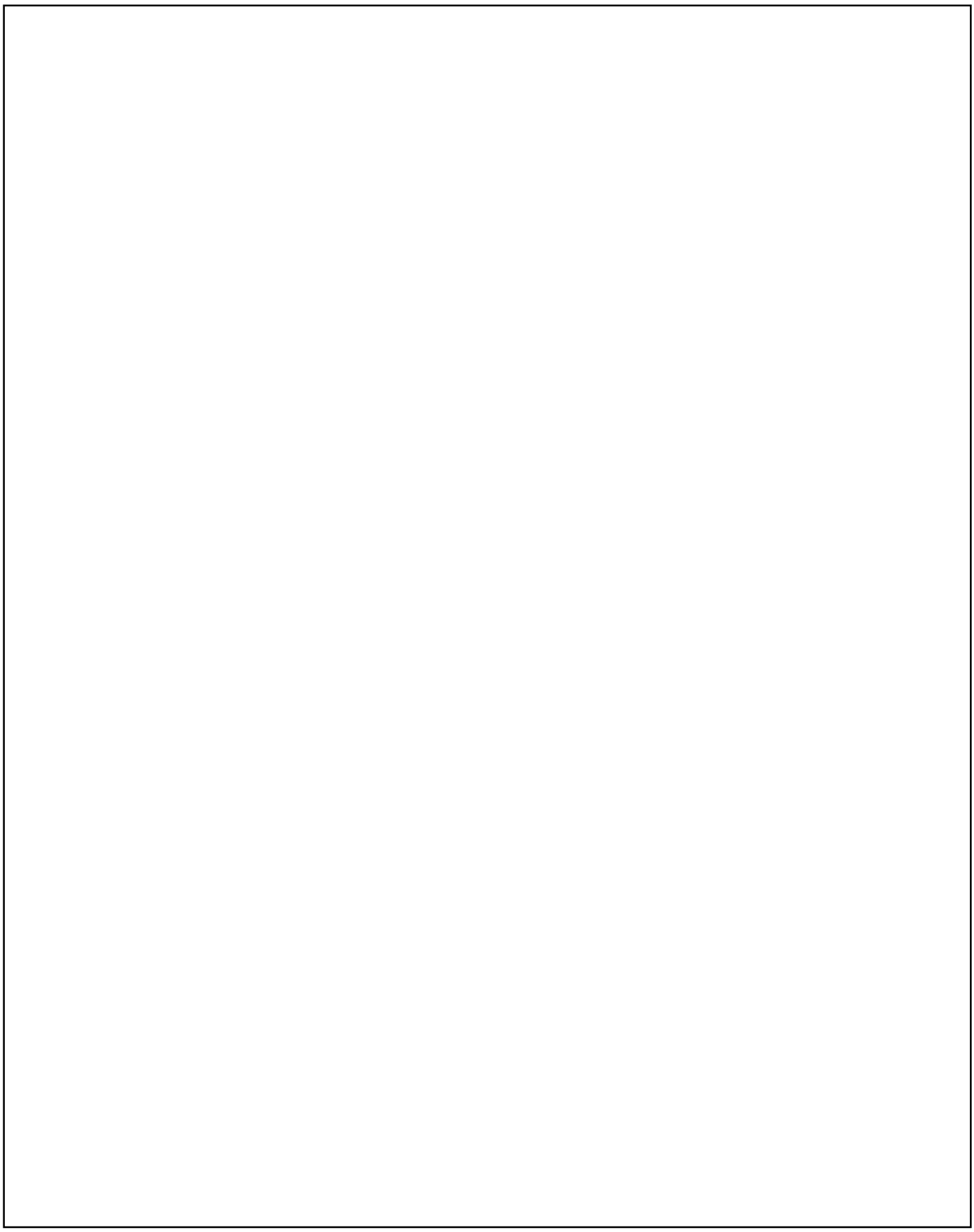

State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of_____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____contract.
(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date:_____Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of_____
Subscribed and sworn to before me this _____day of _____20___
Notary Public _____
My commission expires_____

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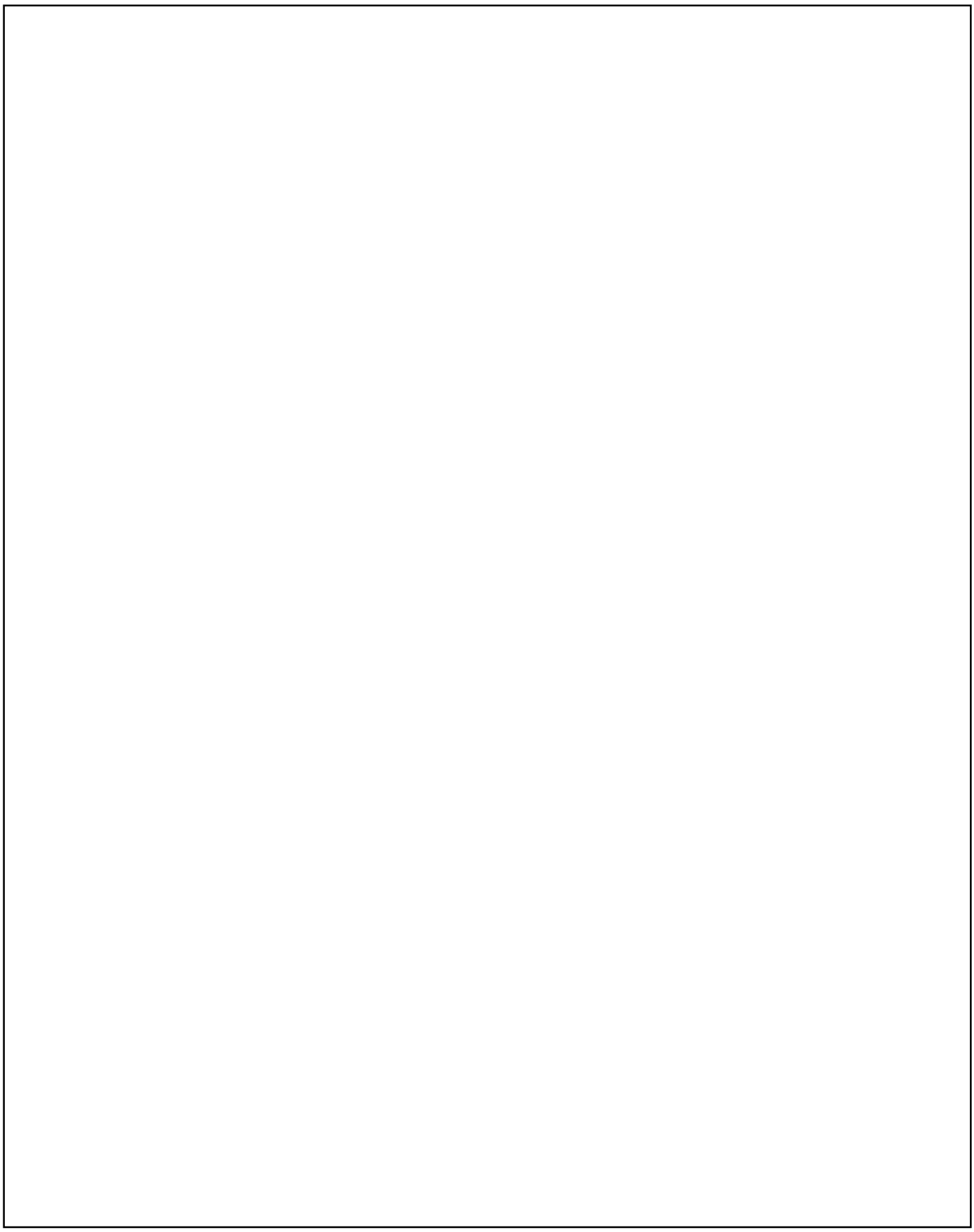

Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina – AFFIDAVIT C – Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.
This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID#_____ Amount of Bid $_____

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

Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public_____
My commission expires_____

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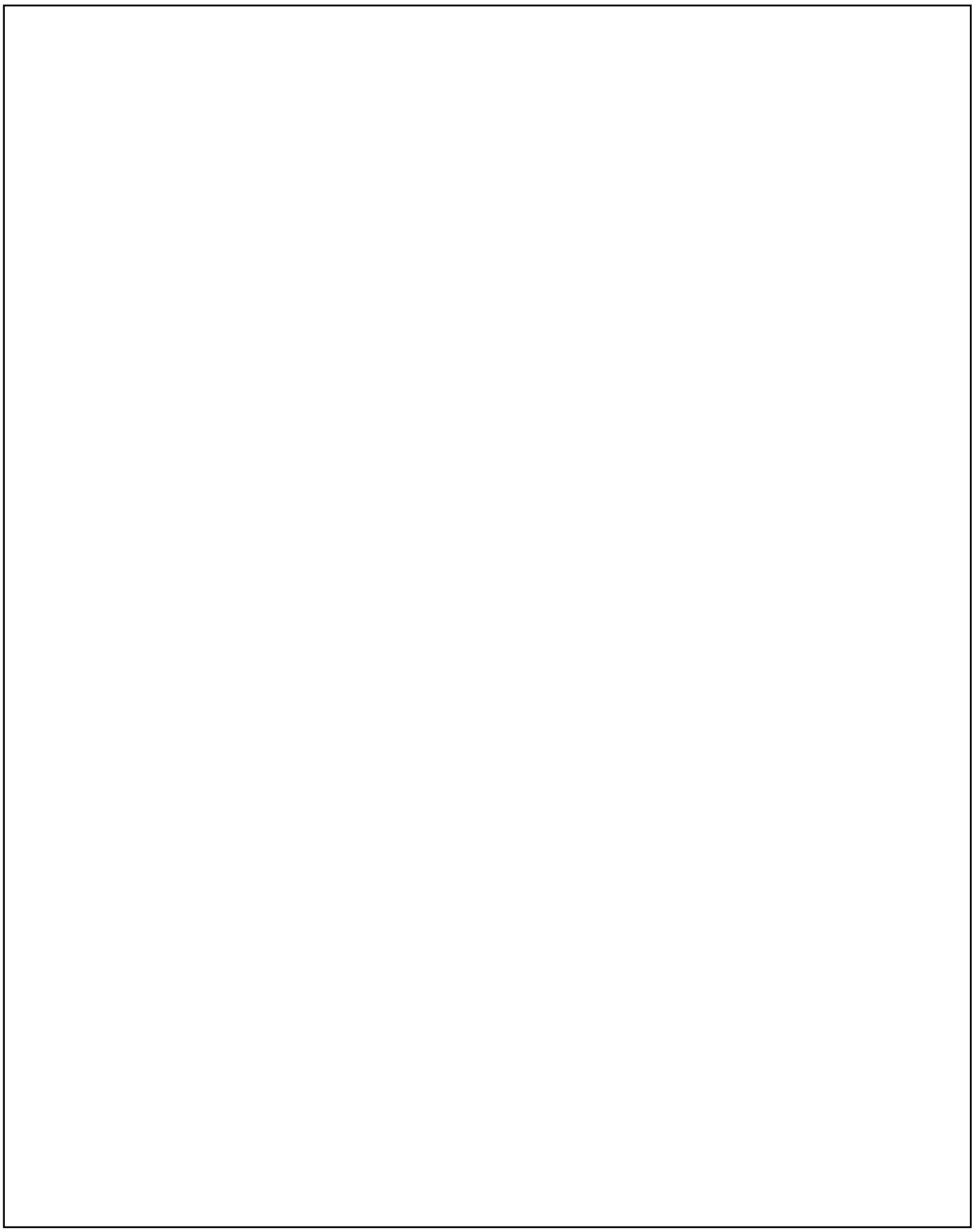


State of North Carolina – AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID#_____ Amount of Bid $_____

I will expend a minimum of _____% of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

****** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.

B. Copies of quotes or responses received from each firm responding to the solicitation.

C. A telephone log of follow-up calls to each firm sent a solicitation.

D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.

E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Copy of pre-bid roster

G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

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

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

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

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

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public_____

My commission expires _____

Attachment D

MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the North Carolina Insurance Commissioner to transact the business of insurance in the State of North Carolina for the applicable line of insurance, the following minimum insurance coverage:

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of $5,000,000 per claim and $10,000,000 in the aggregate. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with any Architect, Engineer or other design professional.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	$1,000,000
Personal Injury Liability	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000

Coverage must include:

2.1 Policy to be endorsed to provide policy limits "per project".

2.2 Policy must name Owner as an additional insured.

2.3 Policy must be endorsed to provide a 30-day notice of cancellation.

2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	$1,000,000
Policy Limit – Disease	$1,000,000
Each Employee – Disease	$1,000,000

Coverage Must Include

3.1 Coverage for all states in which operations are conducted.

3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability

Combined Single Limit (BI & PD)	$1,000,000 per accident

Coverage must include:

4.1 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.

4.2 Policy must name Owner as an additional insured.

5.0 Umbrella Insurance

Limits of Liability

Annual aggregate	$10,000,000
Per Occurrence Limit	$10,000,000

Coverage must include:

5.1 Coverage must be “following form” coverage for all underlying coverages set forth above.

5.2 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.

5.2 Policy must name Owner as an additional insured.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker’s Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide insurance adequate to cover the typical risks for such consultant or subcontractor. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect, reduce or limit the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

10.1 Insurance coverage acceptable to Owner.

10.2 Effective expiration dates of policies.

10.3 Owner must be given thirty (30) days written notice of all cancellation, non-renewable, or material changes in policy.

10.4 A waiver of subrogation endorsement has been attached to all policies.

10.5 Any deductible and/or self-insured retention.

10.6 Any exclusions to the policy which are not part of the standard form.

10.7 Certificate of Insurance title block format is as follows:

_____
_____
_____

SECTION 1- LETTER OF INTEREST

October 27, 2021

Jonathan K. Jacobs, PE
Assistant Town Engineer
111 East Second St
Clayton, NC 27520

RE: Town of Clayton | Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements

Dear Mr. Jacobs:

Crowder Construction Company (Crowder) and our Lead Design Engineer, A. Morton Thomas and Associates, Inc. (AMT) are pleased to submit this Statement of Qualifications to provide Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements. In addition to the original RFQ, we acknowledge receipt of Addendums #1 and #2.

Crowder and AMT have extensive experience designing and building similar pedestrian bridges and a wealth of experience with the design-build delivery method. In addition to Crowder and AMT, our Team includes NV5 for surveys and SUE, F&R for geotechnical, and Three Oaks Engineering for natural resources and permitting. All Team members have a history of working together and are leaders in their respective fields. Our Team is structured to efficiently deliver this project with well-qualified personnel who are dedicated to its success. All key staff members have a thorough understanding of the project, the key issues, and most importantly, how to address them.

This Team is a trusted resource for the Town of Clayton to tailor the final bridge construction to the specific budget and time constraints as outlined in the RFQ.Crowder has been managing alternate delivery contracts for twenty years, completing almost a billion dollars in design build and CMAR projects. Our construction professionals utilize the full resources of a 75-year old construction firm with experience estimating, budgeting, managing, and building each of the design options outlined in our approach.Our relationship with AMT and the other consulting firms is excellent and our Team's value to the Town will be immediately obvious.

Our Team's approach to this project is to serve as a true partner to the Town. We will evaluate the project constraints, risks, and opportunities and make recommendations in the best interest of the Town and the users of the River Walk. We will provide high-quality design and estimating deliverables and efficiently construct the bridges to minimize the closure duration.

George Ellis of Crowder has the authority to sign the contract on behalf of our Team. He will serve as Project Principal and is the primary contact for this pursuit. Serving as Project Manager, Kyle Wiley serve as the primary point of contact for the duration of the project. Stephen Roberts from AMT will serve as our Team's Lead Design Engineer and will manage the design from AMT's Raleigh office. Stephen has been heavily involved in design-build projects for the last 19 years of his 27-year career, is a certified Design-Build professional, and serves on the Design Build Institute of America (DBIA) national Transportation Markets Committee.

In summary, our Team's experience, qualifications, project approach, and understanding of the design-build process makes us a compelling choice for this project. Your consideration of the Crowder Team is greatly appreciated, and we look forward to working with the Town of Clayton.

Sincerely,

George Ellis, Vice President
Heavy Civil Division Manager |Crowder Construction Company
P: 704.332.8184 | E: gellis@crowderusa.com

SECTION 2 – PROJECT ORGANIZATION

LEGEND

- Key Personnel
- Reporting
- Coordination

- Executive
- Design
- Pre-Construction
- Construction
- Quality

EXECUTIVE COMMITTEE

George Ellis, PE CCC
Mike Wiercinski, PE, PLS AMT

PROJECT MANAGER

Kyle Wiley CCC

DESIGN QA / QC AMT

Kyle Rankin, PE
Khoss Babaei, PE, SE

DESIGN MANAGER

Stephen Roberts, PE, DBIA AMT

GREENWAY DESIGN AMT
David Shinbara, PE
Matt Lamy, PE

STRUCTURE DESIGN AMT
Wes Hevener, PE
Marc LeBlanc, PE

HYDRAULICS/E&SC AMT
Mikhail Bhosle, PE, CFM
Greg Fox, PE

GEOTECHNICAL F&R
Patrick Alton, PE
Andrew Frank, PE

SURVEY/SUE NV5
Andy Heath, PLS
Wendell Ball, PLS

PERMITTING 3OE
Michael Wood, LSS, PWS
Jim Mason, PWS

LANDSCAPE ARCHITECTURE
JoAnn Tongson, RLA
Kyle Mundy, RLA, ASLA

PRE-CONSTRUCTION SERVICES MANAGER

Chris Boyd, PE, DBIA CCC

ESTIMATING CCC
David Coe, PE

SCHEDULING CCC
Ryan McGarvey

CONSTRUCTION ALTERNATIVES ANALYSIS CCC
Hans McDonald

CONSTRUCTION MANAGER

Daren Sumner CCC

CONSTRUCTION
Trade Foreman
Safety Manager
Environmental Compliance

SUBCONTRACTORS/DBEs
Erosion Control
Asphalt Paving
Construction Surveying

CROWDER (CCC) AMT (AMT) NV5 BEYOND ENGINEERING (NV5) F&R (F&R) THREE OAKS ENGINEERING (3OE)

SECTION 3 - PROFILE OF TEAM

CROWDER CONSTRUCTION COMPANY | Lead Contractor

Crowder Construction Company (CCC) is a $250 million per year, family-owned business, founded in 1947, that has built bridges, both pedestrian and highway, in North Carolina & South Carolina since 1954. We are headquartered in Charlotte, NC, with over 700 employees in multiple divisions, have a strong financial base, and own a significant bridge construction equipment inventory. The Heavy Civil Division has a tenured and accomplished staff of construction professionals who take great pride in building quality projects safely, while developing superior partnering relationships with owners, other contractors, and stakeholders on the projects we build. Our estimators assemble bids for projects ranging in price from $300K to $80M and can advise pricing for new structures and rehabilitation of older structures.

A. MORTON THOMAS AND ASSOCIATES, INC. | Lead Design Engineer

A. Morton Thomas and Associates, Inc. (AMT) is multidisciplinary engineering firm that continues to rise on ENR's list of top 500 Engineering Firms. AMT has been serving our clients since 1955 and that continues today with over 450 employees and 20 offices located throughout the Mid-Atlantic and Southeast. Our North Carolina operations includes offices in Raleigh and Charlotte, with the management and design of this project taking place primarily in Raleigh. AMT's capabilities include transportation engineering, structural engineering, traffic data collection, analysis, and modeling, site design, surveying, landscape architecture, water resources, utility coordination, environmental services, construction services, and more. We utilize best engineering practices, quality control procedures and management solutions to provide high quality, cost-effective projects to our clients.

NV5 ENGINEERS AND CONSULTANTS | Surveying/SUE

NV5 is a provider of compliance, technology, and engineering consulting solutions for public and private sector clients supporting infrastructure, utility, and building assets and systems. With more than 100 offices and 3,300 employees nationwide and abroad, NV5 helps clients plan, design, build, test, certify, and operate projects that improve the communities where we live and work. For 23 years, NV5 has provided exemplary subsurface utility engineering and survey services across the Southeast.

FROEHLING & ROBERTSON | Geotechnical Engineering (HUB)

Froehling & Robertson, Inc. (F&R) is a multi-disciplinary engineering firm and testing laboratory that offers geotechnical engineering; construction testing & inspection; and environmental consulting services. Established in 1881, F&R is the oldest independent consulting engineering/testing firm in the United States. The Geotechnical Services Division of F&R has a local staff of 20 professional engineers, geologists, engineering technicians and other geo-professionals. Their expertise may be aptly utilized in all phases of the project regarding design, cost, scheduling, and actual construction. In addition to their professional staff, F&R maintains a fleet of drill rigs to perform subsurface exploratory drilling in soil and rock, and an extensive list of geotechnical field-testing equipment. F&R also has geotechnical and materials testing laboratories that are accredited by AASHTO and NCDOT.

THREE OAKS ENGINEERING | Natural Resources & Permitting (DBE, WBE, HUB, SPSF)

Three Oaks Engineering (3OE) is focused on helping clients successfully accomplish infrastructure projects with careful consideration of community and environmental needs. Three Oaks was founded in 2014 and has since grown to a staff of 40 across the Carolinas. Three Oaks offers a broad range of services, including National Environmental Policy Act (NEPA) and state environmental policy act (SEPA) documentation, transportation planning, traffic engineering, community impact assessment (CIA), indirect and cumulative impacts analysis, threatened and endangered (T&E) species surveys (including freshwater mussels and bats), consultation under Section 7 of the Endangered Species Act, ecological/habitat evaluations, essential fish habitat (EFH) analyses, wetland and stream delineations, and environmental permitting.

SECTION 4 - RESUMES

KYLE WILEY | Project Manager

As a Crowder Project Manager, Kyle has proven his ability to effectively manage multiple projects simultaneously. Kyle has significant experience in design build construction in North Carolina. He is responsible for safety, quality, budget and forecasting, project schedule, submittals, as well as communication with owner and personnel on the job. He is responsible for contributing to weekly progress meetings, producing monthly billings to owner, negotiating and writing subcontracts, and negotiating and writing purchase orders for materials acquisition. Kyle brought with him 10 years of experience in large design-build projects with contributions in cost control, project scheduling, subcontract management and estimating. Specializing in structure work, Kyle has worked in field supervision rolls as well as project management. The combination of this experience allows him to easily overcome challenges by offering real world solutions. Kyle will be the primary point of contact for the duration of the project.

EDUCATION:
BS | Construction Management
AS | Industrial Systems Technology

REGISTRATIONS & CERTIFICATIONS:
Crane Signaling and Rigging Certified; NCDOT Erosion Control Certified Level II; ACI Concrete Field Testing Technician; NC Work Zone Traffic

NOTABLE PROJECTS:

- NCDOT C204038 Design Build Madison County - $4M
- NCDOT I-85 Widening Design-Build, Cabarrus County, $125M
- NCDOT I-485 Widening Design-Build, Mecklenburg County, $85M
- VDOT Valley View Bridge Replacement, 2oanoke VA, $38M
- SCDOT Lockhart Multi-bridge & Roadway-$25M
- SCDOT 5485020 - Lockhart Bridges $24M

STEPHEN ROBERTS, PE, DBIA | Lead Design Engineer

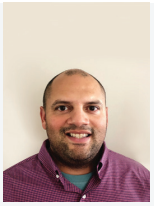
Stephen serves as Director of Transportation Engineering in the southeast and is actively involved AMT's most significant and challenging projects. He is a transportation design professional with over 27 years of experience in the public and private sectors designing, managing, and leading a wide variety of projects. His experience includes traditional NCDOT highway projects, toll facilities, transit, municipal, bicycle & pedestrian, site development, and design-build projects with assignments in North Carolina, South Carolina, Florida, Virginia, and Delaware. As a Director at AMT, Stephen has the authority and ability to draw upon resources companywide to ensure the success of this contract.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 023982; Design Build Institute of America (DBIA)

NOTABLE PROJECTS:

- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- NCDOT Triangle Parkway D/B, Durham & Wake Counties, NC
- Monroe Connector/Bypass D/B, Mecklenburg & Union Counties, NC
- Triangle Parkway D/B, Durham & Wake Counties, NC
- Sandy Forks Road Improvements, City of Raleigh, NC
- Morrisville Parkway Extension / I-540 Western Wake Freeway, Cary, NC



CHRIS BOYD, PE, DBIA | Lead Pre-construction Services Manager

Chris currently serves as the Pre-construction Services Manager for the Heavy Civil Division at Crowder. He manages a staff of estimators in the development of accurate cost estimates for projects ranging from $1M to $90M with scopes that include heavy highway structures, dams, and tunnels. The estimates take into consideration project safety, schedule and budget-labor, equipment, subcontractor and management costs and risks and are for traditional bid-build as well as alternate delivery projects (design build, CMAR, progressive design build). He is well-versed in computer applications, such as AutoCAD, Primavera P6, HCSS Heavy Bid and Blue Beam Revu. Chris will lead the Team GMP development.

EDUCATION:
MS | Real Estate Finance & Development
BS | Construction Engineering & Management

REGISTRATIONS & CERTIFICATIONS:
Profession Professional Engineer: NC | 037358–2010; SC | 34853; USGBC LEED Green Associate; Crowder General Contractor License Qualifier in NC; NC Work Zone Traffic Control Supervisor

NOTABLE PROJECTS:

- SC 9/49 Bridge Replacements, SCDOT | $21M
- Emergency Design Build Package 6 Bluff Rd.,7 | $5.8M
- Hope Station Rd. Over Crim's Creek, SCDOT | $1.6M
- Noisette Creek Bridge Replacements, SCDOT | $8M
- US 78 and SC 7 Bridges, SCDOT | $35M
- Nash County Bridges Completion Contract, NCDOT | $2.4M

DAREN SUMNER | Project Superintendent

Daren has over 20 years construction experience working on heavy civil projects. Daren is a strong leader and has earned the highest respect from his co-workers. His experience has given him a unique perspective regarding the many different aspects and roles involved to make a project successful. Daren's philosophy is to "look at the big picture and realize that everyone is working towards the same goal – to have a safe, high quality, successful project." He has consistently met or exceeded this goal resulting in satisfied owners, engineers, and a team proud of the accomplishment they have achieved. Daren will work with the Team for constructability reviews and Lead the jobsite construction activities.

REGISTRATIONS & CERTIFICATIONS:
Profession Professional Engineer: NC | 037358–2010; SC | 34853; USGBC LEED Green Associate; Crowder General Contractor License Qualifier – NC, SC, GA; NC & SC Work Zone Traffic Control Supervisor

NOTABLE PROJECTS:

- Cary White Oak Pedestrian Trail and Tunnel - $6.3M
- Roanoke Greenway & Pedestrian Bridges - $3.2M
- NCDOT - Trinity Road Pedestrian Tunnel - $4.4M
- NCDOT Div 9 – Multiple Design-Build Bridge Replacements - $13M
- Emergency Temporary Steel Structure (Bridge) Pickens, SC - $1.1M

DAVID SHINBARA, PE | Greenway Design

David Shinbara has 15 years of experience as a Roadway Design Engineer and Project Manager on transportation projects at the planning, final design, and construction phases. David has led multi-discipline design teams on large projects and his experience includes bicycle and pedestrian facilities, new roadways, urban widening, streetscapes, interchanges, feasibility studies, work zone traffic control, constructability reviews, and construction administration.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 046269

NOTABLE PROJECTS:

- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- Rogers Road Bridge Replacement (NCDOT) ,Wake County, NC
- Pulley Town Road Bridge Replacement (NCDOT), Wake County
- Shepard School Road Bridge Replacement (NCDOT), Wake County, NC
- Hillsborough Street Revitalization Phases 1 & 2, Raleigh, NC
- New Bern Avenue Improvements, Raleigh, NC

WES HEVENER, PE | Structural Design

Wes has over 19 years of experience in the design and development of bridge projects. Those projects have ranged from simple to complex in nature with project delivery methods varying from traditional Design-Bid-Build to Design-Build/P3. His responsibilities have included bridge design and rating, structure design, NBIS bridge inspections, structural analysis, and transportation design. In a Project Manager role, he has been responsible for the bridge and roadway design review, right-of-way, environmental permitting, hydraulic and geotechnical design review, invoicing, and project CPM adherence.

EDUCATION:
MS | Civil Engineering; MBA | Business Administration; BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 036583

NOTABLE PROJECTS:
- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- Van Voorhis Road Bridge (WVDOH) - Monongalia County, WV
- Kimball Slab Bridge (WVDOH) - McDowell County, WV
- Lower Blaine Island Bridge Replacement, South Charleston, WV
- Henrietta Bridge (WVDOH) - Calhoun County, WV
- Kanawha Falls Bridge (WVDOH) - Fayette County, WV

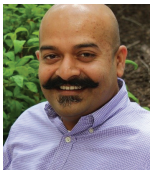
KYLE RANKIN, PE | QA/QC

Kyle has 18 years of structural engineering experience for transportation and pedestrian facilities throughout the Eastern US for state and local agencies. He has served as the structural engineer for numerous, bridges, culverts, and retaining walls with several project delivery methods. His responsibilities have included design, analysis, and plan preparation of various structures; design and plan review of consultant prepared projects; construction specifications; and bridge inspection.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 043438

NOTABLE PROJECTS:
- Blue Ridge Road Bike/Pedestrian Improvements, Raleigh, NC
- Old Cameron Run Trail Pedestrian Bridge, City of Alexandria, VA
- Nauck Town Square Pedestrian Bridges, Arlington, VA
- Multi-Use Trail over Buffalo Creek, Town of Farmville, VA
- North Park Loop Trail over Lilly Run, Harford County, MD
- Central Avenue Connector Trail, Phase II – Prince George's County, MD



MIKHAIL BHOSLE, PE, CFM | Hydraulics/E&SC

Mikhail has 19 years of experience performing Hydrology and Hydraulics (H&H) studies for projects involving detailed H&H analysis. Mikhail will lead our team's hydrologic and hydraulics (H&H) modeling floodplain studies and coordination with the town and FEMA for development in the Neuse River floodplain. He leads a team of water resources engineers and certified floodplain managers (CFMs) with extensive experience in detailed H&H analysis for bridge and culvert projects and with floodplain permitting with local floodplain managers and FEMA for CLOMR and LOMR acceptance.

EDUCATION:
MS | Civil Engineering; BS | Civil Engineering

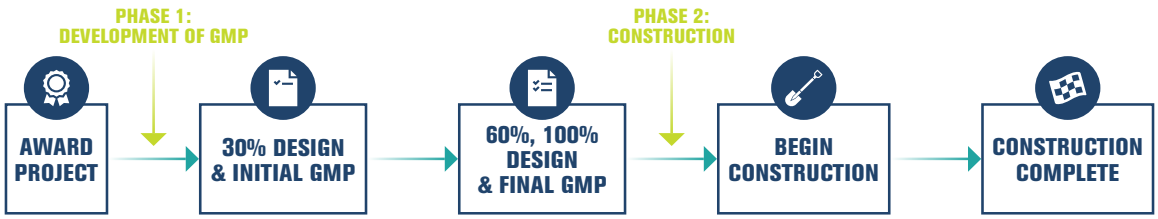
REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: VA | 0402053286; CFM | US-15-08334

NOTABLE PROJECTS:
- Buffalo Creek Pedestrian-Bicycle Bridge & Trail Connections, Farmville, VA
- College Park Woods Connector Trail Bridge, Prince George's County, MD
- Hessong Bridge Road over Little Hunting Creek, Frederick County, MD
- McClanahan Bridge, Putnam County, WV
- Henson Creek Pedestrian Bridge, Prince George's County, MD
- Corker's Creek Trail Pedestrian Bridge, Snow Hill, MD

SECTION 5 - PROJECT APPROACH & SCHEDULE

5.1 - PROJECT UNDERSTANDING & APPROACH

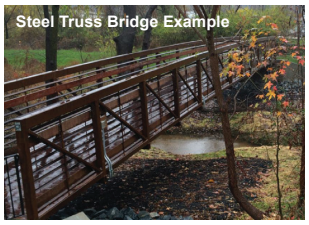
The Crowder Team has a thorough understanding of the existing conditions at the bridge sites, as well as the project constraints, challenges, and opportunities. The constraints include a budget of $850,000, 180-day maximum closure duration, a Guaranteed Maximum Price (GMP) established by January 2022, and completion by May 2023. We have structured our Team and prepared a schedule to address these issues efficiently and responsibly while reducing risk for the Town. Our Team is organized into three distinct groups – design, pre-construction services, and construction. All three groups will work together with the Town to develop designs, pricing, schedule, and contingency within the process outlined below.



PHASE 1 – DEVELOPMENT OF GMP

30% Design and Initial GMP: After the project is awarded, we will begin initial investigations, including geophysical testing, environmental review, and FEMA modeling. During this phase, it will be critical to determine the appropriate bridge type. We anticipate this being a collaborative process with the Town, considering issues such as cost, schedule, constructability, and long-term maintenance. The table below summarizes several potential structure types that we anticipate studying in more detail with the Town.

Structure Type	Advantages	Disadvantages	Comments
Prefabricated, Weathered Steel Truss Bridge	– Minimal environmental impacts – Reduced construction duration – Single span eliminates scour concerns – Durable and long-lasting – Aesthetics blend well with the natural landscape	– Long, prefabricated spans make transporting and access to sites difficult – Long spans necessitate the use of a large crane, creating additional access challenges	To improve constructability, bridge segments between 10' and 20' can be shipped, assembled, and erected near the bridge site with light duty cranes
Prefabricated, Fiber Reinforced Polymer (FRP) Bridge	– Same advantages as Prefabricated, Weathered Steel Truss – Corrosion-resistant, light-weight material reduces long-term maintenance costs and simplifies construction – Bridge segments can be shipped and constructed on site, even stick-built	– FRP material can be more costly to fabricate	Deck surface options are available to include FRP, wood, or composite material
Concrete-Decked Bridge	– Multiple span bridges improve constructability – Fewer spans required than existing bridges – Reduced long-term maintenance costs	– Multiple spans do not eliminate scour concerns – CLOMR/LOMR possibly required	Permatrak- primary vendor of this product
Reinforced Concrete Box Culvert (RCBC)	– Reduced cost as compared to bridge options – Improved construction access as compared to bridge options	– Increased environmental impacts – CLOMR/LOMR required	With increased environmental impacts and FEMA requirements, schedule is a major factor

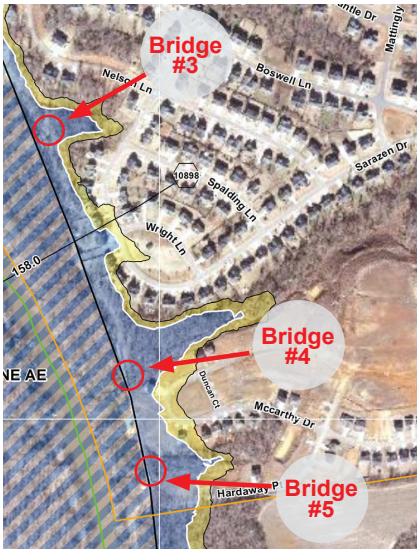

Steel Truss Bridge Example

FRP Bridge Example

Concrete-Decked Bridge Example

Culvert Example

Another critical component that must be considered at the 30% stage is floodplain permitting with the Town of Clayton and FEMA coordination as the project is located within the 100-yr floodplain and is adjacent to the Neuse River floodway. The design will be in accordance with the National Flood Insurance Program (NFIP) as administered locally by the Town of Clayton through their Flood Damage Prevention Ordinance to avoid and minimize impacts to the floodplain. The replacement of the bridges is not anticipated to impact the Neuse River Base Flood Elevation (BFE) and require a map revision but an application to FEMA to show a no-rise condition is anticipated. If FEMA deems that the Neuse River floodway is being encroached upon then the CFR 65.12 process will be followed to certify no structures are impacted.



In evaluating the FEMA Flood Insurance Rate Map, the 100-year floodplain is relatively flat between the elevations of 317' and 318' on the Neuse River and the floodplain extends up the tributaries crossed by the bridges. Based on available information and our site visit, the creeks themselves do not carry significant flow but the Neuse River likely overtops the bridges and portions of the trail. Our Team is prepared model the potential structures mentioned above and to study the resulting impacts on bridge lengths, bridge heights, and ideally carry forward options that are cost effective and maintain a no-rise condition.

Once 30% designs have been developed, Crowder estimating staff will perform quantity take-offs and solicit material vendors as well as subcontractors. As we have done in past on progressive design-build contracts, the team will walk through our bid item cost as well as the risk with the Town of Clayton to develop an Initial GMP, on or around the end of January 2022.

60%, 100% Design, & Final GMP: After the Initial GMP has been established, the team will move forward with the second stage of design, 60% plans. At this time, we will determine foundation layouts, final bridge locations, and obtain environmental permits. Our estimating team will confirm we are still within the initial GMP, highlighting any changes or new risk areas for the Town. After the 60% milestone, The Team will make all remaining permit applications and AMT will move forward with 100% design, final permitting and Release for Construction (RFC) Plans. The cost estimate and construction schedule will be finalized, lowering cost and schedule risks even further. It is at this point, in coordination with the Town, that our Team will provide the Final GMP.

PHASE 2 - CONSTRUCTION

Once the Final GMP is agreed upon, the Team will move into the Construction Phase. It will be critical to begin procurement of the bridges as quickly as possible; as material availability, pricing, and supply chain are all significant risks, and the bridge can have as much as a six-month lead time. An outline of anticipated construction activities is provided below:

- Establish temporary access and lay down areas at the three locations (Nelson Ln., Sarazen Dr., and Hardaway Point)
- Once materials are on site and all permits are in place, we will close the bridges, install erosion control measures, clear and grub, and remove existing structures
- Structure excavation will be performed at the end bents and foundations will be installed, including cast in place concrete caps
- Once bridge fabrication is complete and checked for quality, bridges will be shipped, and erected and final grading tie-ins can be made
- Final paving and seeding will be performed, and the trail will be reopened to pedestrian traffic.

5.2 - KEY RISKS

At the beginning of the project, our Team will prepare a risk matrix beginning with the risks identified preliminarily below. Working with the Town, we will determine how to best address the risks and assign the appropriate contingency amounts. At each design milestone, the matrix will be updated and refined until the Final GMP is established. A summary of the project risks is presented below.

Key Risk #1	
	Utility Conflicts
	Within the project limits, a Town of Clayton sanitary sewer main runs along the east side of the River Walk near the existing bridges at all three sites. Impacting the sewer during construction could have cost, schedule, and service implications.
	Mitigation Strategies
	Perform Level A SUE: It will be critical to determine the exact location, both horizontally and vertically to eliminate the risk of damaging the sewer main during construction. Having detailed location information will inform the design and construction decisions of our Team.
	Early Coordination with the Town's Water and Sewer Department: Our Team will partner with Clayton's Water and Sewer Department to understand their requirements for access, maintenance, and operations.

Key Risk #2	
	River Walk Closure Duration
	Per the Design-Build criteria memo, our Team understands the bridges are to be closed for a maximum of 180 days during construction. To reduce the risk of extended closures and improve communication with users of the River Walk, we will employ the following strategies.
	Mitigation Strategies
	Efficient Scheduling: Demolition and construction will only begin once permits are acquired, access and lay-down areas are in place, and materials are available for construction. Once construction starts, we commit to a continuous work schedule to complete and open the new bridges as soon as possible.
	Self-Imposed Liquidated Damages: Our Team is open to discussions with the Town regarding reasonable liquidated damages.
	Enhanced Communication with Community: The Crowder Team is committed to effective communication with all users of the River Walk. We will provide advanced notice of the River Walk closure and will work with the Town to keep the public informed of the construction schedule.
	Offsite Detour Route: Bridges 4 and 5 could potentially be constructed first with a closure duration less than 180 days. Bridge 3 would then be constructed, utilizing an offsite detour route along Nelson Lane and Sarazen Drive. With this scenario, a complete closure of the greenway would be minimized.

Key Risk #3	
	Environmental Permitting
	We anticipate the need for a Section 404 Nationwide 3 permit and the corresponding 401 Water Quality Certification. A Neuse Riparian buffer authorization will also likely be required. This could change to a Section 404 Nationwide 14 if it is decided to replace the bridges with culverts. Because these permits are issued by third parties, there is a potential risk to the schedule.
	Mitigation Strategies
	Communication & Completeness: Engage regulatory agencies as soon as possible in the design stage to make them aware of the project and studies being performed (i.e., T&E aquatic surveys). Ensure all submittals are 100% complete and provide the information required for the agencies to authorize the permits.
	Environmental Compliance: We understand that environmental stewardship and compliance are paramount throughout construction. To that end, we will develop a customized Environmental Compliance Monitoring Plan. This is an easy-to-read document that notes the specific project conditions and commitments that will warrant the most monitoring and contractor awareness during construction.

Key Risk #4	
	Skilled Labor Availability
	There is currently a shortage of skilled labor in the Raleigh metropolitan area, including Clayton. This is exacerbated by the many highway projects currently under construction.
	Mitigation Strategies
	Utilize Skilled Labor from Other Projects: Skilled labor from Crowder is currently completing two nearby projects and will be available to assign to the Clayton River Walk bridges when construction begins. Eight to ten people will be available from Fort Bragg Pedestrian Bridge and five to six people from Gateway Station, both of which will be completed in the first quarter of 2022.

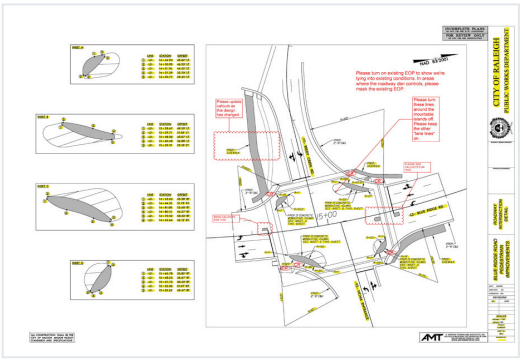
Key Risk #5	
	Access to Bridge Sites
	Even though access exists from Nelson Ln., Sarazen Dr. and Hardaway Point, long, prefabricated spans make transporting and access to sites difficult, especially within the Riverwood Subdivision and along the River Walk. Large cranes, required for construction, create additional access challenges.
	Mitigation Strategies
	Alternate Construction Methods: To improve constructability, bridge segments between 10' and 20' can be shipped, assembled, and erected near the bridge site with light duty cranes.
	Alternate Structure Types: As discussed previously, there are other structure types worth considering, including Fiber Reinforced Polymer (FRP), concrete-decked bridges, and reinforced concrete box culverts.Use of these alternate structure types, in conjunction with alternate construction methods has the potential to greatly improve site access.

Key Risk #6	
	Material Availability & Cost Escalation
	Due to the current unprecedented demand in the general construction market, paired with the supply restrictions stemming from a multitude of supply chain disruptions over the last two years, material has become scarce and the cost of available material has escalated far beyond usual inflationary rates.
	Mitigation Strategies
	Early Purchase Orders: The primary focus of our Project Manager at the start of the project will be to lock in pricing and shop availability with all of our material suppliers. This will be done by focusing energy on issuing as many PO's and Subcontracts as we can directly after NTP.
	Early Fabrication: Fabricating and collecting materials will occur as early as possible in the project. Materials that can be purchased and stored in clean and/or dry storage will be procured and billed early.

5.3 - DESIGN QUALITY ASSURANCE & QUALITY CONTROL

AMT will follow our proven Design Quality Plan (DQP) to assure that plans, specifications, and documents are technically correct and follow the applicable standards, guidelines, and policies for the Town of Clayton Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements project. AMT's DQP will also be followed by our subconsultants and relies heavily on four basic components:

- **Identify Critical Information:** At the onset of the project, Stephen Roberts, PE, DBIA will work with the Team to identify all checklists, manuals, guidelines and protocols that are applicable to the project and to each milestone deliverable.
- **Prepare Check:** Prior to submittals, our calculations and plans will go through a thorough "check" process to ensure the quality goals are achieved. Every sheet of the plan-set will be stamped and signed off by the individuals that prepared, reviewed, revised, and approved that sheet.
- **Perform of Interdisciplinary Reviews:** Prior to every submittal, the plans will be reviewed by other applicable discipline leaders to ensure the designs are consistent and that no conflicts exist. As the project manager, Stephen Roberts will ensure all relevant disciplines are included and take part in this process.
- **Perform Quality Assurance Functions**: Kyle Rankin, PE will serve as the QA/QC Manager and will perform independent audits of the project to ensure the basic steps identified above are being followed by our entire Team.



5.4 - TRACK RECORD OF DELIVERING PROJECTS

Both Crowder and AMT have strong track record of delivering projects on schedule and on budget. See below for our reference projects:

Project Name	Design & Construction Change Orders for Reference Projects			Schedule in Months	
	Initial Contract Price	Final Contract Price	Notes	Original	Actual
Toxaway Design- Build Pedestrian Bridge	$975,000	$982,000	Additional owner requested scope-replacing stringers, needle beams, handrail and stair treads	6	5
Roanoke Pedestrian Trail	$3,207,694	$4,224,919	Design changes by owner required additional geotechnical work for foundations including ground modifications	11	11
Hampton Ave Pedestrian Bridge over NS Railroad	$1,431,702	$1,389,579	Cost-Quantity adjustments; Time - NS Railroad window for bridge placement delayed by RR	10	11
Blue Ridge Road Pedestrian Bridge	$558,012	$639,057	Scope Change	12	12
Pedestrian Bridge over Smith Creek	$257,736	$257,773	--	30	30

5.5 - REGULATORY AGENCY EXPERIENCE

Our Team has extensive experience with the regulatory agencies likely to be involved with this project.We anticipate the agencies and permits to be:

- **US Army Corps of Engineers (USACE)** – Clean Water Act Section 404 Nationwide Permit 3
- **North Carolina Division of Water Resources (DWR)** – Clean Water Act Section 401 Water Quality Certification
- **North Carolina Division of Water Resources (DWR)** – Neuse Riparian Buffer Authorization
- **Town of Clayton** – Erosion Control Permit
- **Town of Clayton** – Floodplain Development Permit
- **Federal Emergency Management Administration (FEMA)** - Either a No-Impact Statement or a Conditional Letter of Map Revision (CLOMR)

Neuse River Adjacent to River Walk

Three Oaks Engineering will be responsible for obtaining environmental permits for our Team.They have a staff of 40 across the Carolinas and have been obtaining environmental permits across the southeast since 1996.Three Oaks has two licensed aquatic biologists that can perform aquatic species surveys, along with a licensed bat specialist and several staff with extensive plant, bird, and terrestrial animal survey experience that complete all other required species surveys for the project.Jurisdictional delineations will be led by one of Three Oaks' three Professional Wetland Scientists. All information will be compiled into a Natural Resources Technical Memorandum (NRTM), including mapping of the project.

Mikhail Bosle, PE, CFM from AMT, will lead our team's Hydraulics modeling/floodplain studies and coordination with the town and FEMA for development in the Neuse River floodplain. He leads a team of water resources engineers and certified floodplain managers (CFMs) with extensive experience in detailed H&H analysis for bridge and culvert projects and with floodplain permitting with local floodplain managers and FEMA for CLOMR and LOMR acceptance.

5.6 - USE OF TECHNOLOGY

The Crowder Team will make use of the latest technology during the design and construction phases of the project. Our Team is well-versed in the use of analysis, design, and estimating software, and most importantly, technology that improves communication with the Owner and the public. A summary of these technologies and how they will be used is provided below.

Design & Analysis	
MicroStation V8	Drafting package for preparation of design plans and details
LEAP Bridge Concrete	Design and analysis software for concrete foundations
ArcGIS	Data visualization; advanced analysis; and authoritative data maintenance in 2D, 3D & 4D
HEC-RAS	Stream analysis software
Communication & Data Sharing	
Bentley ProjectWise	Data management system used for collaboration among design and construction team members. Town of Clayton staff can also be given access to streamline sharing of information.
Adobe After Effects	Digital visual effects and motion graphics application used in the post-production process of video. Used frequently to provide project information to the public.
Bluebeam REVU	Plan review, measurement & markup tool
Primavera P6	CPM Scheduling to include design and construction activities. Schedule will be updated regularly, with four-week lookahead schedules discussed at progress meetings with the Town.The schedule can also be cost loaded to serve as a check for our monthly billings.
Estimating & Construction	
HCSS	Detailed cost estimate development tool
AGTEK	Soils takeoff system for bid development
Procore	Construction documentation and RFI/submittals management system
COINSOA	Auditable accounting and HR database for real-time job costs/budgets

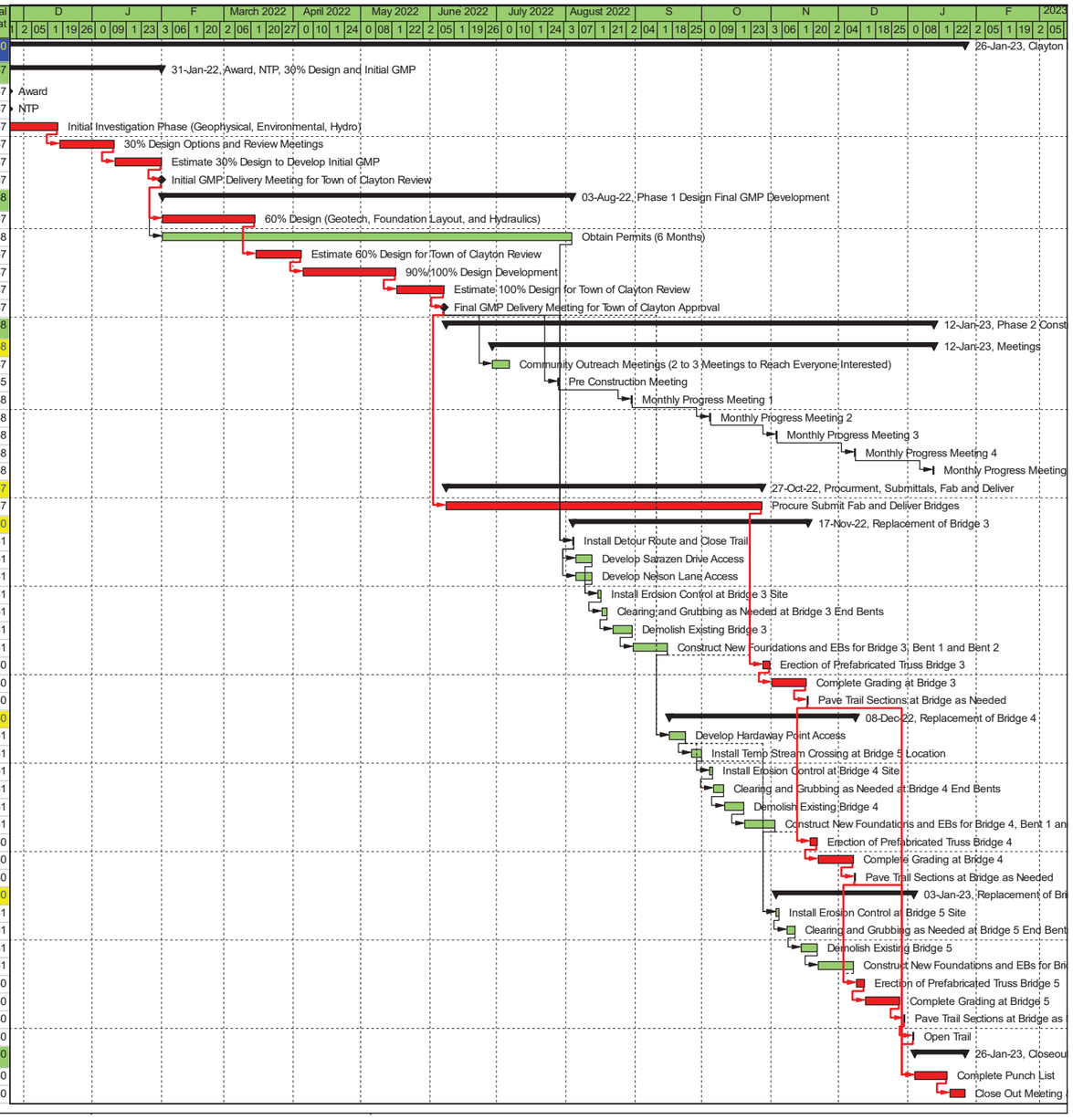
5.7 - PROJECT SCHEDULE

The schedule presented on the following page factors in adequate time for design, permitting, reviews, coordination with the Town, and construction. The implementation of Initial and Final GMP is critical to the success of the project. This approach allows our Team to establish an early GMP and then to refine it, reduce cost, and reduce risk as the Final GMP is developed. With this schedule, **we propose a total closure time of 158 days, 23 days less than the allowable 180 days.** The major milestones of our schedule are summarized below:

- Initial GMP: January 31, 2022
- Final GMP: June 7, 2022
- Delivery of Bridge Components: October 27, 2022
- Opening of the River Walk: January 3, 2023

5.7 - PROJECT SCHEDULE (continued)

Activity ID	Activity Name	Original Duration	Start	Finish	Total Float
Clayton Riverwalk Bridge Replacements PDB Proposal Scheudle		268	24-Nov-21	26-Jan-23	60
Award, NTP, 30% Design and Initial GMP		45	24-Nov-21	31-Jan-22	67
ANTPIG-1000	Award	0	24-Nov-21		67
ANTPIG-1010	NTP	0	24-Nov-21		67
ANTPIG-1020	Initial Investigation Phase (Geophysical, Environmental, Hydro)	15	24-Nov-21	16-Dec-21	67
ANTPIG-1030	30% Design Options and Review Meetings	15	17-Dec-21	10-Jan-22	67
ANTPIG-1040	Estimate 30% Design to Develop Initial GMP	15	11-Jan-22	31-Jan-22	67
ANTPIG-1050	Initial GMP Delivery Meeting for Town of Clayton Review	0		31-Jan-22	67
Phase 1 Design Final GMP Development		130	01-Feb-22	03-Aug-22	68
PH1FG-1000	60% Design (Geotech, Foundation Layout, and Hydraulics)	30	01-Feb-22	14-Mar-22	67
PH1FG-1010	Obtain Permits (6 Months)	130	01-Feb-22	03-Aug-22	68
PH1FG-1020	Estimate 60% Design for Town of Clayton Review	15	15-Mar-22	04-Apr-22	67
PH1FG-1030	90%/100% Design Development	30	05-Apr-22	16-May-22	67
PH1FG-1040	Estimate 100% Design for Town of Clayton Review	15	17-May-22	07-Jun-22	67
PH1FG-1050	Final GMP Delivery Meeting for Town of Clayton Approval	0		07-Jun-22	67
Phase 2 Construction		138	08-Jun-22	12-Jan-23	68
Meetings		124	29-Jun-22	12-Jan-23	68
M-1000	Community Outreach Meetings (2 to 3 Meetings to Reach Everyone Interested	5	29-Jun-22	06-Jul-22	187
M-1010	Pre Construction Meeting	1	28-Jul-22	28-Jul-22	65
M-1020	Monthly Progress Meeting 1	1	30-Aug-22	30-Aug-22	68
M-1030	Monthly Progress Meeting 2	1	04-Oct-22	04-Oct-22	68
M-1040	Monthly Progress Meeting 3	1	03-Nov-22	03-Nov-22	68
M-1050	Monthly Progress Meeting 4	1	08-Dec-22	08-Dec-22	68
M-1060	Monthly Progress Meeting 5	1	12-Jan-23	12-Jan-23	68
Procurment, Submittals, Fab and Deliver		100	08-Jun-22	27-Oct-22	67
PSFD-1000	Procure Submit Fab and Deliver Bridges	100	08-Jun-22	27-Oct-22	67
Replacement of Bridge 3		67	04-Aug-22	17-Nov-22	60
PH2CON-1000	Install Detour Route and Close Trail	1	04-Aug-22	04-Aug-22	61
PH2CON-1010	Develop Sarazen Drive Access	5	05-Aug-22	12-Aug-22	61
PH2CON-1020	Develop Nelson Lane Access	5	05-Aug-22	12-Aug-22	61
PH2CON-1030	Install Erosion Control at Bridge 3 Site	2	15-Aug-22	16-Aug-22	61
PH2CON-1040	Clearing and Grubbing as Needed at Bridge 3 End Bents	3	17-Aug-22	19-Aug-22	61
PH2CON-1050	Demolish Existing Bridge 3	6	22-Aug-22	30-Aug-22	61
PH2CON-1060	Construct New Foundations and EBs for Bridge 3, Bent 1 and Bent 2	10	31-Aug-22	15-Sep-22	61
PH2CON-1130	Erection of Prefabricated Truss Bridge 3	2	28-Oct-22	31-Oct-22	60
PH2CON-1140	Complete Grading at Bridge 3	10	01-Nov-22	16-Nov-22	60
PH2CON-1180	Pave Trail Sections at Bridge as Needed	1	17-Nov-22	17-Nov-22	60
Replacement of Bridge 4		53	16-Sep-22	08-Dec-22	60
PH2CON-1070	Develop Hardaway Point Access	5	16-Sep-22	23-Sep-22	61
PH2CON-1080	Install Temp Stream Crossing at Bridge 5 Location	5	26-Sep-22	30-Sep-22	61
PH2CON-1090	Install Erosion Control at Bridge 4 Site	2	04-Oct-22	05-Oct-22	61
PH2CON-1100	Clearing and Grubbing as Needed at Bridge 4 End Bents	3	06-Oct-22	10-Oct-22	61
PH2CON-1110	Demolish Existing Bridge 4	6	11-Oct-22	19-Oct-22	61
PH2CON-1120	Construct New Foundations and EBs for Bridge 4, Bent 1 and Bent 2	10	20-Oct-22	02-Nov-22	61
PH2CON-1190	Erection of Prefabricated Truss Bridge 4	2	18-Nov-22	21-Nov-22	60
PH2CON-1200	Complete Grading at Bridge 4	10	22-Nov-22	07-Dec-22	60
PH2CON-1220	Pave Trail Sections at Bridge as Needed	1	08-Dec-22	08-Dec-22	60
Replacement of Bridge 5		36	03-Nov-22	03-Jan-23	60
PH2CON-1150	Install Erosion Control at Bridge 5 Site	2	03-Nov-22	04-Nov-22	61
PH2CON-1160	Clearing and Grubbing as Needed at Bridge 5 End Bents	3	08-Nov-22	11-Nov-22	61
PH2CON-1170	Demolish Existing Bridge 5	6	14-Nov-22	21-Nov-22	61
PH2CON-1210	Construct New Foundations and EBs for Bridge 5, Bent 1 and Bent 2	10	22-Nov-22	07-Dec-22	61
PH2CON-1230	Erection of Prefabricated Truss Bridge 5	2	09-Dec-22	12-Dec-22	60
PH2CON-1240	Complete Grading at Bridge 5	10	13-Dec-22	28-Dec-22	60
PH2CON-1250	Pave Trail Sections at Bridge as Needed	1	30-Dec-22	30-Dec-22	60
PH2CON-1260	Open Trail	1	03-Jan-23	03-Jan-23	60
Closeout and Punch List		15	04-Jan-23	26-Jan-23	60
CPL-1000	Complete Punch List	10	04-Jan-23	18-Jan-23	60
CPL-1010	Close Out Meeting & Demob	5	20-Jan-23	26-Jan-23	60



TOXAWAY DESIGN- BUILD PEDESTRIAN BRIDGE | Sapphire, NC (Crowder)

After a bridge inspection revealed severe deterioration of various components, Crowder Construction Company with KCI as lead designer, was chosen as the best value team by a large, private-utility client for Design-Build Repairs of this 224' pedestrian suspension bridge. Our team vetted multiple ideas including flying in a replacement with helicopters and building a truss bridge. Ultimately, we replaced the bridge superstructure with fiberglass components while reusing existing suspension cables, foundations, and reinforced anchor blocks, kept the bridge operational during construction, and provided a safe solution that prolongs the life of the structure. The project was in a remote location on Lake Jocassee in the Gorges State Park just inside of North Carolina. There is no vehicle access, so barges were used to float material, equipment, tools, and supplies to the job-site. A boat was used to transport personnel to the site daily. The project has won multiple awards for innovation and environmental impact.

Owner: Local Private Owner: Ryan Snitker, PM | 703.935.6271	**Client Contact:** KCI Technologies, Inc. | Andrew Craig, PE | 980-288-6762 | Andrew.craig@kci.com
Initial Contract Amount: $925,000 **Final Contract Amount:** $982,000	**Project Duration:** Started: 4/10/2019 **Completed:** 9/9/2019
Project Team: Mitch Brinkley | Asst. Project Manager; William Culbertson | Site Superintendent; George Ellis,PE | Division Manager; John Tuschak, DBIA | Operations Manager	

ROANOKE RIVER GREENWAY, BRIDGE THE GAP, PHASE II | Roanoke, VA (Crowder)

The Roanoke River Greenway is a $4 million multiple Pedestrian bridge and trail project. This Heavy Civil project, with the City of Roanoke in Virginia, involves roughly 2,500 LF of greenway trail along the Roanoke River with three prefabricated pedestrian structures to provide the public with a safe place to exercise and enjoy the scenery of the city and the landscape of the river side. Each bridge was prefabricated by Big R Bridge and arrived in sections. Each bridge is 12' wide however; the lengths vary with Bridge 1 being 79' – 8 ½", Bridge 3 being 112' – 11 ½", and Bridge 2 is the largest spanning 220' across the Roanoke River. Once delivered, Crowder made all necessary splices prior to setting the bridges in place on the drilled shaft foundation piers and installed Brazilian hardwood timber decking. This project was completed four months ahead of schedule despite early project challenges. The team encountered geotechnical issues which required redesign of some of the drilled shafts. Crowder, the Owner, and Engineer collaborated to determine a remedy. Additionally, tight site access and a largely unforeseen need to deal with contaminated soils meant the double handling of some material. Through planning and communication, Crowder was able to maintain a safe working environment on the site and coordinate the disposal of contaminated material. The job is an extension of a project that Crowder completed in March 2012 for the US Army Corp of Engineers.

Owner: City of Roanoke	**Client Contact:** Luke Pugh, PE | 540.853.5208 | luke.pugh@roanokeva.gov
Initial Contract Amount: $3,207,694 **Final Contract Amount:** $4,224,919	**Project Duration:** Started: 7/10/2017 **Completed:** 4/13/2018
Project Team: George Ellis | Division Manager; Seth Bennett | Project Manager; Michael Wilson | General Superintendent; Jeff Lucas | Project Engineer; Daren Sumner | Project Superintendent; John Tuschak, DBIA | Operations Manager	

HAMPTON AVENUE EXTENSION PEDESTRIAN BRIDGE OVER NSRR | Greenville, SC (Crowder)

Crowder was the contractor for this project placing a 161' pedestrian bridge over 9 railroad tracks. Project included installing new drainage pipe and boxes down Hampton Ave and placing sidewalk to access the new bridge. This pedestrian bridge provides safe access to shopping, church etc. for a large community.

Owner: Greenville County, SC	**Client Contact:** Hesha Gamble | 864.467.4612 | hgamble@greenvillecounty.org
Initial Contract Amount: $1,431,119 **Final Contract Amount:** $1,389,579	**Project Duration**: Started: 2/1/19 **Completed:** 1/30/20
Project Team: George Ellis,PE | Division Manager; John Tuschak |Operations Manager; Mitch Brinkley | Assistant Project Manager| Michael Wilson | Superintendent; William Culbertson | Project Superintendent	

BLUE RIDGE ROAD PEDESTRIAN BRIDGE | Raleigh, NC (AMT)

The City of Raleigh selected the AMT Team, to provide professional engineering design services, right of way plats, final construction plans, and contract bid documents for the bicycle and pedestrian improvement project located near the heart of Downtown Raleigh. The project consists of designing a 10' multi-use path along the half mile stretch of road, including the design of North Carolina's first Protected Intersection, designing a gateway-pedestrian bridge that crosses Wade Avenue - six-lane, controlled-access freeway entering Downtown Raleigh, and extensive stakeholder outreach.

The project was divided into two phases: 1) a feasibility study and 2) the final design/contract document phase. Design disciplines include survey, multi-use path, roadway, hydraulic and structure design, public outreach and engagement, visualizations, completion of environmental document, permitting, traffic and pedestrian signal design, geotechnical, utility coordination, easement exhibits/deed descriptions, final construction plans, and development of contract bid documents. Given the design of North Carolina's first Protected Intersection, close coordination with the City and NCDOT was required early and often during the design process. Due to the nature of the gateway pedestrian bridge over Wade Avenue, AMT led stakeholder coordination to ensure input was received from major stakeholders, including NC State University, NC Museum of Art, NC Fairgrounds, Blue Ridge Corridor Alliance, and NCDOT.

The $4.6M dollar project is a Local Administered Project (LAP) receiving Federal funding and is being administered by the City of Raleigh along an NCDOT maintained road. Given the nature of Federal funding, the City asked to receive construction authorization before the end of FY20 (September). In order to accomplish this, AMT Project Manager Nick Ramirez, PE monitored the schedule/budget and scheduled weekly progress meetings with the design team. In addition to monthly status calls with the City, constant communication with the City has been maintained during the design process to ensure the aggressive schedule was met. Thus far, project submittals, stakeholder engagement meetings, and other deliverables have been completed ahead of schedule. The environmental document was submitted and initially reviewed by NCDOT in approximately 5 months.

Owner: City of Raleigh	**Client Contact:** Brian Roth-Roffy, PE | 314.596.7360 | brian.roth-roffy@raleighnc.gov
Initial Contract Amount: $925,000 **Final Contract Amount:** $982,000	**Project Duration:** Started: 4/10/2019 **Completed:** 9/9/2019
Project Team: Stephen Roberts, PE, DBIA | Quality Control Manager; David Shinbara, PE | Greenway Design; Sam MacDonald, PE | Hydrology/ E&SC; Kyle Rankin, PE | Structural Engineer; Patrick Alton, PE | Geotechnical Engineer (F&R)	

PEDESTRIAN BRIDGE OVER SMITH CREEK | Clifton Forge, VA (AMT)

AMT provided engineering design and related services for a pedestrian bridge that crosses Smith Creek in downtown Clifton Forge as part of the Smith Creek Trail Corridor in FEMA Zone AE. The bridge replaced a non-ADA compliant pedestrian bridge linking Segments 2 and 3 of the Smith Creek Trail at the end of Pine Street. The $410,000 federally-funded project was locally administered in completed in accordance with the Local Assistance Program (LAP) manual and other VDOT standards and specifications. The new single-span pedestrian bridge crosses the creek perpendicular to the channel banks (not skewed) to reduce floodplain and wetland impacts.

Scope of work included the following: Preliminary Site Plan and Scoping; Development of Construction Plans (which included a demolition plan for the existing bridge, an open specification for truss bridge manufacturers and supporting calculations for the abutment design); Structural Engineering; Topographic Survey; NEPA Documentation; Permitting; Bid Package; Construction Engineering; and Geotechnical Engineering provided by a subconsultant. AMT also coordinated and oversaw the quality assurance of the HECRAS model (Duplicate Effective Model, DEM) which was used for this No-Rise Analysis. Crucial duties included supervision of road design engineers and River Hydraulic engineers, performing QC checks of field survey data, monitoring project documentation, reviewing project finances, assisting design group collaboration, and resolving data and imagery disputes.

Owner: Town of Clifton Forge, VA	**Client Contact:** Darlene Burcham | 540.863.2500 | dlburcham@cliftonforgeva.gov
Initial Contract Amount: $87,632.40 **Final Contract Amount:** $96,236	**Project Duration**: Started: 6/10/2019 **Completed:** 07/2020
Project Team: Kyle Rankin | Structural Engineering; Khoss Babaei, PE | Structural Engineering	

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

Identification of HUB Certified/ Minority Business Participation

I, Crowder Construction Company/AMT Progressive Design-Build Team
(Name of Bidder)
do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work Type	*Minority Category	**HUB Certified (Y/N)
Three Oaks Engineering 324 Blackwell Street, Ste 1400, Durham, NC	Env. Permitting	W	Y
Froehling & Robertson Inc. 310 Hubert St., Raleigh, NC	Geotech	AI	Y

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be ($)_____.

MBForms 2002-Revised July 2010

State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of North Carolina

(Name of Bidder)

Affidavit of Crowder Construction Company

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

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

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: 10/27/2021 Name of Authorized Officer: George F. Ellis

Signature: George F Ellis

Title: Vice President

TERESA W. MATTHEWS NOTARY PUBLIC SEAL GASTON COUNTY, N.C.

State of NC, County of Mecklenburg

Subscribed and sworn to before me this 27th day of October 2021

Notary Public Teresa W Matthews

My commission expires 8/1/2025

MBForms 2002-Revised July 2010

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of N/A
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____contract.
(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date:_____Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of_____

Subscribed and sworn to before me this _____day of _____20___

Notary Public _____

My commission expires_____

MBForms 2002-Revised July 2010

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 Paragraph 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 requests 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 of "labor, materials, or equipment" that part of the 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:

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DBIA Contract Document #544

Progressive Design-Build Agreement

Document No. 544
First Edition, 2019

© Design-Build Institute of America
Washington, D.C.

Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

1. **License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Construction Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased, or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
2. **User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
3. **Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
4. **Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
5. **Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
6. **Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error-free.
7. **Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty," which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
8. **Acknowledgement.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

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Progressive Design-Build Agreement

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

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

OWNER:
(Name and address)
Town of Clayton
111 E. Second Street
Clayton, NC 27528
Attn: Richard Cappola, PE. Interim Town Manager

DESIGN-BUILDER:
(Name and address)
Crowder Construction Company
6425 Brookshire Boulevard
Charlotte, NC 28216
Attn: George Ellis, Division Manager, Vice President

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

Clayton Riverwalk on the Neuse Greenway Bridge Replacements

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

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Article 1

General

1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").

1.3 Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

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

2.2 Phased Services.

2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an “open-book” basis. Design-Builder’s Compensation for Phase 1 Services is set forth in Section 7.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 Phase 2 Services. Design-Builder’s Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project,

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

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

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

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

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

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

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

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

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

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

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

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Proposal.

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

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

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

i. Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.3 above;

ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or

iii. Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Item 2.3.2.4 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof, or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.4 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 3

Contract Documents

3.1 The Contract Documents are comprised of the following:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General*

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Conditions of Contract Agreement Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract");

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

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

3.1.4 The General Conditions of Contract;

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

3.1.6 Exhibit B, Scope of Services; and

3.1.7 The following other documents, if any:

Exhibit C, Design-Builders RFQ, dated October 27, 2021
Exhibit D, Insurance Exhibit
Exhibit E, Payment and Performance Bond Forms
Exhibit F, Contractor and Subcontractor Release and Lien Waiver Forms
Exhibit G, Weather Days

Article 4

Interpretation and Intent

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

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof. *(Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

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

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

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

Article 5

Ownership of Work Product

5.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.

5.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein.

5.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:

5.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein, and

5.3.2 Owner agrees to pay Design-Builder the additional sum of Dollars ($0) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 5.2 if Owner resumes the Project through its employees, agents, or third parties**.**

5.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.

5.5 Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

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Article 6

Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than Two-Hundred Seventy (270) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

☒ The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

"*Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, and meets all of the requirements for Substantial Completion in the Agreement including but not limited to the receipt of all approvals for such use by governmental entities having juris

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: No Interim Milestones

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

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

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

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by Thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Five Hundred Dollars ($500) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

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

6.6 Early Completion Bonus. If Substantial Completion is attained on or before Ninety (90) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at

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the time of Final Payment under Section 8.4 hereof an early completion bonus of Twenty-Hundred Seventy-Five Dollars ($275) for each day that Substantial Completion is attained earlier than the Bonus Date.

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum Two-Hundred Ninety-Six Thousand Eighty-Six Dollars and 60/100 ($ 296,086.60) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer, and other taxes mandated by applicable Legal Requirements. Final contract value will be based on actual rates and quantities worked and agreed to by the Owner using the established rates and estimates found in Exhibit B. Lump Sum items will be paid in full upon completion.

Upon exhaustion of 80% of the Phase 1 Services contract value, the Design-Build Team will notify the Owner of any expected additional expenditures. Written approval, subject to the General Conditions of Contract, by the Owner must be executed prior to overrunning the value/hours worked. along with a new Not to Exceed estimate

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

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

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

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

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of **Seven and 50/100** percent (**7.5**%) of the additional costs incurred for that Change Order.

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for the Design-Builder's Fee or any other markup.

7.4 Design-Builder's Fee.

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7.4.1 Design-Builder's Fee shall be:

Five percent (**5.0**%) of the Cost of the Work, as adjusted in accordance with Section 7.4.2 below.

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

7.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of **Seven and 50/100** percent (**7.5**%) of the additional Costs of the Work incurred for that Change Order, plus any other markups provided by the Contract Documents. There shall be no automatic markup for general conditions costs in any Change Order, as general conditions costs are part of the Cost of the Work, and shall be itemized as part of any proposed change order, if required by the Change in the Work.

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

7.5 Cost of the Work.

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

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

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

7.5.1.3 Not Used.

7.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

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

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

7.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of

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Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

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

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

7.5.1.10 Costs of removal of debris and waste from the Site.

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

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

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

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

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

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

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

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

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

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

7.5.1.21 Accounting and data processing costs related to the Work.

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

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

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

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

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

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

7.6 The Guaranteed Maximum Price. (**This section will be completed upon review of the Proposal for Phase 2 Services and Contract Amendment)**

7.6.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars ($_____). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

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

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as

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such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

Twenty-Five percent (**25.0**%) to Design-Builder and
Seventy-Five percent (**75.0**%) to Owner.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

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

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

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

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

Article 8

Procedure for Payment

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: *(Insert terms.)*

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the First (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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8.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

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

8.3 Retainage on Progress Payments.

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

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

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

8.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of **One** percent (**1.0** %) per month until paid. Payment shall be due 30 days following the invoice datew.

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by the Owner and Design-Builder as part of this Agreement is not subject to audit.

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Article 9

Termination for Convenience

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

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

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

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

9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

9.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid Eighteen percent (18%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid Twenty percent (20%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price. Additionally, the Design-Builder shall be reimbursed for all direct costs of materials and/or services rendered.

9.3 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

[The following Article 10 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Joshua Baird, PE – Engineering Director
Town of Clayton

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111 E. Second Street
Clayton, NC 27528
(919) 553-5002

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Jonathan K. Jacobs, PE – Assistant Engineering Director
Town of Clayton
111 E. Second Street
Clayton, NC 27528
(919) 359-1297

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:
George Ellis – Division Manager, Vice President
Crowder Construction Company
6425 Brookshire Boulevard
Charlotte, NC 28216
10.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:
George Ellis – Division Manager, Vice President
Crowder Construction Company
6425 Brookshire Boulevard
Charlotte, NC 28216

Article 11

Bonds and Insurance

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

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

Performance Bond.
(Check one box only. If no box is checked, then no bond is required.)

☒ Required ☐ Not Required

Payment Bond.
(Check one box only. If no box is checked, then no bond is required.)

☒ Required ☐ Not Required

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Other Performance Security.

☐ Required ☒ Not Required

Article 12

Other Provisions

12.1 Other provisions, if any, are as follows:

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria, Original RFQ (with Addendum 1 and 2)
Exhibit B – Scope of Services (Phase 1)
DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract")
Contract Price Amendment, if any.

Article 13

Limitation of Liability

13.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed **Five** percent (**5.0**%) of the Contract Price. The parties agree that specific consideration has been given by the Design-Builder for this limitation and that it is deemed adequate.

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

OWNER:	**DESIGN-BUILDER:**
Town of Clayton *(Name of Owner)*	Crowder Construction Company *(Name of Design-Builder)*
_____ *(Signature)*	_____ *(Signature)*
_____ *(Printed Name)*	_____ *(Printed Name)*
_____ *(Title)*	_____ *(Title)*
Date: _____	Date: _____

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

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Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

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

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document 544, *Progressive Design-Build Agreement (2019 Edition).*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the "Basis of Design Documents."

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

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

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

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

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

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

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

1.2.10 *GMP Exhibit* means that exhibit attached to DBIA Document No. 544, *Progressive Design-Build Agreement (2019 Edition).*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.11 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement (2019 Edition).*

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

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

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

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

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

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

1.2.18 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is (i) sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes; and (ii) meets all of the requirements for Substantial Completion in the Agreement. including but not limited to the receipt of all approvals for such use by governmental entities having jurisdiction over the Project.

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

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

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Contract Price and within the Contract Time(s).

2.1.3 **A**ttached to the Agreement as an exhibit is a projected Construction Schedule. Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a detailed critical path schedule for the execution of the Work for Owner's review and approval, which shall be coordinated with the Project Design and Timeline Schedule ("Project Schedule"). The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Design-Builder shall coordinate the activities of Owner's separate contractors, consultants, architects and engineers to the extent coordination of such parties is required to complete Design-Builder's Work within the Contract Time. Owner's review of, and response to, the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Notwithstanding anything to the contrary in the Contract Documents, the Project Design and Timeline Schedule, Projected Construction Schedule, and the Project Schedule and any revisions thereto are not Contract Documents;, and any interim approvals thereof shall not serve to modify any completion dates required by the Contract Documents, which may only be modified by a written Change Order signed by both parties.

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

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Owner shall be a third party beneficiary of the any agreements entered into between the Design-Builder and Design Consultants. However, this Agreement is not intended to create any contractual rights of the Design Consultants as to the Owner.

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any

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changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule, as approved by Owner.

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

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

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

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

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

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

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

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

2.8 Design-Builder's Responsibility for Project Safety.

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

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

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Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, and that all construction Work shall be of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. All construction Work not conforming to these standards will be considered defective and shall be remedied by the Design-builder, at its sole expense. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion. Design-Builder is also responsible to the Owner for the accuracy and quality of any design documents, including Construction Documents in accordance with the standard of care consistent with standards for design professionals in the State of North Carolina..

2.10 Correction of Defective Work.

2.10.1 Without limiting the warranties in Section 2.9.1, Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, including any design deficiencies, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents. If the Design-Builder fails to correct such Work, the Owner, after providing written notice and a reasonable opportunity for Design-Builder to cure, may correct the Work, and the Design-Builder shall be responsible for any costs incurred by the Owner.

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

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

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Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

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

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents, but failure to give such notice shall not prejudice any rights Owner may have under this Agreement or applicable law.

3.2 Furnishing of Services and Information.

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 Financial Information.

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

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

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

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

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

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on, or for, the Project or at the Site, by separate contractors, consultants, architects or engineers under Owner's control, subject to Design-Builder's obligation to coordinate any design documents provided by Owner consultants with those of the Design-Builder for accuracy, completeness and integration. Owner shall contractually require its separate contractors, consultants, architects and engineers to cooperate with, and coordinate their activities with Design-Builder and, as necessary, Design-Builder's design consultants, so as not to interfere with Design-Builder and to enable Design-Builder to timely and safely complete the Work consistent with the Contract Documents. Should Design-Builder be adversely impacted or delayed by Owner's separate contractors, consultants, architects and engineers, or any of them, it shall notify Owner in writing of such event with a copy to the offending party, and the Design-Builder may make a claim as provided by the Agreement.

3.6.2 Design-Builder's safety rules and requirements for the Project shall apply to Owner and its separate contractors, consultants, architects and engineers.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

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

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or

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rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

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

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

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

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

4.2 Differing Site Conditions.

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

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

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage

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amounts all as set forth in the Insurance Exhibit to the Agreement (Exhibit D). Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

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

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

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance.

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

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

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

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

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

5.4 Bonds and Other Performance Security.

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

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

Article 6

Payment

6.1 Schedule of Values.

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

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

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof, which shall include as a condition precedent to payment (i) interim lien waivers for interim payments and final lien waivers for final payment, in the forms attached as **Exhibit F**, from the Design Builder and each Subcontractor and Sub-Subcontractor (who is providing labor or materials in excess of $25,000.00 in the aggregate) and (ii) the Design-Builder's affidavit attached as **Exhibit F**.

6.2.2 The Application for Payment may request payment for equipment and materials not yet

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incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

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

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

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will endeavor to notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement, subject to its right to withhold pursuant to Section 6.3.3.

6.3.3 The Owner may refuse to make any payment to the Design-Builder to the extent that the Owner deems it necessary or desirable to protect itself against loss or damage due to: (i) defective work not remedied; (ii) third-party claims, notices of intent to lien, liens, notice of lien on funds, stop notices or similar claims, or reasonable evidence indicating probable filing of such claims or liens; (iii) failure of the Design-Builder to make payments properly to Subcontractors or for labor, material or equipment; (iv) reasonable evidence that the Work cannot be competed without exceeding the GMP; (v) reasonable evidence that the Work will not be completed by the required completion dates specified herein; (vi) persistent failure to prosecute or carry out the Work, or unsatisfactory supervision of the Work by the Design-Builder; (vii) damage to the Owner or another contractor; (viii) or accrued liquidated damages (if applicable under this Agreement).

6.4 Right to Stop Work and Interest.

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

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants

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and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

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

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

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

6.7 Final Payment.

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

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

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

6.7.2.2 A general release and waiver in the form attached as **Exhibit F** executed by Design-Builder and each Subcontractor and Sub-Subcontractor (who has provided labor or materials in excess of $25,000.00 in the aggregate) waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

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

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

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

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Tax Claim Indemnification.

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

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

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

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

7.5 Owner's General Indemnification.

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

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

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

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price in the event that such critical path delay is caused by the Owner, or the employees or agents of either, and such adjustment shall be only for those direct costs incurred by virtue of the delay including, without limitation, additional field overhead costs actually incurred as a result of delay to the critical path activities of the Work, but Design-Builder shall not be entitled to indirect costs (e.g., home office overhead costs), incidental, or consequential damages; provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

8.2.3 As a precondition to Design-Builder making a Claim for a delay arising out of abnormal weather conditions, Design-Builder shall submit (a) data from the National Oceanic and Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the Claim is made, along with (b) daily weather logs which must be kept at the job site and which must indicate that adverse weather or site conditions. A work day is considered lost due to adverse weather when the Design-Builder establishes that the adverse weather conditions or the ongoing effects of adverse weather prevented the Work on critical path activities from being performed for five (5) hours or more of an otherwise available and scheduled work day (Abnormal Weather Day) Design-Builder acknowledges that it has taken weather conditions into account in agreeing to the Substantial Completion Date. Design-Builder shall be entitled to an extension of time only to the extent (1) it can show that each Abnormal Weather Day specifically affected the critical path of the Work and (2) the number of Abnormal Weather days exceeds the number of weather days built into the schedule as shown on Exhibit G ("Weather Days") ; and (3) Design-Builder complies with all of the other requirements for such a claim under the Contract Documents.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

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

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

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

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

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

9.2 Work Change Directives.

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

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

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

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

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

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

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

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

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

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

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an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If Design-Builder believes that it is entitled make a claim for increases in the Contract Sum or Contract Time or other for any event arising out of or related to the Work or Project, Design-Builder shall provide written notice to Owner of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and, unless otherwise provided in these General Conditions, within ten (10) days after the occurrence giving rise to the claim for relief or after the Design-Builder reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

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

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

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

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties may submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation and in no event shall any such mediation be a condition precedent to further

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

10.3 Not Used

10.4 Duty to Continue Performance.

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

10.5 CONSEQUENTIAL DAMAGES.

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

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

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

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

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

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

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide

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written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

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

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

11.3 Design-Builder's Right to Stop Work.

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

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

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

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within fifteen (15) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such fifteen (15) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted (critical path activities of the Work, in the cast of the Contract Time) by such stoppage.

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

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

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1

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hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

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

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

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

11.5 Bankruptcy of Owner or Design-Builder.

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

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

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and

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three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

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

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

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

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

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Article 13

Miscellaneous

13.1 Confidential Information.

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

13.2 Assignment.

13.2.1 The Design-Builder shall not assign or sublet this Contract, or any portion thereof or the proceeds therefrom, without the Owner's prior written consent. The Owner may assign this Contract to its lender, an affiliated entity, or a purchaser of the Project without the Design-Builder's consent.

13.3 Successorship.

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

13.4 Governing Law.

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

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

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13.8 Notice.

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

13.9 Amendments.

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

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Exhibit A

REQUEST FOR QUALIFICATIONS

DESIGN-BUILD SERVICES
FOR
CLAYTON RIVER WALK ON THE NEUSE GREENWAY
BRIDGE REPLACEMENTS

Issued: September 29, 2021

Town of Clayton
Engineering Department
Clayton, North Carolina

PPAB 5134690v1

I. General

A. Pursuant to N.C. Statute Sec. 143-128.1(A), the Town of Clayton (the "Town" or "Owner") is soliciting proposals from qualified design-build teams interested in providing professional design-build services for replacement of three (3) pedestrian greenway bridges on the Clayton River Walk on the Neuse.

B. The Town will follow a Qualifications Based Selection process as required by N.C. General Statutes and select the most-qualified team to negotiate a contract for services. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. The Town will follow a Qualifications Based Selection process as required by N.C. General Statutes and select the most-qualified team to negotiate a contract for services. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. Information related to this solicitation, including any addenda, will be posted to the North Carolina Interactive Purchasing System (NC IPS) at: https://www.ips.state.nc.us/IPS/. Interested firms may submit a Statement of Qualifications, meeting the requirements defined in the RFQ to:

Jonathan K. Jacobs, PE
Assistant Town Engineer
Town of Clayton
111 East Second St, Clayton, NC 27520*

PO Box 879 (Via US Mail)
Clayton, NC 27528

Email: jjacobs@TownofClaytonNC.org
*For hand delivery

C. Statements of Qualifications must be received by 4:00 p.m. on 10/27/2021. The Town shall issue addenda reflecting questions and answers to this RFQ, if any, which shall be posted to the NC IPS website. No information, instruction, or advice provided orally, or informally, by any Town personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. Respondents shall be entitled to reply *only* on written material contained in an addendum to this RFQ.

D. Requests for clarification and questions to this RFQ must be received by the Town no later than 4:00 p.m. on 10/06/2021 for the submittal of written inquiries. The Town will not entertain any further questions after the due date. All questions related to this solicitation must be submitted in writing (via email) to Jonathan K. Jacobs, PE at jjacobs@townofclaytonnc.org.

E. This RFQ does not obligate the Town to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the Town to accept or contract for any expressed or implied services. The Town reserves the right to reject any and all submittals.

II. Background and Project Site

A part of the Town of Clayton Greenway System, the Clayton River Walk on the Neuse ("River Walk") is a beautiful 4-mile, 10-foot-wide paved trail that begins at the Wake/Johnston County line and parallels the Neuse River under Covered Bridge Road. It is part of the 1,000-mile Mountains-to-Sea Trail, which will connect Clingman's Dome in North Carolina's Great Smokey Mountains National Park to Jockey's Ridge State Park all the way at the coast.

The Town recently performed a routine condition assessment of the pedestrian bridges along the River Walk to determine ongoing maintenance and repair needs. During the most recent assessment, it was determined bridges 3, 4, and 5 of the Riverwalk were nearing the end of their useful life and replacement was recommended. Bridges 3, 4, and 5, constructed in 1999, are 12-foot-wide timber bridges ranging between 78 and 82 feet in length. There are three (3) public access points in proximity to the project site within the Riverwood Athletic Club Subdivision; Nelson Lane, Sarazen Drive, and Hardaway Point. See Attachment A for a map of the bridge locations and approximate GPS coordinates.

The Town anticipates utilizing prefabricated weathered steel clear span bridge structures designed to AASHTO or similar standards and designed to handle at least 10,000 lbs. gross weight. Additionally, the Town desires evaluation of alternative structures for each crossing (e.g., concrete box culvert) to potentially increase constructability and reduce construction timeline, costs, and environmental impacts.

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

III. Scope of Work

A preliminary scope of work for the Design-Builder includes but is not limited to:

A. Pre-Planning, schedule and budget review. Pre-construction project planning including preliminary cost estimate.

B. Perform alternative structure evaluation: Present best method of crossing at least location based on cost, constructability, and environmental impacts to Town staff for determination;
C. Completion of any necessary field surveying, subsurface investigation, and geotechnical borings required for design;
D. Completion of any environmental studies and procurement of all required environmental permits (e.g., USACE, NCDEQ) including no rise, if possible, or CLOMR/LOMR.
E. Preparing all appropriate plans, specifications, and construction document based on Owner's criteria and to include:
    a. Clearing and grubbing plans, grading and drainage plans, sedimentation and erosion control plans, layout and staking plans, structure plans, greenway closure and signage plans, cross-sections and construction details;
    b. Construction Specifications including line items and bid quantities (no Federal or State Funds will be used for this project);
    c. Procurement of any applicable building permits;
F. Development and refinement of cost estimates and project schedules;
G. Construction administration and observation including, weekly site observations and regularly scheduled progress meetings with the Town;
H. Construction
    a. Site work to include but not be limited to:
        i. Clearing and rough grading with excess dirt and material removed from the site. Tree protection and erosion control measures to be immediately put into place.
        ii. Existing bridge demolition and material removal from the site
        iii. Bank/stream stabilization (as required/permitted)
        iv. Construction of temporary access (as required/permitted)
        v. Preparation of subgrade and bridge/structure approaches
        vi. Removal and replacement of existing greenway asphalt (as required by construction)
        vii. Delivery, setup and installation of pre-fabricated bridge/alternative structure
I. Project closeout, establishment of warranties, and guarantees. All materials, equipment, and workmanship are subject to a one-year guarantee against defects or deficiencies beginning on the day of acceptance by the Town;
J. Provide certified record drawings (site, stormwater and public utilities) as well as electronic copies in both PDF and an approved editable format (.dwg).

IV. Project Budget

The Town anticipates spending approximately $850,000 on the greenway bridge replacements.

V. Schedule

Note: All times are Eastern Standard Time

Sequence of Activity	Schedule
Issue RFQ	09/29/2021
Deadline for written questions and clarifications on RFQ (jjacobs@townoflclaytonnc.org)	10/06/2021
Town of Clayton issues any addenda	10/11/2021
Deadline for submission of Statement of Qualifications (Locations above)	10/27/2021
Notify Shortlisted Teams**	10/29/2021
Interviews**	11/03/2021
Notify selected design-build firm, begin contract negotiations	By 11/05/2021
Complete contract negotiations with selected team and award Contract	11/24/2021
GMP	January 2022
Project Completion	May 2023

**If applicable; the Town may elect to omit this step

VI. Submittal Response Requirements

Provide five (5) bound copies and one electronic copy in pdf format of your submittal. Submittals shall be a maximum of 12 pages (6 if double sided) and on 8.5" x 11" paper bound such that lay flat when opened. Font size shall be no less than 10 pt. Submittals must contain the following information:

Section 1- Letter of Interest: The Letter of Interest should include a synopsis of the firm, the team's qualifications, the project manager and primary contact, the project principal representing the contractual authority of the firm/team.

Section 2 – Project Organization: Provide a project organization chart identifying the team composition. Define key staff members who will be working on the project and explain their roles and their expected commitment to the project as a percentage of their time. Indicate any firm/company qualifying as a minority entity.

Section 3 - Profile(s) of Firm or Team: Provide information about each firm, licensed contractor and licensed subcontractor in the project team. Identify capabilities and experiences, the number of employees and location and number of years in business under its current name. Identify the scope of services to be provided under this project. If contractors and/or subcontractors have not yet been selected, describe the selection strategy to be used and how it is compliant with Article 8, Chapter 143 of

the North Carolina General Statutes.

Section 4 - Resumes: Provide resumes of the key staff, including the project manager and task leaders. Include resumes for staff identified as having a major role in the project.

Section 5 - Project Approach and Schedule: Provide a description of the proposed approach to the project. Include a response to the preliminary scope but do not simply restate the scope. Identify key risks/ challenges/ concerns you anticipate and any mitigation steps to achieve successful delivery. Describe the team's approach to design document quality assurance and quality control. Describe the firm and/or team's track record delivering projects with minimal change orders. Describe the team's level of experience with the major regulatory bodies likely to be project reviewers, whether local, state or federal. Describe the team's use of technology and how it will be used to engage with the owner in each project phase. Provide an outline project schedule, showing tasks, milestones and deliverables, including River Walk closure timelines and review meetings with the Town project team and community groups.

Section 6 - Reference Projects: Please identify recent, representative projects of a similar scope, complexity and size (NO MORE THAN FIVE), performed by the proposed team. At least three should be completed projects. For each project, provide project duration and completion year, references (name, email and phone number), and estimated and completed project cost. Identify which team members performed the work and the role each played in the reference project.

VII. Selection Criteria

A team of Town staff will review the proposals based on the criteria below and may make a recommendation to negotiate a tentative contract. This request for qualifications does not commit the Town to award a contract or enter into an agreement, to pay costs incurred in the preparation of a response to this invitation, or to procure or contract for any services or supplies. The Town reserves the right to reject any or all submittals received as a result of this RFQ. Each RFQ response submitted will be evaluated on their Statement of Qualifications score (100 points maximum) as determined through a qualification review process and the scoring criteria noted as follows:

1. Design-Build Team Experience and Qualifications - 30 Points
2. Design & Engineering Professionals' Experience and Qualifications - 30 Points
3. Project Understanding and Approach - 20 Points
4. Ability to meet Project Schedule - 10 Points
5. Reference Projects – 10 Points

VIII. Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the Owner and use their best efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation, collaboration and a commitment among professional design-build services providers to work in the best interests of the project is of utmost importance.

IX. Minority Business Policy.

In accordance with N.C.G.S. 143-128.2, Engineer shall adhere to Owner's Minority Business Policy for all building construction or repair projects in the amount of $300,000 or more and on Owner building projects involving State funding where the total project cost $100,000 or more.

X. Attachments

Attachment A – Site Locations
Attachment B – Establishment of Design Build Criteria
Attachment C – Minority Business Participation Policy
Attachment D – Insurance Requirements

Attachment A

Location Coordinates:

Bridge 3: 35.689297, -78.437692
Bridge 4: 35.686308, -78.436439
Bridge 5: 35.685142, -78.436125

Attachment B

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

To: File

From: Jonathan K. Jacobs, PE – Assistant Town Engineer

Date: September 29, 2021

Subject: Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Clayton River Walk on the Neuse Greenway Bridge Replacements

Background: During a recent routine condition assessment of the pedestrian bridges along the Town of Clayton Greenway System, three (3) greenway pedestrian bridges on the River Walk on the Neuse Greenway were found to need immediate replacement due to the nature of repairs and ending of their useful life. In order to expedite the replacement of these bridges, evaluate alternative structures, and minimize the closure of the River Walk on the Neuse Greenway, staff propose utilizing the design-build delivery method. The design-build delivery method will provide the needed flexibility to complete the project on time and within budget.

North Carolina General Statute §143-128.1A authorizes governmental entities to award construction contracts pursuant to the design-build delivery method after having established written criteria to determine the circumstances under which such delivery method is appropriate for a project.

Below are the required written criteria for the Clayton River Walk on the Neuse Greenway Bridge Replacements.

Criteria 1 – *The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* Through the Engineering Department, the Town has professional personnel with the qualifications and experience needed to thoroughly define the project requirements prior to issuance of a RFQ for design-builders. Additionally, professional personnel are available in the areas of purchasing, finance and legal to assist as needed in the development of an RFQ.

Criteria 2 – *The time constraints for the delivery of the project.* The Clayton River Walk on the Neuse is a part of the 1,000-mile Mountains-to-Sea Trail, North Carolina's flagship state trail. Due to the importance of this segment of the trail, the closure of the River Walk on the Neuse Greenway shall last no longer than 180 days with the project being completed by March 2023.

Criteria 3 – *The ability to ensure that a quality project can be delivered.* Within the Engineering Department, the Town has adequate professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by the Town Council.

Criteria 4 – *The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Engineering Department, the Town has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract out the construction management of the design-build contract, there are experienced consultants that are available.

Criteria 5 – *A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.* The Town complies with G.S. § 143-128.2 and G.S. § 142-128.4. The Town has an established M/WBE program which requires contractors to comply with all M/WBE goals set by Town Council.

Criteria 6 – The *criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.* The Town of Clayton desires to have a greenway that is safe and usable its residents and visitors. Due to the nature of repairs, the design-build delivery method enables the Town to meet its desired timing and keep the greenway safe and open to users as much as possible. Additionally, the design-build delivery method allows the Town to evaluate constructability of alternative structures to potentially reduce the construction timeline, environmental impacts, and reduce future maintenance needs by the Town. By reducing the construction timeline, the Town is eliminating any price escalation which could occur in a lengthened project timeline and stay ahead of any manufacturing delays due to the COVID-19 pandemic. The advantages of utilizing design-build delivery method outweigh the disadvantages of traditional delivery regarding budget, creativity, and flexibility in the design and construction project.

Attachment C

	TOWN OF CLAYTON POLICY	
	Department: Finance	**Effective:** January 19, 2021
Policy Title: **OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN TOWN OF CLAYTON BUILDING CONSTRUCTION OR REPAIR CONTRACTS** Version #01		**Supersedes:** V.# 1992 Resolution **Prepared By:** J. Brian Pridgen (Cauley Pridgen P.A.) Town Attorney **Approved By:** Town Council **Resolution: 2021-04** **Date: JAN. 19, 2021**

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on **Town of Clayton** building construction or repair projects in the amount of $300,000 or more and on Town building projects involving State funding where the total project cost $100,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Town of Clayton has a current verifiable goal of **ten** percent for minority participation for building construction or repair projects. The goal will be reviewed **every five years.**

SECTION A: INTENT

It is the intent of these guidelines that the Town of Clayton, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

A copy of these Guidelines will be issued with each bid package for applicable Town of Clayton building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

SECTION B: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
   a. Black, that is, a person having origins in any of the black racial groups in Africa;
   b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
   c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
   d. American Indian, that is, a person having origins in any of the original peoples of North America; or
   e. Female

2. Minority Business (MBE) - means a business:
   a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
   b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
   c. The business is certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.

3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
4. Public Entity - means the State and all public subdivisions and local governmental units.
5. Owner – Town of Clayton.
6. Designer – Any person, firm, partnership, or corporation which has contracted with the Town of Clayton to perform architectural or engineering work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town of Clayton to perform building construction or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.
11. HUB Office – N.C. Department of Administration's Office for Historically Underutilized Businesses.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Owner:

The Owner shall do the following:

1. Implement the attached "Town of Clayton's Minority and Small Business Participation Outreach Plan" to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
2. Attend the scheduled prebid conference and explain the minority goals and objectives.
3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
   (1) A description of the work for which the bid is being solicited.
   (2) The date, time, and location where bids are to be submitted.
   (3) The name of the individual within the public entity who will be available to answer questions about the project.
   (4) Where bid documents may be reviewed.
   (5) Any special requirements that may exist.
4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
5. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
6. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
7. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
8. Forward documentation showing evidence of implementation of Owner's requirements to the State Construction Office and the HUB Office upon request.

In addition, after a contract has been awarded the Owner shall:

a. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

Designer:

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.

5. During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.
6. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the Owner and State officials upon request.

Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods, as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term "contractor(s)" shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

1. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
   (a) A description of the work for which the subbid is being solicited.
   (b) The date, time and location where subbids are to be submitted.
   (c) The name of the individual within the company who will be available to answer questions about the project.
   (d) Where bid documents may be reviewed.
   (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

   If there are more than three (3) minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.
4. During the bidding process, comply with the contractor(s) requirements listed in these Guidelines and any contractor requirements listed in the Town of Clayton's Minority and Small Business Participation Outreach Plan.
5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce," in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.
7. Provide one of the following to Owner upon being named the apparent low bidder:
   (1) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or

   (2) if the percentage is not equal to the applicable goal, then an affidavit (Affidavit D) and documentation of all Good Faith Efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitation, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.

8. Within thirty (30) days after award of the contract, the apparent lowest responsible, responsive bidder shall file with Owner a list of all identified subcontractors that the contractor will use on the project.
9. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in the General Conditions of the Contract to facilitate payments to the subcontractors.
10. Submit with each monthly pay request and final payment request the "MBE Documentation for Contract Payment" - (Appendix E), for Designer's review.
11. If it any time during the construction of a project, if it becomes necessary to replace a minority business subcontractor, immediately advise the Owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor,
12. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

In addition, a construction manager at risk shall submit its plan for compliance with N.C. Gen. Stat. § 143-128.2 for approval by the Town prior to soliciting bids for the project's first-tier subcontractors.

Minority Business Responsibilities:

Certification

The Town of Clayton does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business ("HUB") by the North Carolina Department of Administration Office for Historically Underutilized Businesses ("HUB Office").

Businesses seeking HUB certification are directed to: http://www.doa.state.nc.us/hub/prog-certification.htm.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

1. Attending the scheduled prebid conference.
2. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
3. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
4. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
5. Negotiating in good faith with the Owner or contractors.

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

(To be included in solicitations and contract documents)

APPLICATION:

The Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

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

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. §143-128.2(c) and G.S. 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) Provide Affidavit C that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contact price, which is equal to or more than the applicable goal.

OR

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this type project.

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

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

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

In determining whether a contractor has made good faith efforts, the Town of Clayton will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

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

SECTION E: DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with the Town of Clayton shall be resolved as governed under the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

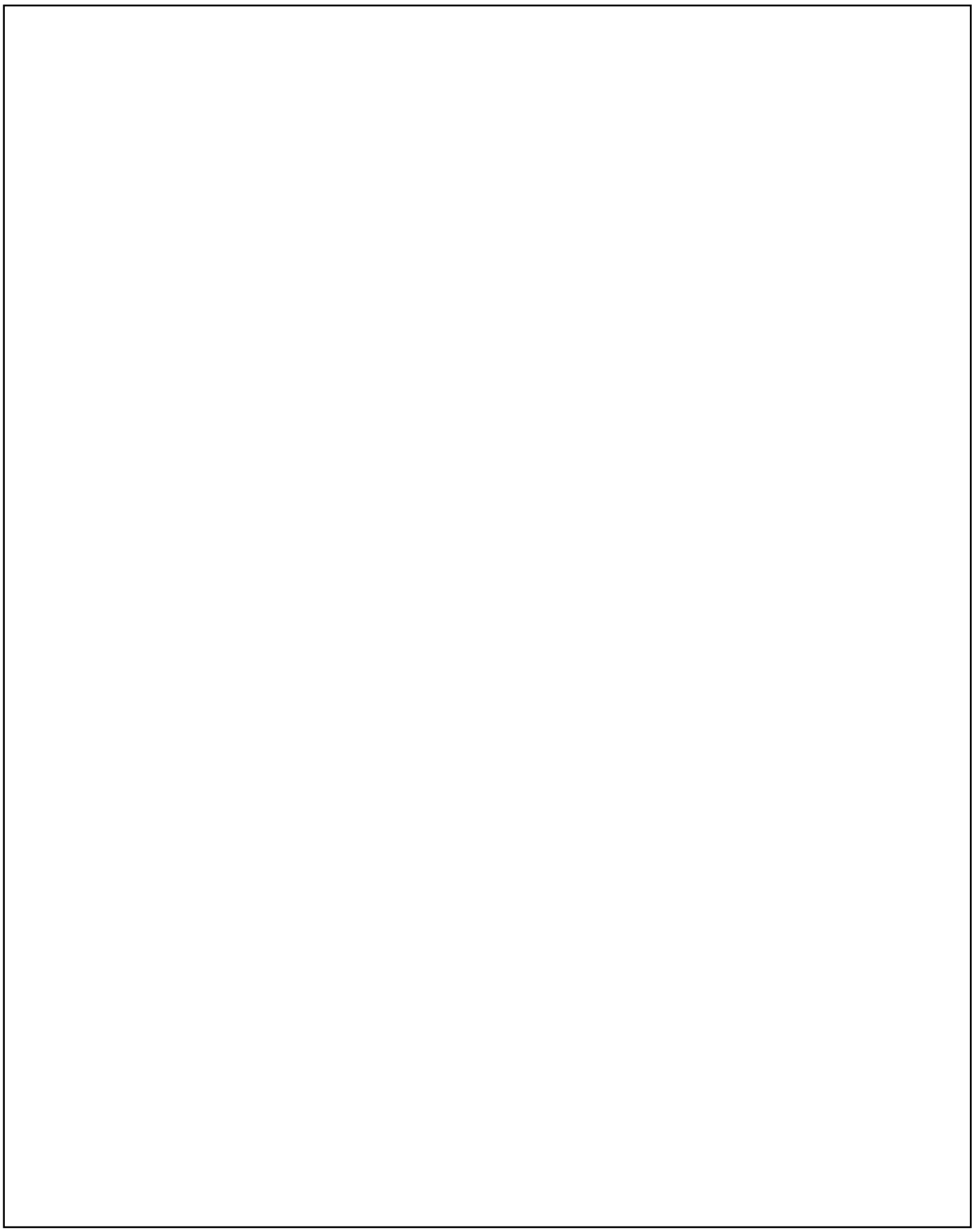
SECTION F: In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in Town of Clayton projects.

SECTION G: The Town Board of Commissioners empowers the Town Manager to enforce and/or amend this policy as may be required by changes in State law or Federal regulation.

TOWN OF CLAYTON'S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Town of Clayton Construction Contracts, the Town of Clayton will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. The Town of Clayton shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids.
2. Place more emphasis on the importance of soliciting certified minority businesses and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Town of Clayton Construction Projects and this Outreach Plan (hereinafter referred to collectively as the "MBE Program") and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the "good faith efforts" provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified minority businesses and small businesses that have expressed an interest in Town of Clayton projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how this MBE Program is working and sharing "best practices" and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the Town's Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to minority businesses, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the Town's web page by including the MBE Program, listing good faith efforts, and creating links to minority business resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with the Town of Clayton or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the Town website.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become certified.



Identification of HUB Certified/ Minority Business Participation

I,_____,
(Name of Bidder)
do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

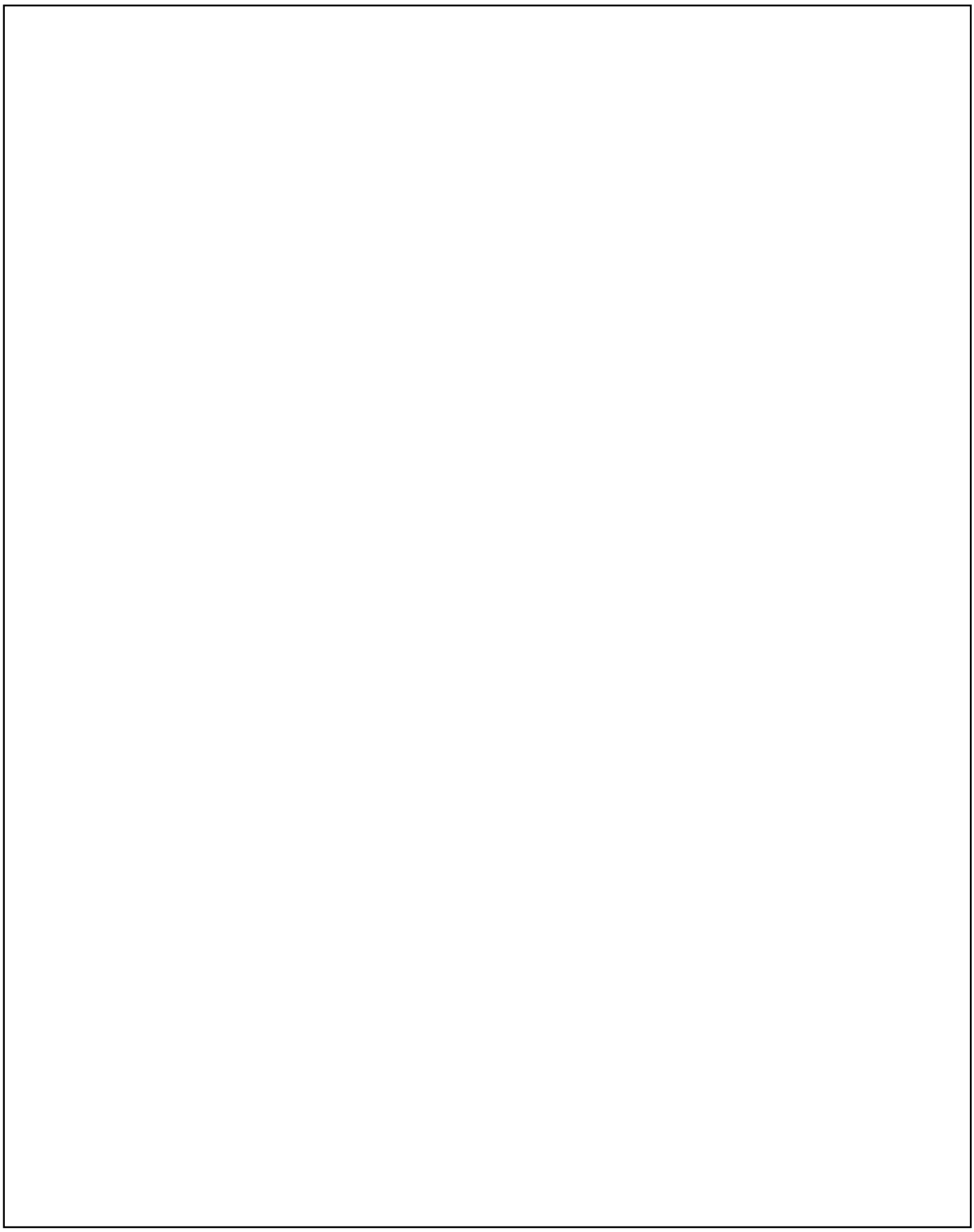
Firm Name, Address and Phone #	Work Type	*Minority Category	**HUB Certified (Y/N)

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be ($)_____.

MBForms 2002-Revised July 2010



State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of_____

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

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

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date:_____Name of Authorized Officer:_____

Signature:_____

Title: _____

SEAL

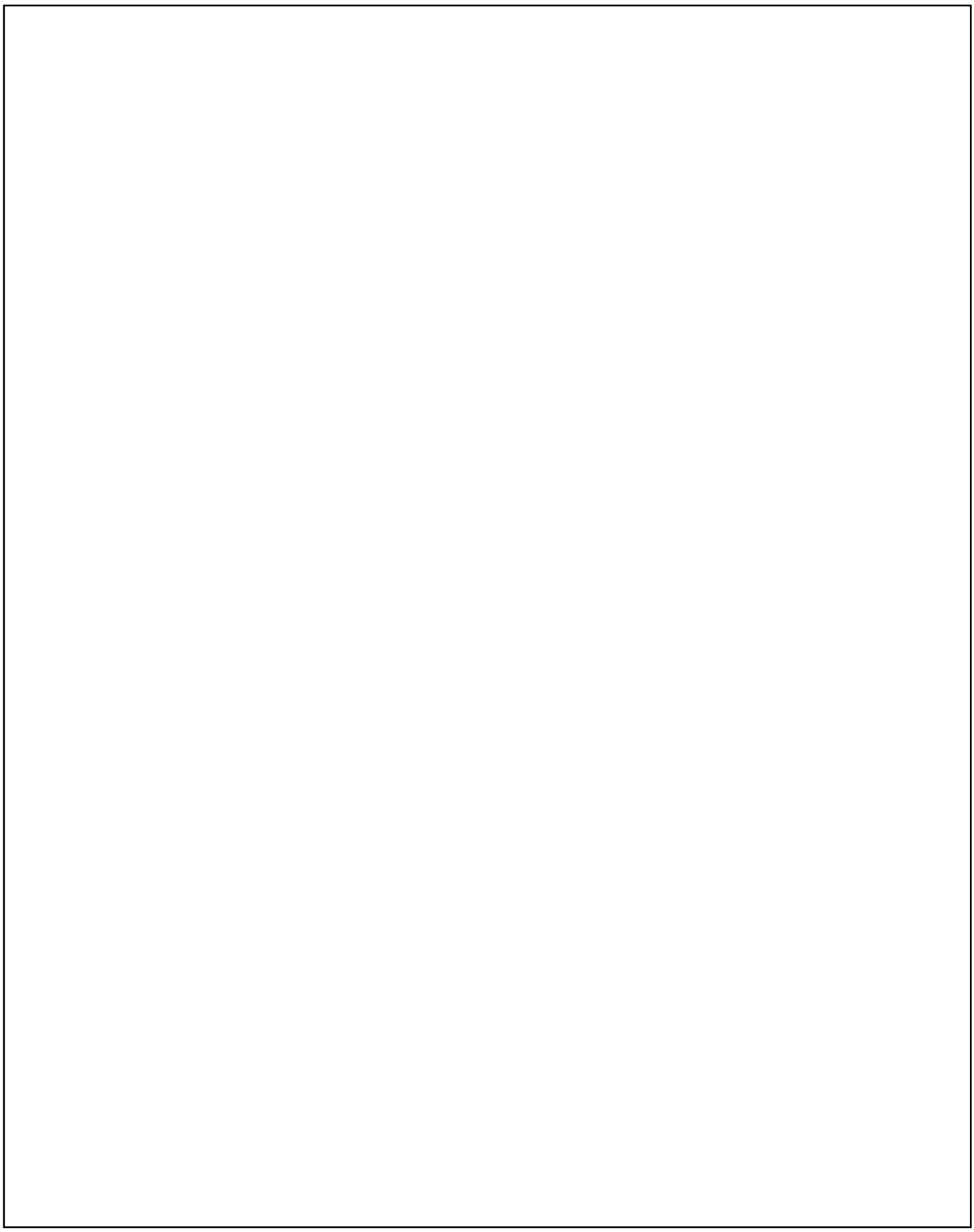
State of_____, County of _____

Subscribed and sworn to before me this _____day of _____20____

Notary Public _____

My commission expires_____

MBForms 2002-Revised July 2010



State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of_____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____contract.
(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date:_____Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

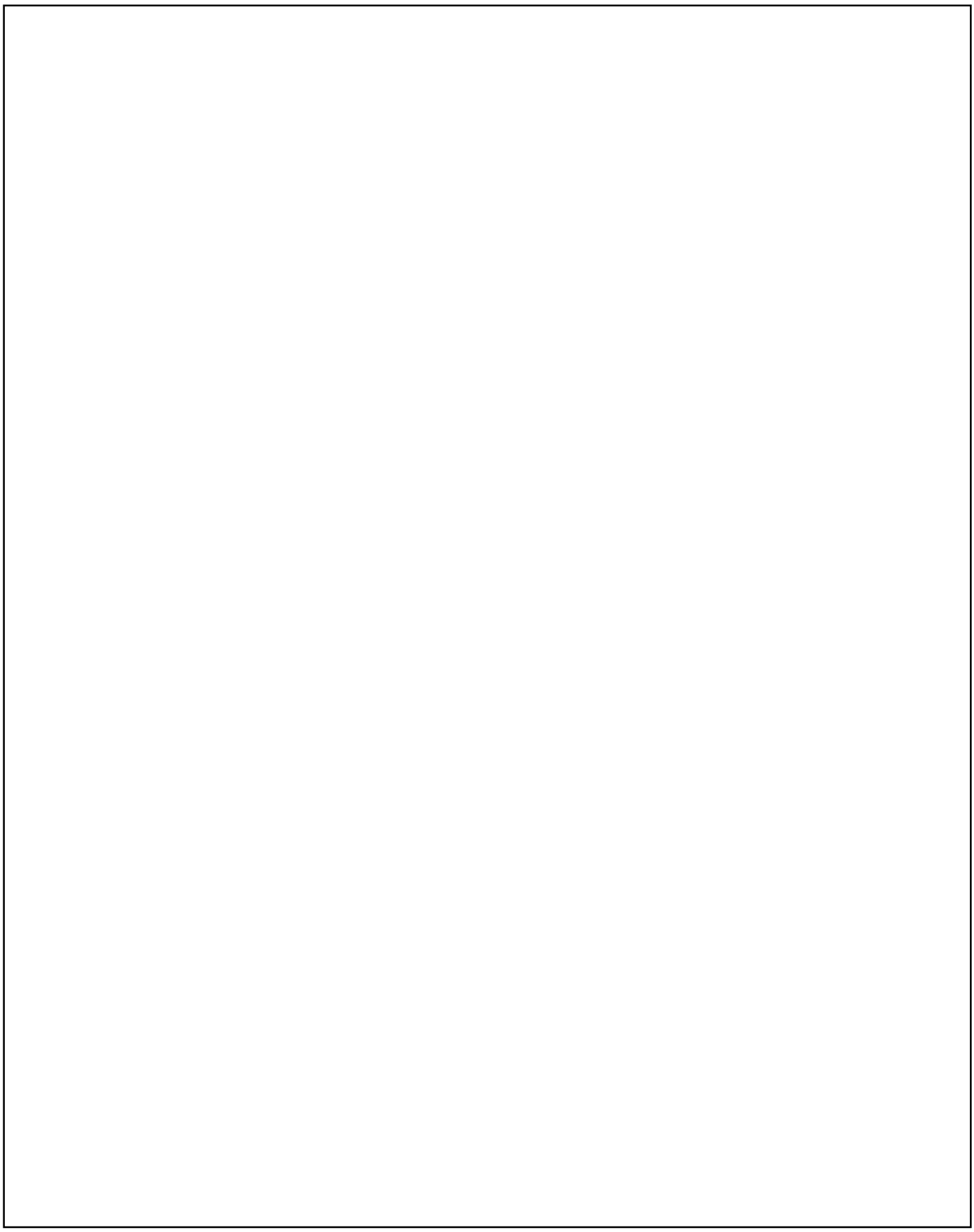
State of _____, County of_____

Subscribed and sworn to before me this _____day of _____20___

Notary Public _____

My commission expires_____

MBForms 2002-Revised July 2010



Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina – AFFIDAVIT C – Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.
This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID#_____ Amount of Bid $_____

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

Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date:_____ Name of Authorized Officer:_____

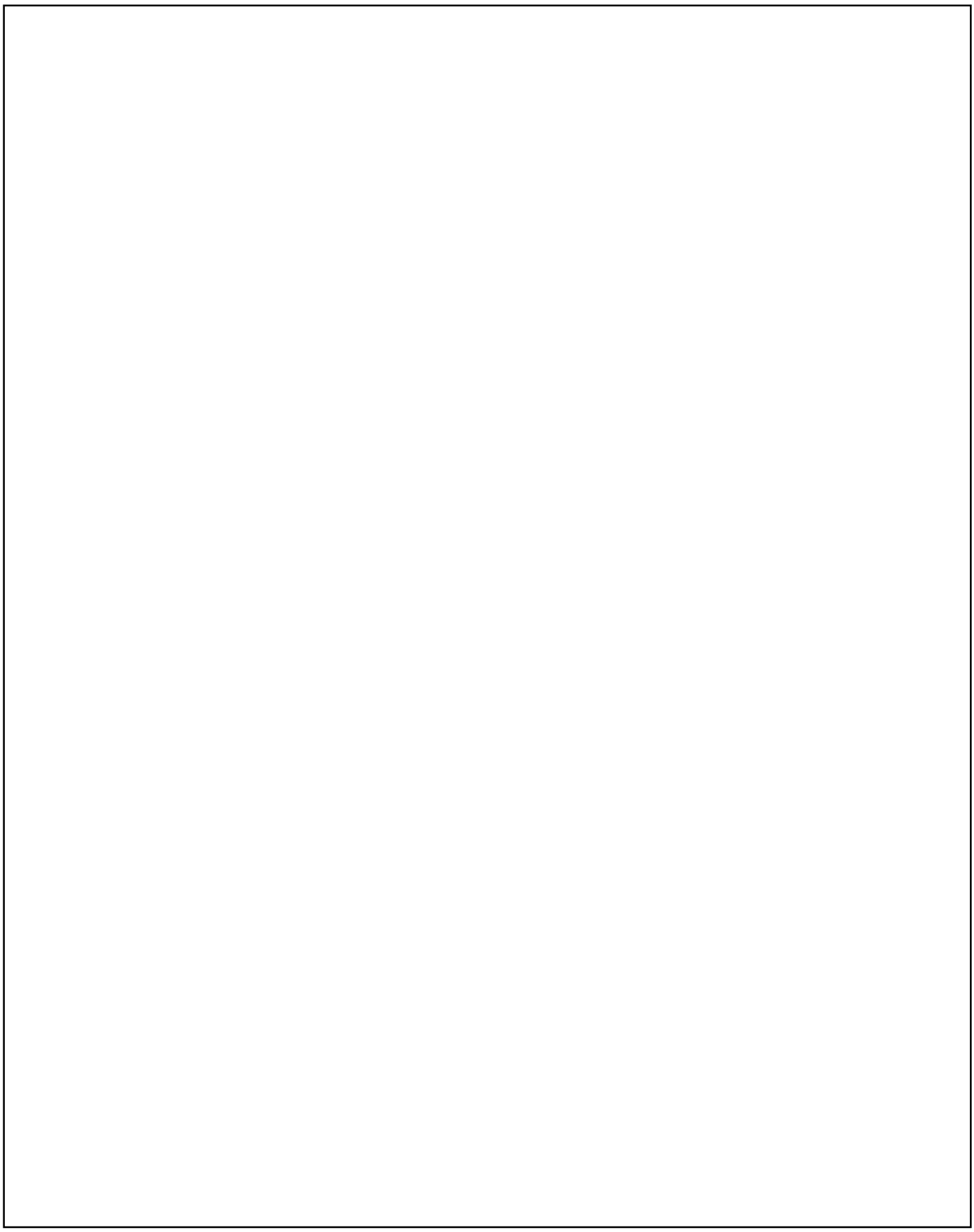
Signature:_____

SEAL

Title:_____

State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public_____
My commission expires_____

MBForms 2002-Revised July 2010



Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina – AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

_____
(Project Name)

Project ID# _____ Amount of Bid $ _____

I will expend a minimum of _____% of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

****** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.

B. Copies of quotes or responses received from each firm responding to the solicitation.

C. A telephone log of follow-up calls to each firm sent a solicitation.

D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.

E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Copy of pre-bid roster

G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

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

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

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

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

Date:_____ Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public_____

My commission expires _____

Attachment D

MINIMUM INSURANCE REQUIREMENTS

Design-Builder, from the time of commencement of Services until one year after completion of Services, shall provide and maintain in force with responsible companies with a Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger and licensed by the North Carolina Insurance Commissioner to transact the business of insurance in the State of North Carolina for the applicable line of insurance, the following minimum insurance coverage:

1.0 Professional Liability Insurance

Errors and Omissions Professional Liability Insurance having minimum limits of $5,000,000 per claim and $10,000,000 in the aggregate. Owner shall be named as an intended third-party beneficiary to Design-Builder's Contract with any Architect, Engineer or other design professional.

2.0 Commercial General Liability Insurance

Occurrence form including premises and operations coverage, products and completed operations coverage, coverage for independent contractors, personal injury coverage and blanket contractual liability.

Limits of Liability

Bodily Injury/Property Damage Liability	$1,000,000
Personal Injury Liability	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000

Coverage must include:

2.1 Policy to be endorsed to provide policy limits "per project".

2.2 Policy must name Owner as an additional insured.

2.3 Policy must be endorsed to provide a 30-day notice of cancellation.

2.4 There shall be no endorsement or modification of coverage for liability due to "explosion", "collapse" or "underground property damage".

3.0 Worker's Compensation

Limits of Liability

Worker's Compensation	statutory
Employer's Liability	
Each accident	$1,000,000
Policy Limit – Disease	$1,000,000
Each Employee – Disease	$1,000,000

Coverage Must Include

3.1 Coverage for all states in which operations are conducted.

3.2 Policy must be endorsed to provide a 30-day notice of cancellation.

4.0 Business Automobile Liability

(Owned, non-owned, and hired vehicles on an occurrence basis)

Limits of Liability

Combined Single Limit (BI & PD)	$1,000,000 per accident

Coverage must include:

4.1 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.

4.2 Policy must name Owner as an additional insured.

5.0 Umbrella Insurance

Limits of Liability

Annual aggregate	$10,000,000
Per Occurrence Limit	$10,000,000

Coverage must include:

5.1 Coverage must be “following form” coverage for all underlying coverages set forth above.

5.2 Policy must be endorsed to provide a 30-day notice of cancellation or substantial change to Owner.

5.2 Policy must name Owner as an additional insured.

6.0 Waiver of Subrogation:

Design-Builder waives all right of recovery of damage against Owner, its agents and employees to the extent covered by insurance, and Design-Builder shall obtain from its insurers a waiver of subrogation against Owner and its agents and employees for all insurance coverage except Worker’s Compensation and Professional Liability.

7.0 Consultants and Subcontractors

Unless otherwise approved by Owner, Design-Builder shall require all of its design consultants and/or subcontractors to provide insurance adequate to cover the typical risks for such consultant or subcontractor. Any deficiency in the coverage or policy limits of the consultants and/or Subcontractor will be the sole responsibility of Design-Builder.

8.0 The insurance provisions set out above in no way affect, reduce or limit the liability of Design-Builder as stated elsewhere in this Agreement.

9.0 Miscellaneous

9.1 The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by Design-Builder under the Design-Build Documents. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the Owner and their officers, members, agents and employees, as additional insureds. The policies of the Design-Builder shall be primary and non-contributing with any insurance carried by Owner.

9.2 The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Design-Builder and its representatives who may be engaged in performing any of the work, services or activities in connection with the Project.

10.0 Certificates of Insurance:

Before commencing performance of the Services, Design-Builder and its consultants and/or subcontractors must furnish certificate(s) of insurance evidencing:

10.1 Insurance coverage acceptable to Owner.

10.2 Effective expiration dates of policies.

10.3 Owner must be given thirty (30) days written notice of all cancellation, non-renewable, or material changes in policy.

10.4 A waiver of subrogation endorsement has been attached to all policies.

10.5 Any deductible and/or self-insured retention.

10.6 Any exclusions to the policy which are not part of the standard form.

10.7 Certificate of Insurance title block format is as follows:

_____
_____
_____

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements

Clayton, NC

Addendum #1

October 11, 2021

RFQ Participants,
Listed below please find answers to the questions received during the RFQ process for the Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements.

1. **Can any existing information be made available to the design-build teams?**
   a. **Recent inspection reports**
   b. **Original or as-built plans for the bridges or this section of greenway**
   c. **Previous survey files**
   d. **Other information**

   The Town has provided the recent inspection report, attachment A-1, to this addendum. The original and as-built plans for the existing bridges and this section of greenway are not available. No survey work been performed on the existing bridges and no other information is available to provide.

2. **Could you provide us a typical section that you plan on using for the bridge crossings?**

   The existing greenway is a 10' asphalt path with approximately a 2/2.5' grass shoulder on either side. The new structure(s)/crossing(s) should provide a minimum of 10 feet walkable surface with additional width or decking provided to accommodate the structure or any railing.

3. **When the bridges were originally installed, was there any hydraulic modeling done? If so, could you provide us with the model(s)?**

   The existing bridges were installed as part of the Riverwood Athletic Club Subdivision in the late 1990s. The Town does not have copies of the plans or any documents associated with the original installation.

4. **Just to make sure we understand the schedule on page 5. Between 11/5 and 11/24 you will negotiate price with the firm and the period from 11/24 and January 2022 is for the contractor to provide their price. Are we understanding that correctly?**

   During the period of 11/05 and 11/24, the Town will complete the contract negotiations with the design-build team, which will include the design/ permitting pricing and overall schedule. Between 11/24 and January 2022, the contractor will provide the GMP (Guaranteed Maximum Price).

5. **Please confirm email delivery to Mr. Jacobs is acceptable for the required electronic copy of the submittal?**

   The Town will accept email delivery to jjacobs@townofclaytonnc.org if email size limits allow. The Town will also accept electronic delivery at that address through SharePoint, Dropbox, OneDrive, etc.

6. **Will resumes count toward the 12-page limit for the proposal package?**

   Yes, resumes are included in the 12-page limit for the proposal package.

7. **Can the Town please confirm which forms are required for submittal with this package (Attachments C&D)?**

   Attachment C forms with "attach to bid" listed at the top for all sheets should be submitted with the statement of qualifications. The forms with "Do not submit bid" are additional forms only required to be completed by the selected design-build team. Please review the first nine (9) pages of Attachment C for more information.

   Attachment D lists the minimum insurance requirements for all design-build contracts with the Town of Clayton. No forms related to Attachment D are required with the statement of qualifications.

8. **The schedule on page 5 states that the project completion is May 2023 however Attachment B letter criteria states "Project being completed by March of 2023." Please clarify which date is correct.**

   The project completion date on Page 5, May 2023, is the correct date. Attachment B lists a typo. Attachment B has been corrected and is attached to this addendum as attachment A-2.

9. **Can you provide us with easement maps of the areas near the bridges that the Town or State may have, for access reasons?**

   There are nearby public access points in the following locations:

- 20 feet sewer and utility easement, paved access, shared equally between Lot 3307 and 3308 (232 and 236 Nelson Lane) as shown on Johnston County Plat Book 60, Page 159 and 160.
- 20 feet drainage utility and pedestrian easement shared equally between Lot 3309 and 3400 (240 and 300 Nelson Lane) as shown on Johnston County Plat Book 60, Page 159 and 160.
- 35 feet utility and pedestrian, paved access, between lot 3206 and 3207 (724 and 800 Sarazen Drive) as shown on Johnston County Plat Book 61, Page 335
- Variable width (minimum 30 feet) sewer and pedestrian easement, paved access, on lot 2262 (441 Hardaway Point) as shown on Johnston County Plat Book 69, Page 334
- There are additional access points to the north and south of the bridge locations, but are not in the immediate vicinity

10. What are the allowable access points to the 3 bridge sites?

See question #9.

11. And more specifically – is there access to each bridge from both sides or just one?

Both bridges are accessible from both directions, but not with machinery or equipment due to other bridge structures. Please reference the accessible locations in questions #9 for more details.

12. Are there workday/hour restrictions – especially due to the close proximity to residential housing?

The project will be subject to follow the Town of Clayton Noise Ordinance, found in Chapter 98 of the Code of Ordinances.

13. Is the City providing any staging/laydown area for the construction aspects of the project and specifically the 3 separate and separated locations?

The Town of Clayton expects this section of the greenway to be closed for duration of construction, not to exceed the maximum closure timeline listed in the written design-build criteria, criteria 2, and to be used for construction activities. No additional staging or laydown areas are proposed to be provided by the Town.

14. Does the $850,000 budget for this project include construction costs?

This is the total anticipated project budget, including construction costs.

15. Do the resumes count towards the 12-page limit?

See question #6.

16. Does a cover page count towards the 12-page limit?

Yes – All pages submitted with the statement of qualifications, with the exception of Town required forms listed in the attachments, count toward the 12-page limit.

17. Does the Letter of Interest count towards the 12-page limit?

See question #16.

18. Does the MBE goal of 10% apply to minority sub-contractors during the actual construction or during the design process as well or both?

Both.

19. Do the applicable MBE forms included as part of Attachment C in the RFQ that we return with our response count toward the 12-page limit?

See question #16.

20. Does 12-page maximum include key staff resumes? Reference projects?

See question #6 and #16.

21. Are there any other formatting requirements for the SOQ, such as single or double line spacing? Single or double columns?

The only formatting requirements are listed in Section VI of the RFQ. There are no requirements related to spacing or column count if it meets the rest of the requirements in Section VI.

22. Will the Town consider allowing 11x17 sheets for the project schedule and/or the organizational chart?

The Town will allow 11" x 17" sheets for **ONLY** the project schedule and/or organizational chart. 11" x 17" sheets shall be folded to be 8.5" x 11" to not extend from the closed, bound proposal. 11" x 17" sheets should be printed landscape as to not require turning or moving the open proposal to read.

23. Can the Town provide the inspection reports for the three bridges?

See attachment A-1

24. Has there been a jurisdictional delineation performed for the project areas?

No additional study has been performed on the project area.

25. Have Threatened and Endangered Species surveys been performed?

See question #24.

26. The schedule shows Project Completion in May 2023. Criteria 2 on page 11 of the pdf says March 2023 for project completion. Please clarify.

See question #8.

27. Please clarify the scope of work for construction inspection and testing services. Will the Town perform or is it part of the D-B Team's scope?

The Town will expect the Engineer of Record to certify the final bridge and provide as-built drawings upon completion. All geotechnical and additional inspections will be performed by the Town, or a representative of the Town.

28. Are the forms in Attachment C, (regarding Minority Business Participation and Good Faith Efforts) required to be submitted as part of the SOQ? Or upon selection of a D-B Team?

See question #7.

29. Please consider lowering the Professional Liability Insurance requirement of $5M per claim and $10M Aggregate. It seems disproportionate for the size and nature of the project.

The Minimum Insurance Requirements are not established on a per-project basis and are non-negotiable.

30. Will the Town consider allowing additional time for questions?

The Town will not allow more time for questions related to the RFQ.

Attachment A-1

Attachment A-1 is the inspection report performed on Bridges 3,4, and 5. Additional information unrelated to Bridges 3,4, and 5 and this RFQ has been removed from the complete report.

LYSAGHT & ASSOCIATES
structural engineers
120 St. Mary's Street
Raleigh, NC 27605
919.833.0495
LysaghtAssociates.com
Firm No. C-0621

FIELD REPORT

Date of Site Visit:	July 23, 2021
Date of Report:	July 31, 2021
Report Prepared for:	Dolores Gill - Town of Clayton
Report Prepared by:	Mark Blankinship - Lysaght & Associates
Project: LA Proj. No. 13324	Clayton Greenway Bridge Re-Inspections
Present at Site:	Mark Blankinship - Lysaght & Associates
Purpose:	**Review Condition of Wooden Bridges 3,4,5 on Clayton Greenway**

Note - This is a follow up inspection and report to our previous inspection report of

INTRODUCTION

We were contacted by Dolores Gill of the Town of Clayton and requested to review the condition of three timber bridges on the Clayton Greenway system. These bridges are designated as bridge numbers 3,4, and 5 by Town of Clayton staff and they are located North of the Covered Bridge Rd trailhead and are between the trailhead and Bridge #2 which is the weathered steel bridge that was recently replaced after Hurricane Matthew devastated the old timber bridge.

Please note that we previously provided an inspection and report on the bridges for the Town of Clayton dated 03/24/20 and this report will provide a similar format and is an update on the condition of the bridges now. Some of the maintenance items recommended for repair on the 03/24/21 were completed and this report addresses the current condition of the bridges.

REPORT

It is our understanding that the existing pedestrian bridges and greenway were originally constructed as part of the adjacent Riverwood neighborhood and subsequently deeded to the Town of Clayton. Bridge numbers 3,4, and 5 are all 12' wide and range in length from 78' - 82'. The bridges are constructed similarly with 8"x10" wood piles, 8"x10" girders and joists, 2x6 wood decking, and 4x6 rails posts and wooden rails and pickets. All three bridges are constructed similarly. See attached drawing S101 for the location of bridge numbers 3,4, and 5 and existing framing plans. Based on the time frame of the construction of the Riverwood neighborhood, the timber wood bridges (3,4,5) were installed approximately 22 year ago.

Bridge # 3 - Timber Bridge on Wood piles

Bridge #3 is a timber bridge which was constructed very similarly to Bridges 4 and 5. The bridge is 12' wide by 80'(+-) long. The bridge framing is described in the Report section above and is shown on the attached drawing S101. The estimated life span of this type of timber bridge varies, but is thought to be 20-30 years. As mentioned above, this bridge was constructed approximately 22 years ago, so it is nearing the end of its useful life. The bridge does not appear to be unsafe at this time, but the condition of the bridge should be monitored on a regular basis. Some of the piles and structural framing members are showing signs of deterioration. The framing connections are made mainly by toe-nailing and there is no lateral bracing on the bridge. The estimated costs to add proper hardware connections and to add lateral bracing is included in the estimate section below.

This bridge is accessible from the Nelson Ave. greenway connector without crossing a greenway bridge. The connector is located approximately 200 yards North of bridge #3 (see picture 19.)

Below are maintenance items for Bridge 3 that we recommend addressing now:

1. Asphalt repairs have recently been made to the greenway in this area which has improved the approach to each side of the bridge (Picture 20.)
2. The bridge dips about halfway down on the left side which is likely the result of settlement of movement of the bridge over time (Picture 21).
3. Remove fungus and algae from the bridge decking to avoid a sliding hazard, especially at the sides (Picture 22).
4. Many of the toe kicks and top rails have been replaced since our last report (Picture 23).
5. The deck boards on the far left side have deteriorated. They can be left alone at this time, but they need close monitoring (Picture 24).
6. There is a deck board on the right side in the middle of the bridge that should be replaced (Picture 25).
7. There is a deck board close to item 6 above on the left that should be replaced (Picture 25).
8. There is a deck board about 3/4 from the north end on the left side that has come unattached that should be screwed back down or replaced (Picture 26).
9. A deck board 3 boards from the South side has deteriorated and needs to be replaced.
10. A 4x6 post on the right side has twisted and the bolts are twisted. We do not recommend replacement at this time, but it should be monitored (Picture 27).
11. There is some erosion at the piles that is similar to the previous inspection 2 years ago (Picture 28).

Bridge 4 - Timber Bridge on Wood piles

Bridge #4 is also a timber bridge which was constructed very similarly to Bridges 3 and 5. The bridge is 12' wide by 82'(+-) long. The bridge framing is described in the Report section above and is shown on the attached drawing S101. The estimated life span of this type of timber bridge varies, but is thought to be 20-30 years. As mentioned above, this bridge was constructed approximately 22 years ago, so it is nearing the end of its useful life. There is severe erosion at some of the piles, and the condition of the bridge should be monitored on a regular basis. Some of the piles and structural framing members are showing signs of deterioration. There is stream erosion at the center of this bridge which has caused severe erosion of some of the piles. The framing connections are made mainly by toe-nailing and there is no lateral bracing on the bridge. The estimated costs to add proper hardware connections and to add lateral bracing is included in the estimate section below.

Due to the severe stream erosion around some of the piles, this bridge is in danger of being damaged or destroyed in a flooding event and should be the 1st bridge scheduled for replacement.

Below are maintenance items for Bridge 4 that we recommend addressing now:

1. Bridge #4 is accessible using the Saracen Road connector on the North side without crossing a bridge. It is located approximately 300 yards North of Bridge #4. The connector also provides access to bridge #3 from the South (Picture 29).
2.The North side wood band is deteriorated at the asphalt joint and should be replaced (Picture 30.)
3. The 1st deck board on the north side is near failure and should be replaced (picture 31).
4. 2 deck boards about 60% from the north side on the right have deteriorated and should be replaced (Pic. 32).
5. A deck board about 75% from the north side on the right has been chipped and should be replaced (Pic. 33).
6. The first deck board from the south side is flexing and should replaced or properly screwed down (Pic. 34).
7. There is severe erosion in the stream under the bridge. A storm drain structure has been dislodged. We recommend hiring a site engineer to review the erosion and the purpose of the damaged storm drain. It is likely that erosion control measures and/or stream remediation may be necessary depending on the site engineer's review. If the bridge is replaced, which we recommend, that would be a good time to work on the stream and erosion control (Pictures 35,36).
8. The erosion has caused severe undermining of the piles at the stream such that the concrete footings have been exposed. The pilings extend below the footings and are intact, but are in danger of being washed away with further erosion (Pictures 37).

Bridge 5 - Timber Bridge on Wood piles

Bridge #5 is also a timber bridge which was constructed very similarly to Bridges 3 and 4. The bridge is 12' wide by 78'(+-) long. The bridge framing is described in the Report section above and is shown on the attached drawing S101. The estimated life span of this type of timber bridge varies, but is thought to be 20-30 years. As mentioned above, this bridge was constructed approximately 20 years ago, so it is nearing the end of its useful life. The condition of the bridge should be monitored on a regular basis. The framing connections are made mainly by toe-nailing and there is no lateral bracing on the bridge. The estimated costs to add proper hardware connections and to add lateral bracing is included in the estimate section below.

Below are maintenance items for Bridge 5 that we recommend addressing now:

1. The asphalt on each side of the bridge at the approaches should be repaired where there are gaps between the bridge and the greenway, especially at each side (Picture 38).
2. A deck board 10' in from the North side is warped and should be replaced (Picture 39).
3. A deck board 5' in from the North side has become unattached and is a hazard. It should be re-attached or replaced. The board is raised about 1" (Picture 40).
4. The right side railing system is bowed. This cannot be repaired without full replacement and we do not recommend that at this time (Picture 41).
5. A mid rail in the middle of the bridge on the right side has warped and should be repaired (Picture 42).
6. There is a nail pop on the left side at the far South end that should be renailed (Picture 43).
7. A left side top rail at the middle of the bridge has split and should be replaced (Picture 44).
8. The north side wood abutment wall is bowed. If the bridge is not replaced, this should be monitored for possible correction in the future (Picture 45).
9. The piles are not eroded because there is not much stream activity under the bridge (Picture 46).
10. A replacement board about 8 boards in from the South side in not attached properly. This should be repaired (Picture 47).
11. Bridge # 5 is accessible via the Hardaway point connector about 50 yards to the South of the bridge without crossing any bridges (Picture 48).

C. CONCLUSIONS AND RECOMMENDATIONS

Based on the age (approximately 22 years), estimated life span of the timber bridges (20-30 years), and the condition of the bridges, we recommend replacement of bridges 3,4, and 5. We recommend replacing the bridges with the weathered steel clear span bridge similar to the recent bridge #2 replacement. The clear span clear bridge has a longer projected life span than a timber bridge and the relative cost of the two is similar. The clear span bridge will also eliminate the installation of piles in the streams. If the bridge replacements are phased, we recommend replacing bridge #4 first due to the severe erosion around the piles, followed by bridge #5 and #3. The deck surface decision, concrete of wood plank could be bid as an alternate and evaluated later.

We recommend performing the maintenance items listed above as soon as possible and then monitoring the bridges until they are replaced. We recommend that staff review the bridges quarterly and after large storms or flooding events for maintenance items and an annual inspection by a structural engineer until the bridges are replaced. We do not recommend reinforcing the bridges unless a decision is made not to replace the bridges. Although reinforcing the bridges would improve performance, they would still be more suspectable to damage than a new steel bridge and the repairs would be costly.

The most likely cause of possible future bridge damage or failure would be due to stream flow and/or impact from debris in a flooding event. This is the likely cause of the previous failure of bridge #2. If the above maintenance and inspection recommendations are followed, we recommend keeping the bridges open to pedestrian and bicycle traffic, but not vehicular traffic until the new bridges are installed.

Limitations

This report does not express or imply any warranty of the structure but only addresses the condition of the portion which was readily accessible and observable at the time of review. The report is based upon visual observations only (no physical testing was performed) and there is no claim, either stated or implied that all conditions were observed.

The Engineer shall not be responsible for the means, methods, procedures, techniques or sequences of construction, nor for safety on the job site, nor shall the Engineer be responsible for the Contractor's failure to carry out the work in accordance with the contract documents.

Email to: dgill@townofclaytonnc.org

Report by:

07/31/21

Mark Blankinship, P.E.
PE No. 046123 / Firm Lic. # C-0621

Bridge # 3

19. Nelson Ave connector

20. Previous asphalt repairs

21. Dip in bridge on left side

22. Fungus and algae on bridge

23. Previously replaced boards

24. deteriorated deck boards on the far left side

25. Replace deck board on right

26. Replace deck board on lef

Pic. 27. Twisted post and bolts

Pic. 28 - Typical piles under bridge #3

Bridge # 4

29 - Saracen Dr. connector

30. North side wood band

31. 1st deck board - North end

32. deck boards 60% in

33. deck board 75% in

34. 1st deck board - South side

35. Severe erosion at stream

36. dislodged storm drain

37. Exposed pilings

Bridge # 5

38. Asphalt gaps

39. deck board 10' in - North

40. Deck board raised 5' in

41. Right side railing system bowed

42. warped Mid-rail in middle

43. Nail pop south end

44. Split top rail

45. Bowed abutment wall

46. Typical piles - Bridge 5

47. Replacement board - south side

48. Hardaway Point connector

Attachment A-2

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

To: File

From: Jonathan K. Jacobs, PE – Assistant Town Engineer

Date: September 29, 2021; Amended October 11, 2021

Subject: Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Clayton River Walk on the Neuse Greenway Bridge Replacements

Background: During a recent routine condition assessment of the pedestrian bridges along the Town of Clayton Greenway System, three (3) greenway pedestrian bridges on the River Walk on the Neuse Greenway were found to need immediate replacement due to the nature of repairs and ending of their useful life. In order to expedite the replacement of these bridges, evaluate alternative structures, and minimize the closure of the River Walk on the Neuse Greenway, staff propose utilizing the design-build delivery method. The design-build delivery method will provide the needed flexibility to complete the project on time and within budget.

North Carolina General Statute §143-128.1A authorizes governmental entities to award construction contracts pursuant to the design-build delivery method after having established written criteria to determine the circumstances under which such delivery method is appropriate for a project.

Below are the required written criteria for the Clayton River Walk on the Neuse Greenway Bridge Replacements.

Criteria 1 – *The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* Through the Engineering Department, the Town has professional personnel with the qualifications and experience needed to thoroughly define the project requirements prior to issuance of a RFQ for design-builders. Additionally, professional personnel are available in the areas of purchasing, finance and legal to assist as needed in the development of an RFQ.

Criteria 2 – *The time constraints for the delivery of the project.* The Clayton River Walk on the Neuse is a part of the 1,000-mile Mountains-to-Sea Trail, North Carolina's flagship state trail. Due to the importance of this segment of the trail, the closure of the River Walk on the Neuse Greenway shall last no longer than 180 days with the project being completed by May 2023.

Criteria 3 – *The ability to ensure that a quality project can be delivered.* Within the Engineering Department, the Town has adequate professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by the Town Council.

Criteria 4 – *The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Engineering Department, the Town has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract out the construction management of the design-build contract, there are experienced consultants that are available.

Criteria 5 – *A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.* The Town complies with G.S. § 143-128.2 and G.S. § 142-128.4. The Town has an established M/WBE program which requires contractors to comply with all M/WBE goals set by Town Council.

Criteria 6 – The *criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified.* The Town of Clayton desires to have a greenway that is safe and usable its residents and visitors. Due to the nature of repairs, the design-build delivery method enables the Town to meet its desired timing and keep the greenway safe and open to users as much as possible. Additionally, the design-build delivery method allows the Town to evaluate constructability of alternative structures to potentially reduce the construction timeline, environmental impacts, and reduce future maintenance needs by the Town. By reducing the construction timeline, the Town is eliminating any price escalation which could occur in a lengthened project timeline and stay ahead of any manufacturing delays due to the COVID-19 pandemic. The advantages of utilizing design-build delivery method outweigh the disadvantages of traditional delivery regarding budget, creativity, and flexibility in the design and construction project.

TOWN OF CLAYTON
Engineering Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements

Clayton, NC

Addendum #2

October 22, 2021

RFQ Participants,

The Town has received several inquiries related to Attachment C – Minority Business participation. In Addendum #1, it was stated that all forms with "attach to bid" at the top were required to be submitted with the RFQ. Since the project is advertised as a design-build proposal, the Town understands this information may not be available until the CMP is finalized. These forms should be submitted with the RFQ related to the design firm(s), but construction forms related to Minority Business Participation will be due upon finalization of the CMP.

Exhibit B

Clayton River Walk on the Neuse Greenway Bridge Replacements

Scope of Services

Introduction

Crowder Construction (Design-Builder) and team were recently selected by the Town of Clayton, NC (Owner) to deliver, via Progressive Design-Build, the Clayton River Walk on the Neuse Greenway Bridge Replacements Project. The project includes the replacement of 3 existing bridge/boardwalk structures. The Project begins along the Clayton River Walk on the Neuse just north of Hardaway Point and extends roughly 1600 feet northward up to near Sarazen Drive.

Design-Builder will provide project management, estimating and constructability level services, including the services listed below. The Design-Builder will be responsible for the following sub-consultants and their services on the project.

- Engineering Services – AMT
    - AMT will serve as the Design-Sub and they along with their sub-consultants will perform the engineering services related to the project. These services are detailed throughout the proposed scope of services described below.

In addition to the Design-Builder's proposed sub consultants, the Design-Sub will utilize the following sub- consultants to assist with completing the scope of services:

- Field Surveying, SUE, & Easement Mapping – NV5
- Geotechnical & Condition Assessment – Froehling & Robertson, Inc.
- Permitting – Three Oaks Engineering

General Services (Phase 1)

1. Kick Off Meeting

A kick-off will be held following Notice to Proceed, to include Design-Builder, Design-Sub and Owner. The meeting will include review and discussion of:

- Review of information gathered and identification of apparent gaps
- Discussion of schedule
- Other known schedule/deadline impacts
- Setting future meeting dates/times
- Confirmation of Critical Success Factors
- Confirmation of lines of communication

2. Alternatives Analysis

The Design Builder shall develop various alternatives for the sequencing and management of the Project and shall make a formal recommendation to the Owner. Following concurrence with the preferred alternative, the design shall progress.

3. **Project Master Schedule**

The Design Builder shall prepare a Master Schedule for the Project for review by the Owner. The Master Schedule shall specify the proposed start and finish dates for project activities, including schedule through the design phases, and the dates by which certain pre-construction activities must be complete. The Design Builder shall submit the Master Schedule to the Owner for acceptance.

In connection with establishing the Master Schedule, the Design Builder shall prepare a Milestone Schedule for the Construction Phase. The Construction Phase Milestone Schedule shall be used in connection with soliciting bids from contractors and suppliers.

The Master Schedule shall have sufficient detail to identify sequence of Design, Preconstruction, and Construction phases. The schedule will outline procurement activities and the various components of construction to be coordinated with the Owner as it relates to permitting, final design and preconstruction activities and the construction phase. The schedule shall be provided to the Owner for review.

The Master Schedule will be a Critical Path Method (CPM) schedule developed using P6 Primavera. CPM Schedule will include activities, and reasonable durations and logic. Resource and / or cost loading shall not be required.

The Master Schedule will be updated at the conclusion of the 30% design development and finalized at the 60%/Final price stage.

4. Progress Meetings

Design-Sub will schedule a series of regular progress meetings between the Owner, Design Builder and Design-Sub. In general, these meetings will review progress made during the prior period and look ahead to progress expected to be made in the upcoming period.

30% Design / Preliminary Engineering Report (Phase 1A)

The 30% Design Phase includes the items specific to the development of the design to the 30% stage by the Design-Sub and the development a 30% cost estimate by the Design-Builder. The team shall perform the following tasks during this phase of the work.

1. 30% Design and Preliminary Engineering Report

Task includes the following activities:

- Prepare for and attend progress meetings during this phase to discuss the project.
- Prepare preliminary GIS mapping of the greenway corridor.
- Evaluate the existing hydraulic channels under each structure to determine low chord elevation.

- Perform a bridge length/layout analysis to determine preferred locations based on environmental impacts, constructability & cost.
- Develop a Preliminary Engineering Report (PER) that will document the existing hydraulic channels, preliminary GIS alignment maps, the proposed new low chord elevation, and a preliminary cost estimate for the new structures.

2. Field Surveying

Field surveys will be performed at each of the bridge sites and will include topography, location of the sanitary sewer line, property line locations, wetlands, and information required for FEMA modeling.

3. Natural Resource Permitting

Task includes the following activities:

- Existing site conditions determination and wetland delineation
- Preliminary environmental permitting research

4. Geotechnical Exploration

Task includes the following activities:

- Determine location and perform up to 6 soil borings, one at each end bent, to a 35-foot depth for each boring. The scope does not include performing a soil corrosivity or stray current analysis.
- Prepare a geotechnical report to summarize general characteristics of the soil.

5. Hydraulic / FEMA Studies

- Review all existing hydrologic and hydraulic models of the tributaries and FEMA model of the Neuse River to determine existing floodplain limits and downstream boundary conditions for proposed hydraulic models.
- Complete Hydrologic Analysis for each of the three (3) bridges and develop the existing hydraulic models. Create existing flood boundary map of Neuse River and Tributary floodplain limits.
- Prepare the initial Town of Clayton Floodplain Development Permit and coordination with the Town Floodplain Manager.
- Coordinate with FEMA for existing models and limits of floodplain boundaries to be used to identify work in the Neuse River floodplain.

6. Cost Estimate at 30% / Initial Price

The Design Builder shall prepare a cost estimate at 30% Design. The 30% Design Cost Estimate will be based on a 30% design and will not include detailed units or quantities. It will be an estimate based on overall scope of the project and use conservative quantities for work items.

7. Constructability Review

The Design Build team will complete a constructability review. This review will include a look at any alternative solutions for building the work and look for possible design alternatives or value engineering ideas.

8. Schedule Update

The CPM schedule will be updated at 30% design to include any additional information and work items that have been added during design. The CPM schedule will also be updated to reflect the current progress of design as it relates to starting construction activities.

9. 30% Design Review Workshop

Internally the Design Build Team will have a 30% Design Review Workshop to wrap up and review the 30% design. An emphasis will be made on the path forward to the 60% design cost estimate.

10. Project Conference Workshop

Finally, the 30% Cost estimate and all other deliverables will be presented and reviewed with the Owner at the Project Conference Workshop. This workshop is an opportunity for the Design Build Team to work collaboratively with the Owner to ensure the most efficient and effective design is being pursued. The conference is also an opportunity to discuss any design alternatives or Value Engineering ideas with the Owner.

60% Design & Price Development with Unit Prices (Phase 1B)

1. 60% Design

Task includes the following activities:

- Prepare drawings and specifications of the proposed structures and greenway for incorporation into the Contract Documents. These documents will be prepared to show the scope, extent, and character of the work to be furnished and performed for construction of the work elements described.
- Design includes three structures (10’ pathway and at least 10,000 lbs gross weight), greenway approaches, erosion control and other associated scope items.

2. Public Involvement

- Assist the Town with the Public Involvement Process by providing graphics, maps, and project information regarding costs and schedule.
- Attend public meetings

3. Natural Resource Permitting

- Obtain the following permits:
- US Army Corps of Engineers (USACE) – Clean Water Act Section 404 Nationwide Permit 3
- North Carolina Division of Water Resources (DWR) – Clean Water Act Section 401 Water Quality Certification
- North Carolina Division of Water Resources (DWR) – Neuse Riparian Buffer Authorization
- North Carolina Division of Water Resources (DWR)– Erosion Control Permit

- North Carolina Division of Water Resources (DWR)- Floodplain Development Permit
- FEMA CLOMR

4. Hydraulic / FEMA Studies

Perform proposed conditions hydraulic modeling, scour analysis, and scour protection recommendations. Obtain either a No-Rise Certification or a Conditional Letter of Map Revision (CLOMR).

5. Constructability Review

The Design Build team will complete another constructability review. This review will include a look at any alternative solutions for building the work and look for possible design alternatives or value engineering ideas.

6. Schedule Update

The CPM schedule will be updated at 60% design to include any additional information and work items that have been added during design. The CMP schedule will also be updated to reflect the current progress of design as it relates to starting construction activities.

7. Design Review Workshop

Internally the Design Build team will have a short 60% Design Review Workshop to wrap up and review the 60% design. An emphasis will be made on the path forward to the 100% design.

8. Unit Price, Quantity & Price Preparation

The Design Build team will prepare the Unit price and Quantities along with developing the price using the 60% design documents. The Design Builder will analyze and identify the risk items and allocate their cost to Owner controlled allowances. The estimate is also prepared to be included as the basis of the price.

9. Unit Price, Quantity & Price Presentation

The Design Build team will host the owner to present the price and schedule and explain how the design has progressed thus far. The Unit prices, quantities and price and schedule will then be reviewed with the Owner. The Design Build team will review with the Owner how the unit prices and quantities were determined. The Unit price pay items will be detailed to make sure all work items have been covered within the unit prices. Finally, the basis for the quantities of the owner-controlled contingencies will be discussed.

100% / Final Design (Phase 1C)

1. 100% Design

Design-Sub will finalize the design of the proposed structures and greenway approaches. The design will:

- Incorporate comments from the Owner and Design-Builder
- Incorporate comments from adjacent property owners
- Incorporate comments from the regulatory agency reviews and approval of the plans

2. Permitting

Design-Sub will provide technical criteria, written descriptions, design data, drawings, and specifications for filing applications for permits with the governmental authorities having jurisdiction to approve the design of the project. The following permits are included in the scope:

- Approval from the Town of Clayton for the proposed construction.
- Sedimentation and Erosion Control Plan approval from the NC Division of Land Quality.
- 404/401 Pre-Construction Notification for Stream Crossings and/or Wetlands Disturbance from the US Army Corps of Engineers and NC Division of Water Resources to obtain a Nationwide Permit No. 12 and associated Section 401 Water Quality Certification. This includes:
    - Jurisdictional Determination for streams and wetlands based on field study
    - Cultural Resources desktop assessment, does not include an archaeological survey
    - Federally-Listed Threatened and Endangered Species Survey, does not include a biological assessment
    - Prepare narrative to include purpose and need for project, impacts and figures, mitigation options, etc.
    - No-Rise Study Report will be prepared to show any changes to water levels for the tributary stream based on the proposed project and available LiDAR data.

Only those permits specifically mentioned are included in the scope of services. All review fees and any mitigation costs above this will be paid by the Town of Clayton. It is assumed that no flow calculations or downstream capacity analysis will be required to obtain the permits. It is assumed that no Environmental Assessment or Section 404 Individual Permit will be required.

3. 100% Design Review

At 100% design the Design Build team will provide a review of the final design to confirm the quantities, project scope, pay items, and contingency item. This information will be presented to the owner for their review.

4. Schedule Update

The CMP schedule will be updated again at 100% design using the current state of the construction contract and the current design status. Particular attention will be paid to the permitting progress.

5. Cash Flow Report

A cash flow report for construction will be provided by the Design Builder correlating to the 100% CPM schedule.

6. Pre-Construction Conference

As a wrap up of the design and moving towards Construction the Design Builder will host a Pre-Construction Conference with the owner and the Engineer to detail out the final design and the planned construction sequence.

MWSBE Program

Throughout the design the Design Builder will work to identify availability and meet the participation goals for the project. As part of the project's M/W/SBE program. A minimum of two outreach sessions will be conducted; one during the 30% design phase and the second prior to the price.

Additional Services

At the request of the Owner, the Design Builder shall perform the following Additional Services and shall be compensated by way of the "Additional Services" allowance as agreed upon by Owner's project manager.

- Services related to investigation, appraisal or evaluation of existing conditions or to determine the accuracy of existing information provided by the Owner.
- Additional pre-construction surveys
- Additional Geotechnical surveys
- Attend additional public meetings
- Other items related to the scope of the project

Project Schedule

The Design Build team proposes completing all the work described above for Phase 1A and 1B per the following schedule. Phase 2 and construction schedule will be determined by the final design scope at the completion of Phase 1B during the development of the price.

Task	Schedule
30% Design and Prelim. Eng. Report	NTP + 7 Weeks
Price based on 30% Design	2 Weeks
Town Review	4 Weeks
60% Design and Eng. Report	5 Weeks
Price based on 60% Design	2 Weeks
Town Review	2 Weeks
100% Design	2 Weeks
Town Review	2 Weeks
Fully Permitted	100% design + 60 days
Obtain "No Rise" or "CLOMR"	60% design + ≈180 days

Fee Summary

The Design Build team proposes completing all the work described above, including assumptions in quantity as noted, for a total estimated Base Fee of $296,086.60.

Pre-Construction Fees Summary

- See Appendix A

Design Assumptions:

1. Adequate GIS contours (2-ft minimum will be provided for areas outside of the topo survey boundaries.
2. AMT will be reimbursed for all FEMA model request and CLOMR application fees.
3. The FEMA LOMR will take place after construction and as-builts are completed and will be performed under separate contract.
4. No survey of the Neuse River will be performed, and existing model information will be used for map revisions.
5. Hydrologic modeling of the Neuse river will not be performed as part of this contract.
6. AMT will be reimbursed for all Town of Clayton permit application fees.
7. The Design Build Team is not responsible for existing floodplain impacts to private property.
8. No SWM permit is required and not proposed SWM facilities are included in this proposal.

APPENDIX A – PHASE I COST BREAKDOWN

Bid Item	Description	Quantity	Unit	Unit Cost	Extended Total
10	Crowder Precon	1	LS	$ 43,000.00	$ 43,000.00
20	Survey & SUE	1	LS	$ 28,200.00	$ 28,200.00
30	Geotech	1	LS	$ 22,000.00	$ 22,000.00
40	Permitting	1	LS	$ 17,200.00	$ 17,200.00
50	AMT - Manager	43	MH	$ 275.00	$ 11,825.00
60	AMT – Discipline Manager	168	MH	$ 230.00	$ 38,640.00
70	AMT – Senior Project Engineer	138	MH	$ 190.00	$ 26,220.00
80	AMT – Design Engineer	258	MH	$ 165.00	$ 42,570.00
90	AMT – Senior Structural Engineer	111	MH	$ 155.00	$ 17,205.00
100	AMT – Junior Design Engineer	132	MH	$ 120.00	$ 15,840.00
110	AMT - CADD Operator	85	MH	$ 110.00	$ 9,350.00
120	AMT – Senior CADD Technician	40	MH	$ 110.00	$ 4,400.00
130	AMT - Direct Cost	1	LS	$ 2,756.00	$ 2,756.00
140	Crowder Fee on AMT Hourly and Direct Cost	10	%	$ 168,806.00	$ 16,880.60
					$ 296,086.60
9990	Allowance - FEMA and CLOMR	1	LS	$8,500	$8,500
9991	Allowance - Permits	1	LS	$1,500	$1,500

Exhibit C

SECTION 1- LETTER OF INTEREST

October 27, 2021

Jonathan K. Jacobs, PE
Assistant Town Engineer
111 East Second St
Clayton, NC 27520

RE: Town of Clayton | Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements

Dear Mr. Jacobs:

Crowder Construction Company (Crowder) and our Lead Design Engineer, A. Morton Thomas and Associates, Inc. (AMT) are pleased to submit this Statement of Qualifications to provide Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements. In addition to the original RFQ, we acknowledge receipt of Addendums #1 and #2.

Crowder and AMT have extensive experience designing and building similar pedestrian bridges and a wealth of experience with the design-build delivery method. In addition to Crowder and AMT, our Team includes NV5 for surveys and SUE, F&R for geotechnical, and Three Oaks Engineering for natural resources and permitting. All Team members have a history of working together and are leaders in their respective fields. Our Team is structured to efficiently deliver this project with well-qualified personnel who are dedicated to its success. All key staff members have a thorough understanding of the project, the key issues, and most importantly, how to address them.

This Team is a trusted resource for the Town of Clayton to tailor the final bridge construction to the specific budget and time constraints as outlined in the RFQ.Crowder has been managing alternate delivery contracts for twenty years, completing almost a billion dollars in design build and CMAR projects. Our construction professionals utilize the full resources of a 75-year old construction firm with experience estimating, budgeting, managing, and building each of the design options outlined in our approach.Our relationship with AMT and the other consulting firms is excellent and our Team's value to the Town will be immediately obvious.

Our Team's approach to this project is to serve as a true partner to the Town. We will evaluate the project constraints, risks, and opportunities and make recommendations in the best interest of the Town and the users of the River Walk. We will provide high-quality design and estimating deliverables and efficiently construct the bridges to minimize the closure duration.

George Ellis of Crowder has the authority to sign the contract on behalf of our Team. He will serve as Project Principal and is the primary contact for this pursuit. Serving as Project Manager, Kyle Wiley serve as the primary point of contact for the duration of the project. Stephen Roberts from AMT will serve as our Team's Lead Design Engineer and will manage the design from AMT's Raleigh office. Stephen has been heavily involved in design-build projects for the last 19 years of his 27-year career, is a certified Design-Build professional, and serves on the Design Build Institute of America (DBIA) national Transportation Markets Committee.

In summary, our Team's experience, qualifications, project approach, and understanding of the design-build process makes us a compelling choice for this project. Your consideration of the Crowder Team is greatly appreciated, and we look forward to working with the Town of Clayton.

Sincerely,

George Ellis, Vice President
Heavy Civil Division Manager |Crowder Construction Company
P: 704.332.8184 | E: gellis@crowderusa.com

LEGEND

- Key Personnel
- Reporting
- Coordination

- Executive
- Design
- Pre-Construction
- Construction
- Quality

EXECUTIVE COMMITTEE

George Ellis, PE CCC
Mike Wiercinski, PE, PLS AMT

PROJECT MANAGER

Kyle Wiley CCC

DESIGN QA / QC AMT

Kyle Rankin, PE
Khoss Babaei, PE, SE

DESIGN MANAGER

Stephen Roberts, PE, DBIA AMT

GREENWAY DESIGN AMT
David Shinbara, PE
Matt Lamy, PE

STRUCTURE DESIGN AMT
Wes Hevener, PE
Marc LeBlanc, PE

HYDRAULICS/E&SC AMT
Mikhail Bhosle, PE, CFM
Greg Fox, PE

GEOTECHNICAL F&R
Patrick Alton, PE
Andrew Frank, PE

SURVEY/SUE NV5
Andy Heath, PLS
Wendell Ball, PLS

PERMITTING 3OE
Michael Wood, LSS, PWS
Jim Mason, PWS

LANDSCAPE ARCHITECTURE
JoAnn Tongson, RLA
Kyle Mundy, RLA, ASLA

PRE-CONSTRUCTION SERVICES MANAGER

Chris Boyd, PE, DBIA CCC

ESTIMATING CCC
David Coe, PE

SCHEDULING CCC
Ryan McGarvey

CONSTRUCTION ALTERNATIVES ANALYSIS CCC
Hans McDonald

CONSTRUCTION MANAGER

Daren Sumner CCC

CONSTRUCTION
Trade Foreman
Safety Manager
Environmental Compliance

SUBCONTRACTORS/DBEs
Erosion Control
Asphalt Paving
Construction Surveying

CROWDER (CCC) AMT (AMT) NV5 BEYOND ENGINEERING (NV5) F&R (F&R) THREE OAKS ENGINEERING (3OE)

SECTION 3 - PROFILE OF TEAM

CROWDER CONSTRUCTION COMPANY | Lead Contractor

Crowder Construction Company (CCC) is a $250 million per year, family-owned business, founded in 1947, that has built bridges, both pedestrian and highway, in North Carolina & South Carolina since 1954. We are headquartered in Charlotte, NC, with over 700 employees in multiple divisions, have a strong financial base, and own a significant bridge construction equipment inventory. The Heavy Civil Division has a tenured and accomplished staff of construction professionals who take great pride in building quality projects safely, while developing superior partnering relationships with owners, other contractors, and stakeholders on the projects we build. Our estimators assemble bids for projects ranging in price from $300K to $80M and can advise pricing for new structures and rehabilitation of older structures.

A. MORTON THOMAS AND ASSOCIATES, INC. | Lead Design Engineer

A. Morton Thomas and Associates, Inc. (AMT) is multidisciplinary engineering firm that continues to rise on ENR's list of top 500 Engineering Firms. AMT has been serving our clients since 1955 and that continues today with over 450 employees and 20 offices located throughout the Mid-Atlantic and Southeast. Our North Carolina operations includes offices in Raleigh and Charlotte, with the management and design of this project taking place primarily in Raleigh. AMT's capabilities include transportation engineering, structural engineering, traffic data collection, analysis, and modeling, site design, surveying, landscape architecture, water resources, utility coordination, environmental services, construction services, and more. We utilize best engineering practices, quality control procedures and management solutions to provide high quality, cost-effective projects to our clients.

NV5 ENGINEERS AND CONSULTANTS | Surveying/SUE

NV5 is a provider of compliance, technology, and engineering consulting solutions for public and private sector clients supporting infrastructure, utility, and building assets and systems. With more than 100 offices and 3,300 employees nationwide and abroad, NV5 helps clients plan, design, build, test, certify, and operate projects that improve the communities where we live and work. For 23 years, NV5 has provided exemplary subsurface utility engineering and survey services across the Southeast.

FROEHLING & ROBERTSON | Geotechnical Engineering (HUB)

Froehling & Robertson, Inc. (F&R) is a multi-disciplinary engineering firm and testing laboratory that offers geotechnical engineering; construction testing & inspection; and environmental consulting services. Established in 1881, F&R is the oldest independent consulting engineering/testing firm in the United States. The Geotechnical Services Division of F&R has a local staff of 20 professional engineers, geologists, engineering technicians and other geo-professionals. Their expertise may be aptly utilized in all phases of the project regarding design, cost, scheduling, and actual construction. In addition to their professional staff, F&R maintains a fleet of drill rigs to perform subsurface exploratory drilling in soil and rock, and an extensive list of geotechnical field-testing equipment. F&R also has geotechnical and materials testing laboratories that are accredited by AASHTO and NCDOT.

THREE OAKS ENGINEERING | Natural Resources & Permitting (DBE, WBE, HUB, SPSF)

Three Oaks Engineering (3OE) is focused on helping clients successfully accomplish infrastructure projects with careful consideration of community and environmental needs. Three Oaks was founded in 2014 and has since grown to a staff of 40 across the Carolinas. Three Oaks offers a broad range of services, including National Environmental Policy Act (NEPA) and state environmental policy act (SEPA) documentation, transportation planning, traffic engineering, community impact assessment (CIA), indirect and cumulative impacts analysis, threatened and endangered (T&E) species surveys (including freshwater mussels and bats), consultation under Section 7 of the Endangered Species Act, ecological/habitat evaluations, essential fish habitat (EFH) analyses, wetland and stream delineations, and environmental permitting.

SECTION 4 - RESUMES

KYLE WILEY | Project Manager

As a Crowder Project Manager, Kyle has proven his ability to effectively manage multiple projects simultaneously. Kyle has significant experience in design build construction in North Carolina. He is responsible for safety, quality, budget and forecasting, project schedule, submittals, as well as communication with owner and personnel on the job. He is responsible for contributing to weekly progress meetings, producing monthly billings to owner, negotiating and writing subcontracts, and negotiating and writing purchase orders for materials acquisition. Kyle brought with him 10 years of experience in large design-build projects with contributions in cost control, project scheduling, subcontract management and estimating. Specializing in structure work, Kyle has worked in field supervision rolls as well as project management. The combination of this experience allows him to easily overcome challenges by offering real world solutions. Kyle will be the primary point of contact for the duration of the project.

EDUCATION:
BS | Construction Management
AS | Industrial Systems Technology

REGISTRATIONS & CERTIFICATIONS:
Crane Signaling and Rigging Certified; NCDOT Erosion Control Certified Level II; ACI Concrete Field Testing Technician; NC Work Zone Traffic

NOTABLE PROJECTS:

- NCDOT C204038 Design Build Madison County - $4M
- NCDOT I-85 Widening Design-Build, Cabarrus County, $125M
- NCDOT I-485 Widening Design-Build, Mecklenburg County, $85M
- VDOT Valley View Bridge Replacement, 2oanoke VA, $38M
- SCDOT Lockhart Multi-bridge & Roadway-$25M
- SCDOT 5485020 - Lockhart Bridges $24M

STEPHEN ROBERTS, PE, DBIA | Lead Design Engineer

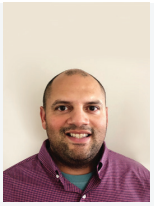
Stephen serves as Director of Transportation Engineering in the southeast and is actively involved AMT's most significant and challenging projects. He is a transportation design professional with over 27 years of experience in the public and private sectors designing, managing, and leading a wide variety of projects. His experience includes traditional NCDOT highway projects, toll facilities, transit, municipal, bicycle & pedestrian, site development, and design-build projects with assignments in North Carolina, South Carolina, Florida, Virginia, and Delaware. As a Director at AMT, Stephen has the authority and ability to draw upon resources companywide to ensure the success of this contract.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 023982; Design Build Institute of America (DBIA)

NOTABLE PROJECTS:

- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- NCDOT Triangle Parkway D/B, Durham & Wake Counties, NC
- Monroe Connector/Bypass D/B, Mecklenburg & Union Counties, NC
- Triangle Parkway D/B, Durham & Wake Counties, NC
- Sandy Forks Road Improvements, City of Raleigh, NC
- Morrisville Parkway Extension / I-540 Western Wake Freeway, Cary, NC



CHRIS BOYD, PE, DBIA | Lead Pre-construction Services Manager

Chris currently serves as the Pre-construction Services Manager for the Heavy Civil Division at Crowder. He manages a staff of estimators in the development of accurate cost estimates for projects ranging from $1M to $90M with scopes that include heavy highway structures, dams, and tunnels. The estimates take into consideration project safety, schedule and budget-labor, equipment, subcontractor and management costs and risks and are for traditional bid-build as well as alternate delivery projects (design build, CMAR, progressive design build). He is well-versed in computer applications, such as AutoCAD, Primavera P6, HCSS Heavy Bid and Blue Beam Revu. Chris will lead the Team GMP development.

EDUCATION:
MS | Real Estate Finance & Development
BS | Construction Engineering & Management

REGISTRATIONS & CERTIFICATIONS:
Profession Professional Engineer: NC | 037358–2010; SC | 34853; USGBC LEED Green Associate; Crowder General Contractor License Qualifier in NC; NC Work Zone Traffic Control Supervisor

NOTABLE PROJECTS:

- SC 9/49 Bridge Replacements, SCDOT | $21M
- Emergency Design Build Package 6 Bluff Rd.,7 | $5.8M
- Hope Station Rd. Over Crim's Creek, SCDOT | $1.6M
- Noisette Creek Bridge Replacements, SCDOT | $8M
- US 78 and SC 7 Bridges, SCDOT | $35M
- Nash County Bridges Completion Contract, NCDOT | $2.4M

DAREN SUMNER | Project Superintendent

Daren has over 20 years construction experience working on heavy civil projects. Daren is a strong leader and has earned the highest respect from his co-workers. His experience has given him a unique perspective regarding the many different aspects and roles involved to make a project successful. Daren's philosophy is to "look at the big picture and realize that everyone is working towards the same goal – to have a safe, high quality, successful project." He has consistently met or exceeded this goal resulting in satisfied owners, engineers, and a team proud of the accomplishment they have achieved. Daren will work with the Team for constructability reviews and Lead the jobsite construction activities.

REGISTRATIONS & CERTIFICATIONS:
Profession Professional Engineer: NC | 037358–2010; SC | 34853; USGBC LEED Green Associate; Crowder General Contractor License Qualifier – NC, SC, GA; NC & SC Work Zone Traffic Control Supervisor

NOTABLE PROJECTS:

- Cary White Oak Pedestrian Trail and Tunnel - $6.3M
- Roanoke Greenway & Pedestrian Bridges - $3.2M
- NCDOT - Trinity Road Pedestrian Tunnel - $4.4M
- NCDOT Div 9 – Multiple Design-Build Bridge Replacements - $13M
- Emergency Temporary Steel Structure (Bridge) Pickens, SC - $1.1M

DAVID SHINBARA, PE | Greenway Design

David Shinbara has 15 years of experience as a Roadway Design Engineer and Project Manager on transportation projects at the planning, final design, and construction phases. David has led multi-discipline design teams on large projects and his experience includes bicycle and pedestrian facilities, new roadways, urban widening, streetscapes, interchanges, feasibility studies, work zone traffic control, constructability reviews, and construction administration.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 046269

NOTABLE PROJECTS:

- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- Rogers Road Bridge Replacement (NCDOT) ,Wake County, NC
- Pulley Town Road Bridge Replacement (NCDOT), Wake County
- Shepard School Road Bridge Replacement (NCDOT), Wake County, NC
- Hillsborough Street Revitalization Phases 1 & 2, Raleigh, NC
- New Bern Avenue Improvements, Raleigh, NC

WES HEVENER, PE | Structural Design

Wes has over 19 years of experience in the design and development of bridge projects. Those projects have ranged from simple to complex in nature with project delivery methods varying from traditional Design-Bid-Build to Design-Build/P3. His responsibilities have included bridge design and rating, structure design, NBIS bridge inspections, structural analysis, and transportation design. In a Project Manager role, he has been responsible for the bridge and roadway design review, right-of-way, environmental permitting, hydraulic and geotechnical design review, invoicing, and project CPM adherence.

EDUCATION:
MS | Civil Engineering; MBA | Business Administration; BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 036583

NOTABLE PROJECTS:
- Blue Ridge Bike / Ped - Phase 2, Raleigh, NC
- Van Voorhis Road Bridge (WVDOH) - Monongalia County, WV
- Kimball Slab Bridge (WVDOH) - McDowell County, WV
- Lower Blaine Island Bridge Replacement, South Charleston, WV
- Henrietta Bridge (WVDOH) - Calhoun County, WV
- Kanawha Falls Bridge (WVDOH) - Fayette County, WV

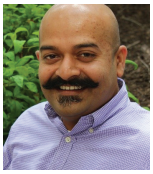
KYLE RANKIN, PE | QA/QC

Kyle has 18 years of structural engineering experience for transportation and pedestrian facilities throughout the Eastern US for state and local agencies. He has served as the structural engineer for numerous, bridges, culverts, and retaining walls with several project delivery methods. His responsibilities have included design, analysis, and plan preparation of various structures; design and plan review of consultant prepared projects; construction specifications; and bridge inspection.

EDUCATION:
BS | Civil Engineering

REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: NC | 043438

NOTABLE PROJECTS:
- Blue Ridge Road Bike/Pedestrian Improvements, Raleigh, NC
- Old Cameron Run Trail Pedestrian Bridge, City of Alexandria, VA
- Nauck Town Square Pedestrian Bridges, Arlington, VA
- Multi-Use Trail over Buffalo Creek, Town of Farmville, VA
- North Park Loop Trail over Lilly Run, Harford County, MD
- Central Avenue Connector Trail, Phase II – Prince George's County, MD



MIKHAIL BHOSLE, PE, CFM | Hydraulics/E&SC

Mikhail has 19 years of experience performing Hydrology and Hydraulics (H&H) studies for projects involving detailed H&H analysis. Mikhail will lead our team's hydrologic and hydraulics (H&H) modeling floodplain studies and coordination with the town and FEMA for development in the Neuse River floodplain. He leads a team of water resources engineers and certified floodplain managers (CFMs) with extensive experience in detailed H&H analysis for bridge and culvert projects and with floodplain permitting with local floodplain managers and FEMA for CLOMR and LOMR acceptance.

EDUCATION:
MS | Civil Engineering; BS | Civil Engineering

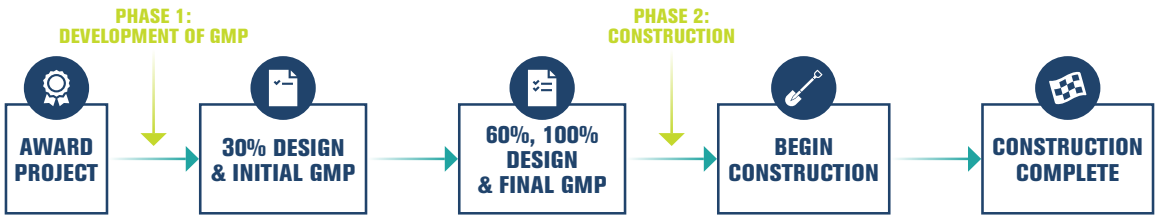
REGISTRATIONS & CERTIFICATIONS:
Professional Engineer: VA | 0402053286; CFM | US-15-08334

NOTABLE PROJECTS:
- Buffalo Creek Pedestrian-Bicycle Bridge & Trail Connections, Farmville, VA
- College Park Woods Connector Trail Bridge, Prince George's County, MD
- Hessong Bridge Road over Little Hunting Creek, Frederick County, MD
- McClanahan Bridge, Putnam County, WV
- Henson Creek Pedestrian Bridge, Prince George's County, MD
- Corker's Creek Trail Pedestrian Bridge, Snow Hill, MD

SECTION 5 - PROJECT APPROACH & SCHEDULE

5.1 - PROJECT UNDERSTANDING & APPROACH

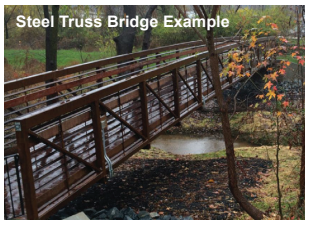
The Crowder Team has a thorough understanding of the existing conditions at the bridge sites, as well as the project constraints, challenges, and opportunities. The constraints include a budget of $850,000, 180-day maximum closure duration, a Guaranteed Maximum Price (GMP) established by January 2022, and completion by May 2023. We have structured our Team and prepared a schedule to address these issues efficiently and responsibly while reducing risk for the Town. Our Team is organized into three distinct groups – design, pre-construction services, and construction. All three groups will work together with the Town to develop designs, pricing, schedule, and contingency within the process outlined below.



PHASE 1 – DEVELOPMENT OF GMP

30% Design and Initial GMP: After the project is awarded, we will begin initial investigations, including geophysical testing, environmental review, and FEMA modeling. During this phase, it will be critical to determine the appropriate bridge type. We anticipate this being a collaborative process with the Town, considering issues such as cost, schedule, constructability, and long-term maintenance. The table below summarizes several potential structure types that we anticipate studying in more detail with the Town.

Structure Type	Advantages	Disadvantages	Comments
Prefabricated, Weathered Steel Truss Bridge	– Minimal environmental impacts – Reduced construction duration – Single span eliminates scour concerns – Durable and long-lasting – Aesthetics blend well with the natural landscape	– Long, prefabricated spans make transporting and access to sites difficult – Long spans necessitate the use of a large crane, creating additional access challenges	To improve constructability, bridge segments between 10' and 20' can be shipped, assembled, and erected near the bridge site with light duty cranes
Prefabricated, Fiber Reinforced Polymer (FRP) Bridge	– Same advantages as Prefabricated, Weathered Steel Truss – Corrosion-resistant, light-weight material reduces long-term maintenance costs and simplifies construction – Bridge segments can be shipped and constructed on site, even stick-built	– FRP material can be more costly to fabricate	Deck surface options are available to include FRP, wood, or composite material
Concrete-Decked Bridge	– Multiple span bridges improve constructability – Fewer spans required than existing bridges – Reduced long-term maintenance costs	– Multiple spans do not eliminate scour concerns – CLOMR/LOMR possibly required	Permatrak- primary vendor of this product
Reinforced Concrete Box Culvert (RCBC)	– Reduced cost as compared to bridge options – Improved construction access as compared to bridge options	– Increased environmental impacts – CLOMR/LOMR required	With increased environmental impacts and FEMA requirements, schedule is a major factor

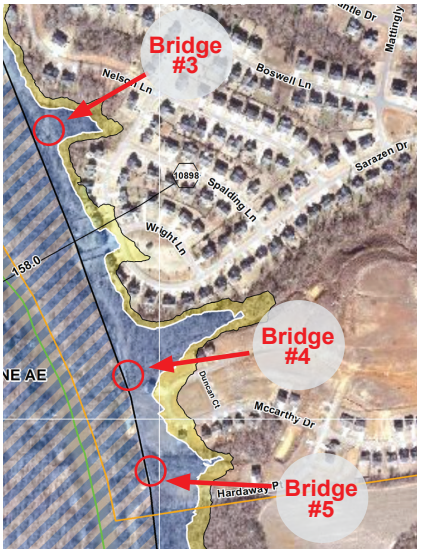

Steel Truss Bridge Example

FRP Bridge Example

Concrete-Decked Bridge Example

Culvert Example

Another critical component that must be considered at the 30% stage is floodplain permitting with the Town of Clayton and FEMA coordination as the project is located within the 100-yr floodplain and is adjacent to the Neuse River floodway. The design will be in accordance with the National Flood Insurance Program (NFIP) as administered locally by the Town of Clayton through their Flood Damage Prevention Ordinance to avoid and minimize impacts to the floodplain. The replacement of the bridges is not anticipated to impact the Neuse River Base Flood Elevation (BFE) and require a map revision but an application to FEMA to show a no-rise condition is anticipated. If FEMA deems that the Neuse River floodway is being encroached upon then the CFR 65.12 process will be followed to certify no structures are impacted.



In evaluating the FEMA Flood Insurance Rate Map, the 100-year floodplain is relatively flat between the elevations of 317' and 318' on the Neuse River and the floodplain extends up the tributaries crossed by the bridges. Based on available information and our site visit, the creeks themselves do not carry significant flow but the Neuse River likely overtops the bridges and portions of the trail. Our Team is prepared model the potential structures mentioned above and to study the resulting impacts on bridge lengths, bridge heights, and ideally carry forward options that are cost effective and maintain a no-rise condition.

Once 30% designs have been developed, Crowder estimating staff will perform quantity take-offs and solicit material vendors as well as subcontractors. As we have done in past on progressive design-build contracts, the team will walk through our bid item cost as well as the risk with the Town of Clayton to develop an Initial GMP, on or around the end of January 2022.

60%, 100% Design, & Final GMP: After the Initial GMP has been established, the team will move forward with the second stage of design, 60% plans. At this time, we will determine foundation layouts, final bridge locations, and obtain environmental permits. Our estimating team will confirm we are still within the initial GMP, highlighting any changes or new risk areas for the Town. After the 60% milestone, The Team will make all remaining permit applications and AMT will move forward with 100% design, final permitting and Release for Construction (RFC) Plans. The cost estimate and construction schedule will be finalized, lowering cost and schedule risks even further. It is at this point, in coordination with the Town, that our Team will provide the Final GMP.

PHASE 2 - CONSTRUCTION

Once the Final GMP is agreed upon, the Team will move into the Construction Phase. It will be critical to begin procurement of the bridges as quickly as possible; as material availability, pricing, and supply chain are all significant risks, and the bridge can have as much as a six-month lead time. An outline of anticipated construction activities is provided below:

- Establish temporary access and lay down areas at the three locations (Nelson Ln., Sarazen Dr., and Hardaway Point)
- Once materials are on site and all permits are in place, we will close the bridges, install erosion control measures, clear and grub, and remove existing structures
- Structure excavation will be performed at the end bents and foundations will be installed, including cast in place concrete caps
- Once bridge fabrication is complete and checked for quality, bridges will be shipped, and erected and final grading tie-ins can be made
- Final paving and seeding will be performed, and the trail will be reopened to pedestrian traffic.

5.2 - KEY RISKS

At the beginning of the project, our Team will prepare a risk matrix beginning with the risks identified preliminarily below. Working with the Town, we will determine how to best address the risks and assign the appropriate contingency amounts. At each design milestone, the matrix will be updated and refined until the Final GMP is established. A summary of the project risks is presented below.

Key Risk #1	
	Utility Conflicts
	Within the project limits, a Town of Clayton sanitary sewer main runs along the east side of the River Walk near the existing bridges at all three sites. Impacting the sewer during construction could have cost, schedule, and service implications.
	Mitigation Strategies
	Perform Level A SUE: It will be critical to determine the exact location, both horizontally and vertically to eliminate the risk of damaging the sewer main during construction. Having detailed location information will inform the design and construction decisions of our Team.
	Early Coordination with the Town's Water and Sewer Department: Our Team will partner with Clayton's Water and Sewer Department to understand their requirements for access, maintenance, and operations.

Key Risk #2	
	River Walk Closure Duration
	Per the Design-Build criteria memo, our Team understands the bridges are to be closed for a maximum of 180 days during construction. To reduce the risk of extended closures and improve communication with users of the River Walk, we will employ the following strategies.
	Mitigation Strategies
	Efficient Scheduling: Demolition and construction will only begin once permits are acquired, access and lay-down areas are in place, and materials are available for construction. Once construction starts, we commit to a continuous work schedule to complete and open the new bridges as soon as possible.
	Self-Imposed Liquidated Damages: Our Team is open to discussions with the Town regarding reasonable liquidated damages.
	Enhanced Communication with Community: The Crowder Team is committed to effective communication with all users of the River Walk. We will provide advanced notice of the River Walk closure and will work with the Town to keep the public informed of the construction schedule.
	Offsite Detour Route: Bridges 4 and 5 could potentially be constructed first with a closure duration less than 180 days. Bridge 3 would then be constructed, utilizing an offsite detour route along Nelson Lane and Sarazen Drive. With this scenario, a complete closure of the greenway would be minimized.

Key Risk #3	
	Environmental Permitting
	We anticipate the need for a Section 404 Nationwide 3 permit and the corresponding 401 Water Quality Certification. A Neuse Riparian buffer authorization will also likely be required. This could change to a Section 404 Nationwide 14 if it is decided to replace the bridges with culverts. Because these permits are issued by third parties, there is a potential risk to the schedule.
	Mitigation Strategies
	Communication & Completeness: Engage regulatory agencies as soon as possible in the design stage to make them aware of the project and studies being performed (i.e., T&E aquatic surveys). Ensure all submittals are 100% complete and provide the information required for the agencies to authorize the permits.
	Environmental Compliance: We understand that environmental stewardship and compliance are paramount throughout construction. To that end, we will develop a customized Environmental Compliance Monitoring Plan. This is an easy-to-read document that notes the specific project conditions and commitments that will warrant the most monitoring and contractor awareness during construction.

Key Risk #4	
	Skilled Labor Availability
	There is currently a shortage of skilled labor in the Raleigh metropolitan area, including Clayton. This is exacerbated by the many highway projects currently under construction.
	Mitigation Strategies
	Utilize Skilled Labor from Other Projects: Skilled labor from Crowder is currently completing two nearby projects and will be available to assign to the Clayton River Walk bridges when construction begins. Eight to ten people will be available from Fort Bragg Pedestrian Bridge and five to six people from Gateway Station, both of which will be completed in the first quarter of 2022.

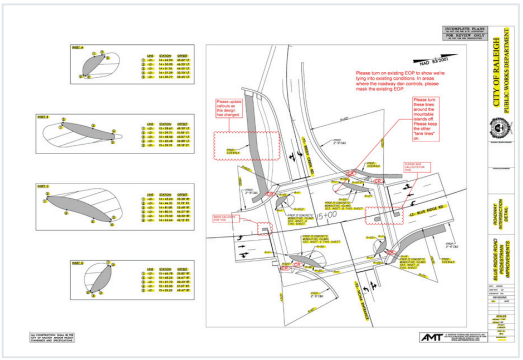
Key Risk #5	
	Access to Bridge Sites
	Even though access exists from Nelson Ln., Sarazen Dr. and Hardaway Point, long, prefabricated spans make transporting and access to sites difficult, especially within the Riverwood Subdivision and along the River Walk. Large cranes, required for construction, create additional access challenges.
	Mitigation Strategies
	Alternate Construction Methods: To improve constructability, bridge segments between 10' and 20' can be shipped, assembled, and erected near the bridge site with light duty cranes.
	Alternate Structure Types: As discussed previously, there are other structure types worth considering, including Fiber Reinforced Polymer (FRP), concrete-decked bridges, and reinforced concrete box culverts.Use of these alternate structure types, in conjunction with alternate construction methods has the potential to greatly improve site access.

Key Risk #6	
	Material Availability & Cost Escalation
	Due to the current unprecedented demand in the general construction market, paired with the supply restrictions stemming from a multitude of supply chain disruptions over the last two years, material has become scarce and the cost of available material has escalated far beyond usual inflationary rates.
	Mitigation Strategies
	Early Purchase Orders: The primary focus of our Project Manager at the start of the project will be to lock in pricing and shop availability with all of our material suppliers. This will be done by focusing energy on issuing as many PO's and Subcontracts as we can directly after NTP.
	Early Fabrication: Fabricating and collecting materials will occur as early as possible in the project. Materials that can be purchased and stored in clean and/or dry storage will be procured and billed early.

5.3 - DESIGN QUALITY ASSURANCE & QUALITY CONTROL

AMT will follow our proven Design Quality Plan (DQP) to assure that plans, specifications, and documents are technically correct and follow the applicable standards, guidelines, and policies for the Town of Clayton Design-Build Services for Clayton River Walk on the Neuse Greenway Bridge Replacements project. AMT's DQP will also be followed by our subconsultants and relies heavily on four basic components:

- **Identify Critical Information:** At the onset of the project, Stephen Roberts, PE, DBIA will work with the Team to identify all checklists, manuals, guidelines and protocols that are applicable to the project and to each milestone deliverable.
- **Prepare Check:** Prior to submittals, our calculations and plans will go through a thorough "check" process to ensure the quality goals are achieved. Every sheet of the plan-set will be stamped and signed off by the individuals that prepared, reviewed, revised, and approved that sheet.
- **Perform of Interdisciplinary Reviews:** Prior to every submittal, the plans will be reviewed by other applicable discipline leaders to ensure the designs are consistent and that no conflicts exist. As the project manager, Stephen Roberts will ensure all relevant disciplines are included and take part in this process.
- **Perform Quality Assurance Functions**: Kyle Rankin, PE will serve as the QA/QC Manager and will perform independent audits of the project to ensure the basic steps identified above are being followed by our entire Team.



5.4 - TRACK RECORD OF DELIVERING PROJECTS

Both Crowder and AMT have strong track record of delivering projects on schedule and on budget. See below for our reference projects:

Project Name	Design & Construction Change Orders for Reference Projects			Schedule in Months	
	Initial Contract Price	Final Contract Price	Notes	Original	Actual
Toxaway Design- Build Pedestrian Bridge	$975,000	$982,000	Additional owner requested scope-replacing stringers, needle beams, handrail and stair treads	6	5
Roanoke Pedestrian Trail	$3,207,694	$4,224,919	Design changes by owner required additional geotechnical work for foundations including ground modifications	11	11
Hampton Ave Pedestrian Bridge over NS Railroad	$1,431,702	$1,389,579	Cost-Quantity adjustments; Time - NS Railroad window for bridge placement delayed by RR	10	11
Blue Ridge Road Pedestrian Bridge	$558,012	$639,057	Scope Change	12	12
Pedestrian Bridge over Smith Creek	$257,736	$257,773	--	30	30

5.5 - REGULATORY AGENCY EXPERIENCE

Our Team has extensive experience with the regulatory agencies likely to be involved with this project.We anticipate the agencies and permits to be:

- **US Army Corps of Engineers (USACE)** – Clean Water Act Section 404 Nationwide Permit 3
- **North Carolina Division of Water Resources (DWR)** – Clean Water Act Section 401 Water Quality Certification
- **North Carolina Division of Water Resources (DWR)** – Neuse Riparian Buffer Authorization
- **Town of Clayton** – Erosion Control Permit
- **Town of Clayton** – Floodplain Development Permit
- **Federal Emergency Management Administration (FEMA)** - Either a No-Impact Statement or a Conditional Letter of Map Revision (CLOMR)

Neuse River Adjacent to River Walk

Three Oaks Engineering will be responsible for obtaining environmental permits for our Team.They have a staff of 40 across the Carolinas and have been obtaining environmental permits across the southeast since 1996.Three Oaks has two licensed aquatic biologists that can perform aquatic species surveys, along with a licensed bat specialist and several staff with extensive plant, bird, and terrestrial animal survey experience that complete all other required species surveys for the project.Jurisdictional delineations will be led by one of Three Oaks' three Professional Wetland Scientists. All information will be compiled into a Natural Resources Technical Memorandum (NRTM), including mapping of the project.

Mikhail Bosle, PE, CFM from AMT, will lead our team's Hydraulics modeling/floodplain studies and coordination with the town and FEMA for development in the Neuse River floodplain. He leads a team of water resources engineers and certified floodplain managers (CFMs) with extensive experience in detailed H&H analysis for bridge and culvert projects and with floodplain permitting with local floodplain managers and FEMA for CLOMR and LOMR acceptance.

5.6 - USE OF TECHNOLOGY

The Crowder Team will make use of the latest technology during the design and construction phases of the project. Our Team is well-versed in the use of analysis, design, and estimating software, and most importantly, technology that improves communication with the Owner and the public. A summary of these technologies and how they will be used is provided below.

Design & Analysis	
MicroStation V8	Drafting package for preparation of design plans and details
LEAP Bridge Concrete	Design and analysis software for concrete foundations
ArcGIS	Data visualization; advanced analysis; and authoritative data maintenance in 2D, 3D & 4D
HEC-RAS	Stream analysis software
Communication & Data Sharing	
Bentley ProjectWise	Data management system used for collaboration among design and construction team members. Town of Clayton staff can also be given access to streamline sharing of information.
Adobe After Effects	Digital visual effects and motion graphics application used in the post-production process of video. Used frequently to provide project information to the public.
Bluebeam REVU	Plan review, measurement & markup tool
Primavera P6	CPM Scheduling to include design and construction activities. Schedule will be updated regularly, with four-week lookahead schedules discussed at progress meetings with the Town.The schedule can also be cost loaded to serve as a check for our monthly billings.
Estimating & Construction	
HCSS	Detailed cost estimate development tool
AGTEK	Soils takeoff system for bid development
Procore	Construction documentation and RFI/submittals management system
COINSOA	Auditable accounting and HR database for real-time job costs/budgets

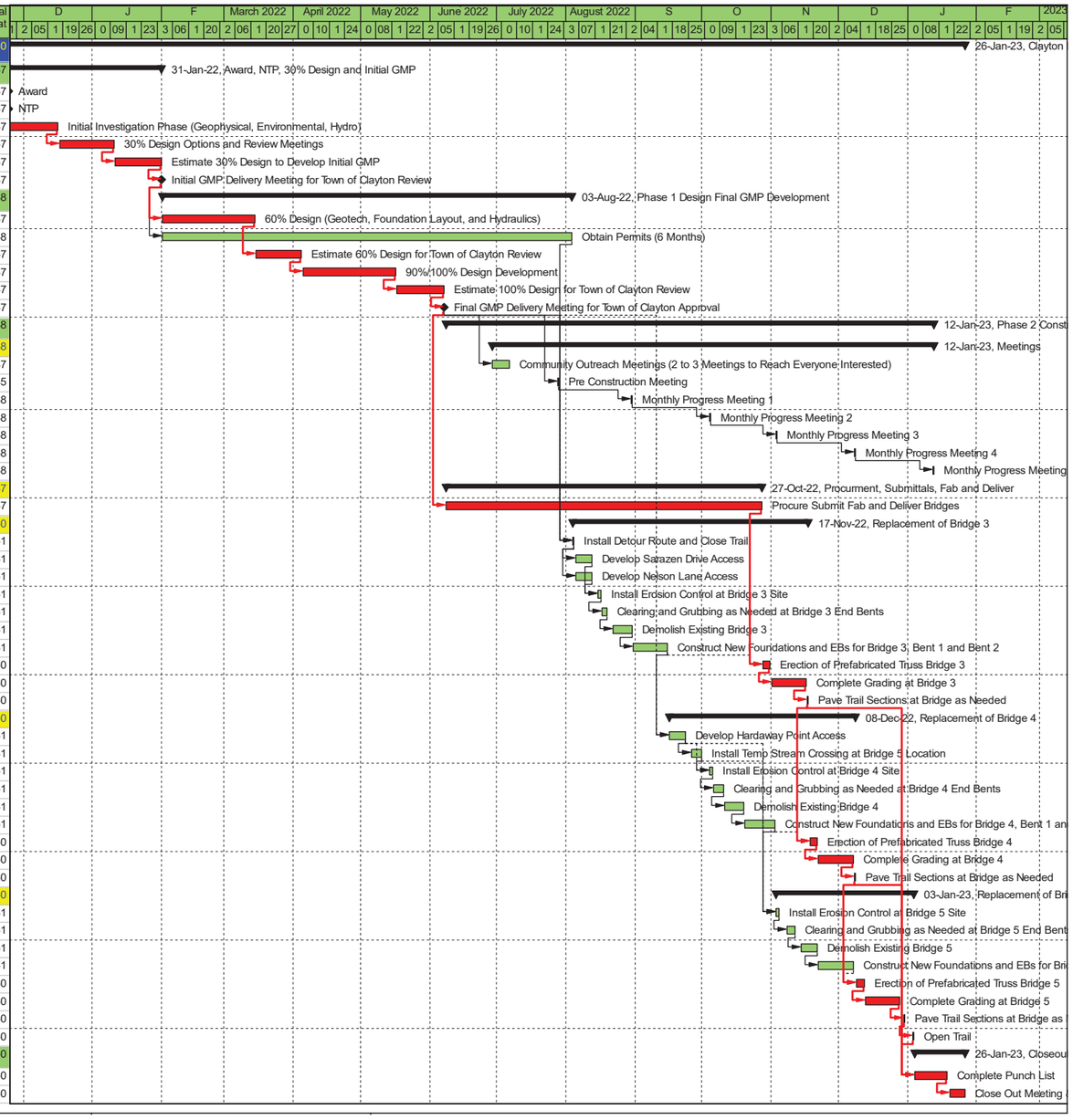
5.7 - PROJECT SCHEDULE

The schedule presented on the following page factors in adequate time for design, permitting, reviews, coordination with the Town, and construction. The implementation of Initial and Final GMP is critical to the success of the project. This approach allows our Team to establish an early GMP and then to refine it, reduce cost, and reduce risk as the Final GMP is developed. With this schedule, **we propose a total closure time of 158 days, 23 days less than the allowable 180 days.** The major milestones of our schedule are summarized below:

- Initial GMP: January 31, 2022
- Final GMP: June 7, 2022
- Delivery of Bridge Components: October 27, 2022
- Opening of the River Walk: January 3, 2023

5.7 - PROJECT SCHEDULE (continued)

Activity ID	Activity Name	Original Duration	Start	Finish	Total Float
Clayton Riverwalk Bridge Replacements PDB Proposal Scheudle		268	24-Nov-21	26-Jan-23	60
Award, NTP, 30% Design and Initial GMP		45	24-Nov-21	31-Jan-22	67
ANTPIG-1000	Award	0	24-Nov-21		67
ANTPIG-1010	NTP	0	24-Nov-21		67
ANTPIG-1020	Initial Investigation Phase (Geophysical, Environmental, Hydro)	15	24-Nov-21	16-Dec-21	67
ANTPIG-1030	30% Design Options and Review Meetings	15	17-Dec-21	10-Jan-22	67
ANTPIG-1040	Estimate 30% Design to Develop Initial GMP	15	11-Jan-22	31-Jan-22	67
ANTPIG-1050	Initial GMP Delivery Meeting for Town of Clayton Review	0		31-Jan-22	67
Phase 1 Design Final GMP Development		130	01-Feb-22	03-Aug-22	68
PH1FG-1000	60% Design (Geotech, Foundation Layout, and Hydraulics)	30	01-Feb-22	14-Mar-22	67
PH1FG-1010	Obtain Permits (6 Months)	130	01-Feb-22	03-Aug-22	68
PH1FG-1020	Estimate 60% Design for Town of Clayton Review	15	15-Mar-22	04-Apr-22	67
PH1FG-1030	90%/100% Design Development	30	05-Apr-22	16-May-22	67
PH1FG-1040	Estimate 100% Design for Town of Clayton Review	15	17-May-22	07-Jun-22	67
PH1FG-1050	Final GMP Delivery Meeting for Town of Clayton Approval	0		07-Jun-22	67
Phase 2 Construction		138	08-Jun-22	12-Jan-23	68
Meetings		124	29-Jun-22	12-Jan-23	68
M-1000	Community Outreach Meetings (2 to 3 Meetings to Reach Everyone Interested	5	29-Jun-22	06-Jul-22	187
M-1010	Pre Construction Meeting	1	28-Jul-22	28-Jul-22	65
M-1020	Monthly Progress Meeting 1	1	30-Aug-22	30-Aug-22	68
M-1030	Monthly Progress Meeting 2	1	04-Oct-22	04-Oct-22	68
M-1040	Monthly Progress Meeting 3	1	03-Nov-22	03-Nov-22	68
M-1050	Monthly Progress Meeting 4	1	08-Dec-22	08-Dec-22	68
M-1060	Monthly Progress Meeting 5	1	12-Jan-23	12-Jan-23	68
Procurment, Submittals, Fab and Deliver		100	08-Jun-22	27-Oct-22	67
PSFD-1000	Procure Submit Fab and Deliver Bridges	100	08-Jun-22	27-Oct-22	67
Replacement of Bridge 3		67	04-Aug-22	17-Nov-22	60
PH2CON-1000	Install Detour Route and Close Trail	1	04-Aug-22	04-Aug-22	61
PH2CON-1010	Develop Sarazen Drive Access	5	05-Aug-22	12-Aug-22	61
PH2CON-1020	Develop Nelson Lane Access	5	05-Aug-22	12-Aug-22	61
PH2CON-1030	Install Erosion Control at Bridge 3 Site	2	15-Aug-22	16-Aug-22	61
PH2CON-1040	Clearing and Grubbing as Needed at Bridge 3 End Bents	3	17-Aug-22	19-Aug-22	61
PH2CON-1050	Demolish Existing Bridge 3	6	22-Aug-22	30-Aug-22	61
PH2CON-1060	Construct New Foundations and EBs for Bridge 3, Bent 1 and Bent 2	10	31-Aug-22	15-Sep-22	61
PH2CON-1130	Erection of Prefabricated Truss Bridge 3	2	28-Oct-22	31-Oct-22	60
PH2CON-1140	Complete Grading at Bridge 3	10	01-Nov-22	16-Nov-22	60
PH2CON-1180	Pave Trail Sections at Bridge as Needed	1	17-Nov-22	17-Nov-22	60
Replacement of Bridge 4		53	16-Sep-22	08-Dec-22	60
PH2CON-1070	Develop Hardaway Point Access	5	16-Sep-22	23-Sep-22	61
PH2CON-1080	Install Temp Stream Crossing at Bridge 5 Location	5	26-Sep-22	30-Sep-22	61
PH2CON-1090	Install Erosion Control at Bridge 4 Site	2	04-Oct-22	05-Oct-22	61
PH2CON-1100	Clearing and Grubbing as Needed at Bridge 4 End Bents	3	06-Oct-22	10-Oct-22	61
PH2CON-1110	Demolish Existing Bridge 4	6	11-Oct-22	19-Oct-22	61
PH2CON-1120	Construct New Foundations and EBs for Bridge 4, Bent 1 and Bent 2	10	20-Oct-22	02-Nov-22	61
PH2CON-1190	Erection of Prefabricated Truss Bridge 4	2	18-Nov-22	21-Nov-22	60
PH2CON-1200	Complete Grading at Bridge 4	10	22-Nov-22	07-Dec-22	60
PH2CON-1220	Pave Trail Sections at Bridge as Needed	1	08-Dec-22	08-Dec-22	60
Replacement of Bridge 5		36	03-Nov-22	03-Jan-23	60
PH2CON-1150	Install Erosion Control at Bridge 5 Site	2	03-Nov-22	04-Nov-22	61
PH2CON-1160	Clearing and Grubbing as Needed at Bridge 5 End Bents	3	08-Nov-22	11-Nov-22	61
PH2CON-1170	Demolish Existing Bridge 5	6	14-Nov-22	21-Nov-22	61
PH2CON-1210	Construct New Foundations and EBs for Bridge 5, Bent 1 and Bent 2	10	22-Nov-22	07-Dec-22	61
PH2CON-1230	Erection of Prefabricated Truss Bridge 5	2	09-Dec-22	12-Dec-22	60
PH2CON-1240	Complete Grading at Bridge 5	10	13-Dec-22	28-Dec-22	60
PH2CON-1250	Pave Trail Sections at Bridge as Needed	1	30-Dec-22	30-Dec-22	60
PH2CON-1260	Open Trail	1	03-Jan-23	03-Jan-23	60
Closeout and Punch List		15	04-Jan-23	26-Jan-23	60
CPL-1000	Complete Punch List	10	04-Jan-23	18-Jan-23	60
CPL-1010	Close Out Meeting & Demob	5	20-Jan-23	26-Jan-23	60



TOXAWAY DESIGN- BUILD PEDESTRIAN BRIDGE | Sapphire, NC (Crowder)

After a bridge inspection revealed severe deterioration of various components, Crowder Construction Company with KCI as lead designer, was chosen as the best value team by a large, private-utility client for Design-Build Repairs of this 224' pedestrian suspension bridge. Our team vetted multiple ideas including flying in a replacement with helicopters and building a truss bridge. Ultimately, we replaced the bridge superstructure with fiberglass components while reusing existing suspension cables, foundations, and reinforced anchor blocks, kept the bridge operational during construction, and provided a safe solution that prolongs the life of the structure. The project was in a remote location on Lake Jocassee in the Gorges State Park just inside of North Carolina. There is no vehicle access, so barges were used to float material, equipment, tools, and supplies to the job-site. A boat was used to transport personnel to the site daily. The project has won multiple awards for innovation and environmental impact.

Owner: Local Private Owner: Ryan Snitker, PM | 703.935.6271	**Client Contact:** KCI Technologies, Inc. | Andrew Craig, PE | 980-288-6762 | Andrew.craig@kci.com
Initial Contract Amount: $925,000 **Final Contract Amount:** $982,000	**Project Duration:** Started: 4/10/2019 **Completed:** 9/9/2019
Project Team: Mitch Brinkley | Asst. Project Manager; William Culbertson | Site Superintendent; George Ellis,PE | Division Manager; John Tuschak, DBIA | Operations Manager	

ROANOKE RIVER GREENWAY, BRIDGE THE GAP, PHASE II | Roanoke, VA (Crowder)

The Roanoke River Greenway is a $4 million multiple Pedestrian bridge and trail project. This Heavy Civil project, with the City of Roanoke in Virginia, involves roughly 2,500 LF of greenway trail along the Roanoke River with three prefabricated pedestrian structures to provide the public with a safe place to exercise and enjoy the scenery of the city and the landscape of the river side. Each bridge was prefabricated by Big R Bridge and arrived in sections. Each bridge is 12' wide however; the lengths vary with Bridge 1 being 79' – 8 ½", Bridge 3 being 112' – 11 ½", and Bridge 2 is the largest spanning 220' across the Roanoke River. Once delivered, Crowder made all necessary splices prior to setting the bridges in place on the drilled shaft foundation piers and installed Brazilian hardwood timber decking. This project was completed four months ahead of schedule despite early project challenges. The team encountered geotechnical issues which required redesign of some of the drilled shafts. Crowder, the Owner, and Engineer collaborated to determine a remedy. Additionally, tight site access and a largely unforeseen need to deal with contaminated soils meant the double handling of some material. Through planning and communication, Crowder was able to maintain a safe working environment on the site and coordinate the disposal of contaminated material. The job is an extension of a project that Crowder completed in March 2012 for the US Army Corp of Engineers.

Owner: City of Roanoke	**Client Contact:** Luke Pugh, PE | 540.853.5208 | luke.pugh@roanokeva.gov
Initial Contract Amount: $3,207,694 **Final Contract Amount:** $4,224,919	**Project Duration:** Started: 7/10/2017 **Completed:** 4/13/2018
Project Team: George Ellis | Division Manager; Seth Bennett | Project Manager; Michael Wilson | General Superintendent; Jeff Lucas | Project Engineer; Daren Sumner | Project Superintendent; John Tuschak, DBIA | Operations Manager	

HAMPTON AVENUE EXTENSION PEDESTRIAN BRIDGE OVER NSRR | Greenville, SC (Crowder)

Crowder was the contractor for this project placing a 161' pedestrian bridge over 9 railroad tracks. Project included installing new drainage pipe and boxes down Hampton Ave and placing sidewalk to access the new bridge. This pedestrian bridge provides safe access to shopping, church etc. for a large community.

Owner: Greenville County, SC	**Client Contact:** Hesha Gamble | 864.467.4612 | hgamble@greenvillecounty.org
Initial Contract Amount: $1,431,119 **Final Contract Amount:** $1,389,579	**Project Duration**: Started: 2/1/19 **Completed:** 1/30/20
Project Team: George Ellis,PE | Division Manager; John Tuschak |Operations Manager; Mitch Brinkley | Assistant Project Manager| Michael Wilson | Superintendent; William Culbertson | Project Superintendent	

BLUE RIDGE ROAD PEDESTRIAN BRIDGE | Raleigh, NC (AMT)

The City of Raleigh selected the AMT Team, to provide professional engineering design services, right of way plats, final construction plans, and contract bid documents for the bicycle and pedestrian improvement project located near the heart of Downtown Raleigh. The project consists of designing a 10' multi-use path along the half mile stretch of road, including the design of North Carolina's first Protected Intersection, designing a gateway-pedestrian bridge that crosses Wade Avenue - six-lane, controlled-access freeway entering Downtown Raleigh, and extensive stakeholder outreach.

The project was divided into two phases: 1) a feasibility study and 2) the final design/contract document phase. Design disciplines include survey, multi-use path, roadway, hydraulic and structure design, public outreach and engagement, visualizations, completion of environmental document, permitting, traffic and pedestrian signal design, geotechnical, utility coordination, easement exhibits/deed descriptions, final construction plans, and development of contract bid documents. Given the design of North Carolina's first Protected Intersection, close coordination with the City and NCDOT was required early and often during the design process. Due to the nature of the gateway pedestrian bridge over Wade Avenue, AMT led stakeholder coordination to ensure input was received from major stakeholders, including NC State University, NC Museum of Art, NC Fairgrounds, Blue Ridge Corridor Alliance, and NCDOT.

The $4.6M dollar project is a Local Administered Project (LAP) receiving Federal funding and is being administered by the City of Raleigh along an NCDOT maintained road. Given the nature of Federal funding, the City asked to receive construction authorization before the end of FY20 (September). In order to accomplish this, AMT Project Manager Nick Ramirez, PE monitored the schedule/budget and scheduled weekly progress meetings with the design team. In addition to monthly status calls with the City, constant communication with the City has been maintained during the design process to ensure the aggressive schedule was met. Thus far, project submittals, stakeholder engagement meetings, and other deliverables have been completed ahead of schedule. The environmental document was submitted and initially reviewed by NCDOT in approximately 5 months.

Owner: City of Raleigh	**Client Contact:** Brian Roth-Roffy, PE | 314.596.7360 | brian.roth-roffy@raleighnc.gov
Initial Contract Amount: $925,000 **Final Contract Amount:** $982,000	**Project Duration:** Started: 4/10/2019 **Completed:** 9/9/2019
Project Team: Stephen Roberts, PE, DBIA | Quality Control Manager; David Shinbara, PE | Greenway Design; Sam MacDonald, PE | Hydrology/ E&SC; Kyle Rankin, PE | Structural Engineer; Patrick Alton, PE | Geotechnical Engineer (F&R)	

PEDESTRIAN BRIDGE OVER SMITH CREEK | Clifton Forge, VA (AMT)

AMT provided engineering design and related services for a pedestrian bridge that crosses Smith Creek in downtown Clifton Forge as part of the Smith Creek Trail Corridor in FEMA Zone AE. The bridge replaced a non-ADA compliant pedestrian bridge linking Segments 2 and 3 of the Smith Creek Trail at the end of Pine Street. The $410,000 federally-funded project was locally administered in completed in accordance with the Local Assistance Program (LAP) manual and other VDOT standards and specifications. The new single-span pedestrian bridge crosses the creek perpendicular to the channel banks (not skewed) to reduce floodplain and wetland impacts.

Scope of work included the following: Preliminary Site Plan and Scoping; Development of Construction Plans (which included a demolition plan for the existing bridge, an open specification for truss bridge manufacturers and supporting calculations for the abutment design); Structural Engineering; Topographic Survey; NEPA Documentation; Permitting; Bid Package; Construction Engineering; and Geotechnical Engineering provided by a subconsultant. AMT also coordinated and oversaw the quality assurance of the HECRAS model (Duplicate Effective Model, DEM) which was used for this No-Rise Analysis. Crucial duties included supervision of road design engineers and River Hydraulic engineers, performing QC checks of field survey data, monitoring project documentation, reviewing project finances, assisting design group collaboration, and resolving data and imagery disputes.

Owner: Town of Clifton Forge, VA	**Client Contact:** Darlene Burcham | 540.863.2500 | dlburcham@cliftonforgeva.gov
Initial Contract Amount: $87,632.40 **Final Contract Amount:** $96,236	**Project Duration**: Started: 6/10/2019 **Completed:** 07/2020
Project Team: Kyle Rankin | Structural Engineering; Khoss Babaei, PE | Structural Engineering	

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

Identification of HUB Certified/ Minority Business Participation

I, Crowder Construction Company/AMT Progressive Design-Build Team
(Name of Bidder)
do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work Type	*Minority Category	**HUB Certified (Y/N)
Three Oaks Engineering 324 Blackwell Street, Ste 1400, Durham, NC	Env. Permitting	W	Y
Froehling & Robertson Inc. 310 Hubert St., Raleigh, NC	Geotech	AI	Y

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be ($)_____.

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State of North Carolina – AFFIDAVIT A – Listing of Good Faith Efforts

County of North Carolina

(Name of Bidder)

Affidavit of Crowder Construction Company

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

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

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: 10/27/2021 Name of Authorized Officer: George F. Ellis

Signature: George F Ellis

Title: Vice President

TERESA W. MATTHEWS NOTARY PUBLIC SEAL GASTON COUNTY, N.C.

State of NC, County of Mecklenburg

Subscribed and sworn to before me this 27th day of October 2021

Notary Public Teresa W Matthews

My commission expires 8/1/2025

MBForms 2002-Revised July 2010

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina – AFFIDAVIT B – Intent to Perform Contract with Own Workforce

County of _____

Affidavit of N/A
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

_____contract.
(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date:_____Name of Authorized Officer:_____

Signature:_____

Title:_____

SEAL

State of _____, County of_____
Subscribed and sworn to before me this _____day of _____20___
Notary Public _____
My commission expires_____

MBForms 2002-Revised July 2010

Exhibit D

Minimum Insurance Requirements

(This document replaces Exhibit A, Attachment D)

Professional and Professional's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Contract insurance for the following: protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of Professional's employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to Professional's performance under this Contract.

Unless otherwise specified on Attachment 1, minimum limits of insurance coverage are:

General Liability	$1,000,000 per occurrence/ $2,000,000 aggregate
Commercial Automobile Liability	$1,000,000 CSL
Commercial Excess Liability / Umbrella Policy	$1,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer's Liability	$500,000 each accident
Professional Liability	$1,000,000 per claim

The Professional may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to the Town.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Insurers

The minimum insurance ratings for any company insuring the Professional shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the Town may, at its option, require the Professional to purchase insurance from a company whose rating meets the minimum standard. Professional's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If Professional is unable to find an authorized carrier for any line of insurance coverage, Professional shall notify Town in writing.

Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name the Town, its elected officials, officers, employees and volunteers as an additional insured.

Notice of Cancellation

Each policy shall provide that the Town shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, Professional shall procure substitute insurance so as to assure Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

Professional's insurance coverage shall be primary for any claims related to this agreement.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Town, its agents or agencies, it being the intention of the parties that the insurance policies shall protect Town and be primary coverage for any and all losses covered by the policies.

Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Contract. The Town's review or acceptance of certificates of insurance shall neither relieve Professional of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Contract.

Certificate Holder address should read:
Town of Clayton
Attn: Town Manager
PO Box 879
Clayton, NC 27528

Special Risks or Circumstances

The Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit E

EJCDC®

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

License Agreement

Before you use this EJCDC document:

1. **Read this License Agreement in its entirety.** As purchaser, you agree to comply with and are bound by the License Agreement's terms, conditions, and instructions when you use the attached EJCDC document. **Commencement of use of the attached document indicates your acceptance of these terms, conditions, and instructions.** If you do not agree to them, you should promptly return the materials to the vendor.

2. **This License Agreement applies to the attached document only. Other licensing terms and instructions may apply to other EJCDC documents.**

3. The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents (including but not limited to the EJCDC document that is attached, and all other documents in the EJCDC Construction Series, Engineering Series, Design-Build Series, Remediation Series, Procurement Series, and Narrative Series)** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

4. You acknowledge that you understand that the text of the **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.

5. Make sure that you have the correct word processing software for the attached EJCDC document, which is distributed in Microsoft Word (.doc) format.

6. EJCDC allows the end user wide discretion in using and editing the attached document, subject to the provisions of the License Agreement. You are advised, however, that EJCDC documents contain numeric and other cross-references, and that changes to one part of the document may affect other parts. It is solely your responsibility to assure the adequacy and consistency of the final document for your purposes.

How to Use This Document:

1. Although EJCDC has made reasonable efforts to achieve uniformity of formatting, some document controls (e.g., bold, underline, font size, indentation, numbering, pagination, table of contents) may be affected by software versioning and translators, user settings, changes during editing, and other factors, and may require user intervention to restore intended format and appearance.

2. The term "Standard EJCDC Text" for the attached document generally refers to all text prepared by EJCDC in the main body of the document, and does not include covers, logos, footers, instructions, license agreement, copyright notices, Notes to Users, or text options. The content of document exhibits (if any) is not Standard EJCDC Text for this purpose.

2. If you do not alter the Standard EJCDC Text of the attached document, you may use it as published, with all EJCDC logos, footers, and copyright notices retained.

3. If you modify the Standard EJCDC Text of the attached document, you must follow the following instructions that address if, when, and how to show the changes to other parties.

4. During the drafting or negotiating process for the document, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus if a draft of the document purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using "Track Changes" (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.

5. As between contracting parties, once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The parties may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any "Track Changes," redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

6. If the attached document is revised or altered and then presented to others (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a

version that shows the changes.

7. The attached EJCDC document may contain "Notes to User," bracketed comments, or prompts that provide instructions for filling in project-specific information, selecting the appropriate clause from a list of options, or making additions or deletions, or that give background information regarding a particular provision. The user may (and in most cases should) delete these notes, comments, and prompts during the drafting process. Deletion of such notes, comments, and prompts is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with "Track Changes," redline/strikeout, highlighting, or other means of indicating changes, at any point in the drafting process.

8. The attached EJCDC document may contain exhibits that are to be used to set out project-specific provisions, such as scope of services, compensation, and insurance requirements. These exhibits are meant to be revised, supplemented, and altered by the user, or discarded if not applicable to the specific project. The text of the various exhibits is not considered Standard EJCDC Text and is not subject to the License Agreement requirement that additions or deletions to the Standard EJCDC Text be shown clearly, and therefore does not need to be shown with "Track Changes," redline/strikeout, highlighting, or other means of indicating changes, at any point in the drafting process.

9. In a few instances the EJCDC Notes to User will instruct the user of a document to choose one of two or more text options in the main body of the document. In such cases the options that are not selected should be discarded or deleted, and not included in the final version of the document. Such discarding or deletion of text options is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process. Note, however, that the text that **is** selected (which in this scenario is in the main body of the document and not in an exhibit) is Standard EJCDC Text, and any revision or alteration of the text that **is** selected is subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly.

10. The License Agreement typically is removed when a document is being prepared for use on a specific project. Such removal is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process. The terms of the License Agreement remain in effect regardless of whether it has been removed or remains attached to the document.

11. When a document is being prepared for use on a specific project, some users remove the EJCDC front cover page, and the "inside front cover page" containing specific information regarding the EJCDC sponsoring organizations. Such removal is not subject to the License Agreement requirement that additions or deletions to Standard EJCDC Text be shown clearly, and therefore does not need to be shown with highlighting, redline/strikeout, or other means of tracking changes, at any point in the drafting process.

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c/o National Society of Professional Engineers
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Alexandria, VA 22314
Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

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(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL	**SURETY**
_____ *(seal)*	_____ *(seal)*
Contractor's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	**By:** _____
Signature	Signature *(attach power of attorney)*
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	**Attest:** _____
Signature	Signature
_____	_____
Title	Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

EJCDC® C-610, Performance Bond
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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 Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 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 Paragraph 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;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 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 Paragraph 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 Paragraph 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 Owners 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 Paragraph 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:

5.4.1 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

5.4.2 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 Paragraph 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 Paragraph 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 Paragraph 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:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 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 Paragraph 5; and

7.3 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 Paragraph 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

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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 periods of limitations 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 for the Contractor for 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:

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2. if EJCDC's selling agent is unable to deliver a replacement CD which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

As purchaser, you assume full responsibility for determining the suitability of this document to your purposes, and for the application and use of this document for contract or project purposes. To the fullest extent permitted by law, in no event will EJCDC, its sponsoring organizations, its committee

members, attorneys, consultants, authorized vendors, or advisors, or their respective staff members, employees, agents, or contractors, be liable to you or any other party for any damages, including any lost profits, lost savings, contractual liabilities, disappointed commercial expectations, economic loss, or other direct, incidental, or consequential damages arising out of the content, unenforceability, insufficiency, inadequacy, use or inability to use the attached EJCDC document or any other **EJCDC Design and Construction Related Documents,** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so portions of the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this License Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void. **If you transfer or purport to transfer such rights, duties, or obligations to another party, your license is automatically terminated.**

This License Agreement shall be governed by the laws of the State of Virginia. If you have any questions concerning this License Agreement, or any requests or inquiries regarding the EJCDC copyright, you may contact EJCDC by writing to:

EJCDC Copyright Administrator
c/o National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314
Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this License Agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the License Agreement and supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this License Agreement.

Information regarding the content of the attached EJCDC document and other **EJCDC Design and Construction Related Documents** may be obtained at ejcdc.org or from the following EJCDC sponsoring organizations:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, D.C. 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL	**SURETY**
_____ *(seal)*	_____ *(seal)*
Contractor's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	**By:** _____
Signature	Signature *(attach power of attorney)*
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	**Attest:** _____
Signature	Signature
_____	_____
Title	Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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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 Paragraph 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 Paragraph 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,

      5.1.1 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

      5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 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 Paragraph 13).

6. If a notice of non-payment required by Paragraph 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 Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 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 Paragraph 7.1 or 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 Paragraph 7.1 or 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 Paragraph 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.

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Exhibit F

CONTRACTOR'S RELEASE AND LIEN WAIVER

The undersigned Design-Builder warrants and represents that upon payment of $_____ as partial payment pursuant to the contract between Design-Builder and _____("Owner") (including any amendments or modifications thereto) (the "Contract") for the Project known as _____and located at _____, Design-Builder has been paid all amounts owed for all work performed and materials provided through _____ (the "Effective Date"). In consideration for this partial payment, and other good and valuable consideration, receipt of which is hereby acknowledged, the Design-Builder makes the following representations, warranties and releases:

1. The Design-Builder represents and warrants that, upon receipt of the payment described above, Design-Builder has been paid in full (exclusive of retainage) through the Effective Date for all labor, services and materials in connection with the Project, including all work performed or any materials provided by its subcontractors, materialmen, laborers or other persons.

2. Design-Builder warrants and represents that: (a) it has paid all its subcontractors, materialmen, laborers, and other persons in full (exclusive of retainage) for all work performed that is subject to prior payments by Owner; (b) there are no outstanding claims, demands, or liens against either Design-Builder, the Project or the real property on which the Project was constructed and/or any improvements thereon (the "Property"); and (c) no claims, demands, or liens have been filed against Design-Builder or the Property.

3. Design-Builder releases and discharges Owner from all claims, demands, or causes of action (including all lien claims and rights) which the Design-Builder has or might have against Owner or the Property related to payments owed Design-Builder under the Contract prior to the Effective Date. Design-Builder hereby specifically waives and releases any lien, claim or right to assert a lien against the Owner and/or the Property, and also specifically waives, to the extent allowed by law, all liens, claims, or rights of lien by the Design-Builder's subcontractors, materialmen, or laborers.

The undersigned Design-Builder makes the representations and warranties with full knowledge that Owner shall be entitled to rely upon the truth and accuracy thereof. Design-Builder acknowledges and agrees that Owner does not waive any rights or claims of any kind under the Contract at law or in equity by making this payment or by acceptance of this Release and Lien Waiver.

This _____ day of _____, 2022

Crowder Construction Company

Name:_____

Printed Name:_____

Title:_____

SUBCONTRACTOR'S RELEASE OF LIENS AND CLAIMS

The undersigned Subcontractor, upon receipt of payment in the amount of $_____ (the "Payment") pursuant to the contract (including any amendments or modifications thereto) (the "Contract") between Subcontractor and _____ ("Contractor") for the Town of Clayton ("Owner") project known as _____ (the "Project") located at _____, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, makes the following representations and warranties:

1. Subcontractor represents and warrants that it has been paid in full for all labor, services, and materials provided by Subcontractor, as well as for all labor services and materials provided by its subcontractors, materialmen, suppliers, laborers, or other persons through _____ (including, without limitation, for all extra work, extra materials, accrued interest, delay, disruption, acceleration, interference, and/or impact claims).

2. Subcontractor warrants and represents that: (a) it has paid all of its subcontractors, materialmen, suppliers, laborers, and other persons in full for all labor, materials, and services provided that are subject to prior payments from Contractor; (b) it will promptly pay all of its subcontractors, materialmen, suppliers, laborers, and other persons for all labor, materials, and services provided that are a subject of the Payment; (c) there are no outstanding claims, demands, or liens against either Subcontractor, the Project or the real property on which the Project was constructed and/or any improvements thereon (the "Property"); and (d) no claims, demands, or liens related to the Project have been filed against Subcontractor, the Project or the Property.

3. Subcontractor releases and discharges Contractor and Owner and all related persons and entities from all claims, demands, or causes of action (including all lien claims and rights) which the undersigned has, or might, under any present or future law, assert against Contractor or Owner relating to the Payment and/or the labor, services, materials or other amounts for which the Payment is being made. Subcontractor hereby specifically waives and releases any lien or claim or right to lien against Contractor, Owner, the Property, and/or the Project relating to the Payment and/or the labor, services, materials or other amounts for which the Payment is being made, and also specifically waives, to the fullest extent allowed by law, all liens, claims, and rights of lien by any of its subcontractors, materialmen, suppliers, laborers and all other persons or entities furnishing services, labor, or materials in connection with the Project for which the Payment is being made.

The undersigned Subcontractor makes the foregoing warranties and representations with full knowledge that Contractor, Owner and Owner's lenders (if any) intend to rely upon the truth and accuracy thereof, and Subcontractor further represents that Contractor, Owner and Owner's lenders (if any) shall be entitled to rely upon the truth and accuracy of such warranties and representations. Subcontractor acknowledges and agrees that Contractor and Owner do

not waive any rights or claims of any kind under the Contract, at law or in equity, by making the Payment or by acceptance of this Partial Waiver. Subcontractor acknowledges and agrees that neither the making of the Payment nor acceptance of this Partial Waiver relieves Subcontractor of its obligation to timely complete all items of work outstanding.

This _____ day of _____, 2022.

_____
[SUBCONTRACTOR'S NAME]

By**:**

Signature: _____

Printed Name: _____

Title: _____

CONTRACTOR'S RELEASE AND LIEN WAIVER

The undersigned Design-Builder warrants and represents that upon payment of $_____ as partial payment pursuant to the contract between Design-Builder and _____("Owner") (including any amendments or modifications thereto) (the "Contract") for the Project known as _____and located at _____, Design-Builder has been paid all amounts owed for all work performed and materials provided through _____ (the "Effective Date"). In consideration for this partial payment, and other good and valuable consideration, receipt of which is hereby acknowledged, the Design-Builder makes the following representations, warranties and releases:

1. The Design-Builder represents and warrants that, upon receipt of the payment described above, Design-Builder has been paid in full (exclusive of retainage) through the Effective Date for all labor, services and materials in connection with the Project, including all work performed or any materials provided by its subcontractors, materialmen, laborers or other persons.

2. Design-Builder warrants and represents that: (a) it has paid all its subcontractors, materialmen, laborers, and other persons in full (exclusive of retainage) for all work performed that is subject to prior payments by Owner; (b) there are no outstanding claims, demands, or liens against either Design-Builder, the Project or the real property on which the Project was constructed and/or any improvements thereon (the "Property"); and (c) no claims, demands, or liens have been filed against Design-Builder or the Property.

3. Design-Builder releases and discharges Owner from all claims, demands, or causes of action (including all lien claims and rights) which the Design-Builder has or might have against Owner or the Property related to payments owed Design-Builder under the Contract prior to the Effective Date. Design-Builder hereby specifically waives and releases any lien, claim or right to assert a lien against the Owner and/or the Property, and also specifically waives, to the extent allowed by law, all liens, claims, or rights of lien by the Design-Builder's subcontractors, materialmen, or laborers.

The undersigned Design-Builder makes the representations and warranties with full knowledge that Owner shall be entitled to rely upon the truth and accuracy thereof. Design-Builder acknowledges and agrees that Owner does not waive any rights or claims of any kind under the Contract at law or in equity by making this payment or by acceptance of this Release and Lien Waiver.

This _____ day of _____, 2022

Crowder Construction Company

Name:_____

Printed Name:_____

Title:_____

SUBCONTRACTOR'S RELEASE OF LIENS AND CLAIMS

The undersigned Subcontractor, upon receipt of payment in the amount of $_____ (the "Payment") pursuant to the contract (including any amendments or modifications thereto) (the "Contract") between Subcontractor and _____ ("Contractor") for the Town of Clayton ("Owner") project known as _____ (the "Project") located at _____, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, makes the following representations and warranties:

1. Subcontractor represents and warrants that it has been paid in full for all labor, services, and materials provided by Subcontractor, as well as for all labor services and materials provided by its subcontractors, materialmen, suppliers, laborers, or other persons through _____ (including, without limitation, for all extra work, extra materials, accrued interest, delay, disruption, acceleration, interference, and/or impact claims).

2. Subcontractor warrants and represents that: (a) it has paid all of its subcontractors, materialmen, suppliers, laborers, and other persons in full for all labor, materials, and services provided that are subject to prior payments from Contractor; (b) it will promptly pay all of its subcontractors, materialmen, suppliers, laborers, and other persons for all labor, materials, and services provided that are a subject of the Payment; (c) there are no outstanding claims, demands, or liens against either Subcontractor, the Project or the real property on which the Project was constructed and/or any improvements thereon (the "Property"); and (d) no claims, demands, or liens related to the Project have been filed against Subcontractor, the Project or the Property.

3. Subcontractor releases and discharges Contractor and Owner and all related persons and entities from all claims, demands, or causes of action (including all lien claims and rights) which the undersigned has, or might, under any present or future law, assert against Contractor or Owner relating to the Payment and/or the labor, services, materials or other amounts for which the Payment is being made. Subcontractor hereby specifically waives and releases any lien or claim or right to lien against Contractor, Owner, the Property, and/or the Project relating to the Payment and/or the labor, services, materials or other amounts for which the Payment is being made, and also specifically waives, to the fullest extent allowed by law, all liens, claims, and rights of lien by any of its subcontractors, materialmen, suppliers, laborers and all other persons or entities furnishing services, labor, or materials in connection with the Project for which the Payment is being made.

The undersigned Subcontractor makes the foregoing warranties and representations with full knowledge that Contractor, Owner and Owner's lenders (if any) intend to rely upon the truth and accuracy thereof, and Subcontractor further represents that Contractor, Owner and Owner's lenders (if any) shall be entitled to rely upon the truth and accuracy of such warranties and representations. Subcontractor acknowledges and agrees that Contractor and Owner do

not waive any rights or claims of any kind under the Contract, at law or in equity, by making the Payment or by acceptance of this Partial Waiver. Subcontractor acknowledges and agrees that neither the making of the Payment nor acceptance of this Partial Waiver relieves Subcontractor of its obligation to timely complete all items of work outstanding.

This _____ day of _____, 2022.

_____
[SUBCONTRACTOR'S NAME]

By**:**

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT G

Weather Days

WEATHER DAYS:

For informational and baseline purposes, Owner and Construction Manager agree that the "Weather Days" at the project location are as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
7	6	7	6	7	6	7	6	5	5	5	7

The baseline above represents the number of calendar days for each month that construction activity is expected to be suspended due to normal seasonal weather.

Construction Manager assumes full responsibility for completing the project within the contractual timeframe taking into consideration these Weather Days. To the extent that Construction Manager contends it is entitled to an extension of the Contract Time for adverse weather, Construction Manager shall pursue such claim as provided in Article 10 of the DBIA 535, as modified.

In addition to precipitation listed in section 8.2.3 of DBIA 535, Weather Days shall also include the following conditions:

1. "Snow Days" - standing snow on the project site in excess of 1.0"
2. "Drying Days" – are defined as a day subsequent to the actual "rain day" during the period of critical path site work operations (mass grading, building pad grading, excavations, backfill operations).
3. "Windy Days" – are defined as days where critical path activities cannot proceed due to high winds that preclude the ability to utilize a crane for critical path activities because wind speeds in excess of the manufacturer's recommendations.

Resolution #2022-02

RESOLUTION OF AWARD

WHEREAS, the Town of Clayton, North Carolina issued a RFQ under NCGS 143-218.1(A) to solicit a Design-Build team to complete improvements of bridges along the Clayton Riverwalk on the Neuse Greenway; and

WHEREAS, on September 7, 2021 staff issued an RFQ and received a total of 4 submissions and a selection committee comprised of the Engineering Director, Assistant Town Engineer, Construction Project Administrator, Parks and Recreation Director and Procurement Contract WMBE Manager evaluated the statements of qualifications; and

WHEREAS, after evaluating each, the committee selected Crowder Construction Company and design consultant AMT (Design-Build) as the top candidate based on scoring criteria; and

WHEREAS, staff has worked with the selected Design-Build team to negotiate a contract based on DBIA standard that is acceptable to both parties; and

WHEREAS, it is recommended Design-Build Contract be granted to Crowder Construction Company and AMT; and

WHEREAS, the contract has been reviewed by the Procurement Manager and is based on DBIA 544 and supplemented by DBIA 535 with Phase 1 pre-construction and design services total fee being $296,086.60; and

WHEREAS, it is further recommended that town manager or designee be authorized to execute the contract for Phase 1 pre-construction services and any amendments up to the GMP milestone; and

NOW, THEREFORE, BE IT RESOLVED that award is made to Crowder Construction Company and AMT (Design-Build Contract) for the improvements of three wooden bridges along the Clayton Riverwalk on the Neuse Greenway.

Duly adopted this the 18th day of January 2022 while in regular session upon motion of Council Member _____, seconded by Council Member _____.

_____
Jody McLeod
Mayor

ATTEST:

_____
Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Town Council Agenda Cover Sheet

Meeting Date
January 18, 2022

Agenda Location
Old Business

Item Title
Mid-Year Budget Review

Presenter:
Rich Cappola, Interim Town Manager

Summary/Description
The Interim Town Manager will present a mid-year budget report for the General Fund; Water and Sewer Fund; and Electric Fund. The report contains key budget and organizational adjustments in conjunction with an overall assessment of the Town's financial condition.

Requested Action
Approval

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☐

Additional Documents to be Included in Agenda Packet

Meeting Timeline
Click or tap here to enter text.