

# Town of Kernersville, North Carolina



## REQUEST FOR QUALIFICATIONS

### Design-Build Services

### Ivey Redmon Stream Restoration Project Phase I

August 10, 2017



**TABLE OF CONTENTS**

SECTION 1. PROJECT INFORMATION AND PROCUREMENT PROCESS ..... 1

1.1 General Notice ..... 1

1.2 Overview..... 1

1.3 Project Scope of Work..... 1

1.4 Conceptual Schedule..... 2

1.5 Construction Costs..... 2

1.6 Status of Existing Work, Permitting and Site Information..... 2

1.7 Additional Information and Procurement Process..... 3

1.8 Project Expectations ..... 3

1.9 Services Provided by the Design-Builder ..... 4

SECTION 2. INSTRUCTIONS FOR PROPOSERS..... 6

2.1 Defined Terms ..... 6

2.2 Examination and Purchase of Documents..... 6

2.3 Pre-SOQ Conference and Site Tour..... 7

2.4 Delivery of SOQs and Procurement Schedule ..... 7

2.5 Point of Contact..... 8

2.6 Copies of RFQs..... 9

2.7 Examination ..... 9

2.8 Interpretations and Alternate Terms and Conditions ..... 10

2.9 Preparation of SOQ..... 10

2.10 Confidentiality of SOQ Information..... 11

2.11 Submittal of SOQs..... 12

2.12 Modification or Withdrawal of SOQ..... 14

2.13 Evaluation of SOQs..... 14

2.14 Payment and Performance Bonds and Insurance ..... 16

2.15 The Draft Design-Build Agreement..... 16

2.16 Requirements for Design Professionals..... 17

2.17 Inspection and Construction Materials Testing ..... 18

2.18 Minority, Women and Small Business..... 18

2.19 Validity of SOQs..... 18

2.20 Responsiveness..... 18

2.21 Owner Not Responsible for Assumptions by Proposers..... 18

2.22 Rights and Reservations of the Owner..... 19

2.23 Requirements to Keep Design-Build Team Intact ..... 20

SECTION 3. SOQ SUBMISSION REQUIREMENTS.....	21
3.1 Requirements for the SOQ .....	21
3.2 SOQ Submission Requirements .....	21
SECTION 4. SOQ FORMS.....	29
SECTION 5. ADDITIONAL INFORMATION .....	56
5.1 Feasibility Study: Stream Restoration of Beeson Creek and Tributaries Located Near Ivey M. Redmon Sports Complex, Kernersville, NC	
5.2 Map of Construction Entrances, Working Areas and Pre-SOQ Conference Meeting Location	
5.3 Draft Design-Build Agreement	

## SECTION 1. Project Information and Procurement Process

### 1.1 General Notice

- 1.1.1 The Town of Kernersville, North Carolina (“Owner”) extends this Request for Qualifications (“RFQ”) to solicit a response in the form of a Statement of Qualifications (“SOQ”) from any interested party (“Proposer”) for Design-Build Services (“Services”) for the Ivey Redmon Stream Restoration Project (“Project”).

### 1.2 Overview

The Ivey Redmon Stream Restoration Project seeks to restore and/or enhance stream reaches located in and adjacent to the Ivey M. Redmon Sports Complex in Kernersville, NC. Sedimentation is resulting from streambank erosion and channel headcutting along the stream channels, and the streambank erosion is causing extensive downstream migration of sediment and associated nutrients. The project is being undertaken to restore and/or enhance the streams in order to significantly reduce streambank erosion and improve water quality and aquatic habitat. The Town was awarded a grant from the NC Clean Water Management Trust Fund (“CWMTF”) to assist with funding the restoration of three of these reaches, totaling approximately 3,540 linear feet. Two additional phases of restoration are planned for the other stream reaches located within the Sports Complex. The project will be used as a public education and outreach opportunity, with planned workshops and classes to be led by NC Cooperative Extension with assistance from the selected Design-Build Team.

### 1.3 Project Scope of Work

- A. The Project consists of the first phase of restoration/enhancement planned to occur within the Complex (Phase 1) which will be implemented by the Design-Builder.
- B. The Phase 1 scope of work will consist of the design and construction of approximately 3,540 feet of stream restoration/enhancement along the stream reach identified as “Reach 1”, “Reach 3” and “Reach 4”, in the attached map (see Section 5).

In addition to conducting all the work that is necessary to complete stream restoration design and construction, the Design-Build Team will also be required to:

- Provide a long-term maintenance plan for the project. The maintenance plan should be concise and should include a checklist of inspection items for the stream restoration components that will enable the Town to conduct annual inspection.
- Provide a 1-year warranty on workmanship, plants and materials.
- Provide a vegetation plan for the restored channels that uses perennial native vegetation with a focus on key spots where a variety of sizes (e.g. shrub, tree), type

(e.g. container, ball and burlap, tubelings and bare root) and bloom color are selected to provide an aesthetic appeal to the project.

- Assist the Town in community meetings for occasional project updates.
- Assist with educational workshops and classes to be held during the design and construction process. NC Cooperative Extension has agreed to be the lead in the education effort and will offer a construction class for professionals; a stream repair class for citizens; an invasive class for professionals/citizens and possibly other classes as well. The Design-Build Team is expected to be an active part of the education process.
- Provide invasive species management and removal.

#### 1.4 Conceptual Schedule

To meet the requirements of project grant funding, the Town requires that the Project be completed before May 2019.

#### 1.5 Construction Costs

Based on the preliminary work done to date, the Owner's Project budget is \$580,000.

#### 1.6 Status of Existing Work, Permitting and Site Information

##### 1.6.1 Status of Existing Work

The Town contracted with an outside consultant to provide a geomorphic assessment and feasibility study for restoration of the project streams. The feasibility study is included as an attachment to this RFQ in Section 5. The study identified seven distinct reaches within the project site and provided recommendations for the level and type of restoration and/or enhancement work necessary to achieve the erosion reduction and water quality goals for the project.

##### 1.6.2 Permitting

The permits listed in this subsection are the responsibility of the Design-Builder and include but are not limited to those permits. It is the responsibility of the Design-Builder to identify and obtain all permits required for this Project.

- Section 404/401 Permits
- Erosion and Sedimentation Control Permit
- FEMA No-Rise/ CLOMR/LOMR

### 1.6.3 Site

The site is located at the Ivey M. Redmon Sports Complex at 788 Beeson Rd, Kernersville, NC. Four streams with seven distinct stream reaches are located in the park and on nearby properties, including the three reaches that are part of the Phase I project (identified as Reach 1, Reach 3 and Reach 4 in the attached map, see Section 5). The streams are located west of the ball fields in the Sports Complex extending southward from near Shields Rd. towards I-40.

## 1.7 Additional Information and Procurement Process

- 1.7.1 The Owner is using the design-build project delivery method. The procurement and the provision of Services will be in accordance with North Carolina General Statutes (G.S.) Chapter 143-128.1A and this RFQ. Selection of the Design-Builder will be made using a one-step procurement and selection process.
- 1.7.2 The procurement process will proceed with the issuance of the RFQ where any interested Proposer can submit its Statements of Qualifications ("SOQ") in accordance with the requirements set forth in this RFQ.
- 1.7.3 The Selection Committee will evaluate the SOQs as set forth in this RFQ. The three most highly qualified Proposers shall be ranked. SOQs may not be withdrawn within 60 days from the date on which SOQs are submitted.
- 1.7.4 If not as many as three SOQs have been received from qualified Proposers, the Town will again solicit for design-build services. If as a result of such second solicitation not as many as three responses are received, the Town may then begin negotiations with the highest-ranked Proposer under G.S 143-64.31 even though fewer than three responses were received. If a contract cannot be negotiated with the best qualified Proposer, negotiations shall be terminated in writing and initiated with the next best qualified Proposer.
- 1.7.5 The Owner intends to enter into a Design-Build Agreement ("Agreement"), a copy of which is included in Section 5.

## 1.8 Project Expectations

- 1.8.1 The Owner expects its Design-Builder to possess the requisite experience and competence which includes experience with the design and construction of stream restoration projects.
- 1.8.2 By utilizing a design-build approach, the Owner expects to secure substantial benefits for its Project, including a design benefitting from the collaboration with the Design-Builder, Owner and its technical advisor. Other benefits include:
  - A. Project price that meets Owner's budget.

- B. Project delivered on time or sooner.
- C. Project risk identification and management throughout the design and construction phases.
- D. Clear assignment of design and construction responsibilities to the Design-Builder.

1.8.3 The Owner intends to be “hands-on” and involved during the design phase and expects to achieve the following benefits:

- A. Accurate estimating during design development to ensure the integrity of the Owner’s budget.
- B. Accurate scheduling during design development to ensure the integrity of the Owner’s schedule.
- C. Incorporation of cost reductions and cost savings proposed by the Design-Builder.
- D. A design that represents the optimal schedule and cost efficiency for construction.
- E. Development of a Safety Plan; Quality Assurance and Quality Control Plan.

## 1.9 Services Provided by the Design-Builder

1.9.1 The Services, in general, to be provided are described below.

### 1.9.2 Design Services

- A. Manage and administer the design process including management of subcontractors and scheduling.
- B. Prepare design package with drawings, details and technical specifications for the entire project.
- C. Obtain all permits, which includes identification and completion of all permits required to design and construct the project.
- D. Assist the Town with public education and outreach efforts during the project.
- E. Assist the Town with public meetings to provide periodic updates.
- F. The Design-Builder will be expected to design a project that will strive to achieve the sediment reduction and aquatic habitat enhancement goals identified in the feasibility study used as the basis for the CWMTF grant.

### 1.9.3 Construction Services

- A. Undertake and complete the Work through self-performance, and use of subcontractors and suppliers.

- B. Implement construction plans developed during design services phase.
- C. Provide construction management and administration.
- D. Provide and manage site safety.
- E. Provide quality assurance and quality control services.
- F. Update master schedule.
- G. Cost management.
- H. Acceptance and Turnover to Owner.
- I. Project closeout.
- J. Warranty correction work.

## SECTION 2. Instructions for Proposers

### 2.1 Defined Terms

2.1.1 Terms used in the RFQ will have the meanings indicated in this RFQ.

2.1.2 For purposes of this RFQ, and when used elsewhere in this RFQ the following definitions shall apply:

- A. Design-Builder means the Selected Proposer and the design-builder that will enter into the Agreement with the Owner.
- B. Design-Build Team means the team formed by the Proposer for purposes of responding to the RFQ. The Design-Build Team can be the Proposer alone.
- C. Design-Build Team Member means a corporate entity or firm or individual included in the Design-Build Team and identified in the SOQ that will provide any of the Services for this Project. Design-Build Team Member will also include Key Personnel. Design-Build Team Member includes the Proposer.
- D. Proposer means the corporate entity or firm that submits its SOQ.
- E. Services means those services provided by the Design-Builder for design services, and construction services described in this RFQ and in the Agreement.
- F. Selected Proposer means the Proposer that is recommended by the selection committee as the best qualified Proposer.
- G. Subconsultant means an individual or entity having a direct contract with the Design-Builder or with any Subconsultant for the performance of any of the design, surveying, architectural or other professional services.
- H. Subcontractor means an individual or entity having a direct contract with the Design-Builder or with any other Subcontractor for the performance of any part of the construction services.

### 2.2 Examination and Purchase of Documents

2.2.1 Advertisement and RFQ information for the Project can be found at the following website: <http://toknc.com/finance/purchasing/>.

2.2.2 The RFQ may be downloaded or viewed free of charge at this website. It is the downloader's responsibility to determine that a complete set of documents, as defined in the Instructions for Proposers are received. Printed copies of the RFQ may be purchased at the website for the cost of printing. The cost for printed RFQ is not refundable.

2.2.3 This website will be updated periodically with revisions, modifications and clarifications to the RFQ (“Addenda”), procurement and RFQ information, responses to questions asked by Proposers and additional information relevant to the procurement of the Project. Proposers are encouraged to routinely monitor the web site.

### 2.3 Pre-SOQ Conference and Site Tour

2.3.1 **A non-mandatory pre-SOQ conference and site tour will be held on August 28, 2017 beginning at 9 A.M.. The location of the meeting will be the Ivey M. Redmon Sports Complex at the location indicated on the attached map in Section 5. Allow at least 2 hours for site tour.**

### 2.4 Delivery of SOQs and Procurement Schedule

2.4.1 Deliver the SOQ to the address shown below no later than 3 p.m. on September 11, 2017 for the SOQ to be accepted. SOQs received after this time will be returned unopened. Address SOQs to:

If delivered by US Postal Service:  
Town of Kernersville  
Attn: Wendi Hartup  
PO Box 728  
Kernersville, NC 27285-0728

If delivered by any other means (UPS/FedEx/etc.):

Town of Kernersville  
Attn: Wendi Hartup  
720 McKaughan St.  
Kernersville, NC 27285-0728

## Procurement and Project Schedule

Activity	Date (2017)
Issue RFQ	August 10
SOQ Preparation Period	July 5- September 11
Proposer Meeting- Pre-SOQ Conference and Site Tour	August 28
Deadline for Questions and Comments	September 1
Submission of SOQs	September 11
Review and evaluation of SOQs	September 11 to September 29
Interviews (optional at discretion of Owner)	September 25-26
Selection of best qualified design-builder	October 2
2017 Negotiations	October 2 to October 13
Contract Execution	October 2017
Deadline for Notification of Possible Delay in Schedule	February 2019
Deadline for Substantial Completion	March 2019
Deadline for Final Completion	April 2019
Deadline for Final Warranty Inspection	April 2020

2.4.2 The Owner reserves the right to schedule interviews. At this time interviews are not being included in the RFQ procurement phase.

2.4.3 The Owner assumes no obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQ. All such costs shall be borne solely by each Proposer.

## 2.5 Point of Contact

2.5.1 To ensure fairness during the procurement process, until the Agreement is executed, Proposers and their employees, representatives and agents shall not contact an Owner staff, member of selection committee, Town Aldermen, or any other official, employee, representative or consultant (identified immediately below) of the Owner involved with this procurement process other than the Point of Contact identified below. Owner Representatives and Consultants:

A. Withers & Ravenel, Inc.

B. Freese and Nichols, Inc.

2.5.2 Direct questions regarding this RFQ and Project are to be submitted in writing, electronically at the email address listed below. Modifications to the RFQ can only be made by Addenda.

Point of Contact:  
Wendi Hartup, Stormwater Manager  
Town of Kernersville

Email address: WHartup@toknc.com

2.5.3 All communications are subject to distribution to all Proposers except that Owner will endeavor to prevent disclosure to other Proposers' information unique to a particular Proposer or otherwise identified as proprietary or confidential by a Proposer. The Owner will share with all Proposers all Addenda to this RFQ including any revisions based on its review of Proposer comment and questions concerning this RFQ. The Owner disclaims the accuracy of information derived from any source other than the Point of Contact identified above, and the use of any such information is at the sole risk of the Proposer. Only answers and responses issued by formal Addenda shall be final and binding upon the Owner. Oral and other interpretations shall be without legal effect and Proposer shall not rely on such oral and other interpretations.

## 2.6 Copies of RFQs

2.6.1 Obtain a complete copy of the RFQ.

2.6.2 Use complete RFQ in preparing the SOQs; neither Owner nor Owner's Representatives and Consultants assumes any responsibility for errors or misinterpretations resulting from the use of an incomplete RFQ.

2.6.3 Owner will make copies of RFQ available on the above terms only for the purpose of obtaining SOQs to determine the three most highly qualified Proposers and the selection of the highest ranked Proposer and does not confer a license or grant permission or authorization for any other use.

## 2.7 Examination

Before submitting an SOQ:

- A. Examine and carefully study the RFQ, including any Addenda and the related supplemental information identified in the RFQ.
- B. Become familiar and satisfied with all federal, state, and local laws and regulations that may affect cost, progress, or the provisions of the Services.
- C. Carefully study and correlate the information known to Proposer with the RFQ, Addenda and the related supplemental information identified in the RFQ.
- D. Promptly give Point of Contact written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer discovers in the RFQ, Addenda and the related supplemental information. Determine that the RFQ, Addenda and the related supplemental information are generally sufficient to indicate and convey understanding of all terms and conditions for completion of the Services.

## 2.8 Interpretations and Alternate Terms and Conditions

Prior to the SOQ submission deadline stated in this RFQ, submit all questions about the meaning or intent of the RFQ, Addenda and the related supplemental information to the Point of Contact as indicated in the RFQ. Interpretations or clarifications considered necessary by the Owner in response to such questions will be issued by Addenda. Addenda will be posted on the web site. Other questions will be answered on the web site. Questions received less than 7 days prior to the date for opening of SOQs may not be answered. Owner will issue Addenda as appropriate of any changes to the RFQ. An SOQ submitted with clarifications or taking exceptions to the requirements of the RFQ, except as modified by Addenda, may be rejected.

## 2.9 Preparation of SOQ

2.9.1 The Statement of Qualifications Letter (“SOQ Transmittal Letter”) and other SOQ Forms are included with the RFQ. A copy of these forms in Word or Excel, as appropriate, will be made available to Proposers.

2.9.2 Complete all blanks on the SOQ Transmittal Letter, SOQ Form 1. Execute SOQ Form 1 as indicated below:

- A. For a corporation in the corporate name with the signature of the president, a vice-president or other corporate officer accompanied by evidence of authority of the individual to sign on behalf of the corporation. Show the corporate address and state of incorporation with the signature.
- B. For a partnership in the partnership name with the signature of a partner. The title of the partner must appear with the signature. The document must be accompanied by evidence of authority for that individual to sign on behalf of the partnership. Show the official address of the partnership with the signature.
- C. For a limited liability company in the name of the firm with the signature of an officer of that company. The document must be accompanied by evidence of authority for that individual to sign on behalf of the company. Show the state in which the firm was formed and the official address of the firm with the signature.
- D. For a joint venture with a signature of an authorized person from each joint venture member entity in the manner indicated on the SOQ Transmittal Letter. The document must be accompanied by evidence of authority for each individual to sign on behalf of their respective organizations. Show the official address of the joint venture with the signature.

2.9.3 Type or print all names in ink below the signature.

- 2.9.4 Acknowledge receipt of all Addenda by filling in the number and date of each Addenda received. Provide a signature as indicated to verify that the Addenda were received. A SOQ Transmittal Letter that does not acknowledge the receipt of all Addenda may be considered non-responsive.
- 2.9.5 Provide the name, address and telephone number of the individual to be contacted for any communications regarding the RFQ in the SOQ Transmittal Letter.
- 2.9.6 Proposer shall provide evidence of its authority to do business in the State of North Carolina and include such evidence with SOQ Form 1. Alternatively, Proposer will covenant to obtain such authority prior to award of the Agreement, with its execution of SOQ Form 1.

## 2.10 Confidentiality of SOQ Information

- 2.10.1 Documents submitted as part of the SOQ are governed by Chapter 132 (Public Records) of the General Statutes of North Carolina. If the Proposal contains confidential technical, financial, or other information that constitutes a trade secret under applicable North Carolina law (See GS 66-152(3) and GS 132-1.2), such confidential information shall be specifically and clearly identified by properly marking each page and inserting the following notice on the front page of the SOQ immediately following the Proposer's Cover Letter:

"Pages of this Proposal, identified by an asterisk (\*) and along the right margin with a bold vertical line, contain information that is a trade secret under applicable North Carolina law. The Proposer requests that such information be used for the limited purpose of evaluating this Proposal. In submitting this Proposal, the Proposer represents that it is familiar with and understands the current provisions of Chapter 132 (entitled Public Records) and Article 24 of Chapter 66 (entitled "Trade Secrets Protection Act") of the North Carolina General Statutes. Furthermore, in submitting this Proposal, the Proposer also agrees that the Town of Kernersville may reveal any trade secret materials contained in the Proposal to each of the following who are involved in the review or evaluation of any Proposal submitted as part of this Project: Officers and employees of the Town of Kernersville. Additionally, the Proposer agrees to indemnify and hold harmless the following persons and entities from all costs, damages, and expenses incurred in connection with refusing to disclose any material which the Proposer has designated as a trade secret: officers and employees of The Town of Kernersville. The Proposer further understands that it may be disqualified if the Proposer designates one or more portions of its submitted Proposal as a trade secret and the Town of Kernersville's Attorney determines that the Proposer knew or should have known that any part of such portion(s) does not qualify as a trade secret under applicable North Carolina law. It is understood that the public disclosure of any portion of a Proposal will be made to the extent that the Town of Kernersville determines that such disclosure is required by applicable Law."

Furthermore, marking the entire SOQ as confidential is not allowed.

2.11 Submittal of SOQs

2.11.1 The Proposer shall complete and submit the SOQ per the instructions and requirements of the RFQ.

A. The SOQ shall be submitted in the following format and subject to the page limits as indicated below and elsewhere in this RFQ:

Section #	Section Title	Page Limit (single printed pages)	Counts towards SOQ Page Limit
	Cover Letter	1	Yes
1	Statement of Qualifications Transmittal Letter	Forms 1 through 4	No
2	Proposer and Design-Build Team Profiles	2	Yes
3	Proposer and Design-Build Team Qualifications and Experience	Form 7	No
4	Project Organization and Personnel	1, Form 8	Yes (except Form 8)
5	Superintendent/Primary Operator Experience	5, Form 8	Yes (except Form 8)
6	Design-Build Team Project Approach	3	Yes
7	Safety Program and Safety Performance	Form 9	Yes
8	Financial Information	Form 5, Form 6	No
	<b>SOQ Page Limit (single printed pages)</b>	12	

B. Except for charts, schedules, tables, exhibits and other illustrative and graphical information, all information shall be prepared on 8.5" x 11" white paper, except where specifically excepted in this RFQ. Charts, schedules, tables, exhibits and other illustrative and graphical information may be on 11" x 17" paper, but must be folded to 8.5" x 11". An 11" x 17" sheet shall be counted as one (1) page provided it is a chart, schedule, table, exhibit or other illustrative and graphical information. All printing, except for the front cover of the SOQ and any appendices, must be a font of not less than 12-point and be double-sided. A double-sided

page shall be considered two (2) pages for purposes of the page limitations. The SOQ covers-front and back and section dividers with tabs will not count as pages for purposes of page limitations. Any plan sheets or drawing submitted shall be drawn to an identifiable scale and submitted on 11" x 17" sheets. Audio visual materials including audio tapes, video tapes and CD Rom material will not be accepted. The SOQ shall be submitted in a spiral bound document.

- C. Proposers are instructed to limit the information included in the SOQ to the information necessary to demonstrate Proposer’s technical, financial and other qualifications and experience for the Project and any other information specifically requested in this RFQ. SOQs should be prepared in a straightforward and concise manner. The Owner is not interested in receiving marketing brochures, promotional material, generic narratives, elaborate binding, colored displays, etc. in the SOQs. Emphasis should be placed on clarity and completeness of content and responsiveness to the RFQ requirements.

D. SOQ Forms

SOQ Forms		
SOQ Form Number	Title	SOQ Submittal Location
1	Statement of Qualifications Transmittal Letter	With cover letter
2	Surety Letter of Intent	Enclosed with SOQ Form 1
3	Insurance Letter of Intent	Enclosed with SOQ Form 1
4	Draft Design-Build Agreement Comments	Enclosed with SOQ Form 1
5	Financial Resources Data	Section 7 Financial Information
6	Bank Credit Reference	Section 7 Financial Information
7	Proposer or Design-Builder Team Member Similar Project Experience.	Section 3 Proposer or Design-Builder Team Member Similar Project Experience.
8	Proposed Key Personnel Matrix	Section 4 Project Organization and Personnel
9	Proposer Safety Performance Questionnaire	Section 6 Safety Program and Safety Performance

- E. Proposer shall provide one (1) original copy of the SOQ.
- F. Proposer shall provide one digital copy of the SOQ in portable document format (pdf) emailed to [WHartup@toknc.com](mailto:WHartup@toknc.com). The SOQ is to be a single file that will print to match the printed

copy provided. Confidential information may be provided in a separate file, provided that file is referenced in the SOQ. The Owner assumes no liability for differences in information contained in the printed SOQ and that contained in the digital copy. In the event of a discrepancy, the Owner will rely upon the information contained in the printed SOQ.

- G. Proposer shall enclose the SOQ in envelopes plainly marked with the Project name, the name and address of the Proposer along with other required documents. Address an outer envelope or box to the mailing address shown in the RFQ and enclose the packages containing the SOQ. The Proposer assumes full responsibility for ensuring that the SOQs arrives at the prescribed location before the prescribed time.

2.11.2 Proposers are required to submit a SOQ for consideration in award of the Agreement.

2.11.3 Proposers shall only be allowed to submit one SOQ in which it has an interest in. Reasonable grounds for believing that any Proposer has an interest in more than one SOQ for the Project shall be cause for disqualification of that Proposer and the rejection of all SOQs in which that Proposer has an interest.

## 2.12 Modification or Withdrawal of SOQ

2.12.1 Deliver the document to the place where the SOQs are to be submitted prior to the date and time for the opening of the SOQs.

2.12.2 Proposers may withdraw an SOQ by providing a written request, duly executed by an authorized representative, and delivered to the Owner at any time prior to the SOQ submittal deadline or within 24 hours after SOQs are opened. If withdrawal is after SOQs are opened, the written request shall demonstrate to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its SOQ. Individuals making the withdrawal will be required to provide evidence of serving as an authorized representative of the Proposer.

## 2.13 Evaluation of SOQs

2.13.1 Within 45 days after the date of opening the SOQs, the Owner will evaluate and rank each SOQ with respect to the evaluation criteria described in this RFQ. In evaluating SOQs, Owner will consider whether or not the SOQs fully comply with the RFQ submittal requirements.

2.13.2 In considering SOQs, Owner will evaluate, score and rank the SOQs in accordance with the requirements set forth in this RFQ to determine the three most highly qualified Proposers.

2.13.3 The SOQs will be evaluated using the criteria indicated in the table below.

Evaluation Criteria	Description and RFQ Location	Max. Score
Compliant SOQ Transmittal Letter, Financial Information, Ability to Provide Bonds and Insurance	3.2.1 SOQ Transmittal Letter 3.2.7 Financial Information	Pass/Fail
Proposer Experience with Similar Size and Scope Projects	3.2.3 Proposer and Design-Build Team Qualifications and Experience	5
Key Staff Qualifications	3.2.4 Project Organization and Personnel	5
Project Approach	3.2.5 Proposer and Design-Build Team Design and Construction Approach	5
Innovation	3.2.5 Proposer and Design-Build Team Design and Construction Approach	5
Schedule	3.2.5 Proposer and Design-Build Team Design and Construction Approach	5
Proposer and Design-Build Team Safety Program and Safety Performance	3.2.6 Safety Program and Safety Performance	Pass/Fail
<b>Total</b>		<b>25</b>

**Rating system will be as follows:**

- 5 = Outstanding Qualified Response
- 4 = Superior Response
- 3 = Fully Qualified Response
- 2 = Minimally Qualified Response
- 1 = Marginal Response

2.13.4 Material misstatements and/or inaccuracies in the information submitted in the SOQs that was relied upon for evaluation, scoring and ranking may be grounds for rejection of the SOQ for this Project. Any material misstatements and/or inaccuracies, if discovered after award of the Agreement may be grounds for immediate termination of the Agreement, at the Owner's sole

discretion. Additionally, the Proposer will be liable to the Owner for any additional costs or damages to the Owner resulting from such misstatements and/or inaccuracies, including costs and attorney's fees for collecting such costs and damages.

- 2.13.5 Submission of an SOQ indicates Proposer's acceptance of the evaluation and scoring criteria and methodology contained in the RFQ as well as Proposer's recognition and acknowledgement that subjective judgments must be made by the selection committee during the evaluation.

## 2.14 Payment and Performance Bonds and Insurance

### 2.14.1 Payment and Performance Bonds

- A. With the submission of the SOQ, Proposer will be required to submit a Letter of Intent from Proposer's surety verifying the Proposer's ability to acquire payment and performance bonds in the amount of 100% of the Agreement Value as required and documenting the commitment from its surety to provide such bonds.
- B. The bonds must be issued by a surety legally licensed to do business in the State of North Carolina.
- C. The bonds shall become effective upon the awarding of the Agreement. The bonds shall be in the amount of the Owner's budget as stated in this RFQ. When the price is established and prior to the initiation of construction, the bonds shall be adjusted to reflect the price.
- D. Bonds shall be in a form that complies with North Carolina G.S. Chapter 44A Article 3.

### 2.14.2 Insurance

- A. With the submission of the SOQ, Proposer will be required to submit a Letter of Intent from Proposer's insurance company stating Proposer's ability to acquire and provide the required insurance for the Project.
- B. The required insurance shall be obtained and maintained from insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue insurance policies for the limits and coverages so required.
- C. The insurance requirements are included in the draft Design-Build Agreement

## 2.15 The Draft Design-Build Agreement

- 2.15.1 The draft Design-Build Agreement contained in RFQ Section 5 Additional Information sets forth the intended risk allocation, responsibilities, obligations and other requirements of the Design-Builder in performing the required Scope of Services for this Project. Information specific to the Design-Builder that may also become part of the Design-Build Agreement includes information provided in the Selected Proposer's SOQ. Once negotiated with the Selected Proposer, the Design-Build Agreement will contain the entire agreement between the parties with respect to

the Project and will completely and fully supersede all other agreements of the Owner and the Design-Builder, including those contained in the RFQ and the Design-Builder's Proposal.

- 2.15.2 Proposers are encouraged to provide detailed written comments on the Draft Design-Build Agreement by the deadline for questions and comments described on the Procurement Schedule.
- 2.15.3 Based on its assessment of all Proposers' comments, the Owner, in its sole discretion, may make modifications to the draft Design-Build Agreement and issue addenda to the RFQ containing such modifications. The Owner expects that this draft Design-Build Agreement review and comment process will substantially reduce the need for extensive post selection negotiation.
- 2.15.4 Each Proposer will be afforded a final opportunity to comment on the draft Design-Build Agreement by indicating its comments on SOQ Form 4, Comments on the draft Design-Build Agreement. This form will be submitted in Section One of the SOQ and will contain the Proposer's final comments on the draft Design-Build Agreement.
- 2.15.5 The Owner fully intends to negotiate the terms and conditions of the final Design-Build Agreement and will consider suggested changes included on SOQ Form 4 during the course of negotiations with the selected Proposer. The other areas of negotiations are so marked in the draft Design-Build Agreement with the phrase "Subject to Negotiations" with the Selected Proposer".
- 2.15.6 It is Owner's intent to limit negotiations to those items contained on SOQ Form 4. All Proposers are hereby advised to fully complete SOQ Form 4 as those items contained on such form will be the extent of negotiations. Unless there is a change in law or other uncontrollable circumstances occurring between the SOQ submission date and the date the Agreement is signed, Owner does not intend to discuss or negotiate any issue, term or condition that is not specifically identified on SOQ Form 4. In the event that the Proposer selected for negotiations raises any such issue, term or condition, Owner reserves the right to suspend or terminate negotiations with the selected Proposer and to commence negotiations with the next highest ranked Proposer.

## 2.16 Requirements for Design Professionals

Proposer shall certify to the Town that each licensed design professional who is a Design-Build Team Member, including subconsultants, was selected based on demonstrated competence and qualifications in the manner provided by North Carolina G.S. 143-64-31. This certification is included on Statement of Qualifications Transmittal Letter, SOQ Form 1.

## 2.17 Inspection and Construction Materials Testing

The Design-Builder will be required to provide quality assurance and quality control services in accordance with the contract documents. Independent of those services, the Owner has the right to provide or contract for inspection services, testing of construction material engineering and verification testing services necessary for acceptance of the Project. The Design-Builder will be required to provide management for coordination of these services.

## 2.18 Minority, Women and Small Business

In accordance with North Carolina Gen. Stat. §143-128, as amended by Chapter 480 of the 1989 Session Laws and by Chapter 496 of the 2001 Session Laws, it is the policy of the Town of Kernersville that on all building construction contracts with costs of \$100,000.00 or greater, including projects done by a private entity on a facility that the Town will lease or purchase, the Town shall have a minority participation goal of ten percent (10%).

## 2.19 Validity of SOQs

The SOQ will remain in full force and effect for sixty (60) days after the SOQ submission date.

## 2.20 Responsiveness

To be deemed responsive, SOQs must be prepared thoroughly; be responsive to the requirements and criteria contained in the RFQ; demonstrate an ability to meet the requirements of the RFQ and conform to the material terms and/or conditions of the RFQ, all as determined solely by the Owner. The Owner will reject an SOQ if it is materially incomplete, takes excessive exceptions to material terms and/or conditions of the RFQ or contains information that does not appear to demonstrate an ability to meet the RFQ requirements, all as determined solely by the Owner. The Owner will apply reasonable judgment, balance and discretion in deciding whether a SOQ is responsive.

## 2.21 Owner Not Responsible for Assumptions by Proposers

Each SOQ shall present the assumptions that the Proposer has incorporated into its SOQ. Neither the participation of the Owner at any correspondence or discussions with the Proposer, nor the subsequent action of short listing a Proposer or award by the Owner of the Agreement, shall in any way be interpreted as an agreement or approval by the Owner that the assumptions are reasonable or correct or that the Owner accepts any liability for the Proposer's SOQ. The Owner specifically disclaims responsibility or liability for any Proposer's assumptions in developing its SOQ.

## 2.22 Rights and Reservations of the Owner

In connection with this procurement process, including SOQs and the short listing of the highest ranked SOQs, Owner reserves to itself all rights (which rights shall be exercisable by Owner at its sole discretion) available to it under applicable law, including without limitation, the following with or without cause and with or without notice:

- A. The right to cancel, withdraw, postpone or extend RFQ in whole or in part at any time prior to the short list determination.
- B. The right to issue a new RFQ or to revise and modify, at any time prior to the SOQ submittal date, information included in the RFQ including but not limited to the dates set or projected and factors to be considered in evaluating SOQs and the responsibilities of the Proposers.
- C. The right to modify the procurement schedule.
- D. The right to waive minor and non-material deficiencies, informalities and irregularities in an SOQ.
- E. The right to suspend and terminate the procurement process or to terminate evaluations of SOQs received at any time.
- F. The right to correspondence with the Proposers to seek an improved understanding of SOQs at any time.
- G. The right to hold meetings and conduct discussions with any or all of the Proposers to seek an improved understanding of the SOQs.
- H. The right to seek or obtain data and information from any source that has the potential to improve the understanding and evaluation of the SOQs.
- I. The right to appoint and change appointees of any selection committee.
- J. The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- K. The right to respond to all, some or none of the inquiries, questions and/or requests for clarification received relative to this RFQ.
- L. The right to seek clarifications from any Proposer to fully understand information provided in the SOQ.
- M. The right to request additional information from a Proposer during the evaluation of SOQs.
- N. The right to reject an SOQ containing exceptions, additions, qualifications or conditions not called for in the RFQ.
- O. The right to conduct an independent investigation of any information, including prior experience identified in an SOQ by contacting project references, accessing public information, contacting independent parties or any other means.

## 2.23 Requirements to Keep Design-Build Team Intact

The Design-Build Team proposed by Proposer, including but not limited to the Design-Build Team Members and Key Personnel identified in the SOQ, shall remain on Proposer's Design-Build Team for the duration of the procurement process. If circumstances require a proposed change, it must be submitted in writing to the Point of Contact. The only circumstance that would warrant such a change would occur if a person defined as one of the "Key Personnel" is no longer employed by the Proposer or Design-Build Team Member. The Owner, in its sole discretion, will determine whether to authorize the change. Unauthorized changes to the Proposer's Design-Build Team at any time during the procurement process may result in the elimination of the Proposer from further consideration. The Design-Builder shall obtain written approval from the Town prior to changing Key Personnel as will be listed in the Agreement after the Agreement has been awarded.

## SECTION 3. SOQ Submission Requirements

### 3.1 Requirements for the SOQ

- 3.1.1 The Statement of Qualifications must include, as a minimum, the information described in this Section. Failure to submit the required information in the SOQ may result in the Owner considering the SOQ as non-responsive and may result in rejection of the SOQ by the Owner. Proposers may be required to provide supplemental information to clarify, enhance or supplement the information provided in the SOQs.
- 3.1.2 Proposers must provide the information requested in the RFQ. Information is requested subject to the page limits indicated, and on the SOQ Forms included in this RFQ. The SOQ is limited to 12 single printed pages. This page limit does not include the cover letter, front and back covers, section dividers, Section 3.2.7 Financial Information, and the SOQ Forms. A copy of these forms will be provided in Microsoft Word or PDF, as appropriate, to assist with the preparation of the SOQs. Information in these forms must be provided completely and in detail. Failure to include the information completely and clearly may result in lower scores in the evaluations. Information that cannot be incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.

### 3.2 SOQ Submission Requirements

#### 3.2.1 Cover Letter and SOQ Transmittal Letter

Proposers are free to submit a cover letter of their choice, not exceeding one (1) page. At a minimum, the cover letter will contain the explanation required by the North Carolina General Statutes Chapter 143. North Carolina General Statutes Chapter 143-128.1A(c) (8) requires that the Proposer provide an explanation of its Design-Build Team selection, which shall consist of a list of the licensed contractors, licensed subcontractors and licensed design professionals whom the Proposer proposes to use for the Project design and construction. If the Proposer has minor work scope items that it plans to subcontract for at a later date, Proposer shall provide a description of such minor work and an outline on how the Proposer will select such subcontractors.

### 3.2.2 Proposer and Design-Build Team Profiles

- A. Proposer shall provide information as to the history of the Proposer, ownership, organization and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing construction services, including design and construction services for design-build and stream restoration projects, growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc. This narrative should include a description of any other names the Proposer has had in its history and any related company that is named in the SOQ as to having relevant experience.
1. Proposer Legal Structure
    - a. The Owner is interested in understanding the legal structure of the Proposer and requests information be submitted. The information submitted shall be concise, clear and in sufficient detail to allow the Owner a complete understanding.
    - b. If Proposer is organized as a consortium, partnership or any other form of joint venture, a limited liability company (LLC), or other form of business entity specifically formed for this Project, whether the business entity for this Project already has been legally constituted or the business entity has not yet been legally formed, the Proposer shall provide the following information:
      - 1) Confirmation of how Proposer is or will be legally structured, identification of the parties to the legal structure, the major roles and responsibilities of the parties and percentages of ownership. Identification of the executed agreements that exist between the parties, i.e. a joint venture agreement, memo of understanding, other underlying agreements, etc.
      - 2) Summary of the key terms of the executed agreement(s) identified above in (a) between the parties including the manner the entity will operate administratively and financially, including: who is responsible for financial management of the entity, who is responsible for the day to day management of the entity, how decisions are made, how conflicts and disagreements will be resolved and how to address any deadlocked situations or situations where a required unanimous agreement is not reached.
      - 3) Based on the Proposer legal structure, provide a statement acknowledging that the parties are either jointly and severally liable or that each party will guarantee all of the Proposer's obligations of the Agreement.
- B. Provide the names of other Design-Build Team Members (other than Proposer). Provide brief summary information as to its history, ownership, organization and other background information including lines of business and service offerings, locations of home and other offices, years in business and providing design, construction and stream restoration services,

growth over time in terms of number of projects, size of projects, types of projects, firm revenue, number of employees, etc.

- C. Proposer shall also describe the history, if any of the past working relationships with Design-Build Team Members on previous and current projects to demonstrate how the prior relationship(s) and experience will benefit this Project.

### 3.2.3 Proposer and Design-Build Team Qualifications and Experience

- A. Proposer shall complete SOQ Form 7 which describes Proposer and if applicable, Design-Build Team experience in designing and constructing similar projects as to that proposed in this RFQ. These forms shall be submitted for no more than ten (10) stream restoration projects (one form per project) that were constructed in the central and southern Piedmont (i.e. piedmont areas of North Carolina, Virginia, South Carolina, Georgia, Alabama). It is at the discretion of the Proposer to select the projects that best demonstrate meeting the RFQ submittal requirements for Proposer and if applicable Design-Build Team Qualifications and Experience.
- B. The ten similar projects should demonstrate:
  - 1. Projects completed within the last 5 years.
  - 2. Stream restoration projects consisting of at least 2,000 linear feet.
  - 3. Experience with projects using the design-build method, design-build bridging method, construction manager at risk method, or design-bid-build (separate-prime bidding, single prime bidding or dual bidding). The order of preference is as listed above with design-build being the most preferred. The Owner expects that a Proposer will have design-build stream restoration project experience. Design-build stream restoration projects are the most preferred, followed by other horizontal civil projects, followed by vertical construction projects. To avoid any doubt and by way as an example: a project where a Design-Build Team member provided design services for a design-build stream restoration project would be highly preferred; a stream restoration project component meeting at a minimum, items 1 and 2 above that was within the scope of a larger project scope would be acceptable as a similar project.
  - 4. Design and construction of stream restoration projects that have the following attributes will be given a more favorable evaluation than those that do not:
    - a. Design for and construction of high-accuracy excavation and grading of stream channels and floodplains to provide permanent functional natural channel design features including thalweg, riffle, step- pool, run, glide, point bar, inner berm, bankfull bench and floodplain depressions. Experience with GPS machine control technologies is preferred.

- b. Design for and construction of high-accuracy installation of boulder structures with size requirements of at least 1 ton for streamflow deflection and grade control. Specifically describe the use of structures including vanes, cross-vanes, step-pools, j-hook vanes, boulder plunge pools, weirs, boulder clusters and constructed riffles.
- c. Design for and construction of high-accuracy installation of log-structures with size requirements of at least 30-ft length by 2-ft diameter for streamflow deflection and grade control. Typical structures include log sills, log rollers, j-hook log vanes, log weirs and constructed riffles.
- d. Design for and construction of high-accuracy installation of storm water collection and treatment ponds, conveyance, outfall pipes, floodplain wetlands and vegetative swales for capturing, treating and discharging concentrated polluted storm water in a riparian floodplain setting that contributes to overall stream system health and integrity.
- e. Successful installation of native riparian vegetation for bank stabilization and riparian habitat, including temporary erosion control grasses, permanent deep-rooted native grasses, wetland plants, livestock, on site transplants, bare root seedlings and container plants.
- f. Erosion and sedimentation control measures during river project construction including pump-around, flow diversion, sediment fence, temporary check dams and other turbidity reduction measures.

#### 3.2.4 Project Organization and Personnel

- A. Provide an organizational chart(s) for this Project showing Proposer's organization and management structure that identifies the Proposer and if applicable Design-Build Team Members responsibilities for the major activities and functions to be performed for the Services. The structure of Proposer's Project organization will also identify the significant positions and participants (both firms and individuals) who are responsible for major elements of the provision of the Services. Significant positions indicated on the organizational chart can have named individuals other than Key Personnel on Form 8.
- B. Describe the roles, responsibilities, functional arrangements, past working relationships on stream restoration projects, and reporting relationships between and among the Proposer and if applicable the Design-Build Team Members. Describe the rationale for the proposed organizational and management structure and the reasons why it is advantageous to the Owner.
- C. Proposer shall designate Key Personnel proposed for the Project. Key Personnel include the Project Manager, Design Manager, Project Superintendent, Primary Equipment Operator,

Safety Manager, Quality Assurance/Quality Control Manager, Lead Stream Restoration Designer (if different than “Design Manager”), and Permitting Specialist. Design-build experience is highly preferred but not required. The Project Superintendent must be dedicated to this Project full time for the duration of the Project. In addition, Design-Builder will be required to have at all times during the construction an English-speaking designee on-site. Proposers that wish to add any position and individual as a Key Personnel that serves a significant and important role can do so.

The Proposer will designate such individuals and provide the information requested on SOQ Form 8 for each Key Personnel position.

**The Proposer must provide the services of the proposed Key Personnel for the life of the Project as a condition of the procurement.** Failure to provide the proposed Key Personnel may result in the disqualification of the Proposer and may void the award of the Agreement.

D. The Proposer shall indicate in this SOQ section how the following has been satisfied:

Site Superintendent and Primary Equipment Operator must have experience with at least five successful stream restoration projects in the southern/central Piedmont (i.e. piedmont regions of North Carolina, South Carolina, Virginia, Georgia, and Alabama). To demonstrate this, provide a page for each of the five projects that includes construction progress photos (a brief narrative is allowed on this page).

### 3.2.5 Proposer and Design-Build Team Design and Construction Approach

A. Proposer shall provide sufficient information to enable the Owner to understand the Proposer’s design and construction approach, specifically for the items listed below. The submitted information should present a compelling case as to why the Proposer and if applicable its Design-Build Team should be shortlisted.

1. Describe the project elements that would be necessary to successfully design and construct this project. Some specific aspects of design and construction that are of particular importance for the Town and should be included in this description are:

- Approach for the planting of restored stream channel and riparian corridor, with specific focus on **plant species, type and size selection to provide year-round color and aesthetic appeal to project.**
- Approach for invasive species management and removal.
- Approach to minimize the impacts of construction on park activities and events, including maintenance of pedestrian traffic, and maintenance of professional appearance during and after construction.

- Approach for public outreach, including assisting the Town with community progress status meetings and assisting NC Cooperative Extension with workshops and classes throughout the design and construction period.
- Approach for working with adjacent landowners, including developers, to coordinate design and construction activities with existing activities and consideration for future development plans.
- Approach to developing the maintenance plan for the Project including prior project experiences lessons learned with maintenance plan development and implementation.

2. Describe the key success factors as you see it.

3. Provide a schedule of milestones of when project elements will be met.

### 3.2.6 Safety Program and Safety Performance

Each Proposer shall submit the safety program and safety performance information requested below. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the safety program and safety performance information.

- Complete the Proposer Safety Performance Questionnaire, SOQ Form 9. Please note, Proposers with an Experience Modification Rate (EMR) higher than 1.0 may be disqualified as a Proposer for the Project.

### 3.2.7 Financial Information

A. Each Proposer shall submit the financial information requested below in Section B.1. through B.4. and C and include such information in this Section, except where specifically noted in bold font. If the Proposer is a consortium, a joint venture, LLC or a partnership, each participating party or firm of such consortium, joint venture, LLC, or partnership shall provide the requested financial information required by this section.

B. Please furnish for the Proposer, the following financial information listed below. If any of this information is not provided, the reason for its omission shall be described.

1. Evidence of the ability of the Proposer to meet the bonding requirements described in the RFQ. Letter(s) of Intent in the form required by the RFQ from the Surety or Sureties **must be included with the SOQ Transmittal Letter.**

2. Evidence of the ability of the Proposer to meet the insurance requirements described in the RFQ. Letter(s) of Intent in the form required by the RFQ from the insurance company **must be included with the SOQ Transmittal Letter.**
3. A summary narrative that describes the Proposer's financial condition and resources in sufficient detail to demonstrate the Proposer's ability to perform the Services for this Project. Completion and submission of SOQ Form 5 - Financial Resources Data.
4. Completion of SOQ Form 6 – one (1) "Bank Credit Reference Form" by bank providing services to the Proposer.

C. Direct Financial Questions

1. The purpose of this section is to elicit information pertaining to unfavorable circumstances or events that have the potential to adversely impact the Proposer's ability to honor its contractual commitments in the provision of the Services. To the extent that any of these questions are answered in a manner that indicates that any of these unfavorable circumstances or events have occurred, it is the responsibility of the Proposer to describe the unfavorable circumstance or event and provide sufficient information to demonstrate that the unfavorable circumstance or event will not adversely impact the Proposer's ability to honor its contractual commitments in the provision of the Services. Responses to these questions are for Proposer and any predecessor name(s) of Proposer.
  - a. Material Adverse Changes in Financial Position. Within the last three years, describe any material, historical, existing or any known anticipated changes in financial position of the Proposer including any material changes in the mode of conducting business, mergers, acquisitions, takeovers, joint ventures or divestitures.
  - b. Bankruptcy. Has the Proposer ever declared bankruptcy or filed for protection from creditors under state or federal proceedings? If so, when and describe the impact it would have on the ability to undertake this Project.
  - c. Liabilities and/or Potential Liabilities. List and briefly describe any pending or past legal proceedings within last three years and judgments or any contingent liabilities in which the Proposer or any parents, affiliates and subsidiaries of the Proposer was or is a party that could adversely affect the Proposer's financial position or ability to undertake this Project.
  - d. Completion of Contracts. Within the last three years has the Proposer failed to complete any contract or has any contract been terminated due to alleged poor performance, default or litigation?
  - e. Violation of Laws. Has the Proposer been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation or court order concerning antitrust, public contracting, employment discrimination or prevailing wages? If so, describe the circumstances.

- f. Violation of Regulatory Compliance. Has the Proposer been cited for a violation of any federal, state, or local statute, regulation for regulatory environmental compliance? If so, describe the circumstances.
- g. Debarred from Bidding. Has the Proposer been debarred or are under consideration for debarment on public contracts by the federal government or by any governmental entity in North Carolina or any other state? If so, describe the circumstances. Is the decision under review or was it upheld by formal legal and/or grievance process?
- h. Contractor Refusal. Has Proposer ever refused to construct or to provide materials defined in the contract documents for any project?
- i. Proposer Release. Has Proposer been released from a bid or proposal in the past three years?
- j. Litigation. Has Proposer been involved in litigation involving owners for construction projects that have been filed within last three years or that are currently outstanding?
- k. Claims. Provide a summary of significant claims incidences (claim is 3% or more of the contract amount) over the past three years that Proposer has had involving owners for construction projects.

## SECTION 4. SOQ FORMS

**SOQ Form 1**

Town of Kernersville, North Carolina  
Statement of Qualifications Transmittal Letter

Doran C. Maltba, PWLF, CGPM  
Director, Public Services  
Town of Kernersville  
720 McKaughan Street  
Kernersville, NC 27285-0728

\_\_\_\_\_ (the "Proposer) hereby submits its Statement of Qualifications for the Ivey Redmon Stream Restoration Project.

Proposer accepts all of the requirements, terms, and conditions of the RFQ, including without limitation those dealing with the required performance and payment bonds and insurance. The SOQ will remain subject to acceptance for sixty (60) days after the opening of SOQs.

In submitting this SOQ, Proposer certifies, represents and warrants, that:

- A. The submittal of the SOQ has been duly authorized by, and in all respects binding upon, the Proposer.
- B. The undersigned declares that it is the Proposer or by holding the position below indicated is authorized to execute this SOQ Transmittal Letter on behalf of the Proposer and that all representations made on this form are true and accurate.
- C. Proposer has examined, carefully studied and understands and agrees to be bound by the requirements of the RFQ, the other related information identified in the RFQ, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.	Addendum Date	Signature Acknowledging Receipt

- D. All information and statements contained in the SOQ are current, correct and complete and are made with full knowledge that the Owner will rely on such information and statements in evaluating the SOQ.

- E. The submission of this SOQ will constitute an incontrovertible representation by Proposer that Proposer has complied with every requirement of the RFQ and Addenda without exception.
- F. Proposer acknowledges that it is not aware of any existing or known future material adverse condition or change(s) in its financial position that would detrimentally impact its ability to provide the Services for this Project.
- G. Proposer certifies that each licensed design professional which is a Design-Build Team Member, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner prescribed by North Carolina General Statutes Chapter 143-64.31.
- H. The Surety identified on SOQ Form 2 is authorized by law to do business in the State of North Carolina pursuant to a current certificate of authority to transact surety business.
- I. The insurance company identified on SOQ Form 3 is duly licensed or authorized in the state of North Carolina to issue policies for the limits and coverages so required.
- J. Proposer is familiar with and is satisfied as to all federal, state and local Laws and regulations that may affect furnishing the Services.
- K. Proposer has given Point of Contact written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the RFQ and the written resolution thereof by Owner is acceptable to Proposer.
- L. If selected, Proposer will submit written evidence of its authority to do business in North Carolina not later than the date of its execution of the Agreement.
- M. Proposer further represents that this SOQ is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham SOQ. Proposer has not solicited or induced any individual or entity to refrain from making an SOQ; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over Owner.

The following documents are attached to this Statement of Qualifications Transmittal Letter and made a condition of this SOQ:

- A. SOQ Forms
  - 1. SOQ Form 2 - Surety Letter of Intent
  - 2. SOQ Form 3 - Insurance Company Letter of Intent
  - 3. SOQ Form 4- draft Design-Build Agreement Comments
- B. In lieu of Proposer's covenant in item L above, evidence of Proposer's authority to do business in the State of North Carolina.

The principal contact person who will serve as the interface between the Owner and the Proposer for all communications during the procurement period is:

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

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

The terms used in this letter have the meanings indicated in the RFQ. The significance of terms with initial capital letters is described in the RFQ.

Proposer agrees that venue shall lie exclusively in Forsyth County, North Carolina for any legal action.

This SOQ is submitted by:

If Proposer is an Individual:

Name: \_\_\_\_\_  
*(typed or printed)*

By: \_\_\_\_\_  
*(Individual's Signature)*

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

SOQ submitted on the following date: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_  
(typed or printed)

Name of General Partner: \_\_\_\_\_  
(typed or printed)

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

Doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

SOQ submitted on the following date: \_\_\_\_\_

A Corporation

Corporation Name: \_\_\_\_\_  
(typed or printed)

State of Incorporation: \_\_\_\_\_

Type: \_\_\_\_\_  
(General Business, Professional, Service, Limited Liability)

Date of Qualification to do business in North Carolina is: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

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

Attest: \_\_\_\_\_  
(Signature of Corporate Secretary)

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

SOQ submitted on the following date: \_\_\_\_\_

Joint Venture

Joint Venturer Name: \_\_\_\_\_  
(typed or printed)

By: \_\_\_\_\_  
(Signature of joint venture partner -- attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

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

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Proposal submitted on the following date: \_\_\_\_\_

Joint Venturer Name: \_\_\_\_\_  
(typed or printed)

By: \_\_\_\_\_  
(Signature of joint venture partner -- attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

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

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

SOQ submitted on the following date: \_\_\_\_\_

Contact for receipt of official communications:

Name: \_\_\_\_\_  
(typed or printed)

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.

Affidavits

One of the following four affidavits shall be executed and provided with this form.

AFFIDAVIT FOR CORPORATION

State \_\_\_\_\_) §

County of \_\_\_\_\_) §

\_\_\_\_\_, being duly sworn deposes and says that they are \_\_\_\_\_ of the  
(Name) (Title)

Corporation submitting the foregoing form and related information; have read such documents; and that such documents are true and correct and contain no material misrepresentations; and that they are authorized to make this affidavit on behalf of the Corporation.

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

Signed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires:

AFFIDAVIT FOR PARTNERSHIP

State \_\_\_\_\_) §

County of \_\_\_\_\_) §

\_\_\_\_\_, being duly sworn deposes and says  
(Name)

that they are \_\_\_\_\_ of the  
(Title)

\_\_\_\_\_ company submitting the foregoing form and related information; have read such documents; and that such documents are true and correct and contain no material misrepresentations; and that they are authorized to make this affidavit on behalf of the Partnership.

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

Signed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires:

AFFIDAVIT FOR INDIVIDUAL

State \_\_\_\_\_) §

County of \_\_\_\_\_) §

\_\_\_\_\_, being duly sworn deposes and says  
(Name)

that they are \_\_\_\_\_ of the  
(Title)

\_\_\_\_\_ company submitting the foregoing form and related information; have read such documents; and that such documents are true and correct and contain no material misrepresentations.

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

Signed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My commission expires:

JOINT VENTURE STATEMENT

We the undersigned do hereby give notice to our agreement to propose as a joint venture on the Project and by submitting the foregoing form and related information; have read such documents; and that such documents are true and correct and contain no material misrepresentations.

\_\_\_\_\_  
(Name of Joint Venture)

\_\_\_\_\_  
(Name of Firm)

*(Signature)*

Signed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

*(Notary Public)*

My commission expires:

---

*(Name of Firm)*

---

*(Signature)*

Signed and sworn to me before this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

*(Notary Public)*

My commission expires:

**SOQ Form 2**

**Surety Letter of Intent**

(To be typed on Surety's letterhead)

Date:

Doran C. Maltba, PWLF, CGPM  
Director, Public Services  
Town of Kernersville  
720 McKaughan Street  
Kernersville, NC 27285-0728

Re: Request for Qualifications for Design-Build Services for the Ivey Redmon Stream Restoration Project Phase 1

Dear \_\_\_\_\_:

\_\_\_\_\_ (the "Proposer") has submitted its Statement of Qualifications ("SOQ") in response to the Request For Qualifications ("RFQ"), as amended by Addenda, for the Design-Build Services for the Ivey Redmon Stream Restoration Project Phase 1 issued by the Town of Kernersville (the "Owner") on \_\_\_\_\_ 2017. The RFQ states the requirement that the selected Proposer will enter into the Design-Build Agreement (the "Agreement") to provide the Design-Build Services (the "Services") as described in the RFQ.

The Surety has reviewed both the Proposer's SOQ and the RFQ. The Surety hereby certifies that, if the Proposer is selected as the Design-Builder for the Project Phase 1 and subject to the review and approval of the final terms and conditions of the Design-Build Agreement, it intends to issue on behalf of the Proposer, as security for the performance of the Proposer's obligations under the Design-Build Agreement, a performance and payment bond meeting the requirements of North Carolina General Statutes Chapter 44A Article 3 for the benefit of the Owner, as beneficiary, in the event the Proposer is selected for the execution of the Design-Build Agreement.

This Letter of Intent shall expire 60 days from the date of this Letter of Intent and it may be extended or renewed by mutual consent of the Proposer and its Surety(s).

Name of Surety(s): \_\_\_\_\_

Name of Designated Signatory: \_\_\_\_\_

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

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

**SOQ Form 3**

**Insurance Letter of Intent**

(To be typed on Insurance Company’s letterhead)

Date:

Doran C. Maltba, PWLF, CGPM  
Director, Public Services  
Town of Kernersville  
720 McKaughan Street  
Kernersville, NC 27285-0728

Re: Request for Qualifications for the Design-Build Services for the Ivey Redmon Stream Restoration Project Phase 1

Dear \_\_\_\_\_:

\_\_\_\_\_ (the “Proposer”) has submitted its Statement of Qualifications (“SOQ”) in response to the Request For Qualifications (“RFQ”), as amended by Addenda, for the Design-Build Services for the Ivey Redmon Stream Restoration Project Phase 1 issued by the Town of Kernersville (the “Owner”) on \_\_\_\_\_2017. The RFQ states the requirement that the selected Proposer will enter into the Design-Build Agreement (the “Agreement”) to provide the Design-Build Services (the “Services”) as described in the RFQ.

The Insurance Company has reviewed both the Proposer’s SOQ and the RFQ, including the proposed insurance requirements, which together will form the basis of the Proposer’s submittal. The Insurance Company hereby certifies that, if the Proposer is selected as the Design-Builder and for the execution of the Design-Build Agreement and subject to the review and approval of the final terms and conditions of the Design-Build Agreement, the Insurance Company hereby certifies that it intends to provide or broker all required insurance identified in the design-Build Agreement.

Name of Insurance Company: \_\_\_\_\_

Name of Designated Signatory: \_\_\_\_\_

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

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

Note: This letter of intent may be provided by an insurance company or insurance broker. References to Insurance Company shall be changed to Insurance Broker if provided by an insurance broker.



**SOQ Form 5**

**Financial Resources Data**

**Proposer Name:** \_\_\_\_\_

Financial Metric (Indicate appropriate years)	2013 or 2014	2014 or 2015	2015 or 2016
A. Operating Revenues			
B. Operating Expense (not including Depreciation and Amortization)			
C. Depreciation and Amortization			
D. Operating Income (A-B-C)			
E. Net Income			
F. Total Assets			
G. Current Assets			
H. Total Liabilities			
I. Current Liabilities			
J. Net Worth (Equity) (F-H)			
Market Price per share (as of 08/10/2017)			
No. of outstanding shares (as of 08/10/2017)			

SOQ Form 6

**Bank Credit Reference**

Please provide the following information for the Proposer. Please sign and date this form.

Bank Reference for \_\_\_\_\_ (“Company”)

Name of banking institution or organization: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Individual: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Please indicate Yes or No in the appropriate box by answering the following questions and also respond to the last two questions:

Question	Yes	No
Has your organization or institution extended credit to the Company in the past three years?		
Has the Company ever defaulted on a loan with your institution or organization?		
Has the Company’s credit history included any instances of delinquent payments?		
To your knowledge, has the Company ever filed for bankruptcy or been involved in any bankruptcy proceedings?		
To your knowledge, have any of the corporate officers of the Company ever been in default on a loan?		
To your knowledge, has any creditor ever filed any criminal charges against the Company?		
Please discuss any other questions or issues that may have come out in any financial due diligence evaluation or credit check performed by your institution or organization		
Response:		
Overall, how would you rank the financial stability or credit worthiness of the Company (e.g. excellent, good, satisfactory or poor?)		
Response:		

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**SOQ Form 7 Proposer and Design-Build Team Member Similar Project Experience**

**Proposer shall complete this form.**

Project Owner		Project Name		State	
Proposer or Design-Build Team Member name:					
General description of project scope of work and relevant similar project characteristics					
<b>Project Budget and Schedule Performance</b>					
			Initial Contract Value	\$	
	<b>Yes/No</b>		Final Cost	\$	
Were there change orders due to change in scope?					
Were the change orders due to Act of God or other unforeseen circumstances?					
Did project exceed budget?					
Were there delays?					

Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)					
	Name	Title/ position	Organization	Telephone	E-mail
Owner					
Disputes/Other Issues					
		<b>Yes/No</b>			
Were there any disputes that were resolved or are pending resolution by arbitration, litigation or dispute review boards?					
Were there any political or socio-economic issues? (e.g. changes in scope due to public perception, conflicts between entities)					
Was there any negative media coverage?					
If yes to any the above, please provide a two to three sentence explanation.					

**SOQ Form 8**

**Proposed Key Personnel Matrix**

KEY PERSONNEL	Key Personnel 1	Key Personnel 2	Key Personnel 3	Key Personnel 4	Key Personnel 5
<b><i>Personal Information</i></b>					
Name					
Company Affiliation					
Professional Certifications/Registrations/Affiliations					
Relevant Academic Degree(s) (list)					
Proposed Role/Function for Project					
Office Location					
Number of Years with Current Company					
<b><i>Projects Listed in Response to RFQ Section 3.2.3 – Indicate Role and Level of Involvement (Major/ Minor or None, as applicable)</i></b>					
1.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
2.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
3.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement

4.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
5.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
6.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
7.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
8.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
9.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
10.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement

KEY PERSONNEL	Key Personnel 6	Key Personnel 7	Key Personnel 8	Key Personnel 9	Key Personnel 10
<b>Personal Information</b>					
Name					
Company Affiliation					
Professional Certifications/Registrations/Affiliations					
Relevant Academic Degree(s) (list)					
Proposed Role/Function for Project					
Office Location					
Number of Years with Current Company					
<b>Projects Listed in Response to RFQ Section 3.2.3 – Indicate Role and Level of Involvement (Major/ Minor or None, as applicable)</b>					
1.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
2.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
3.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
4.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement

5.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
6.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
7.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
8.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
9.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement
10.	Role	Role	Role	Role	Role
	Involvement	Involvement	Involvement	Involvement	Involvement

KEY TEAM MEMBERS	Key Personnel 1	Key Personnel 2	Key Personnel 3	Key Personnel 4	Key Personnel 5
<b><i>Expertise – Indicate Number of Years of Experience or Number of Projects Completed and Specify if Reporting Numbers or Years</i></b>					
Topographic surveying					
Geomorphic surveying					
Hydrologic/hydraulic experience, incl. HEC-1, HEC-2, HEC-RAS, etc.					
Analysis of alternatives					
Design of storm water retrofits					
Benefit/cost evaluations					
Geotechnical engineering/subsurface investigations					
Utility relocations and coordination					
Erosion control					
Conceptual plan preparation					
Prep of Construction Documents (plans, specs, bid tabs, estimates)					
Construction management					
NCDOT encroachment agreements for storm water improvements					
Public education and involvement					
Stream restoration & enhancement design and/or construction					
Water quality modeling/pollutant loading analysis					
Water quality BMP analysis, planning & design (incl. low impact)					
Successful wet and/or structural BMP technologies					
Stream geomorphic assessments, incl. pebble counts, etc.					
Biological stream assessment					
Experience working with municipality in park environment					
Vegetation selection and establishment					
Nuisance animal control					
Environmental site assessments					
Invasive plant management					
GIS					
Post-construction geomorphic monitoring					
Post-construction vegetation monitoring					
Monitoring report preparation					
Operating heavy equipment to construct new stream channel offline (i.e., Rosgen Priority 1)					
Operating heavy equipment to construct a new floodplain at a lower elevation (i.e., Rosgen Priority 2)					

Operating heavy equipment to improve the dimension and profile of an existing channel (i.e., Rosgen Priority 3)					
Operating heavy equipment to construct in-stream structures (i.e., constructed riffles, j-hooks, cross vanes)					

KEY TEAM MEMBERS	Key Personnel 6	Key Personnel 7	Key Personnel 8	Key Personnel 9	Key Personnel 10
<b>Expertise – Indicate Number of Years of Experience or Number of Projects Completed and Specify if Reporting Numbers or Years</b>					
Topographic surveying					
Geomorphic surveying					
Hydrologic/hydraulic experience, incl. HEC-1, HEC-2, HEC-RAS, etc.					
Analysis of alternatives					
Design of storm water retrofits					
Benefit/cost evaluations					
Geotechnical engineering/subsurface investigations					
Utility relocations and coordination					
Erosion control					
Conceptual plan preparation					
Prep of Construction Documents (plans, specs, bid tabs, estimates)					
Construction management					
NCDOT encroachment agreements for storm water improvements					
Public education and involvement					
Stream restoration & enhancement design and/or construction					
Water quality modeling/pollutant loading analysis					
Water quality BMP analysis, planning & design (incl. low impact)					
Successful wet and/or structural BMP technologies					
Stream geomorphic assessments, incl. pebble counts, etc.					
Biological stream assessment					
Experience working with municipality in park environment					
Vegetation selection and establishment					
Nuisance animal control					
Environmental site assessments					
Invasive plant management					
GIS					
Post-construction geomorphic monitoring					
Post-construction vegetation monitoring					
Monitoring report preparation					
Operating heavy equipment to construct new stream channel offline (i.e., Rosgen Priority 1)					
Operating heavy equipment to construct a new floodplain at a lower elevation (i.e., Rosgen Priority 2)					

Operating heavy equipment to improve the dimension and profile of an existing channel (i.e., Rosgen Priority 3)					
Operating heavy equipment to construct in-stream structures (i.e., constructed riffles, j-hooks, cross vanes)					

SOQ Form 9

Proposer Safety Performance Questionnaire

Proposer Safety Performance Questionnaire				
Proposer Name				
Health and Safety				
Please use your OSHA No. 200/300 logs to record the number of injuries and illnesses for the last three (3) years.				
Year (state the applicable years)	2016 or 2015	2015 or 2014	2014 or 2013	
Number of Fatalities				
Lost Work Day Cases Incident Rate -1				
OSHA Recordable Incident Rate -2				
Number of Hours Worked				
Total Number of Employees on Your Payroll				
Owner requires Design-Builder provide the above accident statistics, even though certain companies may not be statutorily required to keep OSHA 200/300 logs.				
-1 The following formula is used for calculating the Lost Work Day Incident Rate:	=	(Number of Lost work Day Cases x 200,000) divided by Number of Hours Worked		
-2 The following formula is used for calculating the OSHA Recordable Incident Rate:	=	(Number of Recordable Cases X 200,000) divided by Number of Hours Worked		
List your Worker's Compensation (WC) Experience Modification Rate (EMR) for the three (3) most recent years:				
Year (state the applicable years)	Interstate	Intrastate		
2016 or 2015				
2015 or 2014				
2014 or 2013				
Is a letter from your WC insurance carrier certifying the above EMRs attached?	Yes		No	
If your WC carrier has not issued an EMR because you have not accrued enough WC costs, is a copy of your WC Loss Run (available from your WC carrier) attached?	Yes		No	
If the current EMR is greater than 1.0, is a comprehensive written explanation of the safety methods and procedures that are being implemented to reduce this rate attached?	Yes		No	
Has Proposer received an OSHA (or State OSHA) citation within the last five (5) years?	Yes		No	
If answered yes to immediately above question, is there a copy of the citation(s)	Yes		No	
Was the citation(s) contested/vacated?	Yes		No	
If answered yes to immediately above question, please describe				
What specific corrective actions were taken to prevent further injuries/ penalties?				
Does Proposer have a written occupational safety and health program?	Yes		No	
Does Proposer conduct field safety inspections to determine compliance with applicable regulations and procedures?	Yes		No	

Who conducts these inspections (provide position/title)?													
How often are safety inspections conducted?													
Does Proposer have the following on your staff or on retainer?	Yes	No	How Many	Staff	Retainer	If yes, list certification number(s)							
Occupational Physician													
Certified Industrial Hygienist													
Certified Safety Professional													
Certified Health Physicist													
Does Proposer have an orientation program for new hires?					Yes		No						
Has Proposer implemented any of the following training programs? If yes, please provide the last date this training was provided or place a "N/A" if the training is not applicable													
Yes	No	Date	Training Program	Yes	No	Date	Training program						
			Asbestos				Hazardous Waste (40 Hour)						
			Blasting/Explosives				Hearing Conservation						
			Blood Borne Pathogens				Heavy Equipment Operation						
			Confined Space Entry				Laboratory Safety						
			Construction (OSHA Certified 10 hours)				Ladder/Scaffolding						
			Construction (OSHA Certified 30 hours)				Lead						
			Cranes Operations				Lockout/Tag Out						
			Electrical Safety				Personal Protective Equipment						
			Excavation Competent Person				Power-actuated Tools						
			Fall Protection				Process Safety Management						
			Fire Extinguishers				Radiation Protection						
			First Aid/CPR				Respiratory Protection						
			Forklift Operations				Welding/Cutting						
Who conducts training (Name and Title)													
Does Proposer have a program in place to discipline workers that perform unsafe work practices?					Yes		No						
Does Proposer have written Accident Investigation Procedures?					Yes		No						
Does Proposer currently maintain a program in compliance with applicable State "Right to Know" laws and the OSHA Hazard Communication Standard?					Yes		No						
Does Proposer hold "tailgate/toolbox safety meetings?"					Yes		No						
If you answered yes, how often are such meetings held?													
Does Proposer have a written Alcohol and Substance Abuse Program?					Yes		No						
If you answered yes to the immediately above question, does it include?													
10-panel substance testing?					Yes		No						
Pre-employment/pre-job assignment testing within 30 days of employment or pre-job assignment?					Yes		No						
Post-accident drug and alcohol testing?					Yes		No						
Random testing (10 percent per month)?					Yes		No						
Reasonable suspicion drug and alcohol testing?					Yes		No						

The undersigned warrants and represents that he/she is authorized to sign this document and that the data and information provided on this document is accurate in all respects.

---

Name of Proposer

---

Name

---

Title

---

Signature

---

Date

## SECTION 5. Additional Information



1209 Blackburn Road, Apex, NC 27502  
919-600-4790  
jenningsenv@gmail.com

## **Feasibility Study:**

### **Stream Restoration of Beeson Creek and Tributaries**

### **Located Near Ivey M. Redmon Sports Complex, Kernersville, NC**

Submitted to Town of Kernersville, North Carolina

November 21, 2016

This report describes results of a feasibility study for the restoration of Beeson Creek and tributaries located in and nearby the Ivey M. Redmon Sports Complex in Kernersville, North Carolina. This report is a compilation of results from two phases of the feasibility study completed in 2015 and 2016. The study streams are located to the West of the ball fields in the Sports Complex extending Southward from near Shields Road toward I-40. The total length of streams evaluated in this study is approximately 7,600 linear feet.

The Feasibility Study will be used for grant applications and funding allocations to implement a multi-phase restoration and environmental education project. Overall project objectives are to improve water quality, habitat, and public access for education by applying natural stream restoration techniques. Long-term benefits to the Town include recreational trails, environmental education opportunities, improved environmental quality, and native riparian vegetation.

#### **1. Stream Condition Assessment**

The streams were assessed to determine existing conditions regarding topography, hydrology, stream morphology, soils and geology, site constraints, property boundaries, utilities, vegetation, and aquatic biology. Additionally, spatial data provided by the Town of Kernersville were reviewed, including aerial photography, 2-foot topographic contours, property boundaries, and utility locations. This information is used to document existing stream stability problems, sediment loading downstream, and available land for reconnecting floodplains in areas with incised streams.

Based on morphological conditions, the streams were separated into 7 reaches. Reach 1 (East Branch) and Reach 2 (West Branch) flow together to form the mainstem of Beeson Creek. Reach 3 extends from this confluence downstream to the vicinity of an existing head cut in the main stream. Reach 4 begins at the head cut and ends where Beeson Creek exits the southern property boundary of the Sports Complex. Reach 5 is the mainstem of Beeson Creek downstream of the Town property boundary and upstream of I-40. Reach 6 is upstream of Reach 2 (West Branch). Reach 7 is an unnamed tributary on the Clarke property. A map showing reach locations is included in Sheet 2 of the attached plan set. Stream reach morphology characteristics are summarized in Table 1.

Table 1. Stream Reach Morphology Characteristics

Reach	Length (feet)	Drainage area (square miles)	Stream slope (feet/foot)	Rosgen stream classification
1 (East Branch)	1300	0.08	0.017	E5
2 (West Branch)	670	0.12	0.013	E5
3 (Beeson)	560	0.29	0.009	E5
4 (Beeson)	1680	0.33	0.011	G5c
5 (Beeson)	1290	0.79	0.005	G5c
6 (West Branch)	1080	0.06	0.018	G5c
7 (Tributary)	1040	0.06	0.019	E5

The following constraints to potential stream restoration projects were noted:

*Property boundaries:* Portions of Reaches 1, 2, 3, and 4 and nearly all of Reaches 5, 6, and 7 are located on parcels outside of the Sports Complex. The affected property owners and Homeowner Associations will need to be involved in the restoration process.

*Utilities:* A sewer main parallels Reaches 2, 3, 4, and 5. It crosses under the streambed at the upstream end of Reach 3 and again within Reach 4. Additionally, one closely parallels most of Reach 6, and crosses Reach 6 once, toward the downstream end. Reach 7 is not affected by sewer utilities, with the exception of a crossing near the confluence with Beeson Creek. There are restoration options that will co-exist with these sewer lines, while providing increased protection from erosion for the utilities.

*Topography:* Reaches 1, 2, 6, and 7 are located in narrow, deep valleys. The lateral constraints of the valley walls affect the potential restoration options. The other Reaches are in wider valleys that provide multiple options for stream and floodplain restoration.

Soils and local geology appear to be conducive for stream restoration. The predominant soil type in the Beeson Creek valley is Hatboro loam, which is typically found in low-slope floodplains. Streambed substrate is predominantly sand, with some small gravel. No bedrock was observed; however, this would present a lateral and/or vertical constraint if it does exist.

Cross-section channel dimensions were noted at the top of streambank, and were highly variable throughout all reaches. Cross-section dimensions are summarized in Table 2, with cross-section plots on Sheet 3 of the attached plan set. Field assessments indicated that Reaches 1, 2, 3 and 7 (downstream) are generally not incised or entrenched, with cross-section dimensions similar to what would be expected for their watershed sizes in the North Carolina Piedmont. The Rosgen stream classification of E5 for these reaches indicates a low-gradient (less than 2%), sand-bed, healthy stream system with good floodplain connection for dispersing erosive energy during high flows.

Reaches 4, 5, and 6 are incised and entrenched, with cross-section areas, widths, and depths much greater than expected for a stable stream with a watershed drainage areas of less than one square mile in the Piedmont ecoregion. Incision is a result of vertical cutting such that flood flows no longer spread onto the floodplain, thereby dissipating erosive energy. Entrenchment is the lateral confinement of flood flows within a narrow channel resulting in high bank erosion and tree falling during high flows. The Rosgen stream classification of G5c indicates a low-gradient (less than 2%), sand-bed, entrenched stream which is rapidly eroding and causing downstream sediment impacts. This is a very unstable stream type which provides a good opportunity for restoration benefits to the ecosystem.

The downstream portion of Reach 7 is not incised or entrenched. Further upstream on Reach 7, the stream transitions to an incised, entrenched gully, with eroding head cuts migrating up valley during storm events.

Table 2. Channel Cross-section Dimensions (measured at top of bank)

Reach	Area (square feet)	Width (feet)	Depth (feet)	Valley width (feet)
1	3 to 4	5 to 7	0.5 to 1.0	30 to 40
2	8 to 12	7 to 10	1.0 to 1.2	20 to 30
3	9 to 12	10 to 12	1.0 to 1.2	60 to 90
4	35 to 100	12 to 30	3 to 5	70 to 150
5	70 to 100	15 to 25	3 to 5	90 to 150
6	30 to 40	12 to 15	2 to 4	30 - 60
7 downstream	8 to 15	6 to 8	1 to 2	50 - 90
7 upstream	50 to 200	10 to 20	5 to 12	30 - 60

Streambank erosion rates were estimated for the stream reaches using the combination of Bank Erosion Hazard Index (BEHI) and Near Bank Stress (NBS). Predicted erosion rates are summarized in Table 3. Streambanks within reaches 1, 2, and 3 predominantly had a 'Low' BEHI, with some areas of 'Moderate' and 'Very Low'. This resulted in relatively low streambank erosion rates predicted for Reaches 1, 2, and 3.

BEHI scores for Reaches 4 and 5 were generally 'High' and 'Moderate', with some areas of 'Very High'. In Reach 4, this high erodibility, combined with a large streambank height (approximately 5 feet), resulted in very high predictions for streambank erosion rates. It is estimated that 174 tons per year of sediment is generated by streambanks within Reach 4 (compared to <10 tons per year for Reaches 1, 2, and 3 combined). This high erodibility in Reach 4 is supported by visual observations of eroding banks, fallen trees, and downstream sediment deposition.

BEHI scores for Reach 6 were generally either 'Low' or 'High,' with instances of 'Moderate' and 'Very Low' (through the piped section). The upper third (approximately 350 feet) of Reach 7 had 'High' and 'Very High' BEHI, while the remainder of the reach had 'Low' and 'Moderate' BEHI. Within Reaches 6 and 7, the BEHI/NBS analysis likely did not fully capture erosion potential, due to the presence of head cuts and eroding bluffs. The high erodibility in all reaches is supported by visual observations of eroding banks, fallen trees, and downstream sediment deposition.

Table 3. Streambank Erosion Rates (Estimated using Bank Erosion Hazard Index (BEHI) and Near Bank Stress (NBS))

Reach	Length (feet)	Erosion rate (tons/year)	Erosion rate (tons/year/linear foot)
1 (East Branch)	1300	3.2	0.002
2 (West Branch)	670	2.9	0.004
3 (Beeson)	560	2.6	0.005
4 (Beeson)	1680	174	0.104
5 (Beeson)	1290	20.4	0.016
6 (West Branch)	1080	27.6	0.026
7 (Tributary)	1040	12.4	0.015

The riparian vegetation community is a mix of native hardwood trees and invasive shrubs, including Chinese Privet (*Ligustrum sinense*). Many areas of Reaches 1, 2, 3, 6, and 7 contain mostly healthy native trees that should be preserved. The vegetation in Reaches 4 and 5 is dominated by invasive plants that should be removed and prevented from re-establishing in order to promote a healthy, diverse streamside forest.

## 2. Restoration Opportunities

Stream restoration and stormwater management projects may be implemented for each stream reach as described below to improve water quality, aquatic habitats, floodplain functions, streamside vegetation, and environmental education opportunities. For each phase, one or more conceptual restoration plans are presented in the attached plan set with estimated implementation costs in Table 4.

*Reach 1:* Reach 1 is currently not incised or entrenched, with a narrow valley and mature riparian vegetation. A stream restoration project on Reach 1 will focus on enhancing habitats and improving water quality through repair of localized bank erosion. Opportunities exist for stormwater management in the watershed of Reach 1, specifically in the vicinity of the cross-country running trail. Specific components of restoration on Reach 1 may include:

- Leave the stream channel in its existing planform location, with the exception of localized realignment to mitigate eroding streambanks
- As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain the design channel width (approximately 6-7 feet)
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Vegetate bare areas and areas disturbed by grading with appropriate native riparian vegetation
- Manage stormwater within the watershed through use of sediment traps, bare area stabilization, vegetated swales, and infiltration

*Reach 2:* Much like Reach 1, Reach 2 is currently not incised or entrenched, with a narrow valley and mature riparian vegetation. A stream restoration project on Reach 2 will focus on enhancing habitats and improving water quality through repair of localized bank erosion. Opportunities exist for stormwater management in the watershed of Reach 2, specifically in the agricultural fields to the north and east, and in the residential area to the west. Specific components of restoration on Reach 2 may include:

- Leave the stream channel in its existing planform location, with the exception of localized realignment to mitigate eroding streambanks
- As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain the design channel width (approximately 8-9 feet)
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Vegetate bare areas and areas disturbed by grading with appropriate native riparian vegetation
- Manage stormwater within the watershed through use of sediment traps, bare area stabilization, and infiltration

*Reach 3:* Reach 3 is a relatively short, stable reach below the confluence of Reach 1 and 2. Reach 3 is not currently not incised or entrenched, though upstream migration of the existing headcut in Reach 4 could change the morphology of Reach 3 over time. A stream restoration project on Reach 3 will focus on enhancing habitats and improving water quality through repair

of localized bank erosion, as well as protection of the sewer line the crossed under the stream channel. Specific components of restoration on Reach 2 may include:

- Leave the stream channel in its existing planform location, with the exception of localized realignment to mitigate eroding streambanks (Note: the valley width and utility locations would allow for realignment of portions of Reach 3 if needed to facilitate restoration of Reach 4)
- As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain the design channel width (approximately 10-12 feet)
- Install boulder structure downstream of sewer line crossing to provide grade control and infrastructure protection
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Vegetate bare areas and areas disturbed by grading with appropriate native riparian vegetation
- Enhance existing stormwater basin to the east of Reach 3 by enlarging, grading and revegetating to enhance stormwater wetland function
- Manage stormwater within the watershed; specifically, by converting swales between ball fields to infiltration swales, bioretention areas, and/or stormwater wetlands

*Reach 4:* Reach 4 begins at a large head cut, which has left the entire reach incised and unstable, with eroding streambanks, poor floodplain access, and poor vegetation. Restoration of Reach 4 will create a stable, meandering stream with appropriate cross-section dimensions, a wide floodplain, and healthy riparian vegetation. Two conceptual options have been developed for Reach 4. Both options include:

- Create a new stream channel with appropriate meander pattern, bedform profile, cross-section dimension (channel width of approximately 10-12 feet), and stable streambanks
- Install boulder structure downstream of sewer line crossing to provide grade control and infrastructure protection
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Revegetate the streambanks and floodplain with appropriate native riparian vegetation
- Fill much of the old stream channel, with portions used to treat stormwater runoff from the ball fields

The primary difference between Option 1 and Option 2 for Reach 4 is the elevation of the realigned stream channel. Option 1 leaves much of Reach 4 at its current elevation, while Option 2 would raise the streambed elevation to reconnect it to its historic floodplain. Specific components of these options include:

*Reach 4, Option 1:*

- Replace the elevation drop over existing unstable head cut with a series of log and boulder step structures
- Downstream of the drop structures, excavate a wide (approximately 55 feet) floodplain through the length of the valley
- Realign the stream channel through the new valley at the existing streambed location

- Near the downstream end of Reach 4, transition the floodplain and channel to match conditions downstream of the project

*Reach 4, Option 2:*

- Eliminate the elevation drop over existing unstable head cut by filling the stream channel to design elevations and stabilizing with grade control structures
- Downstream of the existing head cut, realign the stream channel through the existing valley at a higher elevation
- Use the existing terrace as the new floodplain, with minimal floodplain excavation needed
- Near the downstream end of Reach 4, use a series of log and boulder step structures to lower the streambed elevation to match existing elevations downstream of the project

*Reach 5:* Reach 5 spans from the downstream end of Reach 4, at the Sports Complex property boundary, to I-40. The reach is generally incised, due to a head cut that has migrated upstream into Reach 4. Reach 5 does contain eroding streambanks, poor floodplain access, and poor vegetation. Restoration of Reach 5 would create a stable, meandering stream with appropriate cross-section dimensions, a wide floodplain, and healthy riparian vegetation. Two conceptual options have been developed for Reach 5. Both options include:

- Create a new stream channel with appropriate meander pattern, bedform profile, cross-section dimension (channel width of approximately 14-16 feet), and stable streambanks
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Revegetate the streambanks and floodplain with appropriate native riparian vegetation
- Fill much of the old stream channel, with portions used to treat stormwater runoff from the adjacent forest and sewer right-of-way
- Manage stormwater within the watershed through use of sediment traps, bare area stabilization, vegetated swales, and infiltration

The primary difference between Option 1 and Option 2 for Reach 5 is the elevation of the realigned stream channel. Option 1 leaves much of Reach 5 at its current elevation, while Option 2 would raise the streambed elevation to reconnect it to its historic floodplain. Options for restoration of Reaches 4 and 5 should be considered concurrently; Reach 4, Option 1 should be paired with Reach 5, Option 1, and similarly for Option 2. Specific components of these options include:

*Reach 5, Option 1:*

- At the upstream end, connect with the location and elevation at the downstream end of Reach 4, Option 1
- Excavate a wide floodplain through the length of the valley (up to 120 feet wide, though gradually narrower at upstream and downstream ends)
- Realign the stream channel through the new valley at the existing streambed location
- Near the downstream end of Reach 5, transition the floodplain and channel to match conditions downstream of the project (i.e., within the NCDOT right-of-way for I-40)

*Reach 5, Option 2:*

- Revise the design of Reach 4, Option 2 to not step down the streambed elevation at the downstream end of Reach 4; connect Reach 5 with the revised location and elevation at the downstream end of Reach 4
- Realign the stream channel through the existing valley at a higher elevation
- Use the existing terrace as the new floodplain, with minimal floodplain excavation needed
- Near the downstream end of Reach 5, use a series of log and boulder step structures to lower the streambed elevation to match existing elevations downstream of the project (i.e., within the NCDOT right-of-way for I-40)

*Reach 6:* A stream restoration project on Reach 6 would focus on enhancing habitats and improving water quality through repair of localized bank erosion, poorly vegetated banks, and one major head cut. All restoration activities within Reach 6 would take place downstream of the piped section under Emperor Lane, with differing approaches throughout the reach. Specific components of restoration on Reach 6 could include:

- Leave the stream channel in its existing planform location, with the exception of localized realignment to mitigate eroding streambanks
- Within the grassed area downstream of Emperor Lane, install appropriate riparian vegetation (e.g., live stakes) and repair localized bank erosion
- Within the forested area downstream of the residential area, grade streambanks to reduce erosion, provide floodplain access, and create the design channel width (approximately 6-7 feet)
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Within the lowest 200 feet of Reach 6, where the stream closely parallels the sewer line, make no changes to stream dimension or planform, but install appropriate riparian vegetation
- Stabilize the stormwater-driven head cut off of Constantine Place with one of two options that include a Regenerative Stormwater Conveyance (RSC):
  - Option 1: Install a rock-lined energy dissipation basin at an elevation near the upper elevation of the head cut; fill the head cut with a 56-foot long RSC, with multiple steps, to convey flow from the basin to Reach 6
  - Option 2: Install a stormwater inlet/drop structure at an elevation near the upper elevation of the head cut (build an earthen berm to force flow into the inlet); convey flow through a pipe for approximately 20 feet into an energy dissipation basin, then into a 36-foot long RSC
- Vegetate bare areas and areas disturbed by grading with appropriate native riparian vegetation
- Manage stormwater within the watershed through use of sediment traps, bare area stabilization, vegetated swales, and infiltration

*Reach 7:* The upper end of Reach 7 is characterized by severe head cuts and eroding banks. By the lower end of the reach, the stream has stable dimensions and some floodplain access. A stream restoration project on Reach 7 would focus on enhancing habitats and improving water

quality through repair of bank erosion, poorly vegetated banks, and the head cuts. Specific components of restoration on Reach 7 could include:

- Leave the stream channel in its existing planform location, with the exception of localized realignment to mitigate eroding streambanks and head cuts
- Remove dead, dying, or hazardous trees near the tops of eroding bluffs
- As needed, grade streambanks to reduce erosion, provide floodplain access, and create the design channel width (approximately 6-7 feet)
- As needed, install log and boulder structures in the streambed to enhance habitat, promote sediment transport, provide grade control, and protect streambanks
- Install a log or boulder grade control structure downstream of the sewer line crossing
- Stabilize the head cuts at the upstream end of the reach using a Regenerative Stormwater Conveyance (RSC) with multiple steps
- Vegetate bare areas and areas disturbed by grading with appropriate native riparian vegetation
- Manage stormwater within the watershed through use of sediment traps, bare area stabilization, vegetated swales, and infiltration

*Stormwater Management:* Based on field visits, and a review of aerial photography and topography, several potential Stormwater Control Measures (SCMs) were identified for the Sports Complex property. These include enhanced swales, bioretention areas, and constructed stormwater wetlands. A conceptual view of these is shown on Sheet 14 of the attached plan set. All potential SCMs do not have to be implemented at the same time; they could be phased based on funding and other constraints. Potential SCMs include:

- *SCM 1:* Create a sediment basin and/or bioretention area to the south of the maintenance building (approximately 3600 square feet)
- *SCM 2:* Enlarge and enhance the existing basin along Beeson Creek to function as a riparian stormwater wetland (approximately 6300 square feet)
- *SCM 3:* Create multiple floodplain wetlands in the abandoned stream channel in conjunction with a stream restoration project on Reach 4 of Beeson Creek
- *SCM 4:* Retrofit an existing swale between ball fields to function as a wet swale, with temporary water storage, microtopography and appropriate wetland vegetation (approximately 250 feet in length)
- *SCM 5:* Create a bioretention area in an existing low area among the ball fields; modify the existing outlet structure and soils to provide temporary storage and infiltration (approximately 9800 square feet)
- *SCM 6:* Retrofit an existing swale between ball fields to function as a vegetated infiltration swale (approximately 250 feet in length)
- *SCM 7:* Create a grassed swale downslope of the cross-country track to direct runoff to SCM 8 (approximately 260 feet in length)
- *SCM 8:* Enlarge and retrofit an existing sediment basin downslope of the cross-country track to function as a stormwater wetland, with a level spreader used at the outlet (approximately 5800 square feet)

- *SCM 9*: Create a grassed swale downslope of the cross-country track to direct runoff to *SCM 8* (approximately 180 feet in length)
- *SCM 10*: Stabilize bare and sparsely vegetated areas within the headwaters of Reach 1 with appropriate ground cover (approximately 1.8 acres)

Table 4. Estimated Stream Restoration Implementation Costs

Reach	Estimated Cost
1	\$60,000
2	\$30,000
3	\$30,000
4 – Option 1	\$480,000
4 – Option 2	\$400,000
5 – Option 1	\$380,000
5 – Option 2	\$320,000
6 – Head Cut Option 1	\$240,000
6 – Head Cut Option 2	\$280,000
7	\$240,000
All Potential SCMs	\$180,000

All reaches have high potential for improvement with regard to stream stability, water quality improvement, and habitat enhancement. The restoration options for Reaches 4 and 5 have advantages and disadvantages related to stability, cost, excavation volumes, floodplain composition, and vegetation. A full topographic survey would be needed to fully inform the choice between options for Reaches 4 and 5. Additionally, decisions related to design should only be made after a full evaluation of project goals and resources, with input from stakeholders.

### 3. Educational Opportunities

The Ivey M. Redmon Sports Complex is ideally suited to serve as an outdoor environmental education center. The parking, restrooms, and available space for walking trails support a wide range of target audiences including youth, gardeners, ecologists, engineers, and contractors.

Workshops may be held year-round to teach groups about the following topics:

- Stream ecology
- Stream morphology assessment
- Stream stabilization and protection
- Streamside vegetation
- Soil science
- Wetland science
- Wildlife
- Invasive plant management
- Stormwater management
- Watershed protection

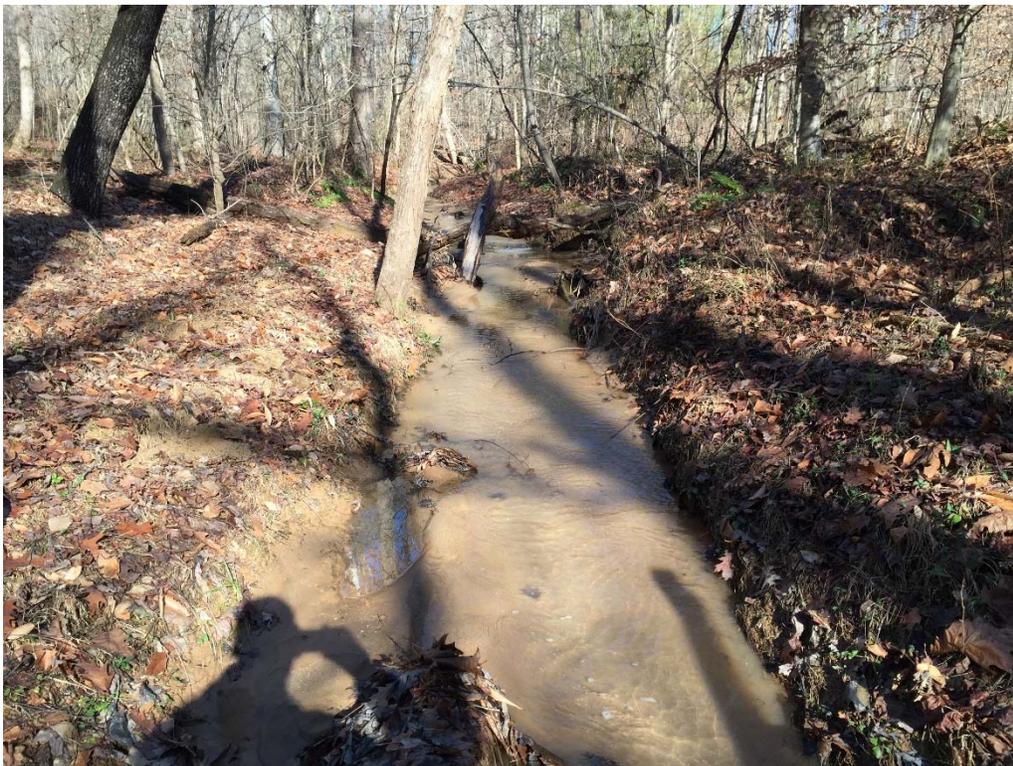
A recreational walking trail along the stream and nearby wetlands may include interpretive signs and exhibits to describe aspects of each of the above topics using attractive photos and graphics. This trail may include boardwalks and observation platforms in sensitive areas.

During implementation of restoration and stormwater management measures, workshops may be organized for professionals and interested citizens to learn about stream assessment, restoration design and implementation, construction, and planting. Follow-up workshop topics may include monitoring and plant management. All of these educational programs may be conducted in cooperation with NC Cooperative Extension and NC State University to provide continuing education credits for professionals as needed.

**Appendix. Photographs**



**Reach 1 Typical Condition.**



**Reach 2 Typical Condition.**



**Reach 3 Typical Condition.**



**Reach 4 Typical Condition at Upstream End.**



**Reach 4 Typical Condition Near Sewer Line.**



**Reach 4 Typical Condition at Downstream End.**



**Reach 5 Typical Condition.**



**Reach 6 Typical Condition at Upstream End.**



**Reach 6 Typical Condition at Downstream End.**



**Reach 6 Side Channel Head Cut.**



**Reach 7 Typical Condition at Downstream End.**



**Reach 7 Typical Condition at Upstream End.**



**Reach 7 Head Cut at Upstream End.**

# Beeson Creek and Tributaries Stream Restoration Opportunities

## **Ivey M. Redmon Sports Complex** **Kernersville, North Carolina**

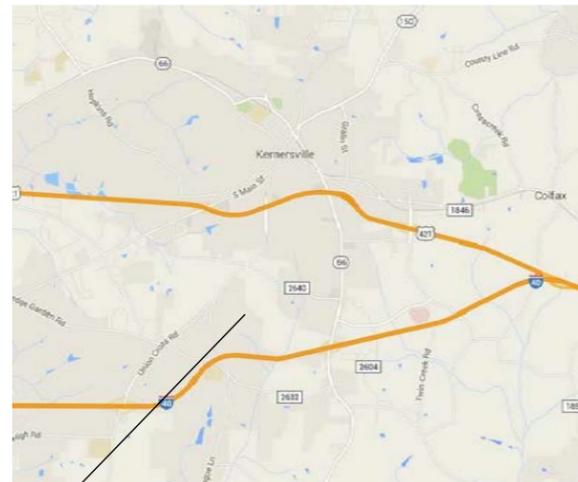
### Sheet Index

### Prepared for:

Town of Kernersville, North Carolina

### Prepared by:

Jennings Environmental, LLC  
1209 Blackburn Road  
Apex, North Carolina 27502



**Site**

### Site Coordinates:

Latitude 36.092293, Longitude -80.082053

1. Cover and Sheet Index
2. Site Overview
3. Existing Cross-sections
4. Reach 1 Conceptual Plan
5. Reach 2 Conceptual Plan
6. Reach 3 Conceptual Plan
7. Reach 4 Conceptual Plan (Option 1)
8. Reach 4 Conceptual Plan (Option 2)
9. Reach 5 Conceptual Plan (Option 1)
10. Reach 5 Conceptual Plan (Option 2)
11. Reach 6 Conceptual Plan
12. Reach 6 Conceptual Plan (Details)
13. Reach 7 Conceptual Plan
14. Potential Stormwater Control Measures
15. Typical Detail: Regenerative Stormwater Conveyance
16. Typical Detail: Longitudinal Profiles and Cross-sections



#### COVER AND SHEET INDEX

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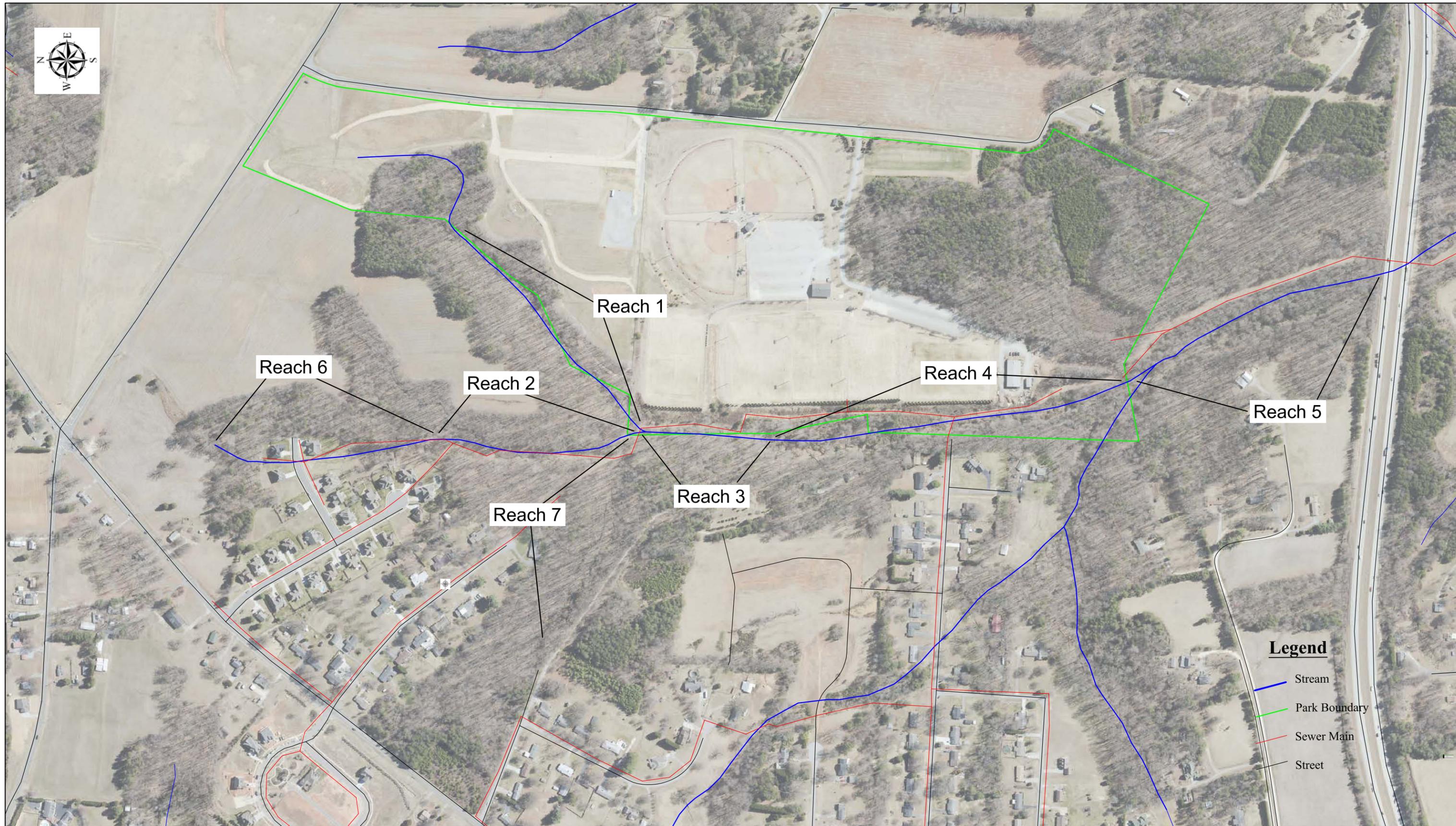
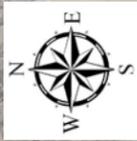
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November 21, 2016

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#### Beeson Creek Stream Restoration Opportunities

Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
1



**Legend**

- Stream
- Park Boundary
- Sewer Main
- Street



SITE OVERVIEW

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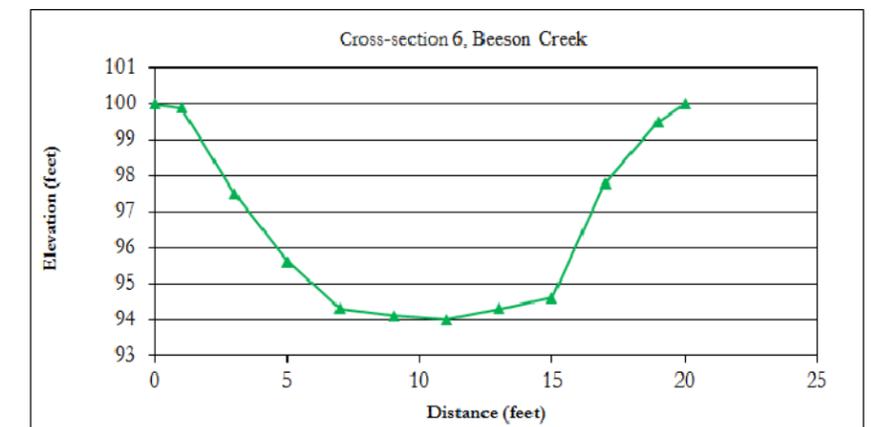
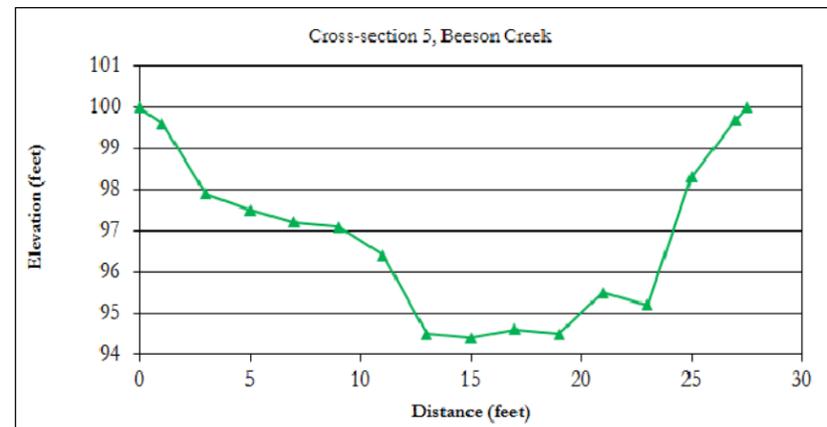
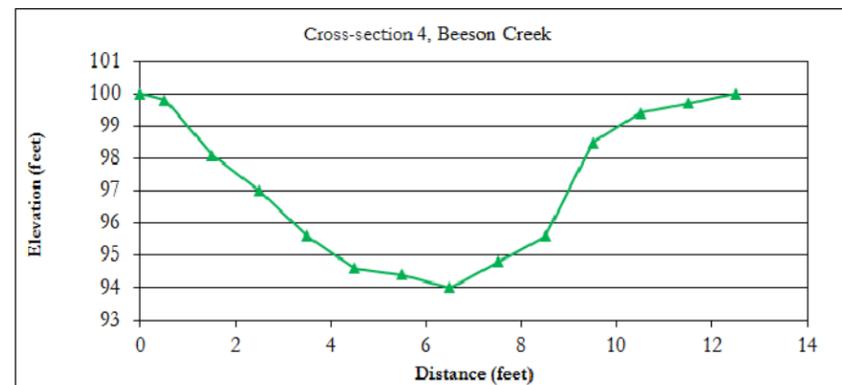
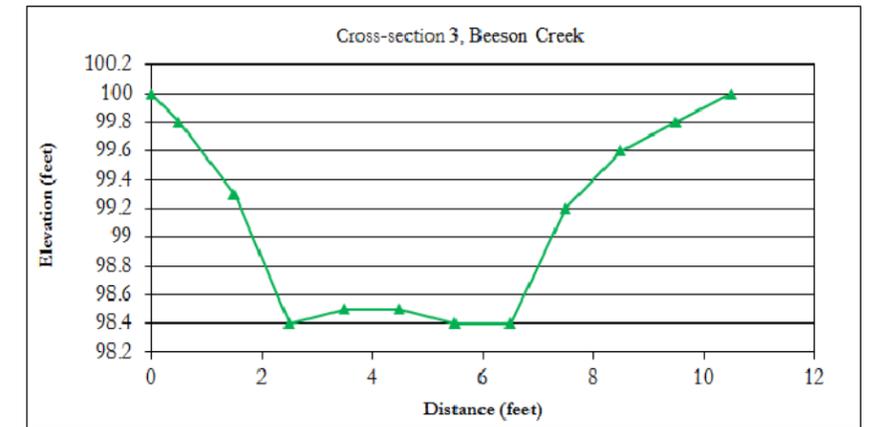
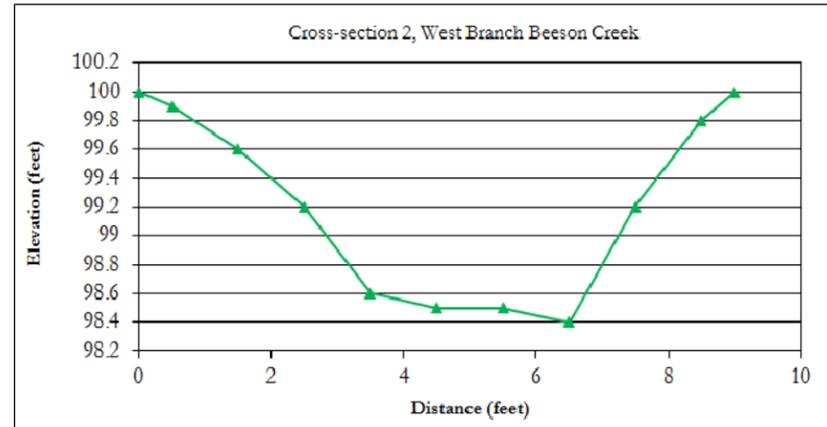
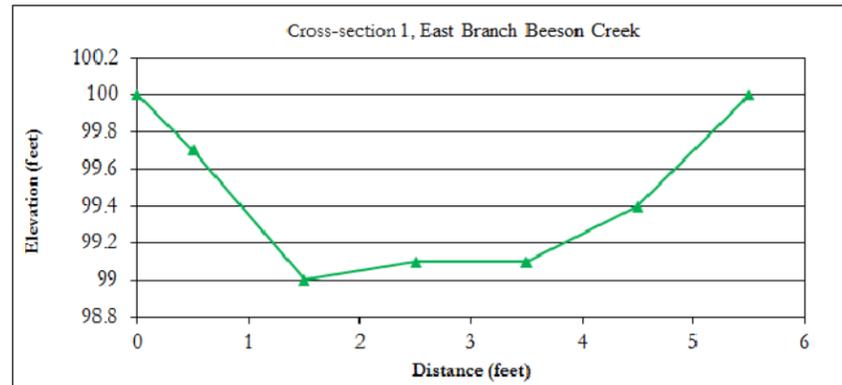
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November 21, 2016

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Beeson Creek Stream Restoration Opportunities

Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
2



EXISTING CROSS-SECTIONS

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Date:  
November 21, 2016

Scale:  
NONE

Beeson Creek Stream Restoration Opportunities

Ivey M. Redmon Sports Complex  
Kernersville, North Carolina



- Legend**
- Stream (Existing)
  - Park Boundary
  - Sewer Main
  - Top of Bank (Design)
  - Log Boulder Structure

Start Reach 1

Leave stream channel in existing planform position

End Reach 1

As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain 6-7 foot channel width

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

**Notes:**  
Localized stream realignment can be considered to mitigate eroding streambanks.  
Vegetate bare areas and areas of disturbance with native riparian vegetation.



REACH 1  
CONCEPTUAL PLAN

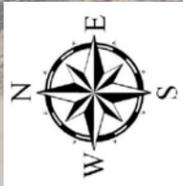
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November 21, 2016

Scale:  
1" = 100'

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
4



**Legend**

- Stream (Existing)
- Park Boundary
- Sewer Main
- Top of Bank (Design)
- Log/Boulder Structure

Start Reach 2

Leave stream channel in existing planform position

End Reach 2

As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain 8-9 foot channel width

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

**Notes:**  
Localized stream realignment can be considered to mitigate eroding streambanks.  
Vegetate bare areas and areas of disturbance with native riparian vegetation.



REACH 2  
CONCEPTUAL PLAN

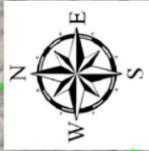
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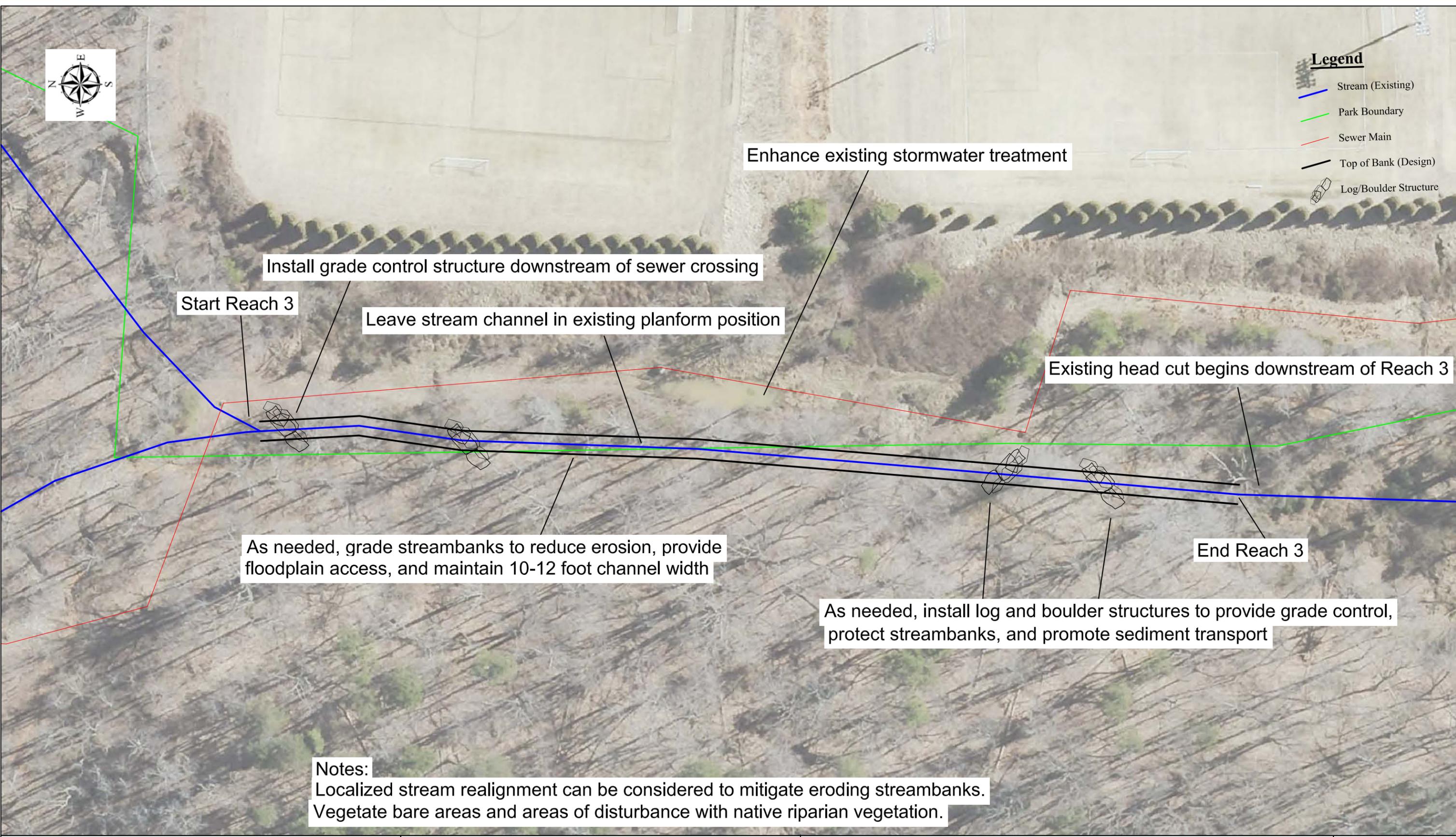
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Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
5



- Legend**
-  Stream (Existing)
  -  Park Boundary
  -  Sewer Main
  -  Top of Bank (Design)
  -  Log/Boulder Structure



Enhance existing stormwater treatment

Install grade control structure downstream of sewer crossing

Start Reach 3

Leave stream channel in existing planform position

Existing head cut begins downstream of Reach 3

As needed, grade streambanks to reduce erosion, provide floodplain access, and maintain 10-12 foot channel width

End Reach 3

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

**Notes:**  
 Localized stream realignment can be considered to mitigate eroding streambanks.  
 Vegetate bare areas and areas of disturbance with native riparian vegetation.



REACH 3  
 CONCEPTUAL PLAN

Designed By: GDJ

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 November 21, 2016

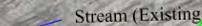
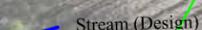
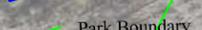
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Beeson Creek Stream Restoration Opportunities  
 Ivey M. Redmon Sports Complex  
 Kernersville, North Carolina

Sheet  
 6



**Legend**

-  Stream (Existing)
-  Stream (Design)
-  Park Boundary
-  Sewer Main
-  Top of Bank (Design)
-  Log/Boulder Structure

Create new stream channel at existing streambed elevation with floodplain access and 10-12 foot channel width

Excavate new floodplain (approx. 55 feet wide) at design elevation

Fill old channel; use portions for stormwater treatment

Start Reach 4

End Reach 4

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

Install grade control structure downstream of sewer crossing

Use log and boulder structures to step stream channel down to design elevation in vicinity of existing head cut

**Notes:**  
Vegetate bare areas and areas of disturbance with native riparian vegetation.  
Channel, floodplain, and structure locations to be based on detailed survey of existing conditions.



REACH 4  
CONCEPTUAL PLAN (OPTION 1)

Designed By: GDJ

Date:  
November 21, 2016

Scale:  
1" = 120'

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
7



**Legend**

- Stream (Existing)
- Stream (Design)
- Park Boundary
- Sewer Main
- Top of Bank (Design)
- Log/Boulder Structure

Limited floodplain excavation throughout; existing ground to provide floodplain after channel is elevated

Create new stream channel at elevation above existing streambed with 10-12 foot channel width

Fill old channel; use portions for stormwater treatment

Start Reach 4

End Reach 4

Use log and boulder structures to step stream channel down to existing elevation at end of Reach 4

Install grade control structure downstream of sewer crossing

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

**Notes:**

Vegetate bare areas and areas of disturbance with native riparian vegetation. Channel, floodplain, and structure locations to be based on detailed survey of existing conditions.



REACH 4  
CONCEPTUAL PLAN (OPTION 2)

Designed By: GDJ

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November 21, 2016

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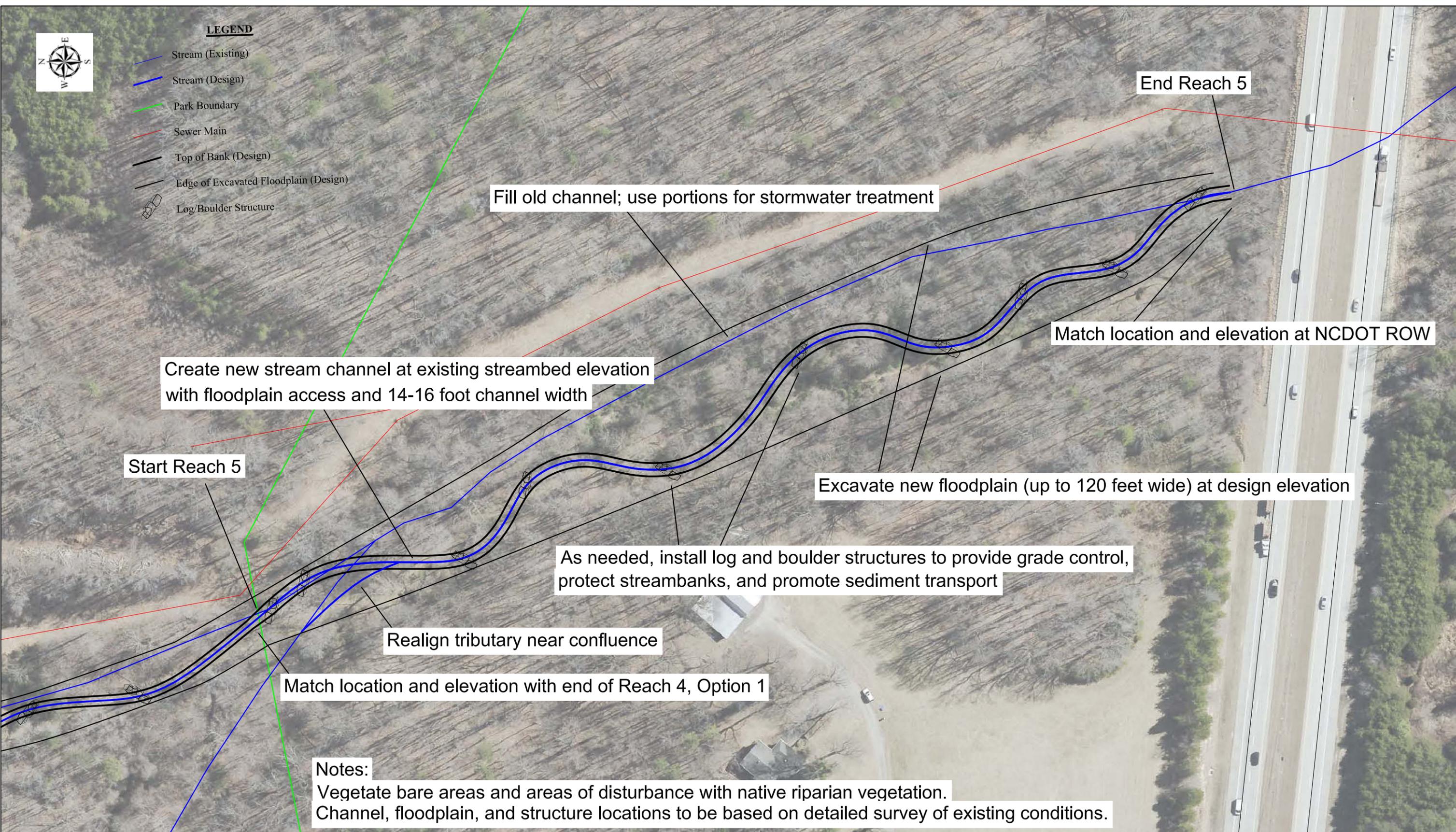
Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
8



**LEGEND**

-  Stream (Existing)
-  Stream (Design)
-  Park Boundary
-  Sewer Main
-  Top of Bank (Design)
-  Edge of Excavated Floodplain (Design)
-  Log/Boulder Structure



**REACH 5  
CONCEPTUAL PLAN (OPTION 1)**

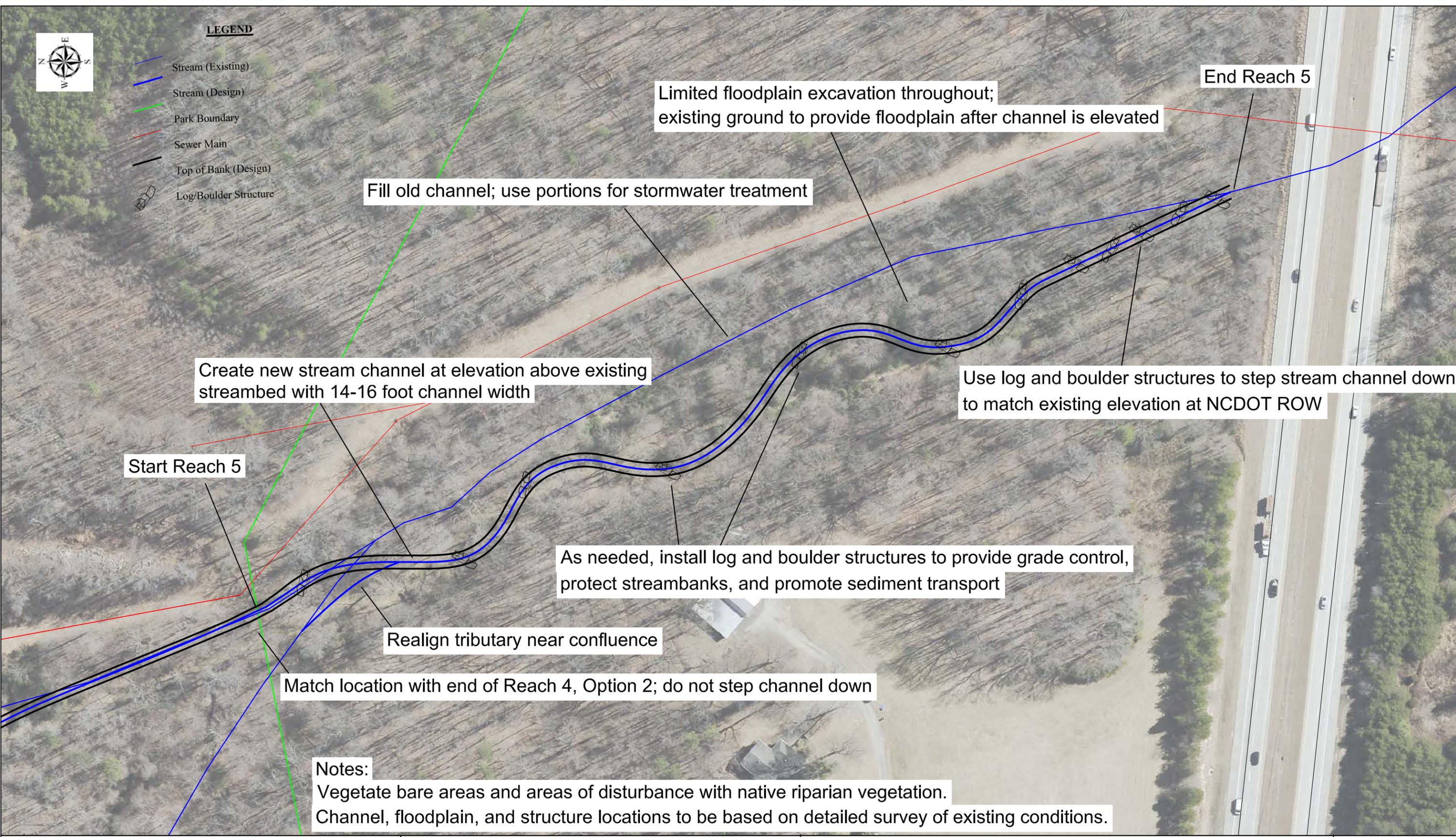
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**Beeson Creek Stream Restoration Opportunities**  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina



**LEGEND**

-  Stream (Existing)
-  Stream (Design)
-  Park Boundary
-  Sewer Main
-  Top of Bank (Design)
-  Log/Boulder Structure



Limited floodplain excavation throughout; existing ground to provide floodplain after channel is elevated

Fill old channel; use portions for stormwater treatment

End Reach 5

Create new stream channel at elevation above existing streambed with 14-16 foot channel width

Use log and boulder structures to step stream channel down to match existing elevation at NCDOT ROW

Start Reach 5

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

Realign tributary near confluence

Match location with end of Reach 4, Option 2; do not step channel down

**Notes:**  
 Vegetate bare areas and areas of disturbance with native riparian vegetation.  
 Channel, floodplain, and structure locations to be based on detailed survey of existing conditions.



REACH 5  
CONCEPTUAL PLAN (OPTION 2)

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Beeson Creek Stream Restoration Opportunities  
 Ivey M. Redmon Sports Complex  
 Kernersville, North Carolina



**LEGEND**

- Stream (Existing)
- Park Boundary
- Sewer Main



**Notes:**

Vegetate bare areas and areas of disturbance with native riparian vegetation.  
 Channel, floodplain, and structure locations to be based on detailed survey of existing conditions.



REACH 6 CONCEPTUAL PLAN

Designed By: GDJ

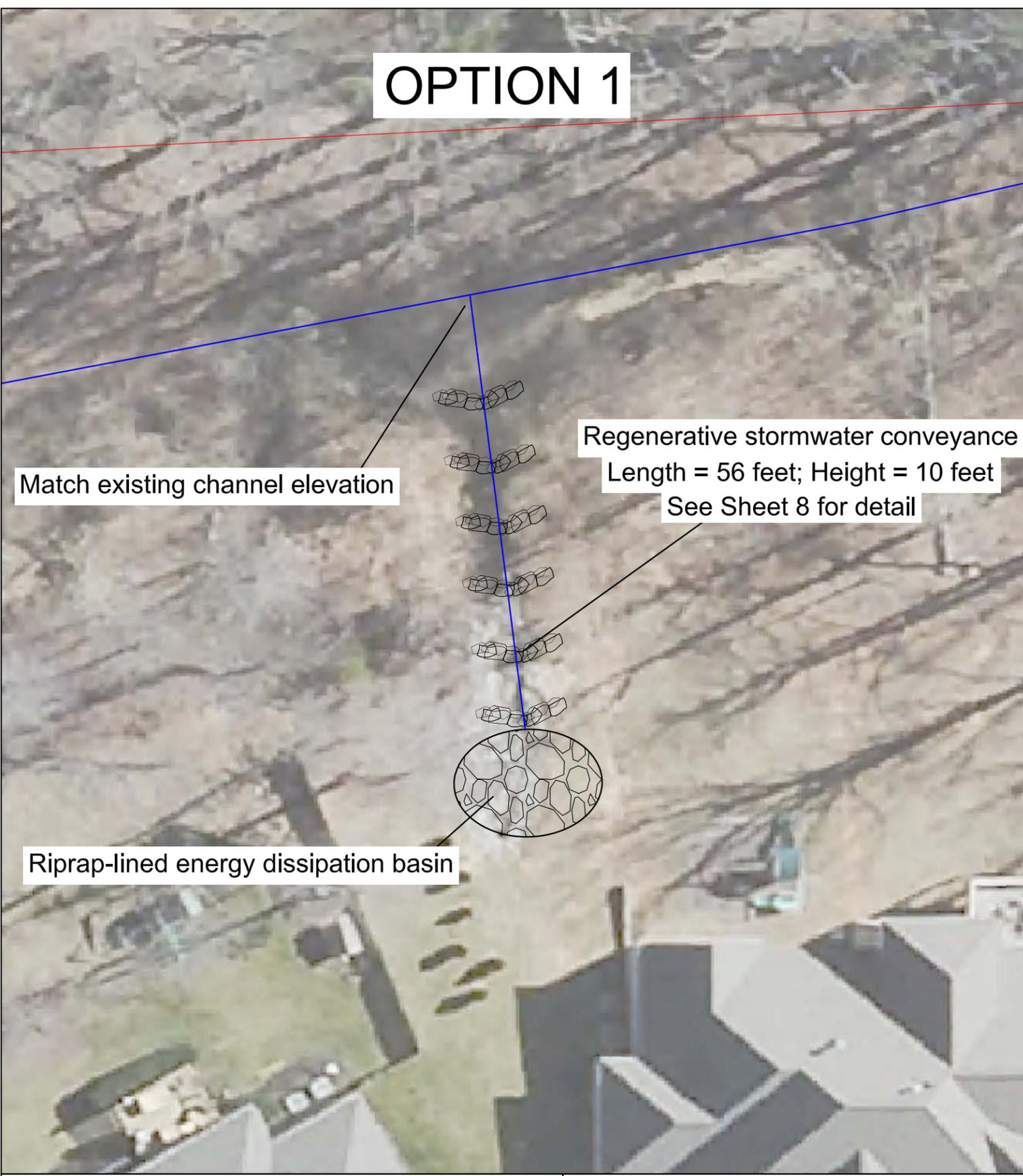
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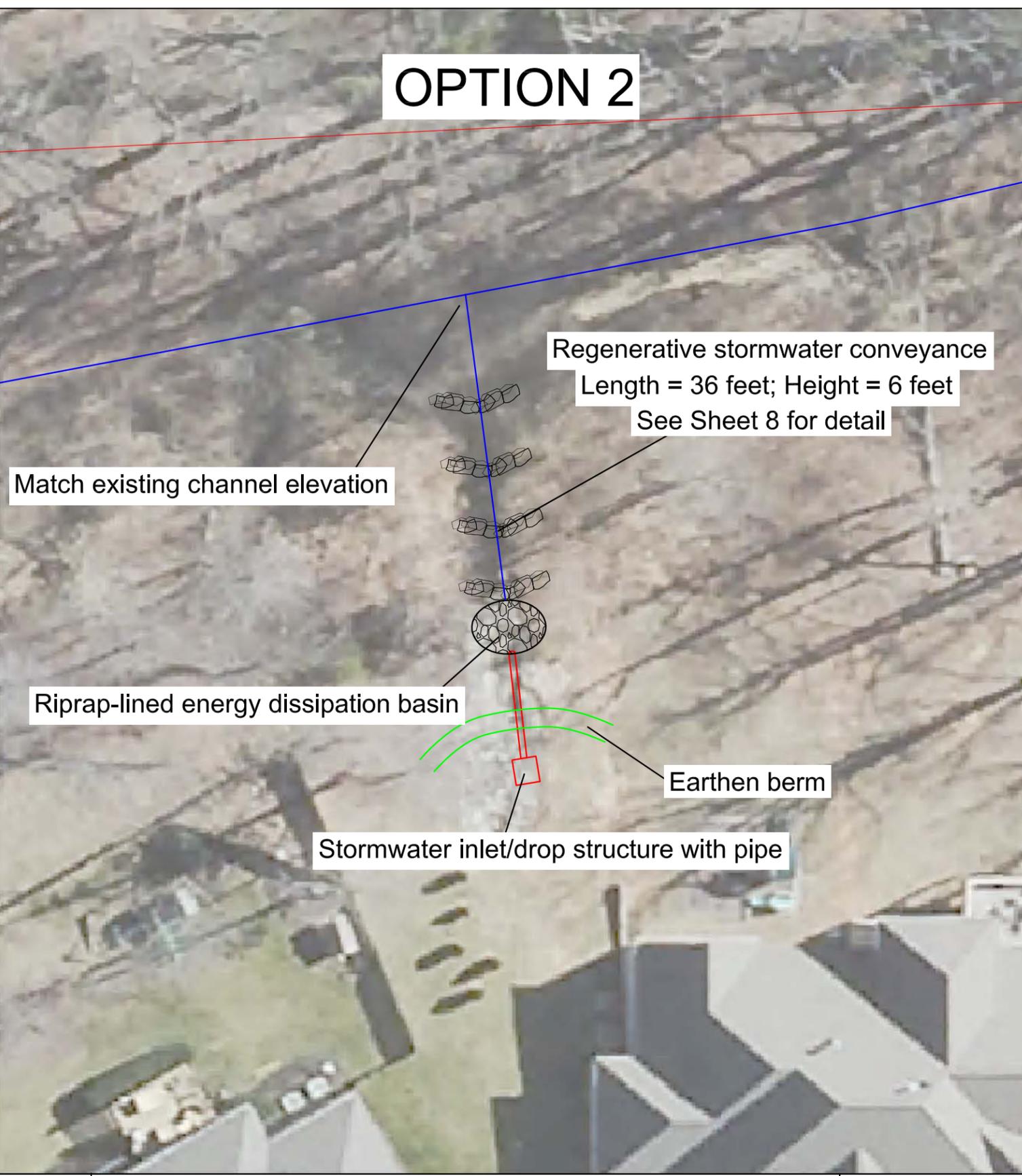
Beeson Creek Stream Restoration Opportunities

Ivey M. Redmon Sports Complex  
 Kernersville, North Carolina

# OPTION 1



# OPTION 2



REACH 6 CONCEPTUAL PLAN  
HEAD CUT OPTIONS

Designed By: GDJ

Date:  
November 21, 2016

Scale:  
1" = 20'

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
12

**LEGEND**

- Stream (Existing)
- Stream (Design)
- Park Boundary
- Sewer Main
- Top of Bank (Design)
- Log/Boulder Structure



Install grade control structure downstream of sewer crossing

Downstream of RSC, work within existing channel to ensure 6-7 foot channel width with stable riffles and pools

Install Regenerative Stormwater Conveyance (RSC) to eliminate 15 foot high head cuts (see Sheet 8 for detail)

End Reach 7  
Match Reach 2 design at confluence

Start Reach 7

As needed, install log and boulder structures to provide grade control, protect streambanks, and promote sediment transport

Address localized bank erosion through grading, matting, and vegetation

**Notes:**  
Vegetate bare areas and areas of disturbance with native riparian vegetation.  
Channel, floodplain, and structure locations to be based on detailed survey of existing conditions.



REACH 7 CONCEPTUAL PLAN

Designed By: GDJ

Date:  
November 21, 2016

Scale:  
1" = 80'

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
13



SCM 10: Bare area stabilization (1.8 acres)

SCM 9: Vegetated swale (180 ft)

SCM 8: Retrofit/enlarge existing basin as stormwater wetland with level spreader (5800 sq ft)

SCM 7: Vegetated swale (260 ft)

SCM 6: Infiltration swale (250 ft)

SCM 5: Bioretention area (9800 sq ft)

SCM 1: Sediment basin and/or bioretention area at maintenance area (3600 sq ft)

SCM 4: Wet swale (250 ft)

SCM 2: Enhance/enlarge existing riparian basin (6300 sq ft)

SCM 3: Create multiple floodplain wetlands as part of stream restoration project

Notes:  
Contour interval 2 feet.

Sizes and locations of SCMs are estimated, and should be confirmed with detailed survey prior to design.

**Legend**

-  Stream
-  Park Boundary
-  Sewer Main
-  Street
-  Potential SCM



POTENTIAL  
STORMWATER CONTROL MEASURES

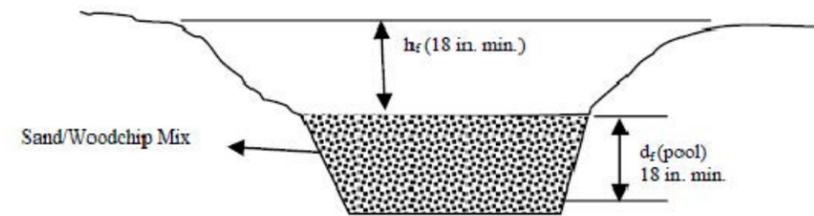
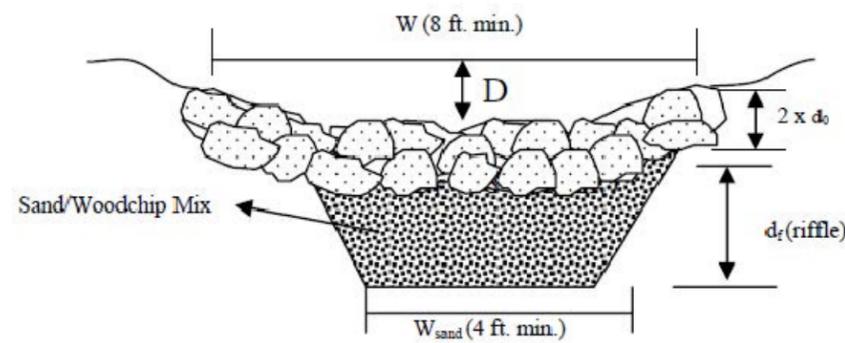
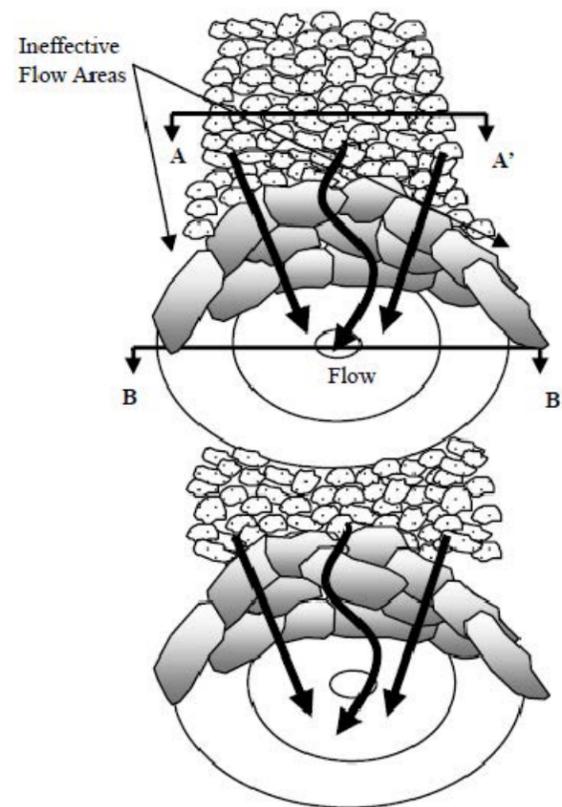
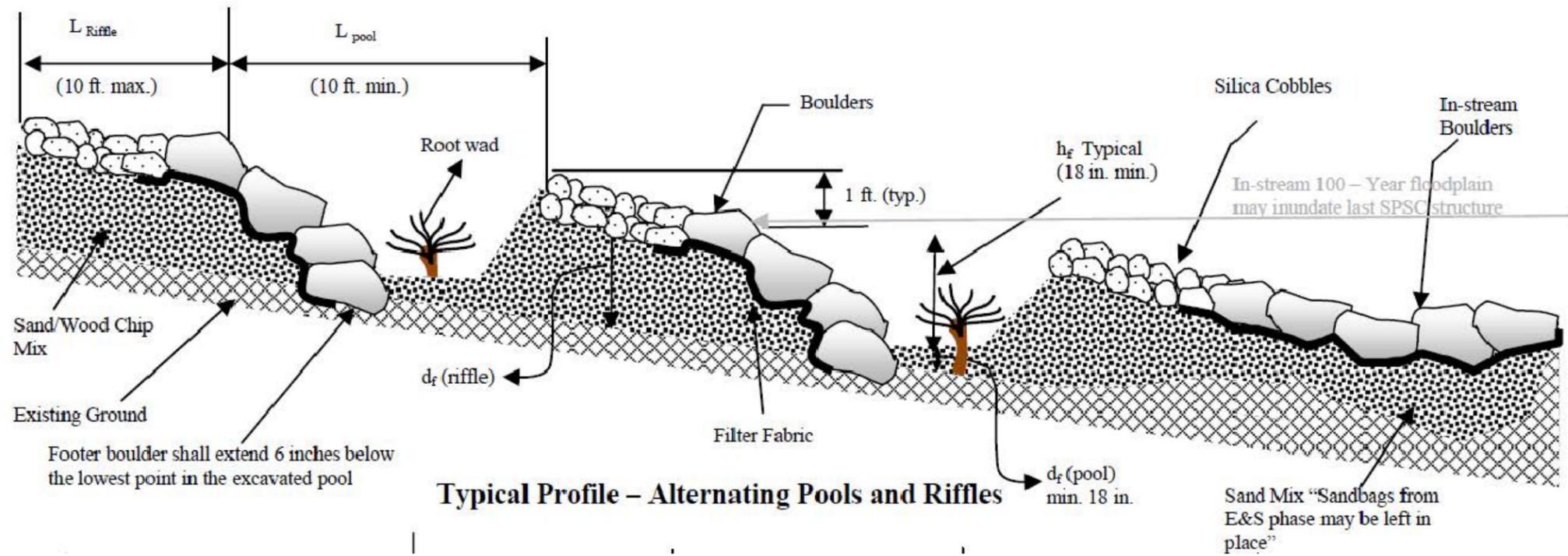
Designed By: GDJ

Date:  
November 21, 2016

Scale:  
1" = 300'

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
14



Note: Details to be adapted to fit site conditions.

Source: Anne Arundel County, Maryland



TYPICAL DETAIL  
REGENERATIVE STORMWATER CONVEYANCE

Designed By: GDJ

Date:  
November 21, 2016

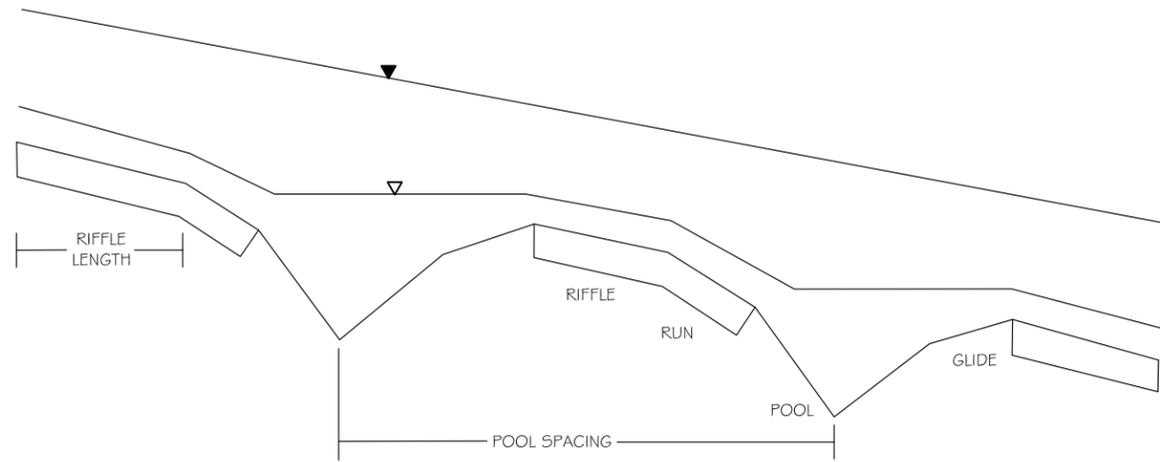
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Beeson Creek Stream Restoration Opportunities

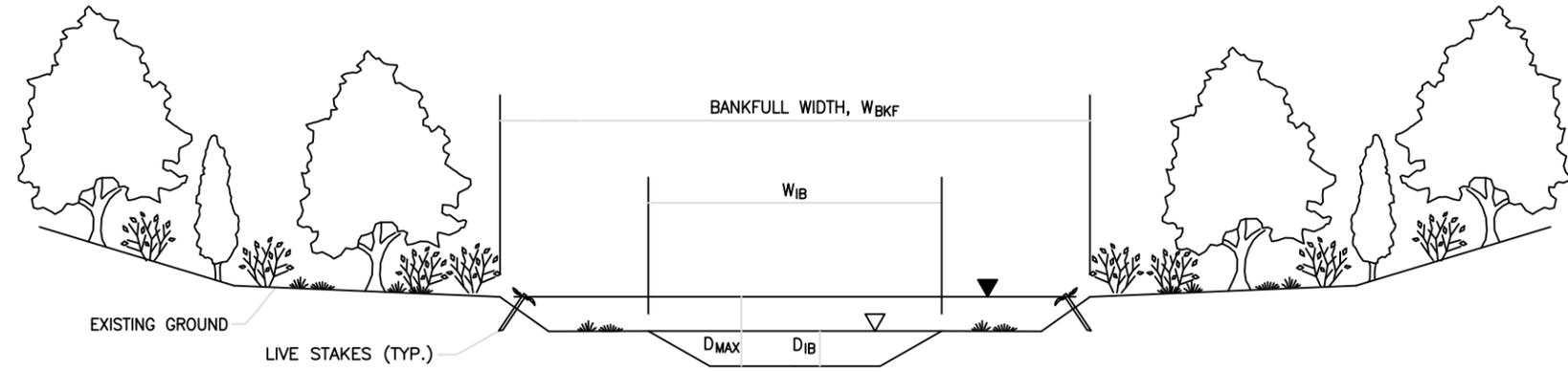
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
15

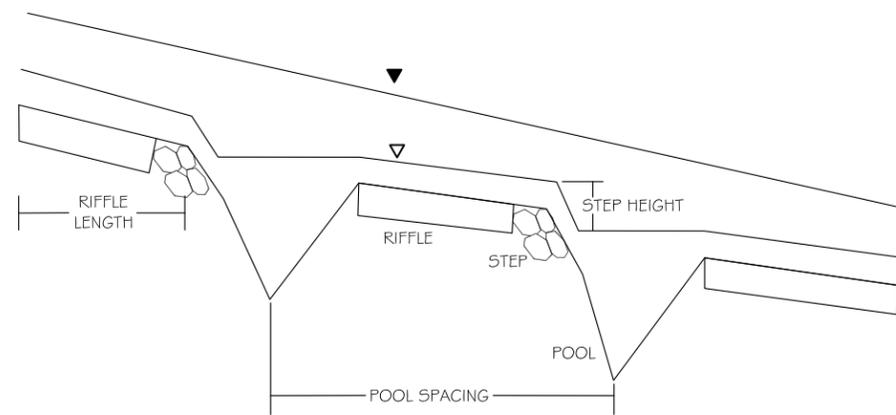
LONGITUDINAL PROFILE: RIFFLE/POOL (MEANDERING) STREAM



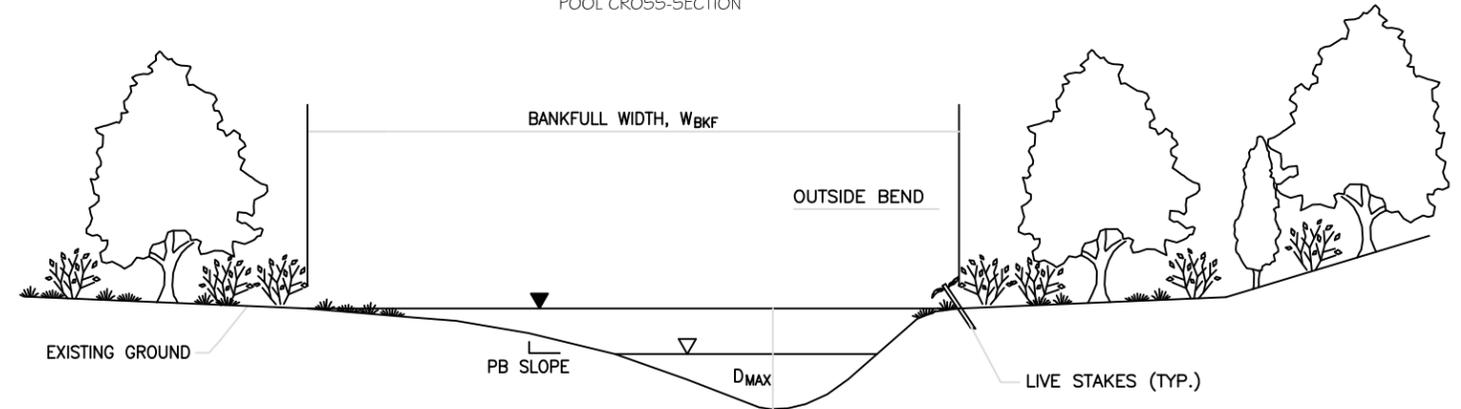
RIFFLE CROSS-SECTION



LONGITUDINAL PROFILE: RIFFLE/STEP/POOL STREAM



POOL CROSS-SECTION



 BANKFULL WATER SURFACE  
 LOW-FLOW WATER SURFACE



TYPICAL DETAIL  
LONGITUDINAL PROFILES AND CROSS-SECTIONS

Designed By: GDJ

Date:  
November 21, 2016

Scale:  
NOT TO SCALE

Beeson Creek Stream Restoration Opportunities  
Ivey M. Redmon Sports Complex  
Kernersville, North Carolina

Sheet  
16



*This Progressive Design Build Agreement  
has been developed in conjunction with  
and endorsed by the  
Water Design Build Council.*



WATER DESIGN-BUILD COUNCIL  
AN ASSOCIATION OF LEADING DESIGN BUILDERS

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# PROGRESSIVE DESIGN-BUILD AGREEMENT FOR WATER AND WASTEWATER PROJECTS

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**Document No. 545**

First Edition 2016

© Design-Build Institute of America

Washington, DC



# Progressive Design-Build Agreement for Water and Wastewater Projects

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

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ in  
the year of 2017, by and between the following parties, for services in connection with the Project identified  
below:

**OWNER:**

*Town of Kernersville Public Services Department  
720 Mckaughan St.  
Kernersville, NC 27284*

**DESIGN-BUILDER:**

*(Name and address)*

**PROJECT:**

*Ivey Redmon Stream Restoration Project, Phase I*

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

# **Article 1**

## **General**

- 1.1 Duty to Cooperate. Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in 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 an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.
- 2.2 Phased Services.
  - 2.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.0 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, 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.

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 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:

## **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.

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 (\$\_\_\_\_\_ ) 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.

## 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 \_\_\_\_\_ (~~\_\_\_\_\_~~) calendar days after the Date of Commencement ~~March 31, 2019~~ ("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, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official, if a Temporary Certificate of Occupancy is applicable to the Project."

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:

*Deadline for notification of possible delay of final completion past grant funding deadline: February 2019*  
*Deadline for Substantial completion (as defined within general conditions of contract, Article 6.6): March 31, 2019*  
*Deadline for final completion contained in grant funding: May 31<sup>st</sup>, 2019*

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 \_\_\_\_\_ (\_\_\_\_\_) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. (If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)~~

6.4 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. However, Design-Builder and Owner acknowledge that damages could include the loss of grant funds to be paid to the Owner by the State of North Carolina in the amount of \$400,000 if the project is not completed by May 31st, 2019 (the "Grant Expiration Date"). Design-Builder agrees that

at any time it reasonably believes that there may be problems in achieving substantial completion by the Grant Expiration date, it shall promptly inform the Owner to allow the Owner to request an extension in the grant expiration date. Owner agrees to permit the Design-Builder to join with the Town in formulating any such extension request if the Design-Builder so desires. If Substantial Completion is not attained by thirty (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Fifty Dollars (\$50.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. If Substantial Completion is not attained by the Grant Expiration Date, then the Design-Builder shall be responsible for the payment of any and all grant funds that are lost by the Owner.

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.

***[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 6.5.]***

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

6.6 Early Completion Bonus. If Substantial Completion is attained on or before \_\_\_\_\_ (\_\_\_\_\_) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 8.4 hereof an early completion bonus of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 6.2.2 or 6.2.3 hereof, this Section 6.6 will need to be modified accordingly.)*

***[The Parties may also desire to cap the early completion bonus payable under Section 6.6 in which case the following language should be included.]***

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

6.7 ***[The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]***

In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall be entitled to an increase in the Contract Price providing that: (i) said events must exceed \_\_\_\_\_ cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to:

***[Check one box only]***

\$\_\_\_\_\_ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.

## Article 7

### Contract Price

#### 7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$) 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.

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

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

7.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \_\_\_\_\_ Dollars (\$) ("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 \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit \_\_\_\_\_ hereto.

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

***[Check one box only]***

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

or

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

7.4 Design-Builder's Fee.

7.4.1 Design-Builder's Fee shall be:

***(Choose one of the following:)***

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

or

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

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

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

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

***[Check one box only]***

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

or

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

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

7.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs 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.

***[In lieu of the language in Section 7.5.1.4 above, Design-Builder and Owner may want to include the following language:]***

A multiplier of \_\_\_\_\_ percent (\_\_\_\_\_% ) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.3.3 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 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.

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

***[Design-Builder and Owner may want to consider adding the following Section 7.5.1.23 to address the payment of warranty work:]***

7.5.1.23 Owner and Design-Builder agree that an escrow account in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

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.

***(The parties shall comply with the following Section 7.6 based upon whether the GMP is agreed upon before the execution of this Agreement or will be developed and agreed upon after execution of this Agreement. If the parties do not use a GMP, this Section 7.5 shall be deemed inapplicable and compensation to Design-Builder shall be based on those fees and costs identified in the balance of this Article 7.)***

7.6 The Guaranteed Maximum Price.

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. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).*

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 such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:~~

***(Choose one of the following:)***

\_\_\_\_\_ percent ( \_\_\_\_\_ %) to Design-Builder and  
\_\_\_\_\_ percent ( \_\_\_\_\_ %) to Owner.

or

The first \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) of Savings shall be provided to (choose either Design-Builder or Owner) \_\_\_\_\_, with the balance of Savings, if any, shared \_\_\_\_\_ percent (\_\_\_\_\_% ) to Design-Builder and \_\_\_\_\_ percent (\_\_\_\_\_% ) 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.

***[Alternatively, the parties may want to delete Section 7.7.4 and add the following provision.]***

In the event the actual direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item is \_\_\_\_\_ percent (\_\_\_\_\_% ) greater than or less than the Allowance Value, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be determined in accordance with Section 7.4.

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.

## 7.8 Performance Incentives.

7.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit \_\_\_\_\_.

*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction, and similar items.]*

## **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 \_\_\_\_\_ (\_\_\_\_\_) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

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

***[Design-Builder and Owner may want to consider substituting the following retainage provision.]***

Owner will retain \_\_\_\_\_ percent (\_\_\_\_\_% ) 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.

***[If Owner and Design-Builder have established a warranty reserve pursuant to Section 7.5.1.23 above, the following provision should be included.]***

If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

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 thirty (30) 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 percent (%) per month until paid.

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.

## **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 ***(Choose one of the following:)***

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

or

Overhead and profit in the amount of \_\_\_\_\_ percent ( \_\_\_\_\_ %) 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 \_\_\_\_\_ percent (\_\_\_\_\_% ) 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 \_\_\_\_\_ percent (\_\_\_\_\_% ) 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.~~

9.3 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: *(Identify individual's name, title, address, and telephone numbers.)*

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: *(Identify individual's name, title, address, and telephone numbers.)*

#### 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:

*Wendi Hartup  
Stormwater Manager  
720 McKaughan St.  
Kernersville, NC 27284  
WHartup@toknc.com*

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

## Article 11

### Bonds and Insurance

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

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

Performance Bond.

Required                       Not Required

Payment Bond.

Required                       Not Required

Other Performance Security.

Required                       Not Required

## Article 12

### Other Provisions

12.1 Other provisions, if any, are as follows: *(Insert any additional provisions.)*

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner’s Project Criteria

Exhibit B – Scope of Services

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.

***[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder’s performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties by including the following language agree that the Design-Builder is obligated to achieve such standards.]***

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

***[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative disputes proceeding clause.]***

Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

## **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 \_\_\_\_\_percent (\_\_\_%) 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:**

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

\_\_\_\_\_  
*(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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**Document No. 535**

Second Edition, 2010

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Washington, DC

# TABLE OF CONTENTS

<b>Article</b>	<b>Name</b>	<b>Page</b>
Article 1	General.....	1
Article 2	Design-Builder’s Services and Responsibilities.....	2
Article 3	Owner’s Services and Responsibilities.....	6
Article 4	Hazardous Conditions and Differing Site Conditions.....	8
Article 5	Insurance and Bonds .....	9
Article 6	Payment.....	11
Article 7	Indemnification .....	13
Article 8	Time .....	15
Article 9	Changes to the Contract Price and Time .....	15
Article 10	Contract Adjustments and Disputes .....	17
Article 11	Stop Work and Termination for Cause .....	19
Article 12	Electronic Data .....	21
Article 13	Miscellaneous.....	22

# **Article 1**

## **General**

### **1.1 Mutual Obligations**

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

### **1.2 Basic Definitions**

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

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

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

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

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

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

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

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

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

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

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

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

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

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

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

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

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

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

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

## **Article 2**

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

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

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

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

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

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

## **2.2 Design Professional Services.**

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

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

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

## **2.4 Design Development Services.**

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

changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

## **2.5 Legal Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health

and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

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

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

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

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

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

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

## **Article 3**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.3 Financial Information.**

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

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

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

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

authority to act on behalf of Owner.

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

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

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

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

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

## **Article 4**

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

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

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

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

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

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

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

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

## **4.2 Differing Site Conditions.**

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

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

# **Article 5**

## **Insurance and Bonds**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 6**

### **Payment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 7**

### **Indemnification**

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

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

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

of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

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

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

## **7.2 Tax Claim Indemnification.**

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

## **7.3 Payment Claim Indemnification.**

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

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

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

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

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

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

## **Article 8**

### **Time**

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

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

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

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

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

## **Article 9**

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

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

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

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

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

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

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

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and

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

## **9.2 Work Change Directives.**

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

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

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

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

## **9.4 Contract Price Adjustments.**

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

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

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

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

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

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

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written

order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

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

# **Article 10**

## **Contract Adjustments and Disputes**

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

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

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

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

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

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

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

### **10.3 — Arbitration.**

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

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

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

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

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

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

### **10.5 CONSEQUENTIAL DAMAGES.**

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

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

## **Article 11**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 12**

### **Electronic Data**

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 13**

### **Miscellaneous**

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

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

#### **13.2 Assignment.**

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

#### **13.3 Successorship.**

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

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

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

### **13.5 Severability.**

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

### **13.6 No Waiver.**

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

### **13.7 Headings.**

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

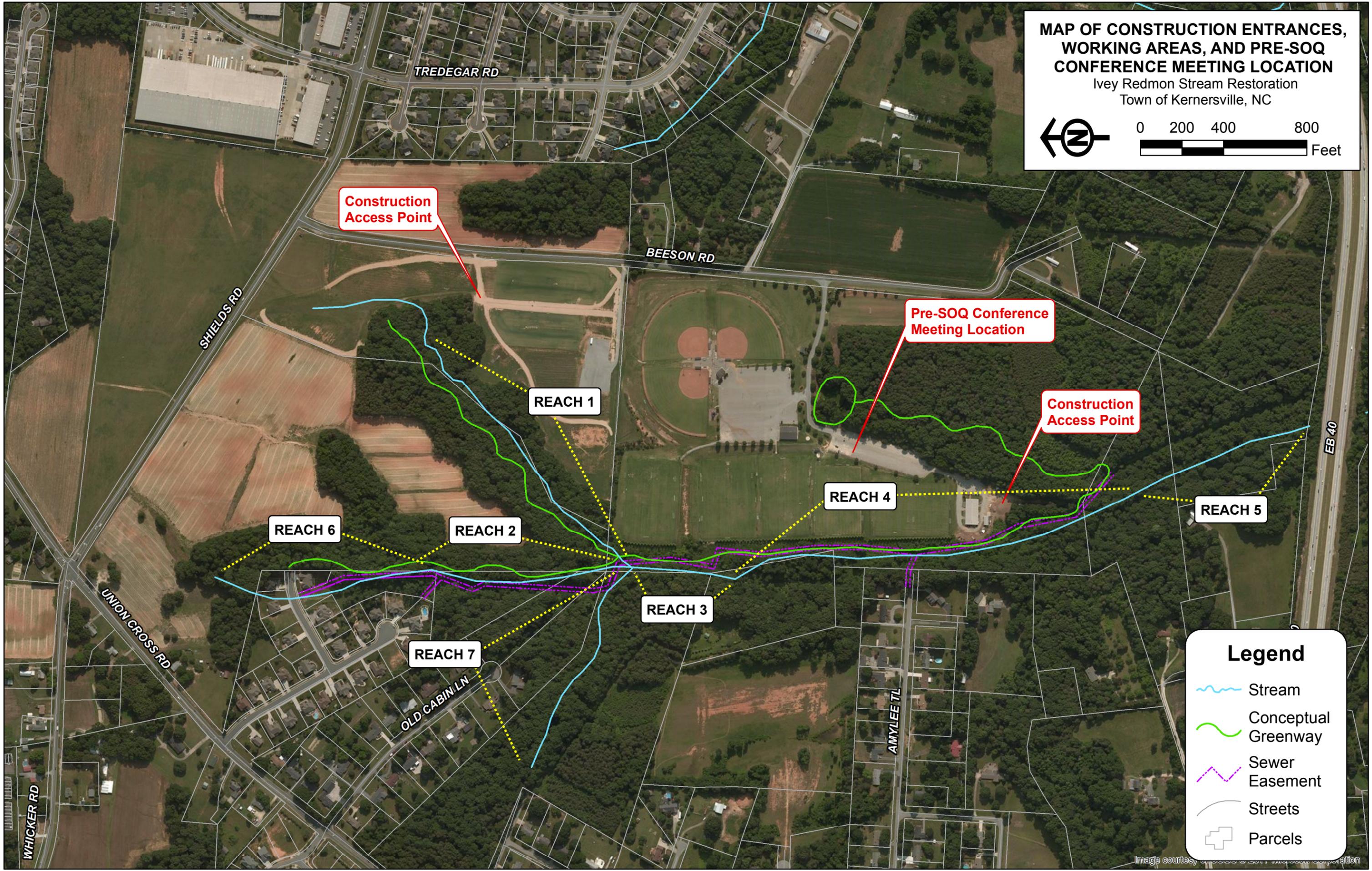
### **13.8 Notice.**

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

### **13.9 Amendments.**

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

**MAP OF CONSTRUCTION ENTRANCES,  
WORKING AREAS, AND PRE-SOQ  
CONFERENCE MEETING LOCATION**  
Ivey Redmon Stream Restoration  
Town of Kernersville, NC



**Legend**

- Stream
- Conceptual Greenway
- Sewer Easement
- Streets
- Parcels

Image courtesy of [unreadable] Corporation