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AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS AGREEMENT is by and between the City of Durham (Owner), a North Carolina municipal corporation, and White Oak Construction Corp. of NC (Contractor).

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Work includes, but may not be limited to, the furnishing of all materials, labor, equipment, tools, etc. unless otherwise specified, for the complete installation of repairs, rehabilitation, and improvements of stormwater drainage systems at various site locations throughout the City of Durham.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Contract: SD-2023-04, Project: Stormwater Infrastructure Repairs

- B. Listed below are the Sites that the Contractor may be instructed to completely construct under this Contract.

1. Maplewood Cemetery (COP-115)
2. Hillandale Golf Course (COP-125)
3. Clarendon Street (PDAP-096)
4. Sarah Avenue (PDAP-104)

1.3 ENGINEER

- A. The Projects have been designed by the following engineers;
1. City of Durham

The City of Durham, Public Works Department, Stormwater Division (Engineer), who is to act as the City of Durham's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

1.4 CONTRACT TIMES

- A. Time of the Essence

1. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- B. Days to Achieve Substantial Completion and Final Payment
1. The Work shall be substantially completed within 335 days after the date when the Contract Times commence to run (Notice to Proceed) as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 365 days after the date when the Contract Times commence to run (Notice to Proceed).
- C. Liquidated Damages
1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for completion and readiness for final payment until the Work is completed and ready for final payment.
  2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily liquidated damages assessment against the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.
- D. Weather Related Delays
1. The Contractor may request for an extension of Contract Times for delays related to adverse weather as described in the General Conditions, Paragraph 12.02A.

## 1.5 CONTRACT PRICE

- A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraphs 1.5.A.1 and 1.5.A.2 below:
1. Not used.
  2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 1.5.A.2:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

**UNIT PRICE WORK**

Standard			Item Description	Quantity	Unit	Unit Price	Item Value
No.	Specification	Drawing					
<b>Abandonment, Demolition, and Removal</b>							
1	NCDOT 200	N/A	Supplementary Clearing and Grubbing	50	SY	\$75.00	\$3,750.00
2	NCDOT 200	N/A	Select Tree Removal (4 to 8-inch diameter)	8	EA	\$1,500.00	\$12,000.00
3	NCDOT 200	N/A	Select Tree Removal (8.1 to 16-inch diameter)	2	EA	\$3,000.00	\$6,000.00
4	NCDOT 200	N/A	Select Tree Removal (24.1 to 36-inch diameter)	1	EA	\$4,500.00	\$4,500.00
5	NCDOT 200	N/A	Select Tree Removal (36.1 to 48-inch diameter)	1	EA	\$7,000.00	\$7,000.00
6	NCDOT 340	N/A	Pipe Removal	284	LF	\$75.00	\$21,300.00
7	30 11 00	N/A	Temporarily Relocate Mailbox	6	EA	\$400.00	\$2,400.00
<b>Subtotal for Abandonment, Demolition, and Removal</b>							<b>\$56,950.00</b>
<b>Earthwork</b>							
8	NCDOT 226	N/A	Undercut Excavation	146	CY	\$60.00	\$8,760.00
9	NCDOT 227	N/A	Grading	1	LS	\$60,400.00	\$60,400.00
10	NCDOT 230	N/A	Borrow Excavation	679	CY	\$30.00	\$20,370.00
11	NCDOT 240	N/A	Drainage Ditch Excavation	62	CY	\$110.00	\$6,820.00
<b>Subtotal for Earthwork</b>							<b>\$96,350.00</b>
<b>Soil Erosion and Sediment Control</b>							
12	NCDOT 876	NCDOT 876	Rip Rap, Class 1	14	TN	\$145.00	\$2,030.00
13	NCDOT 876	NCDOT 876	Rip Rap, Class 2	26	TN	\$150.00	\$3,900.00
14	NCDOT 876	NCDOT 876	Rip Rap, Class B	46	TN	\$140.00	\$6,440.00
15	NCDOT 876	NCDOT 876	Rip Rap, Class VII	26	TN	\$200.00	\$5,200.00
16	NCDOT 876	N/A	Geotextile for Drainage (Type 2)	94	SY	\$10.00	\$940.00
17	NCDOT 1605	N/A	Temporary Silt Fence	54	LF	\$10.00	\$540.00
18	NCDOT 1631	NCDOT 1631.01	Matting for Erosion Control	420	SY	\$10.00	\$4,200.00
19	NCDOT 1630	N/A	Silt Excavation	1	CY	\$200.00	\$200.00
20	NCDOT 1632	N/A	1/4" Hardware Cloth	6	LF	\$10.00	\$60.00
21	NCDOT 1610	N/A	Sediment Control Stone	0.3	TN	\$350.00	\$105.00
22	30 11 00	N/A	Conservation Easement and Stream Buffer Vegetation	1500	SY	\$6.00	\$9,000.00
23	NCDOT 1660	N/A	Seeding and Mulching	0.44	AC	\$8,500.00	\$3,740.00
<b>Subtotal for Soil Erosion and Sediment Control</b>							<b>\$36,355.00</b>
<b>Paving</b>							
24	NCDOT 520	N/A	Aggregate Base Course	16	TN	\$100.00	\$1,600.00
25	NCDOT 607	N/A	Milling Asphalt Pavement, 1.5-inch Depth	820	SY	\$30.00	\$24,600.00
26	NCDOT 610	COD 408.01	Asphalt Concrete Base Course, Type B25.0B	26	TN	\$250.00	\$6,500.00
27	NCDOT 610	COD 408.01	Asphalt Concrete Surface Course, Type S9.5B	75	TN	\$400.00	\$30,000.00
28	NCDOT 620	COD 408.01	Asphalt Binder for Plant Mix	7	TN	\$850.00	\$5,950.00
29	NCDOT 846	NCDOT 846.01	2-foot Concrete Curb and Gutter	310	LF	\$52.00	\$16,120.00
30	NCDOT 846	N/A	2-foot 6-inch Concrete Curb and Gutter	51	LF	\$55.00	\$2,805.00
31	NCDOT 848	NCDOT 848.01	4-inch Concrete Sidewalk	26	SY	\$115.00	\$2,990.00
32	NCDOT 848	COD 404	6-inch Concrete Driveway City Detail No. 404	108	SY	\$140.00	\$15,120.00
33	N/A	N/A	Remove Granite Curb	88	LF	\$25.00	\$2,200.00
<b>Subtotal for Paving</b>							<b>\$107,885.00</b>

Storm Drainage							
34	NCDOT 300	N/A	Foundation Conditioning Material, Minor Structures	100	TN	\$90.00	\$9,000.00
35	NCDOT 300	N/A	Foundation Conditioning Geotextile	361	SY	\$6.00	\$2,166.00
36	NCDOT 840	NCDOT 840.01/840.02	Catch Basin (0 to 5-feet)	5	EA	\$7,500.00	\$37,500.00
37	NCDOT 840	NCDOT 840.03/COD 633.11	Frame, Grate, and Hood, Type 'F'	3	EA	\$1,400.00	\$4,200.00
38	NCDOT 840	NCDOT 840.03/COD 633.11	Frame, Grate, and Hood, Type 'G'	2	EA	\$1,400.00	\$2,800.00
39	NCDOT 840	NCDOT 840.14/840.15	Drop Inlet (0 to 5-feet)	4	EA	\$7,500.00	\$30,000.00
40	NCDOT 840	NCDOT 840.16	Drop Inlet Frame and Grates	4	EA	\$1,400.00	\$5,600.00
41	NCDOT 840	NCDOT 840.51/840.53	Manhole (0 to 5-feet)	2	EA	\$7,500.00	\$15,000.00
42	NCDOT 840	NCDOT 840.54/COD 635.01/02	Manhole Frame and Cover	2	EA	\$1,400.00	\$2,800.00
43	NCDOT 840	N/A	Masonry Drainage Structures	8	LF	\$2,000.00	\$16,000.00
44	NCDOT 840	N/A	Pipe Collars	2	CY	\$1,500.00	\$3,000.00
45	NCDOT 840	N/A	Pipe Plugs	2	CY	\$1,500.00	\$3,000.00
46	NCDOT 310	NCDOT 300.01	15-inch R.C. Pipe Culverts, Class III (5.1 to 11-feet)	141	LF	\$170.00	\$23,970.00
47	NCDOT 310	NCDOT 300.01	18-inch R.C. Pipe Culverts, Class III (0 to 5-feet)	97	LF	\$140.00	\$13,580.00
48	NCDOT 310	NCDOT 300.01	18-inch R.C. Pipe Culverts, Class III (5.1 to 11-feet)	97	LF	\$200.00	\$19,400.00
49	NCDOT 310	NCDOT 300.01	24-inch R.C. Pipe Culverts, Class III (0 to 5-feet)	95	LF	\$175.00	\$16,625.00
50	NCDOT 300	NCDOT 300.01	48-inch R.C. Pipe Culverts, Class III (5.1 to 11-feet)	102	LF	\$470.00	\$47,940.00
51	NCDOT 838	NCDOT 838.80	48-inch Precast Concrete Endwall	2.5	CY	\$5,000.00	\$12,500.00
52	NCDOT 310	NCDOT 310.03	24-inch Pipe End Section	1	EA	\$3,000.00	\$3,000.00
53	NCDOT 838	NCDOT 838.01	Reinforced Endwalls	2.5	CY	\$5,000.00	\$12,500.00
<b>Subtotal for Storm Drainage</b>							<b>\$280,581.00</b>
Utilities							
54	33 11 13	N/A	6-inch Water Transition Coupling	2	EA	\$3,800.00	\$7,600.00
55	33 11 13	N/A	6-inch Water Line (DIP)	14	LF	\$700.00	\$9,800.00
56	NCDOT 1515	N/A	Relocate Water Meter	7	EA	\$2,700.00	\$18,900.00
57	33 31 13	N/A	8-inch Sanitary Gravity Sewer (DIP)	14	LF	\$700.00	\$9,800.00
58	33 31 13		8-inch Sewer Transition Coupling	2	EA	\$3,000.00	\$6,000.00
59		COD 512	Concrete Thrust Collar	2	EA	\$2,500.00	\$5,000.00
60	30 11 00	N/A	Utility Line/Pole Relocation and Coordination Allowances	1	LS	\$10,000.00	\$10,000.00
<b>Subtotal for Utilities</b>							<b>\$67,100.00</b>
Miscellaneous							
61	NCDOT 800	N/A	Mobilization	4	EA	\$8,200.00	\$32,800.00
62	N/A	N/A	Clean Structures, Parge and Replace Inverts as Necessary	2	EA	\$3,000.00	\$6,000.00
63	NCDOT 867	N/A	36-inch Fence Reset (Picket Fence)	57	LF	\$55.00	\$3,135.00
64	NCDOT 867	N/A	72-inch Fence Reset	60	LF	\$60.00	\$3,600.00
65	NCDOT 1670	N/A	Elderberry	2	EA	\$250.00	\$500.00
66	NCDOT 1670	N/A	Flowering Dogwood	2	EA	\$250.00	\$500.00
67	NCDOT 1670	N/A	Persimmon	2	EA	\$250.00	\$500.00
68	NCDOT 1670	N/A	Sycamore	1	EA	\$250.00	\$250.00
69	NCDOT 1670	N/A	Swamp Rose	2	EA	\$250.00	\$500.00
70	NCDOT 1670	N/A	Tulip Poplar	1	EA	\$250.00	\$250.00
71	NCDOT 1670	N/A	Witch Hazel	2	EA	\$250.00	\$500.00
72	NCDOT 1660	N/A	3-inch Bark Mulch	25	CY	\$40.00	\$1,000.00
73	NCDOT 1660	N/A	Landscaping Topsoil (4 inch Depth) and Soil Amendments	45	CY	\$150.00	\$6,750.00
74	NCDOT 800	N/A	Construction Surveying	1	LS	\$15,000.00	\$15,000.00
75	30 11 00	N/A	Testing and Inspecting Allowances	1	LS	\$14,000.00	\$14,000.00
<b>Subtotal for Miscellaneous</b>							<b>\$85,285.00</b>
<b>TOTAL</b>							<b>\$730,506.00</b>

## 1.6 PAYMENT PROCEDURES

### A. Submittal and Processing of Payments

1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### B. Progress Payments; Retainage

1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first

day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a through 1.6.B.1.e below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

- a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as Engineer may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
- b. The City of Durham will retain five (5) percent of the amount of each estimate until Work covered by the Contract is fifty percent (50%) complete. If after the Project is deemed fifty percent (50%) complete based upon the Contractor's gross Project invoices, excluding the value of materials stored on and off-site, and the Contractor provides the City and the Engineer the following:
  - 1) Written verification evidencing fifty percent (50%) completion of the Project; and,
  - 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City shall not retain any further retainage from periodic payments due to the Contractor; the City shall cease holding retainage from future periodic payments if the City finds that the Contractor is performing satisfactorily, and any nonconforming Work identified in writing by the Engineer or City (prior to the point of fifty percent (50%) Project completion) has been corrected by the Contractor and accepted by the Engineer or City, whoever provided such prior notice of nonconforming Work. If, however, the City determines the Contractor's performance is unsatisfactory, the City may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, City may assess retainage after fifty percent (50%) project completion, even if the Contractor has complied with Paragraphs 1.6.B.1.b.1 and 1.6.B.1.b.2 (above) and continues to perform satisfactorily as necessary to retain two and one-half percent (2.5%) total retainage through the completion of the Project.
- c. If by or before the Project is deemed fifty percent (50%) complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades: (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after receipt by the City of Durham of an approval or certificate from the Engineer that such early finishing Work is acceptable and in accordance with the Contract Documents, and after the Contractor provides City of Durham and the Engineer the following:
  - 1) The early finishing trade Subcontractor's written request for such payment; and,

- 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City of Durham shall make such early finishing trade payment;  
the City of Durham shall make full payment to the Contractor for said one hundred percent (100%) completed early finishing trade Work less retainage of five-tenths percent (0.5%) (of the early finishing trade contract) upon the later occurrence of the following:
  - 1) Sixty (60) days receipt of said early finishing trade Subcontractor's written request; or,
  - 2) Immediately upon receipt of said written consent of the surety.
- d. Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for Contracts having a total project cost less than \$100,000.00, and, in addition to the retainage amounts allowed to be held by the City of Durham, the City shall also retain all rights allowed under this Agreement to withhold payment to the Contractor in accordance with [Article 14 of the General Conditions] and for unsatisfactory job progress, defective or nonconforming construction not remedied, disputed Work, or third-party claims filed against the City of Durham or reasonable evidence that a third-party claim will be filed.
- e. Within sixty (60) days of receipt by City of (1) an Application for Payment and (2) written consent of the surety, and after City has either (1) received a certificate of Substantial Completion or (2) received beneficial occupancy or use of the Project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with [Paragraph 14.02.B.5 of the General Conditions], including up to [two hundred fifty percent (250%)] of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Engineer as provided in said Paragraph 14.07.

1.7 NOT USED

1.8 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
2. Contractor has visited the Site (or assumes responsibility for doing so) and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied all:
  - a. Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions; and
  - b. Reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in Paragraph 4.06 of the General Conditions.
5. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
6. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
7. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The Contractor affirmatively acknowledges and agrees that (a) the Contract Time provided for in the Contract Documents to complete the Work is reasonable and (b) the compensation provided for the Work in the Contract Documents is reasonable.

## 1.9 CONTRACT DOCUMENTS

### A. Contents

1. The Contract Documents consist of the following:
  - a. This Agreement (pages 1 to 20, inclusive).
  - b. Performance and Payment bonds (Appendix L, Documentation submitted by Contractor prior to Notice of Award).
  - c. Not used.
  - d. General Conditions (pages 1 to 54, inclusive) of the project manual titled, "PROJECT MANUAL INCLUDING BIDDING DOCUMENTS, CONTRACT DOCUMENTS, AND TECHNICAL SPECIFICATIONS FOR CONTRACT: SD-2023-04 PROJECT: STORMWATER INFRASTRUCTURE REPAIRS," issued June 22, 2023 and July 14, 2023, hereafter referred to as the "Project Manual".
  - e. Technical Specifications as listed in the table of contents of the Project Manual.
  - f. Drawings consisting of thirteen (13) sheets bearing the general titles below and as listed in Section 00 31 00, Paragraph 1.3, dated June 22, 2023.
    - 1) "Stormwater Infrastructure Repairs – Contract: SD-2023-04."
  - g. Addenda (number 1 (issued: July 14, 2023, inclusive).
  - h. Exhibits to this Agreement (enumerated as follows):
    - 1) Appendix K, Contractor's Bid dated July 25, 2023 (pages 1 to 27).
    - 2) Appendix L, Documentation submitted by Contractor prior to Notice of Award (Contract Certificates of Liability/Insurance).
    - 3) Appendix L, Documentation submitted by Contractor prior to Notice of Award.
  - i. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - 1) Notice to Proceed.
    - 2) Work Change Directives.
    - 3) Change Order(s).

- B. The documents listed in Paragraph 1.9.A.1 are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Paragraph 1.9.A.1.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.
- E. Coordination of General Conditions, Supplementary Conditions, Agreement, and Technical Specifications
  1. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the requirements of Paragraph 3.03 of the General Conditions, in case of a conflict or contradiction among the General Conditions (including Supplementary Conditions), Agreement, and Technical Specifications, the following shall be the order of



controlling authority as among these documents: The Technical Specifications shall control over the Agreement and the Agreement shall control over the General Conditions (including Supplementary Conditions). The Technical Specifications and the Drawings are intended to work together and complement each other. Any discrepancy or ambiguity between the Technical Specifications and the Drawings shall be interpreted consistent with the clear intent of the designer. If the intent of the designer is not clear, the Engineer shall determine which is controlling.

#### 1.10 MISCELLANEOUS

##### A. Terms

1. Terms used in this Agreement will have the meanings stated in the General Conditions.

##### B. Assignment of Contract

1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

##### C. Successors and Assigns

1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

##### D. Severability

1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City of Durham and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

##### E. Notices and Communications

1. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City of Durham (Owner):  
Attention: Antwon Williams, PE  
City of Durham  
Public Works Department  
Stormwater Division  
101 City Hall Plaza  
Durham NC 27701  
Fax: (919) 560-4316

To the Contractor:  
Attention: Bruce Hollis  
White Oak Construction Corp. of NC  
4020 Pea Ridge Road  
New Hill, NC 27562  
Fax: N/A

2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.

F. Not Used

G. Technical Data and Other Work

1. Subsurface and Physical Conditions
  - a. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the City of Durham or Engineer.
2. Hazardous Environmental Condition
  - a. No reports or drawings related to Hazardous Environmental Condition are known to the City of Durham or Engineer.
3. Other Work
  - a. The City of Durham and Engineer are unaware of any other work on the Site at the time of Notice to Proceed.

H. Contractor's Liability Insurance

Contractor shall maintain, on a primary basis and at its sole expense, at all times during the life of this Contract, the insurance coverage required under Article 5 of the General Conditions and in the amounts identified below. In the case of any conflict between this Paragraph 1.10.H and Article 5 of the General Conditions, this Paragraph 1.10.H shall be controlling. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities of obligations assumed by Contractor under this Contract.

1. Workers compensation & Employees Liability -- Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General

Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a Waiver of Subrogation.

2. Automobile Liability -- Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.
3. The policies of insurance required by Paragraph 5.04 of the General Conditions shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
4. Commercial General Liability -- Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.
5. Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required for Commercial General Liability and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse the City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis
6. Additional Insured – The contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read City of Durham as its interest may appear.
7. Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
Attn: Antwon Williams, Public Works Department  
101 City Hall Plaza  
Durham, NC 27701

All primary insurance carriers must be authorized to do business in North Carolina.

- I. E-VERIFY REQUIREMENTS
1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129
    - a. the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS;
    - b. the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (1) shall have the meanings intended by NCGS 143-129(j); and
    - c. the City is relying on this subsection (1) in entering into this contract.
  2. If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.
- J. Change "SDBE" to "UBE" and "Form 105" to "Form 104" – Paragraph 6.06.K and subparagraphs of the General Conditions are amended by replacing the phrase "Small Disadvantaged Business Enterprises" with "Underutilized Business Enterprises"; replacing "SDBE" with "UBE"; and replacing "form E-105" to "form E-104".
- K. Change to paragraph reference – Paragraph 7.04.A of the General Conditions is amended to change the Agreement paragraph reference from "Paragraph 1.10.H.3" to "Paragraph 1.10.G.3".
- L. No Durham Privilege License required – Delete Paragraph 6.60.L of the General Conditions.
- M. Indemnification provision replacement – Paragraph 6.20 (Indemnification) of the General Conditions is deleted in its entirety and replaced with the following new paragraph:
- 6.20 *Indemnification.*
- A. In General. The terms of subsection (C) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subsections (D) through (K), where applicable.
- B. Definitions. These definitions apply to this Section unless otherwise stated.

Contractor – Each party to this contract except the City of Durham.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration,

repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend -- to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault – a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor – any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

C. Standard Indemnification Provision. (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subparagraph “c,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within “Charges” are (1) interest and reasonable attorney’s fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders – including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this Paragraph (titled “Indemnification”) directly against the Contractor, but not against the City of Durham.

D. Restriction regarding Indemnitees' Negligence. This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

E. Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this contract is a construction agreement or design professional agreement, nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

F. Restriction regarding Negligence of Design Professionals. Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

G. Liability When at Fault. The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subparagraph (D) (Restriction regarding Indemnitees' Negligence) and subparagraph (E) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.

H. Insurance Contracts and Bonds. This Paragraph does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this Paragraph does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

I. Other Provisions. Every provision in this contract that violates subparagraph (D) (Restriction regarding Indemnitees' Negligence), subparagraph (E) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements), or subparagraph (F) (Restriction Regarding Negligence of Design Professionals) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subparagraphs.

J. Survival. This Paragraph shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

K. Compliance with Law. This Paragraph shall be applied to the maximum extent allowed by law but it shall be construed and limited as necessary to comply with N.C.G.S. § 22B-1. This Paragraph is not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply or direct how the remainder of this Paragraph or of this contract is to be construed.

N. Performance of Private Work in Conjunction with Contract

1. The Contractor shall not perform work for private citizens or agencies in conjunction with this Project or within the Project Sites of this Contract. Any other work performed by the Contractor within the vicinity of the Project Sites shall be completed prior to mobilization to each individual Site or after substantial completion and demobilization from the individual Site.

O. NCDENR Fines

1. In addition to Liquidated Damages, Contractor shall pay Owner for any NCDEQ fines that may be levied against the Owner but related to the Contractor's actions.

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, ....., affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this Bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....  
CONTRACTOR



CONTRACT: SD-2023-04  
PROJECT: Stormwater Infrastructure Repairs  
DATE: September 26, 2023

STORMWATER DIVISION  
PUBLIC WORKS DEPARTMENT  
CITY OF DURHAM, NORTH CAROLINA

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or offices on this 26th day of September, 2023 (the "Effective Date").

ATTEST:

CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

Address for giving notices:

Attention: Antwon Williams, PE  
City of Durham  
Public Works Department  
Stormwater Division  
101 City Hall Plaza  
Durham NC 27701

Phone No.: (919) 560-4326, ext. 30255

Fax No.: (919) 560-4316

CONTRACT: SD-2023-04  
PROJECT: Stormwater Infrastructure Repairs  
DATE: September 26, 2023

STORMWATER DIVISION  
PUBLIC WORKS DEPARTMENT  
CITY OF DURHAM, NORTH CAROLINA

CONTRACTOR (CORPORATION):

.....

By: .....

Title: .....

(CORPORATE SEAL)

Attest: .....

Title: .....

(CORPORATE SEAL)

Address for giving notices:

.....

.....

.....

Phone No.: .....

Fax No.: .....

License No.: .....

Agent for service or process: .....

.....

(If Contractor is a corporation or partnership,  
attach evidence of authority to sign.)

CONTRACT: SD-2023-04  
PROJECT: Stormwater Infrastructure Repairs  
DATE: September 26, 2023

STORMWATER DIVISION  
PUBLIC WORKS DEPARTMENT  
CITY OF DURHAM, NORTH CAROLINA

State of ..... ACKNOWLEDGMENT BY CORPORATION

County of .....

I, a notary public in and for the aforesaid county and state, certify that .....  
personally appeared before me this day and stated that he or she is

*(Strike through the inapplicable:)* chairperson/ president/ chief executive officer/ vice-president/  
assistant vice-president/ treasurer/ chief financial officer of

White Oak Construction Corp. of NC , a corporation, and that by authority duly given and as the act of  
the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the  
corporate seal was affixed thereto. This the ..... day of .....,  
20.....

My commission expires: .....  
..... Notary Public

CONTRACT: SD-2023-04  
PROJECT: Stormwater Infrastructure Repairs  
DATE: September 26, 2023

STORMWATER DIVISION  
PUBLIC WORKS DEPARTMENT  
CITY OF DURHAM, NORTH CAROLINA

END OF DOCUMENT