

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

DOCUMENT 00 52 15

AGREEMENT

THIS AGREEMENT is by and between the City of Durham, a North Carolina municipal corporation, and \_\_\_\_\_ (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:

ELLERBE CREEK AERIAL SEWER CROSSING REPLACEMENT CONSTRUCTION: Includes furnishing and installing approximately 74-feet of new bridge structure and foundation for the support of the two (2) existing 30-inch interceptors that cross over Ellerbe Creek. Services shall include, but not limited to, clearing and grubbing, earthwork, fencing, sedimentation and erosion control, surface restoration, demolition of the existing aerial bridge and structures, bypass pumping, and all associated appurtenances as described in the Specifications and shown on the Drawings.

The foregoing description shall not be construed as a complete description of all work required.

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:

City Contract: SRM-2 EA, Project: **“Ellerbe Creek Aerial Sewer Crossing Replacement Construction”**

- B. NOT IN CONTRACT

1.3 ENGINEER

- A. The Project has been designed by Kimley-Horn and Associates, Inc., (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

The Work shall be Substantially Complete within **180 consecutive calendar 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 Final Completion and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **210 consecutive calendar 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 mediation 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 **two thousand five hundred dollars (\$2,500.00)** 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 **two thousand five hundred dollars (\$2,500.00)** 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 penalty to 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 weather conditions shown in the chart below can be reasonably anticipated and will not be considered abnormal. For example, if the Contractor submits a request to extend Contract Times on the sole basis of adverse weather conditions in January, and the factual records submitted show that the actual January in which the Contractor worked had nine (9) days on which the precipitation exceeded 0.1 inches, the extension of time will not be granted because the chart says that it is expected that there will be ten (10) days in January with at least that much rain. If the factual records show that the actual January in which the

CONTRACT: SRM-2 EA  
 PROJECT: ELLERBE CREEK AERIAL  
 SEWER CROSSING REPLACEMENT  
 DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
 CITY OF DURHAM, NORTH CAROLINA

Contractor worked had twelve (12) days on which the precipitation exceeded 0.1 inches, the Contractor will not need to show that the precipitation was abnormal and could not have been reasonably anticipated, but will still need to show the adverse effect on the scheduled construction. Unless the City agrees in writing otherwise, the weather conditions must be shown by use of data, submitted by the Contractor, from either the National Weather Service (NWS) for Raleigh, NC or NWS readings from a location closer to the site than Raleigh, and not by use of weather readings on the Site or by the Contractor. For requests to extend Contract Times based on weather related delays, the Contractor shall use the form, "Request to Extend Contract Times on the Basis of Adverse Weather Conditions," see Appendix J. The parties are bound by the provisions on that form. Notwithstanding the General Conditions, Paragraphs 9.08 and 12.02, in order to request an extension of Contract Times for abnormal weather conditions the form must be submitted by the tenth (10<sup>th</sup>) day of the month after the month as to which the request is made. In order to make this request for Saturdays, Sundays, and City of Durham holidays, the Contractor must have notified the Resident Project Representative by 3:30 PM, three (3) days in advance of the day of the Contractor's intent to work on a specific Saturday, Sunday, or holiday. Notwithstanding Article 17 of the General Conditions, if the day on which the notice is to be given is a Saturday, Sunday, or City of Durham holiday, the notice shall be given by the first day before that Saturday, Sunday, or holiday that is not a Saturday, Sunday, or City of Durham holiday.

Month	Number of days with 0.1 or more inches precipitation	Number of days on which the temperature is never above 32-degrees Fahrenheit
January	10	3
February	10	1
March	10	0
April	9	0
May	10	0
June	9	0
July	11	0
August	10	0
September	8	0
October	7	0
November	8	0
December	9	0

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. For all Work other than Unit Price Work, a Lump Sum of:

\_\_\_\_\_ (words), (\$ \_\_\_\_\_ (numerals))

All specific cash allowances are included in the above price and have been computed in accordance with Paragraph 11.02 of the General Conditions.

2. NOT IN CONTRACT.

#### 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 twenty-fifth (25<sup>th</sup>) 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 (50% of the Total Contract Amount). 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 more than two and one-half percent (2½%) of the Total Bid Price in retainage from periodic payments due to the Contractor; the City shall reduce retainage to two and one-half percent (2½%) of the Total Bid Price 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.

- c. NOT IN CONTRACT
- 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 IN CONTRACT

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 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.

## 1.9 CONTRACT DOCUMENTS

- A. Contents
  1. The Contract Documents consist of all of the items listed in the Table of Contents, exclusive of Appendix K, which is not to be considered, in any way, a part of these Contract Documents. See the General Conditions, Document (C-700).
- 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 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, 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, 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.

#### 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.

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

E. Notices and Communications

1. All notices and other communications required or permitted by Contract shall be in writing and shall be given by personal delivery, fax, or certified United States mail (return receipt requested) addressed/faxed as follows:

To the City of Durham:  
Attention: Donald F. Greeley, PE, PLS  
Director  
City of Durham  
Department of Water Management  
Administrative Offices  
1600 Mist Lake Drive  
Durham, North Carolina 27704  
Fax: (919) 560-4381

To the Contractor:  
Attention: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State Zip Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

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 IN CONTRACT

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, that are not included with these documents as an Appendix.
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

1. Workers compensation insurance shall cover employers' liability, \$1,000,000.

SECTION: 00 52 15 - Agreement Form - EJCDC Stipulated Sum (Single-Prime Contract)

00 52 15-8

ELLERBE AERIAL NO. 2

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

2. Automobile liability insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
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. An Excess Liability Policy naming the contractor or other person who will be performing the activity as insured and also naming the City and the Engineer as an additional insured in an amount not less than \$10,000,000.00 for bodily injury, personal injury, property damage and products completed operations. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy.)
5. Professional liability insurance coverage self-insured retentions/deductibles in excess of \$10,000 must be approved by the City Finance Director.
6. Professional liability insurance coverage shall have a combined single limit not less than \$2,000,000 per claim applicable to this Contract.
7. Wherever in this Article the terms "The Insured" and OWNER occurs with respect to coverage in a policy, it shall mean the CITY and its agent and agencies, all municipalities where work is being performed under the Contract, the Engineer, and any other parties specifically designated herein, who shall be named as insured in each policy issued. The insurance policies required herein shall not contain any Third Party Beneficiary Exclusion.

**\*\*\*REMAINDER OF PAGE LEFT BLANK INTENTIONALLY\*\*\***

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

CERTIFICATE OF FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
FINANCE OFFICE, CITY OF DURHAM

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

NON-COLLUSION AFFIDAVIT 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: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

**IN TESTIMONY WHEREOF**, the City of Durham has caused these presents to be signed in its name by the City Manager or the Deputy City Manager and its corporate seal to be hereto affixed and attested by the City Clerk, all by order of the City Council and the City of Durham; and the Contractor's officers, having been duly authorized by resolution of its Board of Directors, hereby execute this Contract under the seal of and on behalf of Contractor.

**IN WITNESS WHEREOF**, the City of Durham and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to the City of Durham and the Contractor. All portions of the Contract Documents have been signed or identified by the City of Durham and Contractor or on their behalf.

This Agreement will be effect on \_\_\_\_\_ (which is the Effective Date of the Agreement).

Attest:

CONTRACTOR

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Secretary  
(Affix Corporate Seal)

\_\_\_\_\_  
President

Attest:

CITY OF DURHAM

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
CITY MANAGER OR DEPUTY CITY MANAGER

Pre Audit Certificate

CONTRACT: SRM-2 EA  
PROJECT: ELLERBE CREEK AERIAL  
SEWER CROSSING REPLACEMENT  
DATE: July 31, 2012

DEPARTMENT OF WATER MANAGEMENT  
CITY OF DURHAM, NORTH CAROLINA

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT BY CITY OF DURHAM

COUNTY OF \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE of \_\_\_\_\_

ACKNOWLEDGMENT BY CONTRACTOR

COUNTY of \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State certify that on this day personally appeared before me \_\_\_\_\_ with whom I am personally acquainted, who, being duly sworn, says that \_\_\_\_\_ is the \_\_\_\_\_ President and that the said \_\_\_\_\_ is the \_\_\_\_\_ Secretary of \_\_\_\_\_ the Corporation described in and which executed the foregoing Contract; that he knows the common seal of said corporation; that the seal affixed to the said instrument is said common seal; that the name of the corporation was subscribed thereto by the said \_\_\_\_\_ President and that the said \_\_\_\_\_ President and \_\_\_\_\_ Secretary subscribed their names thereto and said common seal was affixed, all by order of the Board of Directors of said Corporation, and said instrument is the act and Deed of said Corporation.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

- END OF DOCUMENT -