



**Request for Proposal**

**For Professional Lab Consultant**

**Services For BWWB Envirolab Building**

**April 2024**



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

**Request for Proposal (RFP)**  
**Preparing the Detailed Design, Construction Contract Document and Support**  
**During the Bid Phase**  
**for**  
**The Renovation of Existing**  
**100 Lucerne Lane ENVIROLAB Building**

**RFP Issuance Date:** April 9, 2024  
**Pre-Proposal Conference at 100 Lucerne Lane Building:** April 23, 2024, at 10:00 a.m. CST  
**Closing Date for Submission of RFP:** May 14, at 1:00 p.m. CST  
**Presentation Date:** May 21, 2024

**Birmingham Water Works Engineering Department**  
3600 First Avenue North  
Birmingham, Alabama 35222

**Contact:** Jaquice Boyd, Ph.D.  
Email: [jaquice.boyd@bwwb.org](mailto:jaquice.boyd@bwwb.org)  
Office: 3600 1st Ave. North, Birmingham, Alabama 35222  
Office Phone: 205-244-4218

**LATE PROPOSALS WILL BE REJECTED.**

The Birmingham Water Works Engineering Department seeks proposals from qualified consultants for the project named above and described in this Request for Proposal (RFP). Proposals shall be emailed to:

Jaquice Boyd at [jaquice.boyd@bwwb.org](mailto:jaquice.boyd@bwwb.org)

A mandatory Pre-proposal Conference will be held at 100 Lucerne Lane Envirolab Building at 10:00 a.m. CST on April 23, 2024. All prospective proposers and interested parties are required to attend the Pre-Proposal Conference. The purpose of the Pre-Proposal Conference is to present the conditions of the project site, raise questions pertaining to the project, and for BWWB or its representatives to clarify any points.

Questions will be taken until COB on April 30, 2024. Prospective proposers shall email the questions to Jaquice Boyd. Any Addenda will be issued to all parties by COB, May 7, 2024.

**Envirolab Location:** 100 Lucerne Lane  
Oxmoor Corporate Park  
Birmingham, AL 35211



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

The Water Works Board of the City of Birmingham (“BWVB”) has adopted a voluntary Historically Underutilized Business (“HUB”) Program designed to encourage the participation of HUB firms. To that end, the BWVB will never exclude any firm from participation in, deny any person benefits of, or otherwise discriminate in connection with the award and performance of BWVB contracts based on racial, gender, social, or economic status. It is the intent of the BWVB to foster competition among contractors, suppliers, vendors, and firms that will result in better quality and more economical services for the BWVB. Under this program, the BWVB has established a goal of 30% participation of HUB firms for services required for BWVB projects. The BWVB’s stated goal will not be the determining factor in contract awards; rather Firms must demonstrate compliance with the Good Faith Efforts, more particularly outlined in the HUB Program, toward meeting said goal.

Alabama Code §31-13-9 (1975) provides that as a condition for the award of any contract by The Water Works Board of the City of Birmingham, a business entity or employer that employs one or more employees within the state of Alabama shall provide documentation of enrollment in the E-Verify program.

The Board right is reserved to reject any proposals submitted, waive any informalities and technicalities, and award to the proposer it is deemed to serve the “Board’s” interests best and most economically. The Board reserves the right to cancel the contract due to Non satisfactory performance or if the proposer is found to violate the terms and conditions or does not correct any violations of the proposal. The Board reserves the right to re-advertised.



BIRMINGHAM WATER WORKS BOARD  
 REQUEST FOR PROPOSAL  
 RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

TABLE OF CONTENTS

1. GENERAL ..... 5

    1.1 PROJECT DESCRIPTION..... 5

2. DETAILED SCOPE OF WORK ..... 6

    2.1 SCHEMATIC DESIGN DEVELOPMENT ..... 6

    2.2 PRELIMINARY DESIGN (30% DESIGN) ..... 11

    2.3 DETAILED DESIGN (90% DESIGN)..... 12

    2.4 TENDER DOCUMENTS (100% DESIGN) ..... 12

3. BIDDING SERVICES ..... 15

4. TECHNICAL PROPOSAL SUBMISSION REQUIREMENTS..... 15

APPENDIX A – ORIGINAL BUILDING DRAWINGS (PDF FORMAT) ..... 21

APPENDIX B – DUE DILIGENCE REPORT AND CONCEPTUAL LAYOUT DRAWINGS..... 21

APPENDIX C – BWWB CONSULTANT PLAYBOOK AND EXHIBIT 2.6 – CONSULTANT INVOICE EXAMPLE ..... 21

APPENDIX D – OXMOOR CORPORATE PARK – DECLARATIONS OF COVENANTS AND RESTRICTIONS ..... 21

1. **GENERAL**

1.1 **PROJECT DESCRIPTION**

- A. The building is located at 100 Lucerne Lane within the Oxmoor Corporate Park, Planned Mixed-Use District (City of Birmingham), and is owned by Birmingham Water Works Board (BWWB). BWWB closed on the property on July 25<sup>th</sup>, 2023, and would like to proceed with the award of the renovation detailed design and bidding phase support to a consultant.
- B. The building was constructed in 2017 by the previous owner IPG Southeast Technology Center. The building is located on 5.40 acres lot with a total built area of 30,000 sq ft and consists of:
  - a. Office space: ~13,500 sq ft
  - b. Lab & Processing: ~13,500 sq ft
  - c. Warehouse: ~3,000 sq ft
  - d. Planned Future Expansion: ~12,000 sq ft (not part of this RFP)
- C. On June 1<sup>st</sup>, 2023, BWWB completed the due diligence activities, through third party, including site walkthroughs, conceptual test fit of laboratory functions, structural inspection of the existing building, testing, and balancing of existing mechanical systems, and blower door tests. Based on these activities, the third-party reports finding no fatal flaws to renovating the facility for Envirolab use.

Envirolab is the Laboratory supporting the Birmingham Water Works, which was established in the 1990s. It serves (in part) as a traditional Analytical Lab with complex testing platforms working over a broad range of water testing methodologies.



- D. BWWB and its agents completed an ALTA survey report and obtained Zoning Certificate Letter from the City of Birmingham.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- E. The Consultant will be provided with the AutoCAD drawings for the existing building including Architectural, Civil, Electrical, Fire Protection, Landscape, Mechanical, Plumbing, Process Equipment and Structural. In addition, a library of photos showing the existing condition will be shared with the Consultant.

## **2. DETAILED SCOPE OF WORK**

The Consultant shall refer to BWWB Consultant Playbook attached in Appendix C, for more details on the submittal requirements for each phase of the design development.

### **2.1 SCHEMATIC DESIGN DEVELOPMENT**

**Consultant Duration: 45 Days**  
**BWWB Review Duration: 14 days**

#### **Design Guidelines**

BWWB has established the building program and Lab Design Guidelines. The purpose of the Design Guidelines is to ensure a consistent level of functionality, finish and quality. More information on the requirements can be found in Appendix B.

To accommodate the BWWB requirements, the Envirolab building shall have a state of the arts laboratory space with growth built in, secure loading dock for lab deliveries, separation of public and private spaces, ample natural light, and opportunity for collaboration through the building.

The Envirolab building shall prepare the BWWB for long term growth, increased efficiency, environmental sustainability, and transparency. The space to be included are:

- Entry drive
- Landscape
- Parking
- Lobby
- Collaborative space
- Labs and support spaces
- Offices
- Loading dock

#### **Design Criteria**

- A. The existing building was designed under IBC 2009. Refer to the partial list of codes, regulations, stakeholders, and authorities having jurisdiction as below:
- a. 2015 Edition of the International Building Code



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- b. 2015 Edition of the International Plumbing Code
  - c. 2015 Edition of the International Mechanical Code
  - d. 2015 Edition of the International Fire Code
  - e. 2015 Edition of the Fuel and Gas Code
  - f. 2014 Edition of the National Electrical Code
  - g. 2013 Edition of the National Fire Alarm and Signaling Code (NFPA 72)
  - h. 2013 Edition of the ANSI/ASHRAE/IESNA Standard 90.1 – Energy Standard for Buildings Except Low Rise Residential Buildings
  - i. 2015 Edition of the NFPA 101 (Life Safety Code)
  - j. 2010 ADA Standards for Accessible Design
  - k. 2015 Technical Code City of Birmingham
  - l. The Americans with Disabilities Act
  - m. City of Birmingham Fire Marshal
  - n. City of Birmingham, Department of Planning, Engineering, and Permits
  - o. NEBB Procedural Standards for Testing Adjusting & Balancing of Environmental Systems
  - p. Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)
    - (1) ASHRAE Handbook Fundamental for Heating & Cooling Loads Calculations
    - (2) ASHRAE Energy Standard 90.1-2013 for Buildings except Low Rise Residential Buildings
    - (3) ASHRAE Standard 62.1-2007 Ventilation for Acceptable Indoor Air Quality
  - q. Sheet Metal and Air Conditioning Contractor’s National Association (SMACNA)
  - r. SMACNA HVAC Duct Construction Standards for Metal and Flexible
  - s. Underwriters Laboratories (UL)
  - t. National Fire Protection Association (NFPA) for HVAC, Plumbing, and Fire Protection
  - u. Public Health Requirements, National Fire Protection Association,
  - v. 2015 IBC and local codes
  - w. IECC energy code
  - x. Low voltage automatic lighting control system shall be in compliance with the IECC Energy Code and all local codes
  - y. Applicable Codes
- B. Suggested requirements for the new Envirolab shall include the following. However, more details are available in the due diligence report in Appendix B. These requirements and more details for the equipment (existing and new furnished by the BWWB), and Contractor shall be confirmed during the Schematic Design Stage:
- Air Handling System components – Air Handling Units, supply valves, air terminal units, exhaust valves, exhaust fan(s), building automation system – in line with what is required to support the type of analytical testing platforms in Envirolab, and systems that provide a safe working environment for the technicians.
  - New casework, fume hoods, and contractor furnished/installed equipment to better support the analytical testing platforms, and to allow for changes in testing methodologies in the future without costly changes to the lab layout.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- Additional system capacity – supply air, exhaust, gases, power, data – to serve the lab, and future lab expansion within the footprint of the new Envirolab.
- Provide space to expand each lab area – areas which are separate within the current Envirolab building – as the number of customers grows and additional testing within each lab area grows with it.

C. Adjacency Requirements:

The design shall accommodate for the three labs or lab support room types within the building: the Dock, where samples are dropped off and cylinders are stored, the Analytical Labs, and the Central Storage.

D. Lab Module Dimensions:

The lab design shall be open shared space when possible. This shall allow the inclusion of future growth space within a large volume. The module repeating width dimensions of bench and aisle shall be typically in the range of 10'-0" to 11'-0", with casework being 5'-0" to 6'-0" of the module.

E. Lab Casework and Fume Hoods:

The type of casework system for the project shall be fixed elements – fume hoods and sinks – and located on the perimeter of lab spaces. Space for floor mounted equipment is also assumed to be in this zone. The interior space shall be island assemblies of casework, in the lab module described above, with interior islands having services – power, data, gases – provided by fixed, floor mounted vertical utility chases.

F. Contractor-Furnished and Installed Lab Equipment:

Contractor furnished lab equipment shall include three 4°C cold rooms for Sample Receiving, with stainless steel wire shelves. Contractor furnished lab equipment shall also include two undercounter glassware washer units in the Central Storage, with spindle-type injectors to rinse a variety of glassware types and a dedicated deionization unit/reservoir for a final DI rinse of the glassware.

**G. Lab Service Distribution:**

**Exhaust:** Many pieces of analytical equipment require either a directly connected exhaust line, or a small thimble-type exhaust to provide either removal of heat, or fumes, or both. The lab progresses in its current overall configuration (two floors of analytical lab space, with separate but adjacent Micro and Organic GC/MS), requires a target air change rate as occupied, 8-10 air changes per hour, or ACH.

**Gases:** Service gases in the Envirolab currently include Helium (high purity, cylinder source), Nitrogen (high purity, cylinder source), Argon (bulk source).

**Water:** Domestic hot and cold water shall be provided at each lab sink and shall be provided (via a thermal mixing valve) at the eyewash unit provided at each sink. Domestic cold water shall be provided to a gooseneck faucet with vacuum breaker located on the right side of each fume hood. Domestic hot and cold water shall be





BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

provided at each safety shower, via a thermal mixing valve.

**Purified Water:** The design shall consider consolidating the purified water system in each open space lab. Consideration shall be to providing a single Reverse Osmosis system, located in Central Storage, to provide feed water to the deionization units in the footprint, and perhaps to a single RO faucet within each lab volume (centrally locate) for filling carboys.

**Safety Devices:** Safety showers shall be in each lab, and emergency eyewashes shall be located at each sink. All shall conform to ANSI/ISEA Z358.1-2014, American National Standard for Emergency Eyewash and Shower Equipment, and be compliant with OSHA 29 CFR 1910.151.

**Storage:** The design shall consider much of the lab storage needs be relocated to the Central Storage and include a mix of tall storage cabinets and high-density wire shelving units.

#### Data Collection and Analysis

Under this stage the Consultant shall undertake a thorough visual and dimensional building investigation to identify materials and services. The Consultant shall then meet with the BWWB to obtain a better understanding of the renovation needs and analyze existing similar laboratory to validate the program requirements. Data collection shall include the following:

- Photographs showing the building exterior (i.e. shell, enclosures, and roofing) and interior (i.e. partitions, finishes, offices, lobby, toilets and floors), general mechanical, plumbing and fire protection, service and power distribution, lighting, site boundaries, adjacent land use, and site accessibility, existing site features such as trees, fences and buildings, utilities including location, size and capacity of sanitary sewer, storm sewers, power supply, water lines, fiber optic lines, gas lines, and telephone lines.
- Survey of existing pedestrian and vehicular traffic flows adjoining the car parking, emergency and service routes.
- Review the Oxmoor Corporate Park - Declarations of Covenants Conditions and Restrictions.

The findings and results of the above shall be summarized in a Data Collection Analysis Report. The report shall include the following:

- An analysis of the entire data collection information i.e. regulatory, physical, financial, environmental and constraints and their impact upon the design process and intent.
- A clear statement of goals and more specific objectives relative to the design process and intent.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- Space standards and requirements for each category of laboratory, common areas and office space functions.
- All maps, charts, graphs, matrices, photographs, sketches, and similar graphic material, which will assist in expressing the design process and intent.

The Consultant shall consider appropriate building plans, which take into consideration the data analysis, gathered. The study shall form the basis for discussion and review. This shall include but not limited to the following elements:

- Organization plans in the form of special relationship diagrams
- Site and landscape plans
- Circulation diagram, to include vehicular, pedestrian, service, and public safety access points
- Building plans, with all areas labeled
- Elevations showing massing and outline only
- Sections to determine heights and massing relationships.
- Volumetric character sketches and blocks model(s)
- Cost estimate
- Area analysis (net gross ratios etc.)

The deliverables of this phase shall consist of:

- Schematic Design Report, Equipment List and Drawings

The Selected Concept Report shall be a refinement of the existing building drawings and the recommended design modifications identified in this Phase and initial meeting(s) with BWWB. The design shall demonstrate its compliance with all current and relevant codes. The Schematic Design shall include the following:

- Site Plan showing existing building, parking, pedestrian and vehicular circulation, landscape spaces, boundary walls, and any special features or other elements unique to the project.
- Architectural Design
  - Architectural plans showing building outlines with appropriate annotation
  - Architectural elevations and sections
  - Area Analysis (net to gross ratio)
- Building and Engineering Systems
  - Structural systems with sketches and sections where modifications are proposed,
  - HVAC, electrical, mechanical, fire protection, security, building automation and communication systems. Single line or outline proposals,



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- Recommended energy conservation measures (As required), and
  - Fire and life safety plan.
- External Works
    - Vehicular and pedestrian circulation, ingress and egress drawing(s)
    - Storm drainage drawing(s)
    - Landscape drawing(s) zones and schematic planting schematic to the immediate surrounding area
    - Irrigation drawing(s) showing mainline routing (As required)
    - Emergency generator

The Schematic Design Package shall address the above elements with narrative and graphic materials as appropriate in addition to all requirements in BWWB Consultant Playbook – Appendix C.

To reduce the possibility of later rejection, interim discussions with BWWB early in the Schematic Design phase for the purpose of guidance and direction will be required. The Consultant shall not proceed with the Preliminary and Detailed Design without BWWB approval for the Schematic Design.

## 2.2 PRELIMINARY DESIGN (30% DESIGN)

**Consultant Duration: 30 Days**

**BWWB Review Duration: 14 days**

During this phase the earlier approved Schematic Design shall be further refined to establish more detailed building plans. The Consultant shall ensure full coordination between different disciplines. The 30% design development submittal shall comply with the requirements in the BWWB Consultant Playbook.

### **3-D Rendering**

The Consultant shall present a 3-D rendering (internal views of all Laboratory areas) of the selected concept. The scale will be 1:200 or as determined by mutual consent between BWWB/Engineer and the Consultant.

### **Estimate of Probable Construction Cost**

The Consultant shall perform a cost analysis as recommended by AACE for costs estimates with this level of design development.

All submittals during the design process shall be submitted in hard copies and electronically in PDF and AutoCAD format.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

Review meetings with BWWB and intended users will be scheduled during the preliminary design phase to review facilities layouts, massing, equipment and systems proposed.

This phase shall result in a formally submitted Preliminary Design Report to BWWB for review and approval. The review period shall include a formal presentation of the report to BWWB.

The Consultant shall submit to BWWB three (3) hard copies of the drawings and documents, and electronic copy for review and approval.

### 2.3 DETAILED DESIGN (90% DESIGN)

**Consultant Duration: 30 Days**

**BWWB Review Duration: 14 days**

At the commencement of this phase the Consultant shall prepare and submit for review and approval a complete intended drawing schedule and specifications for all disciplines. The Consultant shall incorporate all the relevant comments from the previous phase in all discipline sheets.

During this phase, the Consultant with BWWB assistant will submit the detailed designs and workings drawings, to the required scales, to the City of Birmingham, Department of Planning, Engineering, and Permits for approval.

The submittal for this phase shall comply with the requirements of 90% submittal in the BWWB Consultant Playbook in addition to any special installation specific to Envirolab.

An interim and informal review shall be scheduled during the 90% detailed design phase to ascertain progress and content of work.

All the detailed drawings shall be to the highest recognized standards, complete and fully detailed, dimensioned in imperial system and divided into bid packages as agreed and approved by BWWB.

The Consultant shall submit to the concerned authorities the requested number of sets of drawings as they deemed required and other required items for review and approval. All drawings sets shall be full size.

The Consultant shall submit to BWWB three (3) full size hard copies of drawings and documents, and electronic copy for review and approval.

### 2.4 TENDER DOCUMENTS (100% DESIGN)

**Consultant Duration: 30 Days**

**BWWB Review Duration: 14 days**



BIRMINGHAM WATER WORKS BOARD  
 REQUEST FOR PROPOSAL  
 RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

For each package the Consultant shall prepare and submit to BWWB tender documents in the form of Project Construction Contract Document, stamped by a Professional Engineers, as detailed below, to enable BWWB to invite contractors to tender for the respective packages.

**A. Division 00 – Procurement and Contracting Requirements (Consultant shall utilize BWWB Standard Division 00)**

- 00 10 00 Notice to Bidders
- 00 10 10 Non-disclosure and Confidentiality Agreement
- 00 20 00 Instructions to Bidders
- 00 20 10 Certification Regarding Debarment
- 00 40 90 Alabama Department of Revenue-Sales and Use Tax Exemption
- 00 41 00 Bid Form
- 00 43 50 Bid Bond
- 00 43 60 Verification of Attendance at Pre-bid Conference
- 00 45 00 Bidder Qualifications Statement
- 00 45 10 Historically Underutilized Business Program
- 00 45 20 Non-Discrimination Policy
- 00 50 00 Agreement
- 00 61 10 Performance Bond
- 00 61 20 Payment Bond
- 00 70 00 General Conditions
- 00 80 00 Supplementary Conditions

**B. Division 01 – General Requirements**

This document shall be developed as per CSI 50-Diviosn MasterFormat.

**C. Technical Specifications**

Consisting of the followings:

Document shall comprise the General as well as the Special Specifications as required to execute the work:

- DIVISION 02 – EXISTING CONDITIONS
- DIVISION 03 – CONCRETE
- DIVISION 04 – MASONRY
- DIVISION 05 – METALS
- DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES
- DIVISION 07 – THERMAL AND MOISTURE PROTECTION
- DIVISION 08 – OPENINGS
- DIVISION 09 – FINISHES
- DIVISION 10 – SPECIALTIES
- DIVISION 11 – EQUIPMENT



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

DIVISION 12 – FURNISHINGS  
DIVISION 14 – CONVEYING EQUIPMENT  
DIVISION 21 – FIRE SUPPRESSION EXISTING  
DIVISION 22 – PLUMBING EXISTING  
DIVISION 23 – HEATING VENTILATING AND AIR CONDITIONING  
EXISTING / NEW  
DIVISION 26 – ELECTRICAL  
DIVISION 27 – COMMUNICATIONS  
DIVISION 28 – ELECTRONIC SAFETY AND SECURITY TBD  
DIVISION 31 – EARTHWORK  
DIVISION 32 – EXTERIOR IMPROVEMENTS TBD  
DIVISION 33 – UTILITIES

**D. Drawings**

This document shall consist of the Detailed Drawings, as prepared by the Consultant and approved by BWWB, standard size.

**E. Bills of Quantities (Priced / Un-priced)**

This document shall consist of Bills of Quantities and Schedule of Rates as prepared detailed calculations of quantities stated therein.

All items shall be measured accurately and included in the Bills of Quantities; descriptions encompassing more than one item of work shall generally be avoided.

**F. Price Analysis**

This shall consist of tenderers prices and is considered a stage of bid evaluation. It is an assessment of the evaluated price of responsive bids to ascertain that it is not unreasonably high nor unreasonably low, but fair enough to the procuring entity and the Contractor.

Each set of the Tender Documents shall be submitted to BWWB, for each bid package, three (3) sets of drawings and complete proposed tender documents plus a priced/unpriced copy of the approved Bills for review and approval.

Upon completion and approval of all amendments required by BWWB, the Consultant shall submit to BWWB three (3) bound sets of complete Tender Documents of each package in accordance with the above requirements to enable BWWB to solicit Contractors to tender for the construction of the project.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

### **3. BIDDING SERVICES**

The renovation project bidding stage shall be a competitive open bid through BWWB to contract with a qualified contractor at an equitable price with minimal change orders.

#### **Consultant's Responsibilities for Bidding:**

- Provide all necessary personnel, resources, and sub-consultants to assist BWWB in competitively bidding the work.
- Gather and compile all necessary data required from BWWB records and other sources as deemed necessary to bid the project successfully and competitively.
- Prepare bidding forms, conditions of the Contract, and the form of Agreement between the Contractor and BWWB. Consultant shall use the AIA standard forms and contract, which may include modifications by BWWB's legal counsel.
- Provide a PDF of the complete Plans and Specifications suitable for advertisement.
- Assist BWWB in answering questions from prospective bidders.
- Support the preparation for a pre-bid meeting with prospective contractors to explain the project concepts and goals, and answer questions.
- Prepare Contract Addenda as required to clarify or modify the bid documents.
- Assist BWWB in opening and evaluating the bids and recommending an award.

#### **Cost Limitation on Construction Costs:**

If the bid price is higher than the project budget, work with BWWB to determine ways to cut costs.

- Assist in value engineering the project to reduce costs. Evaluate alternatives, provide cost information, and advise BWWB as to the value of all revisions.
- Work with vendors/contractors in developing and evaluating cost reduction alternatives.
- Assist BWWB in re-design and re-bidding the project if required. Justification of additional compensation to the Consultant shall be considered based on the reasons and sources of the cost overruns.
- Provide any other work and assistance during the bidding process that would be usual and customary for a project of this size and scope.
- Prepare construction contracts.

### **4. TECHNICAL PROPOSAL SUBMISSION REQUIREMENTS**

Proposals submitted for this Project are to follow the outline described below and the BWWB Consultant Playbook and shall address all requested information. Any additional information that the Consultant wishes to include that is not specifically requested should be included in an appendix to the Proposal. Firms are encouraged to keep the Proposals brief and to the point, but sufficiently detailed to allow evaluation of the Project approach. The Consultant shall submit the following information in the order and format indicated below.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

**A. Cover Letter: (1 page maximum).**

Provide a cover letter introducing the Consultant's Firm and proposal. The cover letter shall include a short narrative description of the Project based on the Scope of Work presented. Include any issues that the Consultant believes will require special consideration for this Project. Also identify any unique approaches for design or construction of this Project. Discuss the strengths that your firm may have related to this Project.

**B. Company Overview: (2 page maximum).**

Provide an overview of the company detailing the total number of professional staff, the history of the company, structure, and the office responsible for this Project as a minimum.

**C. Design Experience: (5 page maximum).**

Provide five examples of the types of projects which the Consultant feels best represent the firm's experience for design and bid phase support. Include project size and description and all other pertinent project facts. Only include those projects where there is significant involvement from individuals who will be part of the proposed Project staff. Include the owner of the project as a reference for each of the referenced projects.

**D. Related Project Experience (5 page maximum)**

Provide a list of specific project experience with pertinent project information. Provide the name of the project manager for each similar project completed. Present the budget and schedule for each project in comparison to the final cost and completion time. References should be provided for each project.

**E. Personnel Assigned to Project (Project Team)**

Provide the name of the project manager to be assigned this work along with a description of their experience and expertise. This person shall be the main point of contact with BWWB and directly responsible for the project. List the names of other key members of the project team, along with their experience and expertise. Provide resumes and references for the staff to be assigned to this Project. If selected, the naming of personnel as listed above will be considered by BWWB to be the project team and will be expected to be assigned to the project for its duration. These personnel are also expected to be readily available by email, telephone and in person.

**F. Understanding of the Project (2 page maximum)**

Provide a brief statement as to the firm's understanding of the project. Discuss the resources needed to achieve the work listed in the scope of services. Specifically, detail the employees, time and approach that will be required for each component of the project. Discuss the proposed planning, organization and management tools to be used to control schedule and costs. Provide an estimated schedule for the project from award of the RFP to project closeout particularly as it adheres to or strays from the schedule given.

**G. Management Approach: (4 page maximum).**

Provide your approach to the management of the following critical Project parameters.





BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

- i. BIM applications
- ii. Electronic delivery of plans and specifications
- iii. Schedule
- iv. Quality Control
- v. Software
- vi. Partnering/Teamwork
- vii. Communications Management

**H. Insurance: (1 page maximum)**

The following minimum insurance requirements must be adhered to by all firms.

- Workers' Compensation: Statutory
  
- Employer's Liability  
Bodily injury, each accident: \$2,000,000.00\*  
Bodily injury by disease, each employee: \$2,000,000.00\*  
Bodily injury/disease, aggregate: \$2,000,000.00\*
  
- General Liability  
Each Occurrence: (Bodily Injury and Property Damage): \$1,000,000.00  
General Aggregate: \$2,000,000.00
  
- Automobile Liability – Combined Single Limit  
(Bodily Injury and Property Damage): \$1,000,000.00
  
- Professional Liability  
Each Claim Made: \$1,000,000.00  
Annual Aggregate: \$2,000,000.00

\*BWW shall be an additional insured on Consultant's general liability policy and automobile liability insurance.

All major subconsultants (if any) shall have the same types of insurance coverage and the same limits as the Consultant.

**I. Laboratory Consultants: (1 page maximum)**

Identify a laboratory engineering consultant, with a brief introduction to their experience and capabilities.

**J. Exceptions:**

State any exceptions the Consultant has to the terms of this RFP, the requirements of the Response, Compensation Proposal and the anticipated Design Contract. If the Consultant response varies from the requirements of the RFP, clearly mark those differences. The Consultant Response is a certification that he has thoroughly read the RFP and the anticipated form of Design Contract and agree with their provisions, other than the



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

exceptions noted in the Response.

**K. Confidentiality:**

All proposals shall become the property of BWWB once submitted. If any of the material the Consultant provides is confidential or is a proprietary trade secret, mark that material with a “Confidential” stamp. While BWWB will attempt to keep such information confidential, as a public body it cannot guaranty that it will remain confidential. BWWB will inform Consultant of a public records request to see such information. Consultant may contest such a request at his sole expense. BWWB assumes no responsibility for any liability whatsoever in relation to its compliance with the Public Records Law.

**L. Conflicts of Interest:**

Consultants submitting a Proposal in response to this RFP must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm or other persons relative to the services to be provided under the agreement for architectural and construction management services to be awarded pursuant to this RFP. If a firm has no conflicts of interests, a statement to that effect shall be included in the Proposal.

**M. Signatures and Costs:**

The Proposal shall be signed by an official authorized to bind the Consultant firm and shall expressly state the Proposal is valid for a minimum of 90 days. BWWB is not responsible for any costs incurred by the firm in preparing or submitting the Proposal. Proposals should be complete but concise. Consultants will be evaluated on the following information listed in the order of importance:

**N. Fee Schedule**

Fee quotations are to include the names, title, hourly rates, overhead factors, and any other details by which the project costs have been derived. Provide an estimate of hours needed to complete the tasks outlined above of this RFP.

**O. Selection Process**

BWWB’s staff will review proposals, attend presentations, and make a recommendation for final approval. Eight (8) copies of the proposal must be submitted no later than Tuesday, May 14, 2024, at 1:00 p.m. to the below address:

The Water Works Board of the City of Birmingham  
Attention: Jaquice Boyd, Ph.D.  
3600 First Avenue North  
Birmingham, AL 35222

An electronic copy of all proposals should also be emailed to Jaquice Boyd: [jaquice.boyd@bwwb.org](mailto:jaquice.boyd@bwwb.org) by Tuesday, May 14, 2024, at 1:00 p.m.



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

All proposals and presentations will be reviewed based on the criteria listed. All Consultants will be requested to provide an in-person presentation to BWWB. The presentations are scheduled for May 21, 2024, at the Birmingham Water Works Offices (3600 First Avenue North, Birmingham Alabama 35222), time TBD. Each firm will have 40 minutes to present and 20 minutes to respond to questions.

The timeline to select firm is TBD. The selected firm will be requested to provide a standard contract for BWWB to review, comment, and sign.

**P. Rejection of Proposals**

BWWB reserves the right to reject any and all of the responses received as a result of this RFP. BWWB does not intend to award a contract solely based on responses to this RFP. BWWB will award the contract to the firm who, in the judgment of BWWB, will best serve the interest of BWWB.

Proposal Cost and Duration/Proprietary Information the architectural and engineering firm must certify that the proposal and pricing shall remain in effect and unchanged for a minimum of ninety (90) days from the date of the proposal opening. All materials submitted in response to the RFP will become the property of BWWB and part of the official public record. All restrictions on the use of data contained with a proposal and all confidential information must be clearly identified as “Confidential and Propriety Information” Confidential and Propriety information submitted in a proposal, or in response to the RFP, will be handled in accordance with the applicable Alabama State Statute(s).



BIRMINGHAM WATER WORKS BOARD  
 REQUEST FOR PROPOSAL  
 RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

**Proposers' Checklist**

**(If all forms are not returned with bid, Consultant's bid will be non-compliant)**

<b>HUB Forms and Documentation Checklist</b>		<b>Yes or No</b>	
1.	HUB Form 1 - HUB Program Acknowledgment	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.	HUB Form 2 - HUB Compliance Form	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	HUB Form 3 - HUB Resource Engagement Form (Only for Public Works Bid)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.	HUB Form 4 – Sub-Company Participation Form (Part 1&2) (Only for Sub-Contractors)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.	HUB Form 5 - HUB Subcontractor Performance Form (Part 1&2) – Only for Sub-Contractors	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	HUB Form 6 - HUB Subcontractor Utilization Form (Only for Public Works Bids)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7.	HUB Form 7 – HUB Compliance Form (Only for Public Works Bids)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8.	HUB Form 8 – Prime Company Monthly Report (Applicable to All)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9.	HUB Form 9 – Prime Close-Out Report (Applicable to All)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10.	Proof of Enrollment in the E-Verify Program	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11.	EEO Report	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12.	Certification of Non-Discrimination Form	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13.	Debarment Form	<input type="checkbox"/> Yes	<input type="checkbox"/> No



BIRMINGHAM WATER WORKS BOARD  
REQUEST FOR PROPOSAL  
RENOVATION OF 100 LUCERNE LANE ENVIROLAB BUILDING

**APPENDIX A – ORIGINAL BUILDING DRAWINGS (PDF FORMAT)**

Executed Nondisclosure Agreement (NDA) required to obtain. Contact Jaquice Boyd via email at [jaquice.boyd@bwwb.org](mailto:jaquice.boyd@bwwb.org)

**APPENDIX B – DUE DILIGENCE REPORT AND CONCEPTUAL LAYOUT DRAWINGS**

**APPENDIX C – BWWB CONSULTANT PLAYBOOK AND EXHIBIT 2.6 – CONSULTANT INVOICE EXAMPLE**

**APPENDIX D – OXMOOR CORPORATE PARK – DECLARATIONS OF COVENANTS AND RESTRICTIONS**

**APPENDIX B – DUE DILIGENCE REPORT AND  
CONCEPTUAL LAYOUT DRAWINGS**



**OWNER**

Birmingham Water Works Board  
3600 First Avenue North  
Birmingham, AL 35283

**STRUCTURAL**

MBA STRUCTURAL ENGINEERS, INC.  
300 20th Street North #100  
Birmingham, Alabama  
Keith Owens  
205.323.6385

**ELECTRICAL**

JACKSON RENFRO & ASSOCIATES, INC.  
141 Village Street, Suite 1  
Birmingham, Alabama 35242  
Tim Cooke  
205.305.6559

**LAB CONSULTANT**

LORD AECK SARGENT  
1175 Peachtree Street, Suite 2400  
Atlanta, Georgia 30030  
Jared Horn/ Mark Tinsley  
404.253.6745/877.929.1400

**COST ESTIMATOR**

RIB US COST  
11475 Great Oaks Way, STE 250  
Alpharetta, GA 30022  
Russell McElreath/Rendy Tendean  
770.481.1600

**ARCHITECT/INTERIOR DESIGNER**

STUDIO 2H DESIGN, LLC  
1721 4<sup>th</sup> Avenue North, Suite 101  
Birmingham, Alabama 35203  
Creig Hoskins & Angela B. Nash  
205.264.9988 & (AB's Cell) 205 937-1600

**MECHANICAL/PLUMBING/FIRE PROTECTION**

NEWCOMB & BOYD, LLP  
3332 Old Montgomery Hwy, Suite 103  
Birmingham, Alabama 35209  
Walker Jones  
Direct 404.730.8452

**LANDSCAPE ARCHITECT**

HOLCOMBE NORTON PARTNERS, INC  
1914 28<sup>th</sup> Avenue South  
Birmingham, Alabama 35209  
Edward Norton  
205.870.9936

**CIVIL**

Dynamic Civil Solutions  
2210 2<sup>ND</sup> Avenue North  
Birmingham, Alabama 35203  
Bolaji Kukoyi/Rundle Curtis  
205.358.7256 Office

**TABLE OF CONTENTS**

SUBMITTAL OUTLINE

PROJECT DESCRIPTION

NARRATIVE

CODE CHECK

SCHEMATIC DESIGN PROJECT MANUAL TABLE OF CONTENTS

CONCEPTUAL TEST FIT DESIGN DRAWING LIST



## **SUBMITTAL OUTLINE**

### PROJECT DESCRIPTION

- I. Envirolab Building Overview
- II. Overall Building Design Concept
- III. Lab Design Concept

### NARRATIVE of Existing and New

#### A. SUBSTRUCTURE

1. Foundation
  - a. Existing to Remain
  - b. New Foundations for Small Building Addition

#### B. SHELL

1. Exterior Enclosure
  - a. Existing to Remain
  - b. New Enclosure for Small Addition
  - c. Replace one bay of storefront window and stone wainscot over metal panel
2. Roofing
  - a. Existing Roofing

#### C. INTERIORS

1. Interior Construction
  - a. Existing to Remain
  - b. New
2. Stairs
  - a. Existing to Remain
3. Interior Finishes
  - a. Existing to Remain
  - b. New Finishes in Admin Wing and Lab Wing

#### D. SERVICES

1. Laboratory Consultant Design
2. Commissioning
3. Existing Elevator
4. Inspection of Existing and Proposed Renovation to Structural System
5. Plumbing and Fire Protection
6. Inspection of and Testing of Heating, Ventilation, Air Conditioning
7. Electrical Systems
8. Blower Door Testing of Exterior Envelope
9. Possible scanning of existing Building to produce 3d Revit Model

#### E. EQUIPMENT AND FURNISHINGS

1. Equipment – Existing and New Lab Equipment by Owner
2. Lab Hoods - New
3. Furnishings – New

#### F. SPECIAL CONSTRUCTION AND SELECTIVE DEMOLITION

1. Site/Selective Demolition

#### G. BUILDING SITEWORK

1. Site Preparation
2. Site Improvements

3. Site Civil/Mechanical Utilities
4. Site Electrical Utilities
5. Other Site Construction

H. OTHER INFORMATION

1. General Requirements
2. Bidding Requirements, Contract Forms and Conditions
3. Applicable Codes

## **PROJECT DESCRIPTION**

### **I. BWWB ENVIROLAB BUILDING OVERVIEW**

- A. The proposed Birmingham EnviroLab Building will accommodate a number of lab types. It will usher a new state-of-arts of water treatment labs, collaborative and public spaces that enhance the transparency of government that represent the fabric of the people the BWWB serves.

1. **FYI - Currently Utilized Lab Building on the BWWB Downtown Campus**  
due consideration, it has been determined the existing Lab Building facility cannot reasonably accommodate the requirements that are planned for it. It was recommended by the staff to the BWWB to construct a new one that is more flexible and capable of meeting the planned requirements. Design of the New Building has been put on hold.
2. **Proposed New EnviroLab Building**  
To accommodate the BWWB requirements, the new facility will have a state of the arts lab space with growth built in, secure loading dock for lab deliveries, separation of public and private spaces, ample natural light, and opportunity for collaboration throughout the facility.

The EnviroLab Building will prepare the BWWB for, long term growth, increased efficiency, respecting and embracing the surrounding community, environmental sustainability and transparency: The spaces to be included are:

- (a) Entry Drive
  - (b) Landscape
  - (c) Parking
  - (d) Lobby
  - (e) Collaborative Space
  - (f) Labs and Support Spaces
  - (g) Offices
  - (h) Loading Dock
2. **100 LUCERNE PROPERTY TEST FIT** - The BWWB has put in an offer to purchase a 30,000 sf existing lab building at 100 Lucerne Lane, Birmingham, AL. A Contract was accepted by the sellers and a 90 day due diligence period began April 12<sup>th</sup>, 2023. S2HD and Consultants have been engaged to perform a Conceptual Test Fit and Cost Estimate along with Structural Inspection, HVAC Test and Balance and A Blower Door Test to aid in the final decision to proceed with the purchase.

The intent of the Test Fit Design is to take the Existing Floor Plans of the IPG Photonics Building and modify them to accommodate the Current Program of the ENVIROLAB. The Written Narrative will cover the design of the systems required for the new spaces.

Proposed Schedule for HOLD DATES at the 100 Lucerne Lane Site:

- 90 Day Due Diligence window opened – April 12th
- Studio 2H Design to begin work – May 1st (upon NTP)
- User/Programming Meeting (ASAP) – week of May
- MBA Structural Inspection – May 4th and 5th
- NTTI HVAC Testing – May 11th and 12th
- NTTI Blower Door Testing – rescheduled for June 5<sup>th</sup> and 6th
- Studio 2H Design Pricing Package to RIB – June 2nd
- RIB Cost Estimate Completed and Report Submitted to BWB – June 29th
- 90 Day Due Diligence window closes – July 11th

## II. DESIGN GUIDELINES

### A. Design Guidelines

The S2HD Design Team has established the building program and Lab Design Guidelines with BWWB employee's input. The purpose of the Design Guidelines is to ensure a consistent level of functionality, finish and quality.

### B. Design Criteria

The Existing Building was designed under IBC 2009.

The following is a partial list of codes, regulations, stakeholders, and authorities having jurisdiction:

- a. 2015 Edition of the International Building Code
- b. 2015 Edition of the International Plumbing Code
- c. 2015 Edition of the International Mechanical Code
- d. 2015 Edition of the International Fire Code
- e. 2015 Edition of the Fuel and Gas Code
- f. 2014 Edition of the National Electrical Code
- g. 2013 Edition of the National Fire Alarm and Signaling Code (NFPA 72)
- h. 2013 Edition of the ANSI/ASHRAE/IESNA Standard f90.1 – Energy Standard for Buildings Except Low-Rise Residential Buildings
- i. 2015 Edition of the NFPA 101 (Life Safety Code)
- j. 2010 ADA Standards for Accessible Design
- k. 2015 Technical Code City of Birmingham
- l. The Americans with Disabilities Act
- m. City of Birmingham Fire Marshal
- n. City of Birmingham, Department of Planning, Engineering, and Permits

### C. LAB DESIGN CONCEPT

See attached Lab Design Document by LAS

## **NARRATIVE**

### A. SUBSTRUCTURE

1. Foundation
  - a. S2HD and MBA have obtained a copy of the Geotech Report dated, February 12, 2015.
  - b. Existing - See Original Construction Documents – Spread and Strip Footings.
  - c. New Addition - utilize similar footings.

### B. SHELL

1. Superstructure – See Attached Structural Report from MBA.
  - a. Columns – Existing – See S Sheets of Original Construction Documents.  
New HS 4x4x38 at small addition
  - b. Floors
  - c. Ex Slabs on Grade – Existing – See S Sheets of Original Construction Documents.  
New Slab on grade similar.
  - d. Ex Framed Slabs Existing – See S Sheets of Original Construction Documents.
  - e. Ex Roofs See S Sheets of Original Construction Documents.
  - f. Lateral Load Resistance – Existing – See S Sheets of Original Construction Documents.
2. Exterior Enclosure
  - a. Exterior Glass - See A Sheets of Original Construction Documents.
  - b. Exterior Wall System – See A Sheets of Original Construction Documents.
  - c. New Exterior Wall – Aluminum Storefront Entry System
3. Ex Roofing: Fully adhered single ply membrane. – See Original Documents.
  - a. New Single Ply
    - (1) System will be a fully adhered TPO membrane on rigid insulation.
    - (2) Membrane – 60 mil white TPO equal to Carlisle with manufacturer’s standard flashing system.
    - (3) Cover Board – 5/8” thick Dens-deck mechanically attached through insulation into metal roof deck.
    - (4) Insulation – Polyisocyanurate roofing insulation with a minimum 30 R-value over conditioned occupied areas. Tapered insulation will be utilized as needed to direct water to drainage system.

### C. INTERIORS

1. Interior Construction
  - a. Ex Partitions – See A5.1 for Partition Types.
  - b. New Partitions - Utilize Partition Type “1A” as standard construction.
2. Interior Finishes

- a. Partitions – Three coat paint system consisting of primer or block filler and two finish coats.
- b. Ceilings
  - (1) Typical Office Ceiling - 2 x 2 x ¾" reveal edge mineral wool acoustical tile in painted steel suspension system.
  - (2) Special Office area Ceilings- Painted 5/8" paperless gypsum board.
  - (3) Lobby Ceiling – Perforated metal or wood ceiling system with concealed hanging/fastener system and acoustical insulation above.
- c. Toilet Rooms – Existing Finishes to Remain. Provide optional price to replace all tile with the following:
  - (1) Floors – Porcelain tile set and grouted with latex modified mortars.
  - (2) Wall and Ceilings – Porcelain tile set and grouted with latex modified mortars.
- d. Floors
  - (1) Office Areas – Carpet tile with rubber base.
  - (2) Admin Corridors and Meeting Rooms – LVT Plank
  - (3) Labs – Epoxy Resin with integral Base – Stone Tec or equal
  - (4) Service/Storage Areas in Offices – VCT with rubber base.
  - (5) Mechanical/Electrical Rooms/Lab Storage – Sealed concrete equal to Euclid Diamond VOX water-based.

#### D. SERVICES

1. Commissioning – This service is not included in Basic or Expanded Services. Should the Owner determine that LEED Certification will be sought, commissioning of mechanical and electrical systems will be provided as an additional service to support that effort.
2. Elevators – One Existing – KONE 5000 lbs, approx.. 4'x'6 cab.
3. Structural System – See Superstructure above.
4. Mechanical, Plumbing and Fire Protection. See attachment.

#### E. MECHANICAL GENERAL, HVAC, PLUMBING AND FIRE PROTECTION

See attached Narrative Report from Newcomb & Boyd

#### ELECTRICAL GENERAL

1. Electrical System
  - a. General Requirements
    - (1) All work shall be in accordance with the 2014 National Electrical Code, Public Health Requirements, National Fire Protection Association, 2015 IBC and local codes, IECC energy code, Americans with Disabilities Act (ADA) and all local and State of Alabama codes.

- (2) Electrical equipment shall meet standards of Underwriter Laboratories, Inc.
- b. Workmanship
- (1) All work shall be executed in a workmanlike manner and shall present a neat and mechanical appearance upon completion.
- c. Work Required
- (1) Arrange with local utility company for power service to the building.
  - (2) Removal or relocation of all electrical services located on or crossing through the project property, either above or below grade, which would obstruct the construction of the project or conflict in any manner with the completed project or any code pertaining thereto.
  - (3) Complete power distribution systems to include normal, emergency and optional standby (equipment) power systems.
  - (4) Complete voice evacuation fire alarm/mass notification system.
  - (5) Complete empty raceway system for voice/data systems. Structured cabling and voice/data equipment provided by others.
  - (6) Complete lighting and lighting control systems to include emergency and exit lighting per code.
  - (7) Complete empty raceway system for surveillance and security systems. Surveillance and security systems provided by others.
  - (8) Complete empty raceway system for public address (PA) system. Public address (PA) system provided by others.
  - (9) Complete elevator lobby rescue assistance system.
- d. Service and Power Distribution
- (1) The electrical service will be obtained from the local utility company (Alabama Power Company) and will come to the building via underground secondary service from a utility company owned and maintained pad mounted transformer. There is an existing local utility company owned and maintained 750 KVA pad mounted service transformer, which will more than likely be adequate to accommodate the owner's needs, however, this determination will have to be confirmed by Alabama Power Company once the new building loads have been determined. The tentative electrical service for the schematic phase has been determined to be 3,000 amp, 277/480 volt, three-phase, four-wire to a new service entrance rated main switchboard with two (2) main circuit breakers. The existing building main switchboard will be reused and backfed from the new main service switchboard and the existing underground secondary service to the building will be intercepted and re-routed to the location of the new main service equipment. Both 277/480 volt, 3-phase, 4-wire power and 120/208 volt, 3-phase, 4-wire power will be distributed throughout the building in order to accommodate the lab spaces, mechanical equipment, lighting, etc. 120/208 volt, 3-phase, 4-wire power will be derived by way of dry-type transformers located within the building. Surge protection devices will be provided at the service entrance and at all lighting panelboards and 120/208 volt branch circuit panelboards including lab panels. All lab panels will be provided with 200% rated neutral busses and dry-type transformers serving lab panels will be K13 rated transformers. The existing power distribution system equipment within the building is in very good condition and will be reused to the extent possible. All electrical work will be in compliance with the National Electric Code.
- e. Emergency and Optional Standby (Equipment) Systems

A diesel fuel standby generator with skid fuel tank will be located external to the building and will have a weatherproof enclosure and silencer/muffler. Silencer/muffler will be located inside enclosure. There will be two (2) automatic transfer switches located in the Emergency Electrical Room of the building. One (1) transfer switch will be for life safety (emergency) loads and one (1) for optional standby (equipment) loads. The generator will provide backup power for the entire building. All building loads not considered to be life safety will be considered to be equipment loads. Voltage for the generator will be 277/480 volt, three phase, 4-wire and will be sized as necessary to accommodate the entire building, which is currently estimated at 1,250 KW.

f. Telecommunications Service

Telecommunications service for the new facility will be provided by a local telecommunications service provider through underground raceways. The underground raceways will be terminated in the main IT (MDF) room. The service provider demark will be located in that same room.

g. Structured Cabling System

A cable management system consisting of empty raceways and low voltage cable tray will be provided throughout the building in order to accommodate a vendor provided structured cabling system.

h. Fire Alarm/Mass Notification System

The building will have a voice evacuation fire alarm/mass notification system with audio-visual devices, manual pull stations and automatic detection, as required by NFPA 72 and all local, state, and federal codes, statutes, acts and ordinances. The system will be set-up for monitoring by way of a remote receiving station. The basis of design will be a Simplex (Johnson Controls) 4100ES addressable/intelligent system with main control panel, remote annunciator panel and transponders as required.

i. Surveillance and Security System

A cable management system consisting of empty raceways and low voltage cable tray will be provided throughout the building in order to accommodate vendor provided surveillance and security systems.

j. Public Address System

A cable management system consisting of empty raceways and low voltage cable tray will be provided throughout the building in order to accommodate a vendor provided public address (PA) system.

k. Cable Tray System

A low voltage, above ceiling, cable tray system will be provided throughout the building for horizontal cable management of all low voltage cabling systems to include, but not limited to, voice/data, surveillance, security, public address, HVAC controls, lighting controls, etc.

l. Raceway and Boxes

All raceway and boxes installed indoor will be metallic, outdoor exposed to weather will be IMC and/or rigid and all underground conduit will be schedule 40 PVC. All conduits installed underground that are subject to heavy traffic will be concrete incased.



m. Power

Receptacles will be extra heavy-duty industrial grade type with GFCI type receptacles where required by code and local authority having jurisdiction. Cover plates will be stainless steel type for indoor receptacle and in-use cast weather proof cover plates for outdoor receptacles.

n. Lighting

(1) General

(a) The standards of Illumination Engineering Society of Northern America (IESNA) will be followed for illumination levels. The standards of the International Energy Conservation Code (IECC) will be followed for energy expenditures. Leadership in Energy and Environmental Design will be followed for the product selection, and procurement of light fixtures. Exterior light fixtures will meet the standards of Dark Sky.

(a) The existing LED site lighting and building mounted lighting is in very good condition and will be reused to the extent possible and supplemented as necessary at strategic locations in order to accommodate evening deliveries, security, and normal usage during winter hours. Parking lot lighting will include buried wires in conduit, pole mounted luminaires, and concrete bases.

o. Building Lighting

Each space will have specific needs for illumination including general and specific task illumination. Lamp sources will include the latest efficient design of LED. All spaces will be served by recessed lens 2' x 4', recessed lensed 2' x 2', continuous recessed lensed or recessed LED can lighting fixtures. Unfinished areas like electrical and mechanical rooms, storage and similar areas will have strip LED lighting fixtures with wire guards. The existing LED luminaires within the building are in very good condition and will be reused to the extent possible.

p. Lighting Control System

A low voltage automatic lighting control system in compliance with the IECC Energy Code and all local codes will be provided for both interior and exterior lighting control. The existing low voltage automatic lighting control system is in very good condition and be reused to the extent possible.

## EQUIPMENT AND FURNISHINGS

1. Equipment

- a. Existing and New Lab Equipment by Owner
- b. Lab Hoods - New
- c. Furnishings – New

2. Load Dock Equipment

- a. Loading Dock equipment existing.

3. Administration Office Furnishings

- a. Heavy-duty loose furniture at meeting rooms, collaborative and waiting areas.
- b. New Cubicles and New Office Furnishings.

B. BUILDING SITEWORK

1. Site Preparation

- a. Existing Geotech Report
- b. No work required, except at Small Building Addition, New Drive, New Parking and New Screened Equipment Yard.

2. Site Improvements

a. Site Grading

- (1) Refer to new survey provided by BWWB. Grading should be minimal and only in the Courtyard Area where New Building Addition, Paving and Screened Equipment Yard will be installed.

b. The storm runoff – see existing Civil Documents.

c. Planting – See Landscaping Sheets – All existing. Minimal landscaping required. New sod will be required in the Courtyard area where existing will be disturbed.

d. Irrigation – Existing

e. Site Furnishings - None I

f. Site Exterior Hardscape – Existing - No new Hardscape planned.

3. Site Civil/ Utilities – All public Utilities are existing.

a. Sanitary Sewer –

b. Domestic and Fire Sprinkler Water –

c. Natural Gas –

4. Site Electrical Utilities

a. Electrical Power - Alabama Power Company will supply electrical power requirements.

b. Telecommunications – AT&T will supply telecommunication requirements.

5. Other Site Construction

- a. BWWB will require a continuous fence at perimeter of site and gates which will be operated from the front Lobby Desk.

C. OTHER INFORMATION

1. General Requirements – TBD – coordinate with BWWB staff

2. Bidding Requirements, Contract Forms and Conditions – TBD – coordinate with BWWB staff

3. Applicable Codes

a. 2015 Edition of the International Building Code

b. 2015 Edition of the International Plumbing Code

c. 2015 Edition of the International Mechanical Code

d. 2015 Edition of the International Fire Code

e. 2015 Edition of the Fuel and Gas Code

f. 2014 Edition of the National Electrical Code

g. 2013 edition of the National Fire Alarm and Signaling Code (NFPA 72)

- h. 2013 Edition of the ANSI/ASHRAE/IESNA Standard f90.1 – Energy Standard for Buildings
- i. 2015 Edition of the NFPA 101 (Life Safety Code)
- j. 2010 ADA Standards for Accessible Design
- k. 2015 Technical Code City of Birmingham
- l. The Americans with Disabilities Act
- m. City of Birmingham Fire Marshal
- n. City of Birmingham, Department of Planning, Engineering, and Permits
- o. National Environmental Balancing Bureau (NEBB)
- p. NEBB Procedural Standards for Testing Adjusting & Balancing of Environmental Systems
- q. National Fire Protection Association (NFPA) for HVAC, Plumbing, and Fire Protection
- r. Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)
  - (1) ASHRAE Handbook Fundamental for Heating & Cooling Loads Calculations
  - (2) ASHRAE Energy Standard 90.1-2013for Buildings except Low Rise Residential Buildings
  - (3) ASHRAE Standard 62.1-2007 Ventilation for Acceptable Indoor Air Quality
- s. Sheet Metal and Air Conditioning Contractor’s National Association (SMACNA)
- t. SMACNA HVAC Duct Construction Standards for Metal and Flexible
- u. Underwriters Laboratories (UL)

**CITY OF BIRMINGHAM**

**Planning, Engineering & Permits**  
710 20<sup>th</sup> Street North, Room 207

Birmingham, Alabama 35203-2212

**Phone:** 205-254-2211    **Fax:** 205-254-2111    **Web Site:** www.ci.bham.al.us

**Building Plans Review Sheet**

Parcel ID # 29-00-32-2-000-001.017    City of Birmingham, Case # \_\_\_\_\_

Project BWWB EnviroLab Building    City of Birmingham, Master # S2HD 202025

Contract Drawings should include required details and other information to describe construction. This includes plans, elevations, finish schedules, and other details needed to communicate design and construction assemblies.

**Applicable Codes**

International Building Code	(IBC)	2015
International Plumbing Code	(IPC)	2015
International Gas Code	(IGC)	2015
International Mechanical Code	(IMC)	2015
International Fire Code	(IFC)	2015
National Electrical Code	(NEC)	2014
CABO/ANSI A117.1		1998
Technical Codes City of Birmingham, Alabama		2015
Safety Code for Elevators and Escalators, ASME A17.1		

List any other codes used in the development of the project.    N.A.

**Code Review Data**

**Occupancy Type** (IBC 303)

A. 1<sup>st</sup> Floor

Type	Lab	Group	B	Area	0000	s.f.
Type	Conference	Group	B	Area	0000	s.f.

Type	Offices	Group B	Area	0000	s.f.
Type	Toilets	Group B	Area	0000	s.f.
Type	Electrical	Group B	Area	0000	s.f.
Type	Mechanical	Group B	Area	0000	s.f.
Type	Warehouse	Group B	Area	0000	s.f.

B. 2<sup>nd</sup> Floor

Type	Lab	Group B	Area	0000	s.f.
Type	Lobby	Group B	Area	0000	s.f.
Type	Conference	Group B	Area	0000	s.f.
Type	Offices	Group B	Area	0000	s.f.
Type	Break Room	Group B	Area	0000	s.f.
Type	Toilets	Group B	Area	0000	s.f.
Type	IT	Group B	Area	0000	s.f.
Type	Storage	Group B	Area	0000	s.f.
Type	Electrical	Group I	Area	0000	s.f.
Type	Mechanical	Group B	Area	0000	s.f.

**Building Plans Review Sheet**

**Construction Type**

(IBC 602) Type II B

**Automatic Sprinkler System**

Sprinklered Yes Unsprinklered \_\_\_\_\_

**Maximum Occupant Load (IBC 1004.1.2)**

A. 1<sup>st</sup> Floor – Lab Wing, Admin Wing and Storage

Occupancy Type B

Area (net / gross) (sq ft) 17,998 gross / Area per Occupant (sq ft) 100 = Occupant Load 180

B. 2<sup>nd</sup> Floor Offices

Occupancy Type B

Area (net / gross) (sq ft) 11,426 gross / Area per Occupant (sq ft) 100 = Occupant Load 115

**Maximum Travel to an Exit** (IBC Table 1015.1)

Occupancy Classification B

**Maximum** Travel dist to exit (ft) allowed by code  
 Unsprk. \_\_\_\_\_ Sprk B = 300'

**Proposed** Travel dist to exit (ft)  
 Unsprk. \_\_\_\_\_ Sprk B = 200'

**Height Limit** (IBC Table 503)

Maximum Height allowed In Feet  $55' + 20' = 75'$  Proposed Height In Feet 40'  
 (504.2)

Maximum Height allowed in stories  $3 + 1$  (504.2) = 4 Proposed Height In Stories 3

**Building Plans Review Sheet**

**Area Limit** (IBC Table 503)

Occupancy Type B

Maximum area allowed  $19,000 + 200\% \text{ sprl} = \underline{57,000 \text{ s.f.}}$  Proposed area 30,000 s.f.

**Area Between Fire Walls** (If Applicable) 3 Hours (table 706.4)

**Occupancy Separation** (IBC Table 302.1.1) – Non-separated Occupancies per 508.3

Occupancy Type \_\_\_\_\_ Separation Requirements \_\_\_\_\_

Occupancy Type \_\_\_\_\_ Separation Requirements \_\_\_\_\_

**Required Fire Ratings for Walls and Openings:** Include only applicable elements and ratings.

(IBC Table 601, Table 706.4 & Section 706)

Element	Wall Rating	Opening Rating
Party & Fire Walls	3 Hour	3 Hour
Interior Bearing Walls	0 Hour	0 Hour
Columns	0 Hour	__Hour

Beams, Girders, Trusses		
& Arches	0 Hour	
Floor & Floor Ceiling	0 Hour	0 Hour
Roof & Roof Ceiling	0 Hour	0 Hour
Exterior Bearing	0 Hour	0 Hour
Exterior Nonbearing	0 Hour	0 Hour (exception > 30' = 0 Hour)
Interior Nonbearing	0 Hour	0 Hour
Shaft Enclosures	1 Hour	1 Hour
Smoke Barrier	1 Hour	1 Hour
Mechanical/Storage	0 Hour	0 Hour
Maintenance Storage/Janitor	0 Hour	0 Hour
Bathrooms & Restrooms	0 Hour	0 Hour
Exterior Walls (704)	0 Hour	0 Hour
Building Separation	0 Hour	__Hour

**Egress Capacity Tabulation** (IBC Table 1004.1.2)

See Egress Code Review on A-0.2 in Original Construction Documents calculations the same.

Occupancy Insert Building Occupancy Type Business	Size In Square Feet	Occupancy Load	Egress Width Required # of Occupants X width per person, level & stairs.	Egress width Provided
1 <sup>st</sup> floor	17,998	180	X 0.2 level	
2 <sup>nd</sup> floor B	11,426	115	X 0.2 level	
			X 0.3 stair	

**SCHEMATIC DESIGN**  
**PROJECT MANUAL PROPOSED TABLE OF CONTENTS**

**DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS**

ADVERTISEMENT FOR BID  
INSTRUCTIONS TO BIDDERS AIA A701  
SUPPLEMENTARY INSTRUCTIONS TO BIDDERS  
PROPOSAL FORM  
BID BOND AIA A310  
CONSTRUCTION CONTRACT AIA A101  
PERFORMANCE BOND AIA A312  
PAYMENT BOND AIA A312  
COMPLETION AD

**SAMPLE FORMS (INCLUDED FOR REFERENCE ONLY)**

APPLICATION AND CERTIFICATE FOR PAYMENT AIA G702  
CONTINUATION SHEET AIA G703  
CHANGE ORDER AIA G701  
CERTIFICATE OF SUBSTANTIAL COMPLETION AIAG704  
CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS AIA G706  
CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS AIA706A  
WORK CHANGES PROPOSAL REQUEST AIA G709  
ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS AIA G710  
CONSTRUCTION CHANGE DIRECTION AIA G714  
CONSENT OF SURETY TO FINAL PAYMENT AIA G707

**CONTRACT CONDITIONS**

GENERAL CONDITIONS OF THE CONTRACT AIA A201  
SUPPLEMENTARY GENERAL CONDITIONS

**DIVISION 01 – GENERAL REQUIREMENTS**

01 1000 SUMMARY  
01 2100 ALLOWANCES  
01 2200 UNIT PRICES  
01 2300 ALTERNATES  
01 2500 SUBSTITUTION PROCEDURES  
01 2600 CONTRACT MODIFICATION PROCEDURES  
01 2900 PAYMENT PROCEDURES  
01 3100 PROJECT MANAGEMENT AND COORDINATION  
01 3200 CONSTRUCTION PROGRESS DOCUMENTATION  
01 3233 PHOTOGRAPHIC DOCUMENTATION  
01 3300 SUBMITTAL PROCEDURES  
01 4000 QUALITY REQUIREMENTS  
01 4200 REFERENCES  
01 5000 TEMPORARY FACILITIES AND CONTROLS  
01 6000 PRODUCT REQUIREMENTS  
01 7300 EXECUTION  
01 7419 CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL  
01 7700 CLOSEOUT PROCEDURES  
01 7823 OPERATION AND MAINTENANCE DATA  
01 7839 PROJECT RECORD DOCUMENTS  
01 7900 DEMONSTRATION AND TRAINING  
01 9113 GENERAL COMMISSIONING REQUIREMENTS



**DIVISION 03 – CONCRETE**

03 3000 CAST-IN-PLACE CONCRETE

**DIVISION 04 – MASONRY**

04 2000 UNIT MASONRY

**DIVISION 05 – METALS**

05 1200 STRUCTURAL STEEL FRAMING  
05 1213 ARCHITECTURALLY EXPOSED STRUCTURAL STEEL FRAMING  
05 2100 STEEL JOIST FRAMING  
05 3100 STEEL DECKING  
05 4000 COLD-FORMED METAL FRAMING  
05 5000 METAL FABRICATIONS  
05 5100 METAL STAIRS  
05 5213 PIPE AND TUBE RAILINGS  
05 5300 METAL GRATING  
05 7000 DECORATIVE METAL  
05 7500 DECORATIVE FORMED METAL

**DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES**

06 1000 ROUGH CARPENTRY  
06 4023 INTERIOR ARCHITECTURAL WOODWORK

**DIVISION 07 – THERMAL AND MOISTURE PROTECTION**

07 2100 THERMAL INSULATION  
07 2726 FLUID-APPLIED MEMBRANE AIR BARRIERS  
07 4213.13 FORMED METAL WALL PANELS  
07 3415 GARDEN ROOF ASSEMBLY  
07 4213.53 METAL SOFFIT PANELS  
07 5556 FLUID-APPLIED PROTECTED MEMBRANE ROOFING  
07 6200 SHEET METAL FLASHING AND TRIM  
07 7100 ROOF SPECIALTIES  
07 7200 ROOF ACCESSORIES  
07 8100 APPLIED FIREPROOFING  
07 8413 PENETRATION FIRESTOPPING  
07 9200 JOINT SEALANTS

**DIVISION 08 – OPENINGS**

08 1113 HOLLOW METAL DOORS AND FRAMES  
08 1416 FLUSH WOOD DOORS  
08 3113 ACCESS DOORS AND FRAMES  
08 3326 OVERHEAD COILING GRILLES  
08 4113 ALUMINUM-FRAMED ENTRANCES AND STOREFRONTS  
08 4213 ALUMINUM-FRAMED ENTRANCES  
08 4423 STRUCTURAL-SEALANT-GLAZED CURTAIN WALLS  
08 7100 DOOR HARDWARE  
08 8000 GLAZING  
08 8300 MIRRORS  
08 9119 FIXED LOUVERS

**DIVISION 09 – FINISHES**

09 2116.23 GYPSUM BOARD SHAFT WALL ASSEMBLIES  
09 2216 NON-STRUCTURAL METAL FRAMING  
09 2900 GYPSUM BOARD  
09 3000 TILING

09 5113 ACOUSTICAL PANEL CEILINGS  
09 6513 RESILIENT BASE AND ACCESSORIES  
09 6519 RESILIENT TILE FLOORING  
09 6813 TILE CARPETING  
09 9113 EXTERIOR PAINTING  
09 9123 INTERIOR PAINTING  
09 9300 STAINING AND TRANSPARENT FINISHING  
09 9600 HIGH-PERFORMANCE COATINGS

**DIVISION 10 – SPECIALTIES**

10 1100 VISUAL DISPLAY SURFACES  
10 1419 DIMENSIONAL LETTER SIGNAGE

**DIVISION 11 – EQUIPMENT**

11 5213 PROJECTION SCREENS

**DIVISION 12 – FURNISHINGS**

**DIVISION 14 – CONVEYING EQUIPMENT**

**DIVISION 21 – FIRE SUPPRESSION**

EXISTING

**DIVISION 22 – PLUMBING**

EXISTING

**DIVISION 23 – HEATING VENTILATING AND AIR CONDITIONING**

EXISTING / NEW TBD

**DIVISION 26 – ELECTRICAL**

TBD

**DIVISION 27 – COMMUNICATIONS**

TBD

**DIVISION 28 – ELECTRONIC SAFETY AND SECURITY**

TBD

**DIVISION 31 – EARTHWORK**

TBD

**DIVISION 32 – EXTERIOR IMPROVEMENTS**

TBD

**DIVISION 33 – UTILITIES**

TBD

**DRAWING INDEX**

**Cost Estimator will Utilize the Existing IPG Photonics Construction Documents to supplement information included in the Drawings Below and the Narrative Descriptions given within this Narrative.**

**CIVIL Provided**

**New Survey of Property provided by BWWB**

**LANDSCAPE                      NA**

**ARCHITECTURAL**

- A1.1 First Floor Demolition
- A1.2 Second Floor Demolition
- A2.1 First Floor Plan
- A2.2 Second Floor Plan
- A2.3 Roof Plan

Additional Documents from Lab Designer:  
New Lab Layout  
Comparison of New Lab to Putnam Design  
Lab Equipment Schedule

**STRUCTURAL                      NA**

**PLUMBING                        NA**

**MECHANICAL                    NA**

**FIRE PROTECTION              NA**

**ELECTRICAL                     NA**

## LAB NARRATIVE, LUCERNE TEST FIT

### Introduction

The Mission of the Birmingham Water Works Board (BWWB) is states as follows:

*“The Birmingham Water Works Board is committed to providing the highest quality water and service to our customers and our entire service area. As a concerned corporate citizen, we are responsive to the needs of the entire community and strive to maintain, preserve and conserve our precious water resources in order to ensure adequate water quality and supply for future generations.”*

The Laboratory supporting the Birmingham Water Works, referred to as the EnviroLab, was established in the 1990s. It serves (in part) as a traditional Analytical Lab with complex testing platforms working over a broad range of water testing methodologies.

The Design Firm of Studio 2H Design of Birmingham was selected by the Water Works Board of the City of Birmingham to provide architectural, engineering and lab consulting services for the design and construction of a replacement building for EnviroLab; subsequently the Board selected Lord Aeck Sargent Architects of Atlanta to provide a *Laboratory Program of Requirements* for the EnviroLab replacement. The Lab Program of Requirements defines space needs and individual lab layouts, system capacity requirements, casework and fume hood, sink, and safety needs of all lab spaces, and lab support spaces including Sample Receiving and Central Storage.

BWWB has chosen to consider relocating to an existing Building at 100 Lucerne Lane in Birmingham. This summary reviews the implications of relocating EnviroLab to this location, and considers what Lucerne property has to offer, and considers the information gathered from the May 4, 2021 Program of Requirements and subsequent discussions and changes in scope.

### Current EnviroLab Lab Spaces

EnviroLab, in it's current location, has no ability to expand testing beyond the current capacity (other than increases in testing efficiencies) due to lack of bench space, specifically bench space for equipment, sample prep, casework and fume hood, sink, and storage. The service distribution and casework supporting the equipment platforms are not conducive to efficient lab work, and do not allow for the changes to equipment platforms which are common for the types of testing performed in EnviroLab.

## Lab Goals

Goals for the new EnviroLab include:

- Air Handling System components – Air Handling Units, supply valves, air terminal units, exhaust valves, exhaust fan(s), building automation system – in line with what is required to support the type of analytical testing platforms in EnviroLab, and systems that provide a safe working environment for the technicians.
- New casework, fume hoods, and contractor furnished/installed equipment to better support the analytical testing platforms, and to allow for changes in testing methodologies in the future without costly changes to the lab layout.
- Additional system capacity – supply air, exhaust, gases, power, data – to serve the lab, and future lab expansion within the footprint of the new EnviroLab.
- Provide space to expand each lab area – areas which are separate within the current EnviroLab building – as the population grows and additional testing *within each lab area* grows with it.

Each goal outlined above is achievable when considering relocating EnviroLab to the Lucerne property.

## Space Summary, Lab

In 2005, BWWB commissioned Malcolm Pirnie to create a Space Allocation Analysis which (among other spaces) considered the needs of the EnviroLab and potential expansion needs. The Analysis confirmed the existing Lab and Lab Support square footages, and outlined specific deficiencies on a per space basis. Commonly listed deficiencies included:

- Inadequate linear feet bench for equipment, prep space, and often inadequate depth of bench for deep equipment
- Inadequate sink capacity
- Inadequate fume hood space
- Inadequate space for chemical storage
- Improper worksurface height for intended purpose
- Inadequate space available for floor mounted equipment
- Inadequate cold storage space
- Inadequate ice production/storage
- Inadequate storage for lab consumables, glassware, references
- Inadequate storage space for material carriers (carts, coolers)

- Casework which does not allow proper access to equipment back side for changes, and does not allow proper space for equipment peripherals
- No glassware washing
- Inadequate in-lab write-up space

The 2005 Analysis noted that individual lab spaces occupy 3,017 square feet. The recommendation was made at that time to expand this footprint to 6,771 square feet, and to add a Central Storage (200 square feet). The 2005 Analysis further recommended specific lab layouts for the spaces outlined above, in a format of individual, enclosed lab spaces.

The Design Team reviewed the existing EnviroLab, interviewed the technicians and managers, created an Equipment Matrix of current and future equipment, and created individual Room Data Sheets – recommended layouts of each lab – to test the assumptions for square footages outlined in the 2005 Analysis. The individual lab layouts include, in each case, the six principal types of lab space required of an analytical lab: equipment space, prep space, fume hood space, sink access, space for floor-mounted equipment, and storage space. The equipment currently located in each lab (outlined on the Equipment Matrix) has been placed in a test-fit layout for each lab in an effort to understand service connectivity, casework systems support of the testing platform, and potential growth required within each lab area. The test-fit defined a need for 8,050 square feet of lab space.

The Lucerne property, while the lab block includes a two-floor solution, offers a lab footprint – 7,821 square feet - in line with the square footage needs defined during the 2021 Programming effort.

### **Adjacency Requirements, Lab**

There are three lab or lab support room types within the building: the Dock, where samples are dropped off and cylinders are stored, the Analytical Labs, and Central Storage.

The analytical block may be separate from both the Loading Dock, where samples are accepted, and Sample Receiving, where samples are accessioned. The Analytical Labs should be adjacent Central Storage, as materials stored here will be frequently accessed by the technicians. Sample Receiving may be located adjacent either the Loading Dock/Cylinder Storage area, or the Analytical Labs.

The opportunities offered by the Lucerne property are in line with the functional adjacency requirements.

### **Lab Module Dimensions**

Modern lab design has migrated away from individual, enclosed labs to more open, shared space when possible. This has allowed for the inclusion of future growth space within a large

volume, rather than within enclosed spaces, mitigating the requirement to be precise with assessments of future growth – growth space originally assessed to be for one function can be used, as situations evolve, for another.

The module – the repeating width dimensions of bench, and aisle – that repeat through a lab are typically in the range of 10'-0" to 11'-0", with casework being 5'-0" to 6'-0" of the module. Module width is a function of the density of technicians in the lab, access required to service the equipment, and the depth of equipment sitting on the bench (or depth of floor-mounted equipment that may be a part of the module). Service access, including access to the back of analytical equipment, is a critical factor, as once a tool has been validated, moving the tool may require revalidation.

The Room Data Sheets which are a part of the 2021 Programming effort were drawn using an 11'-0" module. The test-fit within the Lucerne property maintained this plan, with tables that are 36" depth, and aisles that are 5'-0" minimum.

### **Lab Casework and Fume Hoods**

Currently, EnviroLab is provided with fixed wood casework with a mix of door and drawers, and epoxy resin worksurfaces. Fume hoods are a mix of general purpose constant volume and general purpose auxiliary fume hoods – it is not certain that the auxiliary fume hoods are operating as designed, with a separate supply volume dedicated to the hood.

The Design Team is recommending a different type of casework system for the project. Fixed elements – fume hoods and sinks – are located on the perimeter of lab spaces. Space for floor mounted equipment also is assumed to be in this zone. The interior space is assumed to be island assemblies of casework, in the lab module described above, with interior islands having services – power, data, gases – provided by fixed, floor mounted vertical utility chases. These chases will allow services above the ceiling to turn down, and then turn out at each island assembly. As conditions on any one bench change, additional services can be easily added to support that change. These chases are natural locations to include building structural elements within the structural grid.

The island assemblies are each made of subcomponent tables, with tables 3'-0" depth. All tables are adjustable in height from sitting height (2'-6" worksurface above finished floor) to standing height (3'-0" worksurface above finished floor), and each has a lower shelf, removable, at 12" above finished floor, for peripherals (controllers, vacuum pumps, air filters, chillers, equipment-to-drain carboys).

Casework and fume hoods will be painted steel, with casework worksurfaces either epoxy resin or phenolic resin, and shelves either phenolic resin or steel.

Fume hoods will be the general purpose with vertical rising sash. Fume hood work surfaces will be epoxy resin. Fume hoods will be provided with cupsinks with cold water service on the right side, and will have two service valves on the right side, pre-piped up, with services to be determined for each fume hood during Design. Fume hoods will be ten feet in width, with base cabinets being one each: 48" width acid storage cabinet, 48" width solvent storage cabinet, and two general purpose 12" width sink cabinets for fume hood cupsinks.

Sinks will have be epoxy resin, 25" width by 15" depth by 10" height, served by a hot/cold swinging gooseneck faucet with wrist blades, with vacuum breaker and aerator. Each sink location will have a drench pose type eyewash. Each sink unit will have a 16" deep shelf above for mounting a deionization unit and reservoir, and each will have a pegboard for drying glassware and labware.

### **Contractor-Furnished and Installed Lab Equipment**

Contractor furnished lab equipment will include three 4 degree C cold rooms in Sample Receiving, with stainless steel wire shelves. The rooms will need to be ramped as the space available for these in Lucerne is existing.

Contractor furnished lab equipment to also include two undercounter glassware washer units in Central Storage, with spindle-type injectors to rinse a variety of glassware types and a dedicated deionization unit / reservoir for a final DI rinse of the glassware.

### **Lab Service Distribution**

**Exhaust:** Many pieces of analytical equipment require either a directly connected exhaust line, or a small thimble-type exhaust to provide either removal of heat, or fumes, or both. If the lab progresses in it's current overall configuration (two floors of analytical lab space, with separate but adjacent Micro and Organic GC/MS), then the target air change rate (occupied, 8-10 air changes per hour, or ACH) would be higher than the actual air changes provided by fume hoods alone. This would require the addition of some type of general exhaust to provide the target ACH.

The best format to add general exhaust is via snorkels, or snorkel drops, in the area where analytical equipment will require direct drops or thimble exhausts, and where this type connection may be required in the future. It is for this reason that main horizontal exhaust runs will be required, in each lab.

**Gases:** Service gases in the EnviroLab currently include Helium (high purity, cylinder source), Nitrogen (high purity, cylinder source), Argon (bulk source). Careful consideration should be given during the design phase to provide connectivity between the active cylinder storage location (Central storage, as close to the Analytical Lab as possible) and the equipment



requiring service gases, limiting the distance for high purity capable piping. Careful consideration should also be given for the clean, grease-free valves which will be a part of the casework system, and which will regulate pressure/flow to individual pieces of equipment on the worksurface. It

**Water:** Domestic hot and cold water will be provided at each lab sink, and will be provided (via a thermal mixing valve) at the eyewash unit provided at each sink. Domestic cold water will be provided to a gooseneck faucet with vacuum breaker located on the right side of each fume hood. Domestic hot and cold water will be provided at each safety shower, via a thermal mixing valve.

**Purified Water:** Currently, EnviroLab has separate labs, and each lab has determined individual need for purified water. Many labs (though not all) have individual water polishers at the sink, with storage reservoir, fed by house domestic water.

It is reasonable to assume that, should the eventual Design effort result in labs which are not separated, as they are today, the purified water systems currently in use could be consolidated to fewer units, taking up less bench space. One existing unit may be relocated to support the additional glassware washers to be located in Central Storage. Consideration should be given during the Design Phase to providing a single Reverse Osmosis system, located in Central Storage, to provide feed water to the deionization units in the footprint, and perhaps to a single RO faucet within each lab volume (centrally locate) for filling carboys. RO feedwater will greatly extend the life of cartridges which are a part of the final, DI polishing units.

If existing DI units are to be reused, the unit and the reservoir should be wall mounted on 16" deep shelves located above each sink for mounting purposes.

**Safety Devices:** Safety showers will be located in each lab, and emergency eyewashes will be located at each sink. All will conform to ANSI/ISEA Z358.1-2014, American National Standard for Emergency Eyewash and Shower Equipment, and be compliant with OSHA 29 CFR 1910.151.

**Storage:** Currently much of the lab storage utilizes base cabinet drawer and door units, wall cabinets, and tall cabinets. The Design Team is proposing that much of the lab storage needs be relocated to Central Storage, which has increased from the recommended 200 square feet to 433 square feet, and includes a mix of tall storage cabinets and high density wire shelving units, with a total square feet of storage shelf of 400 square feet.

In-lab storage will include the mobile base cabinets beneath worksurfaces, which will be a mix of door and drawer units defined during the design phase. Shelving above the prep benches adds, in the Analytical Lab area, an additional 1,158 square feet of shelving at the bench, not counting shelves above sink units.

The Lucerne property can meet the Lab Service requirements (outlined above) established for EnviroLab during the 2021 Programming effort.

**Comparative Space Analysis, 2021 Program (Putnam Design) versus Lucerne**

LAB SPACES	SQUARE FEET PUTNAM DESIGN	FUME HOOD	SQUARE FEET LUCERNE	FUME HOOD
WET CHEMISTRY 1	895	2	1163	2
WET CHEMISTRY 2	797	1	639	1
ICP / OES	641	1	752	1
TOC	318		297	
*MICROBIOLOGY	1155	1	1036	1
HPLC PREP	801	1	722	1
ORGANIC PREP	801	2	537	2
HPLC	318		420	
LCMS	636		566	
GC INSTRUMENT	895	1	856	1
*ORGANIC GC/MS (voc)	793	1	833	1
FIRST FLOOR LABS				
SECOND FLOOR LABS				
*ENCLOSED LAB				
PUTNAM DESIGN WITHOUT CENTRAL STORAGE AND SAMPLE RECEIVING TOTAL 8,050 SF				
LUCERNE OPTION LAB SPACE AVAILABLE TOTAL 7,821 SF				
PUTNAM DESIGN WITHOUT CENTRAL STORAGE AND SAMPLE RECEIVING				
TOTAL 953 LINEAR FEET BENCH (NOT INCLUDING FUME HOODS)				
LUCERNE OPTION TOTAL 1,023 LINEAR FEET BENCH (NOT INCLUDING FUME HOODS)				



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Associate Partner  
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wjones@newcomb-boyd.com

February 20, 2023

Mr. Creig Hoskins  
Member Manager  
Studio 2H Design, LLC  
1721 Fourth Avenue North  
Suite 101  
Birmingham, Alabama 35203-4400

Re: BWWB Lab Building – HVAC Design for 100 Lucerne Lane Property  
Birmingham, Alabama

Dear Creig:

As we have discussed, humidity control within the BWWB Lab building will be a critical design issue. Maintaining proper humidity control will require a coordinated effort between the architectural and mechanical disciplines. We recommend including requirements for the Contractor to evaluate the existing building envelope and address any issues with the exterior envelope components. Our HVAC design will include air handling systems which will remove moisture from the airstream and control leaving air conditions to help maintain the required indoor conditions. Both proper architectural detailing and appropriate mechanical equipment selections are required to achieve success. Furthermore, it is imperative that the construction documents require a thorough commissioning effort and proper training for the building user.

#### Architectural Design

1. A continuous vapor barrier includes the roof, walls, floor above, and floor below (if exposed to unconditioned air or spaces having different design requirements). A properly located vapor barrier is located based on the outdoor climate and indoor design conditions. In general, vapor barriers stop moisture migration before it can reach a surface that has a temperature below the dewpoint, which condition causes condensation. Since the building being considered for renovation was constructed within the past ten years, we would expect the vapor barrier and envelope to be in good condition but cannot guarantee its performance.
2. Airtightness is important. Cracks at windows and joints, cavities within walls to unconditioned spaces or outside (such as parapet walls), and stairs and elevator hoistways are potential air leakage paths for infiltration of moisture-laden air. We recommend including requirements for evaluating and addressing any existing penetrations of the building envelope to minimize infiltration potential.

3. We recommend building envelope commissioning including a blower door test to evaluate the existing air tightness prior to construction and a validation during construction to ensure the any envelope improvements in the design have the expected result.

#### Mechanical Design

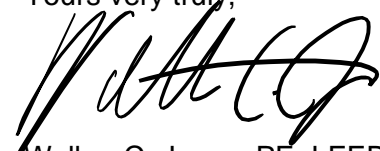
1. Laboratory spaces within the project will be designed to maintain inward directional airflow compared to adjacent spaces, to enable contaminants to be contained within the lab spaces. The overall building will be designed for a positive pressure. Positively pressurized air in the office spaces will serve as make-up air for lab spaces, and this positive pressure will also help provide outward directional airflow at exterior doors to minimize infiltration from the outside air.
2. Laboratory and office air handling systems will be designed to provide low dewpoint supply air during all operating seasons, to facilitate space relative humidity control at all times. The building automation system will include alarms if the humidity levels exceed setpoint, due to a controls failure or similar issue.
3. We recommend a thorough commissioning effort is included to ensure that the mechanical systems operate properly through their entire sequence of operations.

We are confident that a well-sealed building envelope working in concert with modern mechanical systems designed to control pressurization and operating properly will minimize any risk of humidity control issues within the building.

Please let us know if we can provide further information.

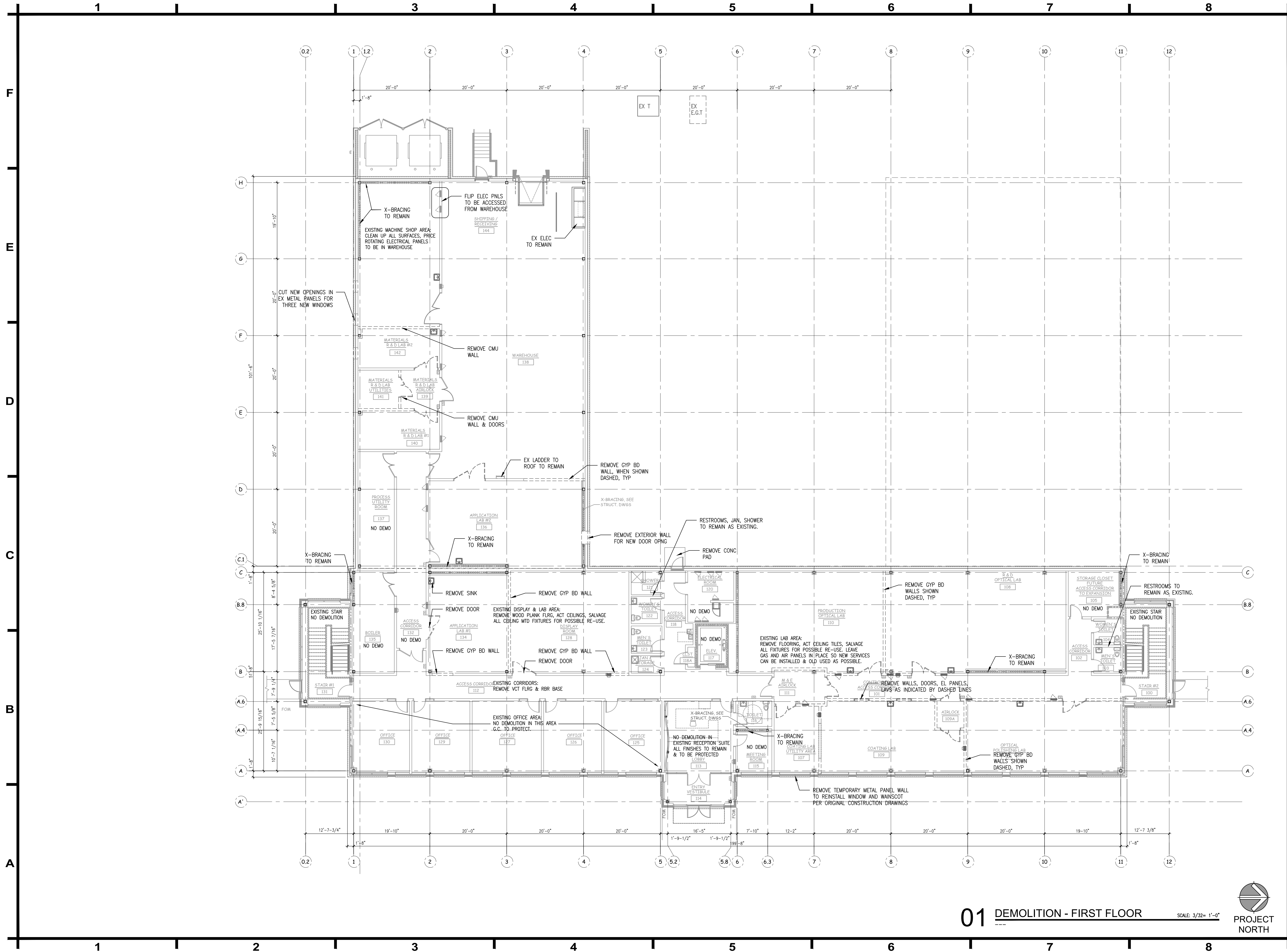
Thank you.

Yours very truly,



Walker C. Jones, PE, LEED AP

WCJ/jvm  
21N063/20230220 BWWB Control Letter.docx



PROJECT TITLE  
**BWWB ENVIROLAB  
 CONCEPTUAL PLANS**

100 LUCERNE LANE  
 BIRMINGHAM, AL 35209

STAMP

REVISIONS MEETING #3  
 ISSUED 9/13/2023

**STUDIO 2H** 1721 4TH AVENUE  
 NORTH, SUITE 101  
 BIRMINGHAM, AL 35203  
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 STUDIO 2H DESIGN, LLC FAX: 205-264-9992

NOT FOR CONSTRUCTION  
 RELEASED FOR CONSTRUCTION

DATE: June 1, 2023

DRAWN BY: AAA

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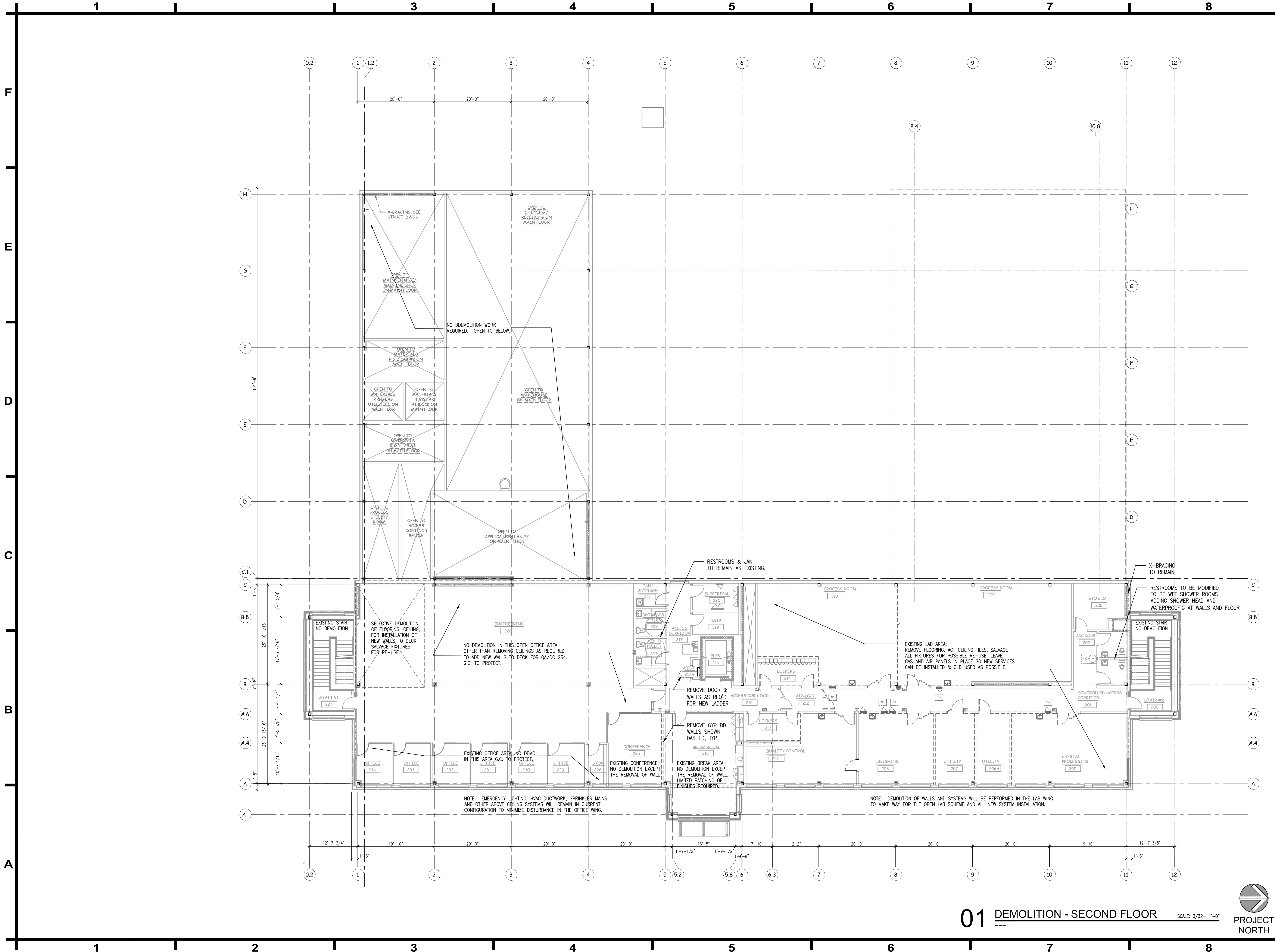
**REVISIONS**

Revision	Date	Description

SHEET TITLE  
**DEMOLITION  
 FIRST FLOOR**

DRAWING NUMBER  
**A1.1**

PROJECT NUMBER  
**202025A**



PROJECT TITLE  
**BWWB ENVIROLAB  
 CONCEPTUAL PLANS**

100 LUCERNE LANE  
 BIRMINGHAM, AL 35209

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**DEMOLITION -  
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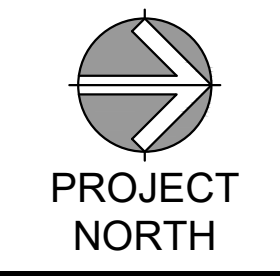
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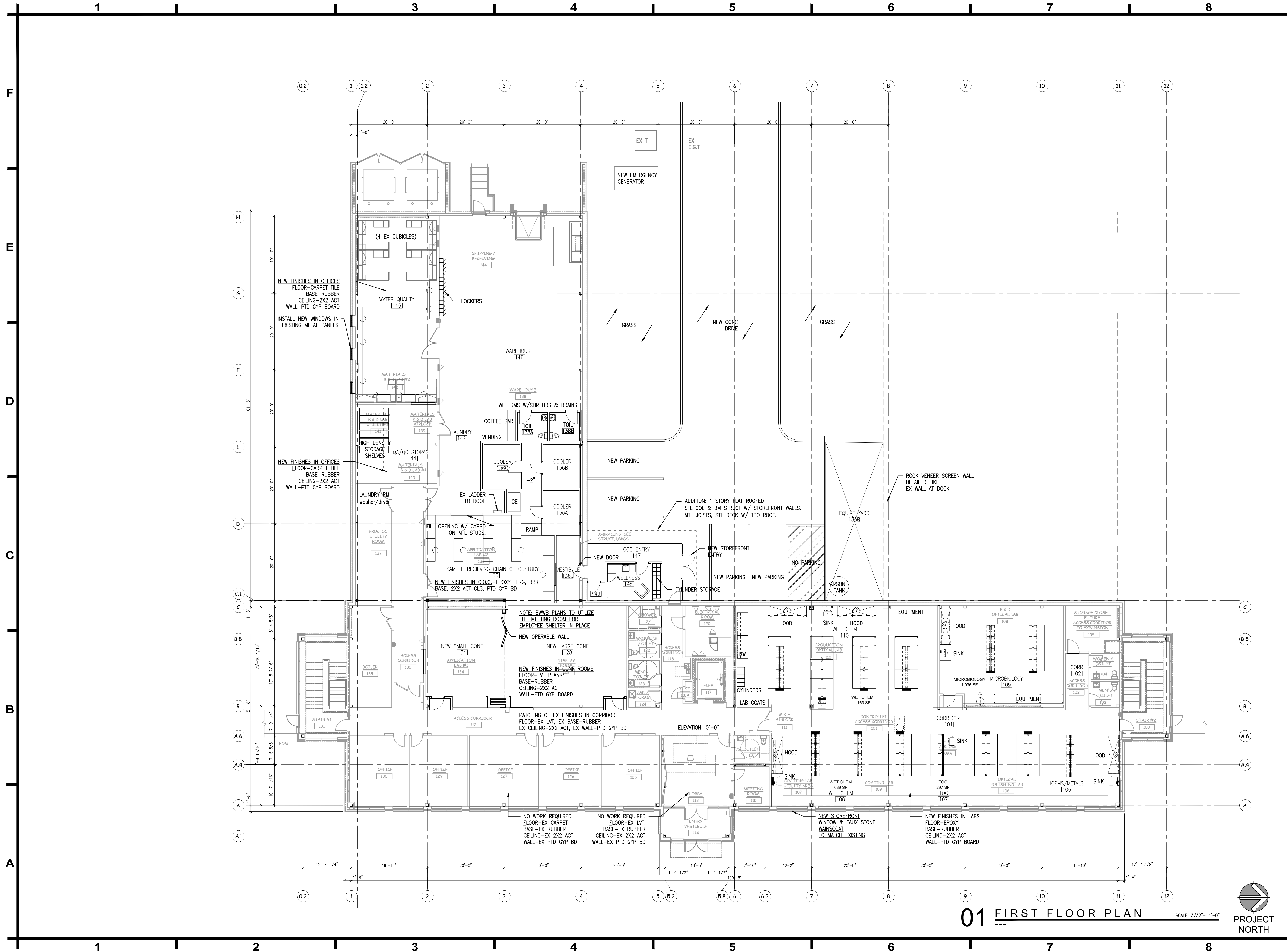
PROJECT NUMBER

**202025A**

**01** DEMOLITION - SECOND FLOOR SCALE: 3/32"= 1'-0"



PROJECT  
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PROJECT TITLE  
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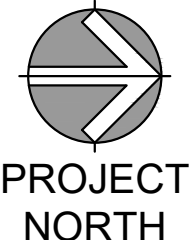
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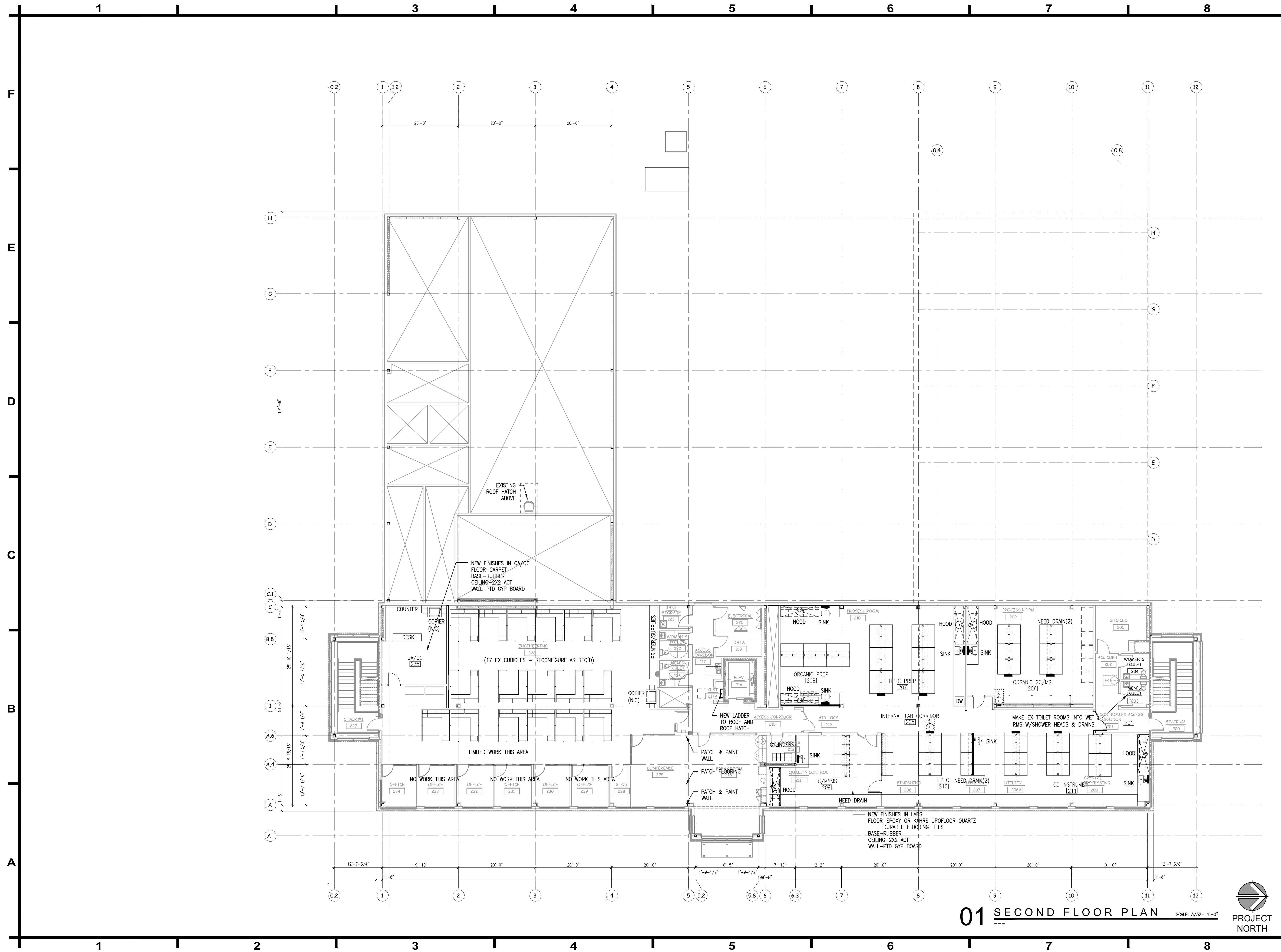
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SHEET TITLE  
**FIRST FLOOR**

DRAWING NUMBER  
**A2.1**

PROJECT NUMBER  
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PROJECT TITLE  
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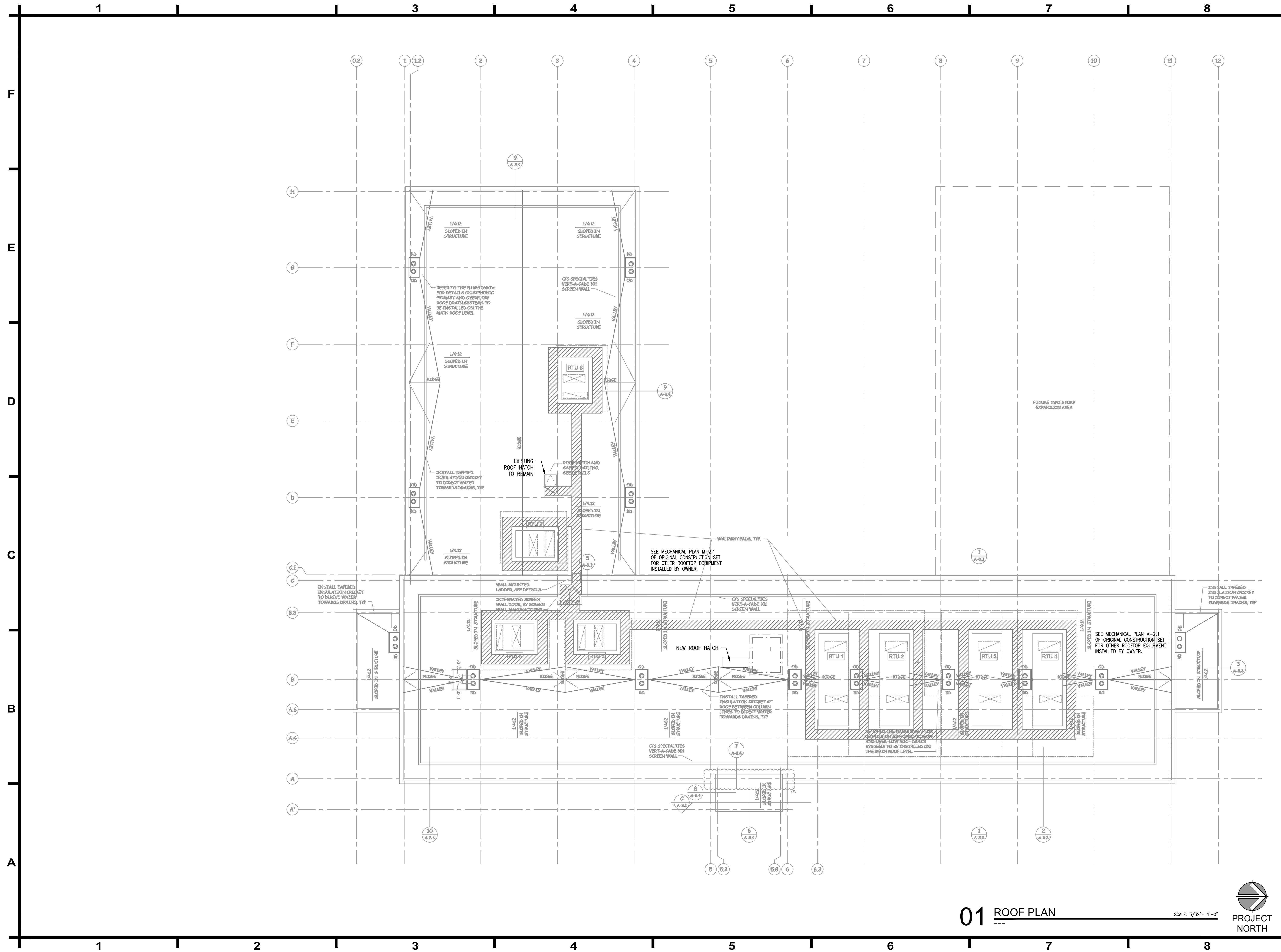
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PROJECT NUMBER  
**202025A**

**01 SECOND FLOOR PLAN** SCALE: 3/32"= 1'-0"







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Revision	Date	Description

SHEET TITLE  
**ROOF PLAN**

DRAWING NUMBER  
**A2.3**

PROJECT NUMBER  
**202025A**

**01** ROOF PLAN

SCALE: 3/32" = 1'-0"



PROJECT  
 NORTH

**APPENDIX C – BWWB CONSULTANT PLAYBOOK  
AND EXHIBIT 2.6 – CONSULTANT INVOICE  
EXAMPLE**

# 2024 CONSULTANT PLAYBOOK



VERSION CONTROL

Issue	Revision No	Date Issued	Description

## Table of Contents

Defined Terms.....	6
<b>Section 0 – Background and Introduction .....</b>	<b>9</b>
<b>Section 1 – General Information .....</b>	<b>9</b>
The BWW System .....	9
Overview of BWW Departments and Key Contacts .....	11
<b>Section 2 – Consultant Guidelines.....</b>	<b>13</b>
Consultant Contracting Documents .....	13
Master Services Agreement .....	13
Single Task Order (Proposal) .....	13
Small Projects (Less than \$25,000) .....	13
Proposal Development .....	13
Task Order Proposal Submittal and Approval Process .....	13
Consultant Notice to Proceed and Project Kickoff .....	14
Project Administration.....	14
Progress Reports.....	14
Invoicing .....	15
Meetings.....	16
Sign-in Sheets .....	16
Meeting Agendas.....	17
Meeting Minutes / Summaries.....	17
Request for Approval and Information.....	17
Request for Approval (RFA).....	17
Request for Information (RFI).....	17
Request for Change Order / Amendment to Approved Work.....	17
<b>Section 3 – Design Phase Services .....</b>	<b>17</b>
Design Standards Purpose .....	17
Design Standards Timelines.....	18
Overall Requirements .....	18
Basis of Design (15 Percent).....	19
Preliminary Design (30 Percent) .....	19
Detailed Design (60 Percent) .....	19
Detailed Design (90 Percent) .....	20
Construction Documents Phase (100 Percent Bid Ready & Final).....	20
<b>Section 4 – Bid Phase Services.....</b>	<b>21</b>
<b>Exhibits .....</b>	<b>22</b>

## Acronyms

<b>Abbreviation</b>	<b>Definition</b>
AACE	Association for the Advancement of Cost Engineering
ADA	Americans with Disabilities Act
ADEM	Alabama Department of Environmental Management
AGM	Assistant General Manager
ALDOT	Alabama Department of Transportation
A&E	Architectural and Engineering
ARB	Architectural Review Board
BOD	Basis of Design
BWW	Birmingham Water Works
CADD	Computer-Aided Drafting and Design
CIP	Capital Improvement Plan
CSX	Chesapeake Seaboard Consolidated Railroad
DBE	Disadvantage Business Enterprise
DBT	Design Basis Threat
DDR	Design Development Report
DQL	Design & Quality Leader
EBO	Equal Benefits Ordinance
E&M	Engineering and Maintenance
EPA	Environmental Protection Agency
FC	Formal Contract
HUB	Historically Underutilized Business
HVAC	Heating Ventilation Air Conditioning
I&C	Instrumentation & Controls
I/O	Input/Output
LAN	Local Area Network
MBE	Minority Business Enterprise
MCC	Motor Control Center
MGD	Million Gallons per Day
MOPO	Maintenance of Plant Operations
MSA	Master Services Agreement
NAD	North American Datum
NEC	National Electrical Code
NPDES	National Pollutant Discharge and Elimination System
NTP	Notice to Proceed
N/A	Not Applicable
OPC	Open Platform Communications
PCBs	Polychlorinated Biphenyls
PDR	Preliminary Design Report
PDL	Project Discipline Leader

PM	Project Manager
PMIS	Project Management Information System
P&ID	Piping and Instrumentation Diagram
QA	Quality Assurance
QC	Quality Control
RFA	Request for Approval
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Qualifications
ROW	Right of Way
SCADA	Supervisory Control and Data Acquisition
SME	Subject Matter Expert
SOV	Schedule of Values
VA	Vulnerability Assessment
WAN	Wide Area Network
WBE	Women's Business Enterprise
WBS	Work Breakdown Schedule

## Defined Terms

Term	Definition
Application of Payment	The form to request the approval of progress or final payments to be used by the Contractor during the work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
Baseline Cost	The estimated total cost of a project in order to provide the necessary capabilities on the identified schedule.
Basis of Design	This includes 15 percent design schematics and tech memos outlining the design process which shall be developed in accordance with Section 3.
Bid Design	The 100 percent design which is included in a complete bid ready package with comprehensive design information, such as drawings and specifications etc. prepared for the Contractor.
Capital Improvement Plan (CIP)	CIP is a plan to list, analyze, and prioritize all potential and On-going projects in order to 1) balance the risk and benefits of projects; 2) optimize the achievement of the Board's goals with the least impact to rate payers. BWW uses Excel to track the CIP progress. There is a top-level Excel Project List that contains information for each proposed or active project.
Change Order	An amendment to a construction contract that changes the contractor's scope of work. It shall be in the form of a written order to the Contractor for sign and approval.
Comment Resolution Form	Document used to identify, address and finalize comments received from other parties during the design review process.
Commissioning	A process of planning, documenting, scheduling, testing, adjusting, verifying, and training, to provide a facility that operates as a fully functional system that meets established design requirements and Owner's expectations.
Conceptual Design	A critical design phase in the engineering design process. It involves the activities of function formulation, concept generation, concept organization, concept evaluation, and concept improvement.
Conformed Documents	Conformed Drawings include the bid drawings, updated to include all changes made by addendum during the bid process and all awarded alternates. Conformed Documents should be labeled "Conformed Drawing" or "Conformed Specifications". Conformed Documents do not replace the official contract documents.
Contract Documents	A list of the documents setting out the obligations and responsibilities of the parties to the contract on a traditionally-procured, fully-designed construction project, which includes the agreement and conditions of contract, specifications, working drawings, schedule of work etc.
Designer	An organization or individual, who prepares or modifies a design for a construction project; arranges for or instruct someone else to do so.



Term	Definition
Detailed Design	This includes 60 percent and 90 percent design phase of the design process which shall be developed in accordance with Section 3.
Environmental Permits	Official documents or certificates that authorize performance of a specified activity, required by and from government agencies to proceed with work.
Final Completion	When all the construction works that are described in the contract have been carried out, and the contract administrator issues a certificate of final completion.
Historically Underutilized Business	A business formed for the purpose of making a profit and is at least 51% owned, operated and/or controlled by one or more American citizens or permanent resident aliens who are: Minority Business Enterprise (MBE); Women's Business Enterprise (WBE); or, Disadvantaged Business Enterprise (DBE) (herein sometimes collectively referred to as HUB).
Master Plan	A long term perspective plan for guiding the development of a project or program. This document lays down the planning guidelines, policies, development code, defined achievable future etc. for various activities during the plan period.
Non-conformance	Any condition or characteristic of any element of the "Work" that does not conform to or comply with the required specification or standard.
Performance Testing	A testing measure that evaluates how the product or system performs in terms of functionality and stability under a particular workload. It can also serve to investigate, validate or verify other quality attributes of the product or system, such as scalability, reliability and resource usage.
Preliminary Design	This is the 30 percent design phase of the design process which shall be developed in accordance with Section 3.
Progress	It includes milestones, goals achieved, finished tasks and validated items that contribute to project completion. A description that records the project change from one specific stage or point in time to another.
Project Schedule	A graphic presentation of all activities in a project required to produce the output. It can be a list of items, activities, events, information and so on. Sometimes schedules will also include dates on which activities listed in the schedule will be carried out.
Quality	Features that meet Owner's needs and freedom from failures. The degree to which a set of inherent characteristics fulfills requirements, and is safe to use and maintain.
Quality Assurance (QA)	QA is a set of planned and systematic actions to ensure that products and services comply with specified requirements. It not only involves checking the final quality of products to avoid defects, as is the case in quality control, but also checking product quality in a planned way in all the production stages. It is the development of work and product design procedures to prevent errors from occurring in the first place, based on planning backed up by quality manuals and tools.

Term	Definition
Quality Control (QC)	QC is the part of quality management that ensures products and services comply with requirements. It is a work method that facilitates the measurement of the quality characteristics of a unit, compares them with the established standards, and analyses the differences between the results obtained and the desired results in order to make decisions which will correct any differences.
Record Drawings	The “red-line” markup drawings showing the completed project, which include field changes and change orders, actual as-built locations of the items constructed, actual locations of the items and details not shown on the original drawings.
Request for Information (RFI)	Document that is issued by either the Contractor or Owner’s consultant team that request clarification of any portion of the project or the initial communication for processing contract changes. This document is generally required to clarify information in the contract documentation or to provide information that was not complete at the time the contract was agreed.
Request for Proposal (RFP)	Document that is issued by either the Contractor or Owner’s consultant team that announces a project, describes it, and solicits bids from qualified contractors to complete it. Most organizations prefer to launch their projects using RFP.
Request for Qualifications (RFQ)	Document that refers to the pre-qualification stage of the procurement process. Those proponents who successfully respond to the RFQ and meet the qualification criteria will be included in the subsequent Request for Proposals (RFP) solicitation process.
Schedule of Values (SOV)	A start-to-finish list of work items on a project and their associated cost. This comprehensive work list represents the entire construction project and the entire contract price, from beginning to end. It is generally prepared by the Contractor, allocating portions of the Contract price to various portions of the Work and issued as the basis for reviewing the Contractor’s application for payment.
Start-up	Start-up is when the actual process fluids or chemicals or power transfers are initiated for the first time, allowing a lot of the fine-tuning of the plant processes to take place once the systems are up and running.
Strategic Plan	Document prepared annually by the consultant team which identifies and prioritizes the projects needed to achieve the goals identified in the Master Plan.
Submittal	A written or graphic document, material, sample, or other item prepared by or for the Contractor, which is required by the Contract Documents. It shall be submitted by the Contractor to the consultant team for review and approval.
Testing	It is part of a quality control system to verify that materials comply with the required specification, achieve certification, and demonstrate compliance with legislative requirements.

The above terms are included in the Glossary portion of this document.

## Section 0 – Background and Introduction

The fundamental purpose of this Consultant Playbook (the Playbook) is to provide the Birmingham Water Works Consultants (the Consultants) with guidelines to ensure conformity of management processes, uniformity in implementing processes, and efficiency in providing the professional engineering and consultant services. These guidelines establish key procedures and guidance that define the control components and the processes for managing the engineering and consultant services between Birmingham Water Works (BWW) and the Consultants. In case of contradiction, each the Consultant's contract shall supersede the procedures established in the Playbook. The objectives of the Playbook are to:

- Provide information about the assignment of functions and responsibilities
- Define lines of communication, points of interface, and authorities
- Provide standard procedures, when required, on the approved methods for performing specified activities

The Playbook is organized into sections that describe specific functional area responsibilities and requirements. The sections in the Playbook correspond to the key phases of project delivery in addition to managing the Consultant's responsibilities under their contract and their respective task orders. The sections are divided into sub-sections addressing the key components of each phase. The sections contained in the Playbook are as follows:

- Section 1 – General Information
- Section 2 – Consultant Guidelines
- Section 3 – Design Phase Services
- Section 4 – Bid Phase Services

## Section 1 – General Information

### The BWW System

The BWW acquired and has operated the water system since 1951. The water system serves more than 770,000 persons over five counties (Blount, Shelby, Jefferson, St. Clair, and Walker), delivering an average of 105 million gallons per day (MGD) (permitted at 189 MGD) of water to customers throughout the Birmingham metropolitan area.

The BWW has four water sources within two river basins (Black Warrior River and Cahaba River Basins) and four water treatment plants. The Black Warrior River system consists of three sources: Inland Lake (Blackburn Fork, a branch off the Little Cahaba), Sipsey Fork, and Mulberry Fork. Industrial raw water customers are supplied from all three sources depending on the hydraulic gradients of the raw water transmission systems.

The Cahaba River system consists of the Lake Purdy reservoir and the Little Cahaba River. Flows in the Cahaba River are augmented as needed with releases from BWW's Lake Purdy reservoir. Raw water is supplied from the Cahaba Pump Station on the Cahaba River to the Shades Mountain Filter Plant. There is no raw water pump station on Lake Purdy. Three of the four drinking water plants in the system are supplied by the Black Warrior River Watershed.

The BWW has flexibility in determining the rate of withdrawal and location of raw water originating from Sipsey Fork, Mulberry Fork, and Inland Lake. BWW maintains 51 storage tanks located on 47 tank sites, providing approximately 75 million gallons of aboveground storage in the distribution system.

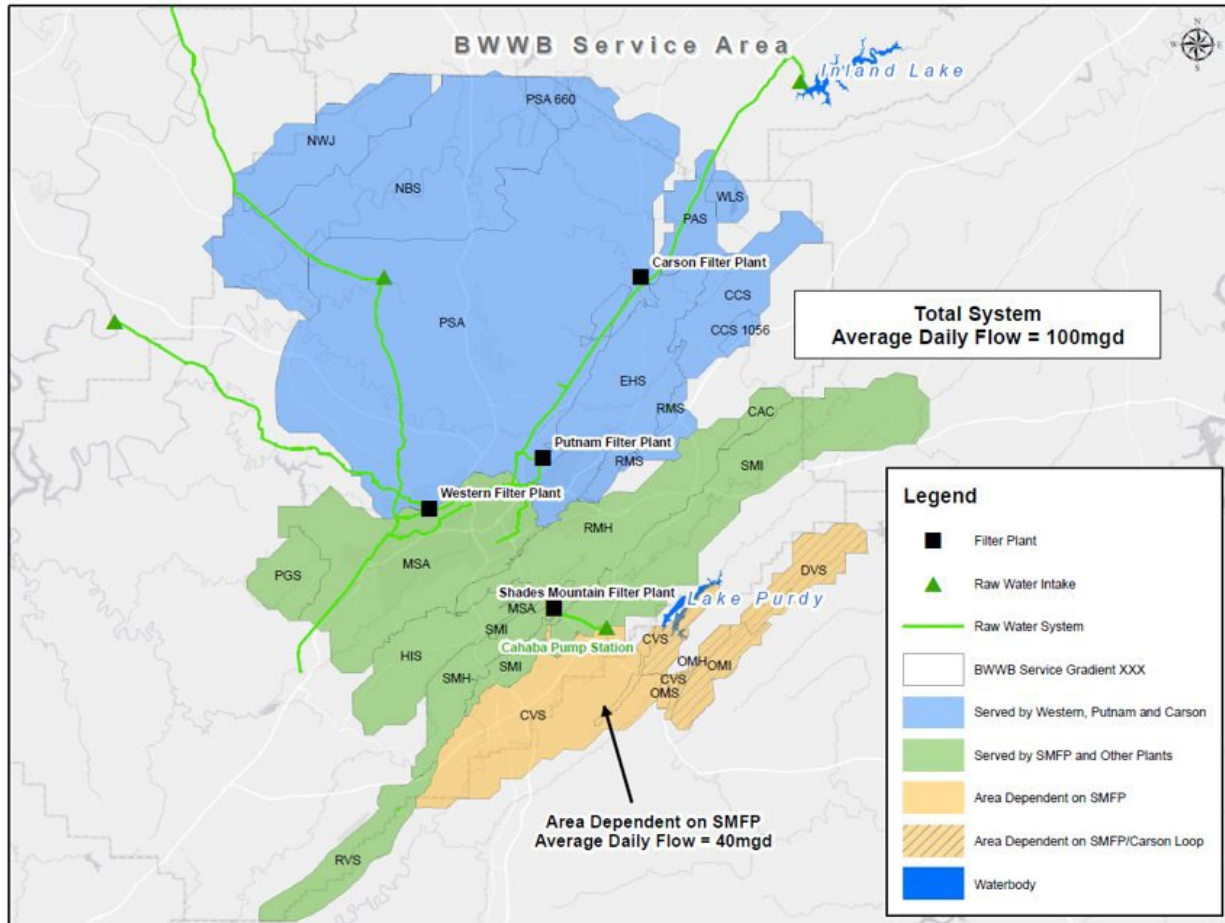
The Carson Loop supports redundancy in the rapidly growing Shades Mountain Intermediate and Cahaba Valley service areas. The Carson Loop consists of more than 27 miles of 36-inch transmission main that delivers water in a “loop” between the Carson Filter Plant in the northeastern portion of the service area and the Shades Mountain Intermediate and Cahaba Valley portions of the service area. When the Cahaba River system is drought limited (including Lake Purdy), the Carson Loop can deliver water to the service areas described in Table 2.1 that are traditionally served by the Shades Mountain Filter Plant. The source water systems for each treatment plant as well as their respective treatment capacities are indicated in Table 1.1.

**Table 1.1. Treatment Plant and Source Water**

Treatment Plant	Source Water	Description	Approved Capacity (MGD)	Average Daily Flow (MGD)
Shades Mountain Filter Plant	Cahaba River and Lake Purdy	The Shades Mountain Filter Plant can only be supplied with raw water from the Cahaba River system.	80	55
Western Filter Plant	Sipsey and Mulberry Forks	The Mulberry and Sipsey intakes and associated transmission systems provide water to the Western Filter Plant.  As needed, production can be shifted from the Shades Mountain Filter Plant to the Western Filter Plant and the H.Y. Carson Filter Plant.	60	30
Putnam Filter Plant	Inland Lake, Sipsey Fork, and Mulberry Fork	Inland Lake and the associated transmission system provide water to the Putnam Filter Plant.  The Sipsey system is considered a secondary water supply for the Putnam Filter Plant and raw water customers.	24	15
H.Y. Carson Filter Plant	Inland Lake	The H.Y. Carson Filter Plant and most of the raw water customers are supplied from Inland Lake.  When needed, BWW can deliver up to approximately 20 MGD from the Sipsey or Mulberry systems to the H.Y. Carson Filter Plant, in addition to the feed to the Western and Putnam Filter Plants and the industrial raw water customers.  Additionally, production can be shifted from the Shades Mountain Filter Plant to the Western Filter Plant and the H.Y. Carson Filter Plant.	25	15

There are 22 distinct pressure system gradients in the BWW service area. The northern pressure system gradients are served by the Western, Putnam, and H.Y. Carson Filter Plants. The southern pressure system gradients are served by the Shades Mountain Filter Plant. An overview map of the service area and pressure gradients are identified in Figure 1.1.

Figure 1.1. System Overview Map with Pressure Gradients



### Overview of BWW Departments and Key Contacts

The BWW organization is divided into four major divisions:

- **Executive Office (lead by Michael Johnson)** - includes Public Communications, Business Systems and Operations, Internal Audit)
- **Engineering and Maintenance (E&M) (lead by Derrick M. Murphy)** - includes System Development, Mapping and Records, E&M Shop, Distribution, Engineering, and Revenue Water
- **Finance and Administration (lead by Iris Fisher)** – includes IT, Call Center, Accounting, Human Resources, Customer Support Services, and Purchasing
- **Operations and Technical Services (lead by Jeffrey Thompson)** – includes Security, Water Resources, EnviroLab, Water Treatment, Supervisory Control and Data Acquisition [SCADA], and Industrial and Commercial Accounts

While the Consultants may interface with several departments within BWW's organization to fulfill its contracts, it's primary communication will be through the Engineering Department. Key contacts within Engineering Department are listed in Table 1.2.

Table 1.2 Key Engineering Department Contact List

Name	Title	Email Address	Number
Derrick Murphy, MEng	Assistant General Manager, Engineering & Maintenance Division	derrick.murphy@bwwb.org	205-244-4404
Hattye McCarroll, PE	Chief Engineer and Engineering Manager	hattye.mccarroll@bwwb.org	205-244-4182
Wanda Ervin, PE	Principal Engineer / Civil - Construction	wanda.ervin@bwwb.org	205-244-4220
AJ Gray	Administrative Assistant / Pressure Complaints	AJ.Gray@bwwb.org	205-244-4180

## Section 2 – Consultant Guidelines

### Consultant Contracting Documents

The BWW has multiple types of contracts that are entered into with Consultants based on the professional services to be rendered. These contracts include a Master Services Agreement (MSA), Single Task Order Contract (submitted as a Proposal), and a contract for Small Projects (Less than \$25,000).

#### *Master Services Agreement*

The MSA is a contract of professional services for various tasks under one project and includes detail of Basic Services, Additional Services, Client's Responsibility, Periods of Service, Compensation, Opinions of Construction Cost, and General Considerations. **Exhibit 2.1 – Master Services Agreement** provides the outline of the requirements of the contract (all sections may not be applicable depending on the type of project).

#### *Single Task Order (Proposal)*

A Proposal is a description of the work to be completed on a project. The details included in a proposal depend on the project's scope. Typically, organizations advertise a need for proposals and consulting engineers respond to the need. **Exhibit 2.2 – Single Task Order (Proposal)**.

#### *Small Projects (Less than \$25,000)*

A project less than \$25,000 has a contract in a simplified form which is used to identify the Parties Involved, Party Representatives, General and Special Types of Services to be Performed, the Legal Agreement, and Execution of the Agreement and is provided in **Exhibit 2.3 – Small Projects (Less than \$25,000 Contract)**.

For informational purposes the BWW level of approval is provided below:

- **Department Managers**--All requisitions (exclusive of professional service contracts) exceeding \$2,500.01 up to \$7,500.00.
- **Assistant General Managers**--All requisitions (exclusive of professional service contracts) exceeding \$7,500.01 up to \$15,000.00.
- **General Manager** – All requisitions (**exclusive** of professional service contracts) exceeding \$15,000.01, up to \$50,000.00.
- **General Manager** - All requisitions for professional service contracts or agreements for amounts less than or equal to \$25,000.00 (legal, engineering, etc.).
- **Board of Directors** - All requisitions for professional service contracts or agreements in excess of \$25,000.00 (legal, engineering, etc.).

### Proposal Development

As part of the task order development process, each Consultant should adhere to proposed information as listed in **Exhibit 2.4 - Consultant Proposal Content**.

#### *Task Order Proposal Submittal and Approval Process*

After development of the task order proposal, the Consultant should submit it to the BWW Project Manager (or the representative detailed in the request for proposal). The Consultant shall refer the request for proposal for specific details on the evaluation process. The Consultant shall

expect to receive a response from BWW *within* 60 calendar days. Additional clarification regarding the review process will be provided with Request for Proposal.

#### *Consultant Notice to Proceed and Project Kickoff*

Upon receipt of task order approval / authorization to proceed, the Consultant should facilitate a project kickoff meeting as soon as possible. The timing of this meeting should be no later than two weeks after approval / authorization is provided. The intent of the meeting is to introduce project team members from various organizations (BWW Project Manager, BWW Stakeholders, Consultant, etc.), provide guidance on project procedures, and outline clear expectations of each project participant to facilitate successful project delivery.

As part of the project kickoff meeting, the Consultant shall present a one-page project charter to summarize the focus, outcomes, stakeholders, milestones dates, and key deliverables. A template for the project charter is illustrated in **Exhibit 2.5 – Consultant Project Charter**.

### **Project Administration**

As part of project delivery, the Consultant is required to coordinate the execution of the proposed tasks, including tracking task budgets and schedule, as well as reviewing and ensuring quality of deliverables. The services are completed to ensure that the task order objectives are met in a manner consistent with the BWW's standards and procedures.

The Consultant will maintain scope, schedule, and budget and communicate with BWW's Project Manager on a regular basis. The Consultant will complete monthly invoicing and regular progress meetings (with the frequency mentioned in the approved task order).

Any changes in scope, schedule, and/or budget must be formally requested by the Consultant to the BWW Project Manager with the BWW Chief Engineer cc'd for review.

#### *Progress Reports*

Monthly progress reports should be submitted with the monthly invoices and must include:

##### Front Information

- Project name and number
- Start and end date of the billing period
- Invoice date
- Consultant contact details

##### Activities

- Summary of activities conducted this period
- Summary of activities to be conducted next period
- Any delays / requested BWW charges that impacts the schedule or budget

##### Summary of Project Financials

- Total invoiced amount for this period
- Amount invoice to date
- Cumulative amount (total invoiced amount for this period + amount invoice to date)
- Total approved project budget
- HUB participation (as applicable)



### *Invoicing*

In addition to information provided in the progress reports, monthly invoices should include the following information:

#### Front Information

- Project name and number
- Start and end date of the billing period
- Invoice date
- Invoice due date
- Invoice number
- Invoice payment terms
- Consultant contact information and remittance details

#### Summary Information

- Project name and number
- Start and end date of the billing period
- Purchase order number

#### Invoice

- Information at the task level
  - Contracted task level amount
  - To-date previously invoiced amount
  - Percentage of completions
  - Amount for this invoice
- Information at the subtask level
  - Per employee: employee name; total of hours; rate; total invoiced amount
  - Total subtask labor costs (all employee labor)
  - Per expense: invoice type; amount (receipts should be submitted as well)
  - Total subtask expense costs
  - Total subtask invoiced (total labor and total expenses) costs
- Total Cost Invoice (all subtask combined)

#### Timesheet Backups

- Per employee, per date:
  - employee name; daily total of hours; rate; comments for work completed

A template for information needed in the invoice is shown in **Exhibit 2.6 – Consultant Invoice Example**.

### *Submittal and Approval Process*

As part of the invoice submittal process, each Consultant should email a draft version of the progress report and invoice to BWW Project Manager for review and feedback. Upon initial review, the BWW Project Manager will then forward the draft invoice to the BWW Chief Engineer for review. Any updates requested by BWW will be provided to the Consultant from the BWW Project Manager within 30 days of submission. Any revised invoices completed by the Consultant must be clearly identified with changes highlighted in the email transmittal. Upon approval of the invoice, it will be processed through BWW.



### *Meeting Agendas*

Meeting agendas must be prepared for all planning and design-related meetings. Agendas should be developed prior to meetings and submitted to BWW at least 24 hours for review and feedback. A template for the agenda format to be used is shown in **Exhibit 2.8 – Consultant Meeting Agenda**.

### *Meeting Minutes / Summaries*

Upon completion of a meeting, the Consultant will prepare and submit meeting minutes / summary within seven calendar days of the held meeting date. All meeting minutes / summaries shall be prepared in draft format for review by BWW Project Manager prior to finalization. BWW will have a maximum of five business days OR seven calendar days (whichever is the longest duration) to review and comment, after which the minutes are issued as final, whether or not comments are received. Any exception to the BWW review period must have prior approval via the task order authorization or email transmittal. All final meeting minutes shall be submitted to the BWW Project Manager. A template for the meeting minutes / summary format is shown in **Exhibit 2.9 – Consultant Meeting Minutes / Summary**.

## **Request for Approval and Information**

All official matters will be communicated to BWW by the Consultants using the requests for approval and information process. In managing the Request for Approval (RFA) and Request RFI for Information (RFI), the Consultant must maintain a log of the status of all submittals to BWW. BWW will respond to these requests within fourteen (14) days.

The requests will be used as follows:

### *Request for Approval (RFA)*

An RFA will be used to request approval by BWW for all contractual matters including approval of subcontractors, approval of documents prepared by the Consultants and its subcontractors. RFAs will be entered in the RFA form, which is included in **Exhibit 2.10 – Request for Approval Form**.

### *Request for Information (RFI)*

A request for information (RFI) will be used to request information needed from BWW. RFIs will be entered in the RFI form, which is included in **Exhibit 2.11 – Request for Information Form**.

## **Request for Change Order / Amendment to Approved Work**

As requests for change orders and/or amendments to approved work are requested, work written authorization from the BWW acknowledging the additional work, impact on budget/schedule, as well as approval are needed to proceed. Refer to the **Exhibit 2.12 – Request for Change Order / Amendment** to detail what information is needed for changes.

## **Section 3 – Design Phase Services**

### **Design Standards Purpose**

The design standards have been prepared to provide the Consultants conducting business with the BWW and their internal engineering design staff a clear understanding of requirements of each Design Submittal Phase for New Projects. It also helps the design engineer to look at all the design components in the development of Construction Documents as well as strengthens the

Lead Engineer/Project Architect (or Project Manager used interchangeably in this document) to ensure there is coordination between all disciplines and begin the process of evaluating requirements of all regulatory agencies having jurisdiction over the project area much earlier in the design process.

### **Design Standards Timelines**

Below is the guidance for preparing interim design packages for BWW review submittals. It is used as a guide in establishing specific project execution requirements for all phases and aspects of design project delivery.

Basis of Design, Detailed Design – 60%, Detailed Design – 90%, and Construction Documents Phase (Final Review Bid-Ready), a Page Turn meeting unless prior written approval is provided by BWW is required. A two-week review period for BWW is required unless specified in the approved task order. Any exceptions need to be detailed and placed in the technical assumptions. All comments provided by BWW should be incorporated into the next design-phase submittal.

As comments are provided by BWW and submittals are updated by the Consultant, BWW shall have a two-week review period to review the resubmittals.

### **Overall Requirements**

The A&E Firm or the Design Engineer of record shall provide the following submittals at each stage of the design together with adequate responses to review comments of the preceding submittal.

- **Basis of Design** – 15 % of the design efforts - This submittal requires responses to review comments. This is the initial submittal to the BWW and the Senior Engineering Staff for the approval of the design concept.
- **Preliminary Design** – 30% of the design efforts - This submittal requires responses to review comments.
- **Detailed Design – 60%**- 60% of the design efforts - This submittal requires responses to review comments.
- **Detailed Design – 90%** - 90% of the design efforts - This submittal requires responses to review comments.
- **Construction Documents Phase (Final Review- Bid Ready)** - 100% Completion - This submittal requires responses to review comments.
- **Final Construction Document Submittal-Bid Documents** - 100% Completion - This submittal requires responses to the Final Construction Review Comments

For each design phase, the A&E Lead Engineer/Project Architect will be required to complete a Checklist that focuses on the overall aspect of the project. The deliverables shall also include design discipline checklists as well as drawings and other documents called for in the checklist. This checklist attempts to cover many design components, the designer can insert Not Applicable (N/A) for items that do not apply to a particular project.

As it is important that A&E Firms submit the required checklists; a project phase submittal that is not accompanied by the necessary checklists will be deemed incomplete and rejected until the BWW or representative receives the complete deliverables that includes the checklist. To state it plainly, **no phase is complete without the necessary Checklist.**

The following are the checklists' format per project phase, and it consists of a cover checklist to be completed and signed by the overall Lead Engineer/Project Architect followed by individual design discipline's checklists. The two sets of checklists shall be packaged with the design drawings and other pertinent documents to complete the submittal:

### **Basis of Design (15 Percent)**

The submittal goals of this Design Development Phase mainly include:

- Develop design (draft schematics and concept layouts) suitable to lock-in basis of design.
- Determine if concept is consistent with capital/design budget.
- Initial opinion of probable construction cost.
- Confirm that standard "front end" construction documents will be used.

The typical deliverables developed during the 15% Design Development Phase are listed in **Exhibit 3-1 - Basis of Design (15%) Development Phase Form.**

### **Preliminary Design (30 Percent)**

The submittal goals of this Design Development Phase mainly include:

- Finalize basis of design and advance spatial design suitable to lock-in complete design intent.
- Design suitable for constructability review and for development of the opinion of probable cost.
- Draft Table of Contents for Project Manual.
- Identify Permitting Type for permit application in 90% Design Development Phase.
  - Local ROW Utilities Lane Closure, Full Road Closure, Sidewalk Closure, Noise Ordinance
  - State ROW Utilities Lane Closure, Sidewalk Closure
  - Army Corps of Engineers
  - ADEM
  - CSX or Norfolk Southern Railroad Encroachment Permits
  - County Encroachments
  - Tree Ordinance Removal Permit

The typical deliverables developed during the 30% Design Development Phase are listed in **Exhibit 3-2 - Preliminary Design (30%) Development Phase Form.**

### **Detailed Design (60 Percent)**

The submittal goals of this Design Development Phase mainly include:

- Produce a set of well-coordinated documents that clearly communicate the design approach/intent for all disciplines.
- Design suitable for detailed review to identify conflicts and refine the opinion of probable cost.
- Submit "front end" documents for Owner review.
- If applicable, verify compliance with legal guidelines for review of BWW construction documents

The following are typical deliverables developed during the 60 % Design Phase are listed in **Exhibit 3-3 - Detailed Design (60%) Development Phase Form.**

### **Detailed Design (90 Percent)**

The following are typical deliverables developed during the 90 % Design Phase:

- Produce complete drawings and specifications that have passed internal Quality Control (QC) and coordination.
- Design suitable for final BWW review, permit application and complete opinion of probable construction cost.

The following are typical deliverables developed during the 90 % Design Phase are listed in **Exhibit 3-4 – Detailed Design (90%) Development Phase Form**.

### **Construction Documents Phase (100 Percent Bid Ready & Final)**

At the final design phase, all major BWW decisions have been made, and work of previous phases is considered completed. Changes from concepts already approved may constitute additional scope of work. Finalizing documentation to support permit applications is often completed during this phase. Additional external deliverables may include a construction schedule and project delivery analysis if required by the contract task order.

Following the completion of the design, Consultant will prepare final design contract documents and submit them to the BWW for review and comment. The final document will include drawings (22-inches x 34-inches), technical specifications, an updated opinion of probable construction cost (AACE Class 2) and project schedule.

Consultant will conduct a design review workshop with the BWW engineering, operations, and maintenance staff to review the final documents. Consultant will prepare meeting minutes summarizing the decisions reached at the design review workshop. Review comments will be incorporated into the bid ready design documents.

The following are typical deliverables developed during the 90 % Design Phase are listed in **Exhibit 3-5 – Bid Ready Document Development Form**.

## Section 4 – Bid Phase Services

Consultant will provide services during the bid period including assisting BWW with a pre-bid meeting, preparing and leading the pre-bid meeting, and providing minutes of the meeting. Up to 15 copies of the plans and specifications will be provided by the Consultant, which required for the BWW to distribute to prospective bidders. The Consultant will review all questions, and prepare and issue addenda as appropriate, including reviewing requests for substitution and equal products. The Consultant shall include specifications on quantities of plans, specifications, and addenda as well bid-phase timeline within the developed proposal.

The Consultant will attend and assist the bid opening, evaluate the bids, and provide a written recommendation to BWW regarding award of the contract. Following the award, the Consultant shall develop Conformed Drawings and Specifications.

Note that the Conformed Set Construction Document Submittal of the project will not require a checklist but must include all addenda and other applicable documents representing the post award situation. Also, after completion of the project, “as-builts” are required in the format specified by the BWW.

Exhibits



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**Exhibit 2.1  
Master Services Agreement**

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**Exhibit 2.2  
Proposal**

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**Exhibit 2.3**  
**Small Projects (Less than \$25,000)**

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**Exhibit 2.4  
Consultant Proposal Content**

## Consultant Proposal Content

Consultant:

Proposal Title:

TOPIC	YES	NO	N/A
<b>Introduction</b>			
Project Background / History	_____	_____	_____
Project Goals / Objectives	_____	_____	_____
<b>Scope of Services</b>			
PDR	_____	_____	_____
DDR	_____	_____	_____
Permitting	_____	_____	_____
Design	_____	_____	_____
Start-Up	_____	_____	_____
Inspection	_____	_____	_____
Bid Phase	_____	_____	_____
Construction Phase Services	_____	_____	_____
Operation & Maintenance	_____	_____	_____
Project Administration	_____	_____	_____
Phases / Tasks/ Subtasks	_____	_____	_____
List of Meetings	_____	_____	_____
List of Deliverables for Each Phase / Task	_____	_____	_____
Technical Assumptions / Out of Scope Items Identified	_____	_____	_____
<b>Project Team</b>			
Organizational Chart /Roles List with Functional Titles	_____	_____	_____
Resumes of Key Team Members	_____	_____	_____
Project Manager / Construction Manager	_____	_____	_____
SMEs	_____	_____	_____
QA/QC Leads	_____	_____	_____
Additional Team Members	_____	_____	_____
<b>Project Schedule</b>			
Activity-based WBS Schedule (MS Project or Excel file and PDF)	_____	_____	_____
Weeks/Months from NTP for each Task/Subtask	_____	_____	_____
Key Deliverables and Milestones	_____	_____	_____
QA/QC Review Period	_____	_____	_____
BWW Review Durations	_____	_____	_____
Permitting/Regulatory/Bidding Activities Durations	_____	_____	_____
<b>Project Budget</b>			
Phase / Task Budgets with Labor Hours	_____	_____	_____
Team Members Rates with Functional Roles / Titles	_____	_____	_____
Expenses	_____	_____	_____
HUB Participations	_____	_____	_____
Budget Assumptions	_____	_____	_____
<b>General Comments</b>			

---

**Exhibit 2.5  
Consultant Project Charter**

## Consultant Project Charter

Project Charter			
<b>Project Title</b>			
<b>Project Start Date</b>		<b>Project Manager</b>	
<b>Project End Date</b>		<b>Project Sponsor</b>	
Business Need			
Project Scope	Deliverables		
Risks and Issues	Assumptions/Dependencies		
Financials			
Schedule of Milestones			
Milestone	Target Completion Date	Actual Completion Date	
Consultant Project Team		BWW Project Team	
<b>Project Manager (s)</b>			
<b>Team Members</b>			

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**Exhibit 2.6  
Consultant Invoice Example**



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**Exhibit 2.7**  
**Consultant Sign-In Sheet**

## Consultant Sign-In Sheet

	Name (Please Print)	Company	Bus. Telephone #	Cell Phone #	Email Address
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

---

**Exhibit 2.8  
Consultant Meeting Agenda**

## Consultant Meeting Agenda

Birmingham Water Works Board

[Type of Meeting]

[Project Title]

[Location]

[Date], [Time]

### MEETING AGENDA

1. Review Minutes from the previous meeting
2. Status of Action Items
3. Project Status Reports
  - Tasks
  - Disciplines
4. Project Schedule
5. Other Items
6. Action Items
7. Next Meeting

*[Note: Items on this agenda are to be modified for each meeting.]*

---

**Exhibit 2.9  
Consultant Meeting Minutes / Summary**

## Consultant Meeting Minutes/Summary

Birmingham Water Works Board

[Type of Meeting]

[Project Title]

[Location]

[Date], [Time]

### MEETING MINUTES

#### Distribution List:

The minutes of this meeting are distributed to all of those who attended as well as those listed below:

#### Attendees:

The following attended:

Name	Affiliation

#### Distributions:

The following items were distributed:

- Meeting Agenda
- 

#### Meeting Minutes

The meeting followed the attached agenda (Attachment A):

##### 1. Introduction

[Describe introductory comments from meeting.]

##### 2. Enter Item No. 2 Heading from appropriate Agenda

[Describe issues and comments from the meeting.]

**3. Enter Item No. 3 Heading from appropriate Agenda**

[Describe issues and comments from meeting.]

**4. Enter Item No. 4 Heading from appropriate Agenda**

[Describe issues and comments from meeting.]

**5. Enter Item No. 5 Heading from appropriate Agenda**

[Describe issues and comments from meeting.]

*[Continue to list Item Heading from appropriate Agenda.  
As noted above, describe issues and comments from meeting for each Agenda Item.]*

**Action Plan**

Action Items	Responsible Party	Due Date

**Summary of Decisions Made**

**[Insert Summary]**

*This represents our understanding of the summary of this meeting. If you have any comments or questions, please forward them to \_\_\_\_\_ no later than \_\_\_\_\_.*

Summary prepared on \_\_\_\_\_ by: \_\_\_\_\_.

**Attachment A – Agenda**

*Include Additional Attachments, as necessary (e.g., Project Schedule)*

---

**Exhibit 2.10**  
**Request for Approval Form**



## Request for Approval Form

<b>To:</b>			
<b>Subject:</b>		<b>Response requested by:</b>	
<b>Date of this Request:</b>		<b>RFA No.:</b>	
<b>Proposed by (Consultant):</b>		<b>Task Order No.:</b>	
<b>Action Required:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Project Name:</b>	
		<b>CIP No.</b>	
<b>Type of Request:</b>			

<b>Description of Request:</b>			
<b>Estimated Cost of Request:</b>		<b>Is Cost of Request in the Approved Budget?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Estimated Schedule Effect:</b>

<b>*Justification for Request:</b>	
<b>Submitted by (Consultant POC):</b>	

-----For BWW Use Only -----

<b>Recommended by:</b>			
<b>Approved by:</b>	----- (XXXX)	<b>Date:</b>	
<b>Contractor authorized to implement request:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>*BWV Comments:</b>			

*\*Attach additional pages if required.*

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**Exhibit 2.11  
Request for Information Form**

## Request for Information Form

<b>To:</b>			
<b>Subject:</b>		<b>Response needed by:</b>	
<b>Date of this Request:</b>		<b>RFI No.:</b>	
<b>Proposed by (Consultant):</b>		<b>Task Order No.:</b>	
<b>Project Name:</b>		<b>CIP No.</b>	
<b>Related Phase:</b>		<b>Action Required:</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>*Description of Request:</b>			
<b>*Justification for Request:</b>			
<b>Submitted by (Consultant POC):</b>			

-----For BWW Use Only-----

<b>Recommended by:</b>			
<b>Approved by:</b>	----- (XXXX)	<b>Date:</b>	
<b>*BWW Clarification:</b>			

*\*Attach additional pages if required.*

---

**Exhibit 2.12**  
**Request for Change Order / Amendment**

## Request for Change Order/ Amendment Form

<b>Project Name:</b>		<b>Change Request Number:</b>	
<b>Project Manager:</b>			
<b>Change Request</b>			
<b>Requester Name:</b>		<b>Date of Request:</b>	
<b>Requestor Contact:</b>			
<b>Item to be Changed:</b>			
<b>Change Description:</b>			
<b>Alternatives Considered:</b>			
<b>Predicted Timeline:</b>		<b>Estimate Costs:</b>	
<b>Expected Outcome</b>			
<b>Work Required</b>			
Area of Impact	Impact Description	Impact Level	Attachment with Additional Information
Scope			Y/N
Schedule			Y/N
Cost			Y/N
Quality			Y/N

<b>BWW Change Review/ Approval</b>			
<b>Reviewer Name</b>		<b>Status</b>	<b>Accepted/ Rejected</b>
<b>Reviewer Signature</b>		<b>Date of Review</b>	
<b>Additional Comments</b>			
<b>Attachments</b>			
[ Attach updated Scope, Schedule, and Cost details]			



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**Exhibit 3.1**  
**Basis of Design (15%) Development Phase Form**

## Basis of Design (15%) Development Form

Consultant:

Project Reference Information (Name, Number):

TOPIC	YES	NO	N/A
<b>Design &amp; Quality Coordination</b>			
- Determine if Project Manual will be prepared with BWW Documents or Consultant Standard Documents	_____	_____	_____
- Coordinate all discipline schematic information needs and design production	_____	_____	_____
- Arrange for preliminary geotechnical site suitability evaluation and determination of site soil class (for seismic) in coordination with Structural, unless information is already available	_____	_____	_____
- Determine BWW preferences for equipment preferences and vendors	_____	_____	_____
- Establish consistent terminology for all equipment	_____	_____	_____
- Establish target construction cost and schedule goals	_____	_____	_____
- Collect and distribute record documents of existing facilities including reports and data from prior environmental investigations	_____	_____	_____
- Prepare for and conduct Concept Design Workshop with Technical Advisors	_____	_____	_____
- Lead technical alternative/ unit process workshops with BWW	_____	_____	_____
- Prepare opinion of probable construction cost (% consistent with industry standard Association for the Advancement of Cost Engineering (AACE) Class 5 or 4) to compare against BWW's budget in coordination with PDLs	_____	_____	_____
- Compile and submit Basis of Design (BOD) Report	_____	_____	_____
- Develop Preliminary Table of Contents for Project Manual including a Preliminary List of Specifications and Drawings	_____	_____	_____
<b>To facilitate change control and design lock-in:</b>			
- Maintain design decision and change log	_____	_____	_____
- Update BOD to include design or BWW changes from submittal comments; facilitate lock-in of basis of design	_____	_____	_____
<b>Process Mechanical</b>			
- Determine all process train(s)	_____	_____	_____
- Establish unit operations, i.e., identify sizing, volume, footprints and all major mechanical items	_____	_____	_____
- Develop overall plant/facility process flow diagram(s)	_____	_____	_____
- Establish/confirm process design parameters (and any deviations for regulatory requirements), and develop initial layout plans for all unit treatment processes	_____	_____	_____
- For major process equipment items and valves, contact equipment manufacturers, obtain budgetary cost information for the items, and establish equipment to be used as the basis of design and as named manufacturers/suppliers in the specifications	_____	_____	_____

TOPIC	YES	NO	N/A
- Perform system hydraulic calculations and prepare initial hydraulic profile for the treatment train; set initial elevation levels for the various unit treatment processes	_____	_____	_____
- Develop process control portion for each process and depict on Process & Instrumentation Drawings (P&IDs) showing Field Instrumentations and Control logic.	_____	_____	_____
- Establish naming convention for unit treatment processes, piping systems, valves, panels, etc.	_____	_____	_____
- Coordinate environmental investigation work for determination of hazardous wastes, toxic materials, lead-based paint, asbestos, PCBs and mercury-containing items	_____	_____	_____
<b>Site/Civil</b>			
- Establish requirements for site survey work and execute contract with sub- consultant for performance of the work; this may include: <ul style="list-style-type: none"> <li>• Property acquisition</li> <li>• Site boundary survey</li> <li>• Topographic survey</li> <li>• Verification of existing structures and piping locations and elevations</li> <li>• Establishing baselines and elevation control points</li> <li>• Establishing soil boring locations</li> </ul>	_____	_____	_____
- Identify site environmental issues	_____	_____	_____
<b>Structural</b>			
- Coordinate geotechnical report requirements with DQL/PM	_____	_____	_____
- Review soils report and identify foundation issues which that either engineering budget or construction costs	_____	_____	_____
<b>Architectural</b>			
- Develop schematic floor plan layouts	_____	_____	_____
- Develop schematic elevations	_____	_____	_____
- Establish exterior building materials	_____	_____	_____
- Define deliverables and timeline for Architectural Review Board (ARB) and Art Commission	_____	_____	_____
- Advise Process Mechanical and/or Site/Civil with early collaborative input to site planning and development	_____	_____	_____
- Prepare Building Code Study	_____	_____	_____
- Determine if the facility is going to be designed in accordance with ADA	_____	_____	_____
- Obtain input from the cost estimator so that the design intent (i.e., building type and materials) is in alignment with the construction budget	_____	_____	_____
- Host a collaborative work session with all disciplines so that the architectural basis of design is in alignment with each design discipline's respective approach	_____	_____	_____

TOPIC	YES	NO	N/A
<b>Heating, Ventilation, and Air Conditioning</b>			
- Advise Process Mechanical and Architectural on anticipated system types and sizes to suit overall facility needs	_____	_____	_____
- Advise Architectural on anticipated equipment locations (inside and outside buildings) and space requirements	_____	_____	_____
<b>Plumbing/Fire Protection</b>			
- Advise Architectural on anticipated system types and sizes to suit overall facility needs	_____	_____	_____
<b>Electrical</b>			
- Advise Process Mechanical and Architectural on anticipated system types and sizes to suit overall facility needs	_____	_____	_____
- Identify any constraints to concept layouts	_____	_____	_____
<b>Instrumentation and Controls</b>			
- Determine with BWW the communication protocols for the instrumentation and controls system – communicate protocols to other disciplines.	_____	_____	_____
- Confirm with BWW the degree of automation and control philosophy suitable for project	_____	_____	_____
- Confirm with BWW the document procurement strategy for control system (pre-selection, sole-source, or-equal)	_____	_____	_____
- Review process portion of draft P&IDs (with Process Mechanical)	_____	_____	_____
- Determine control system hierarchy/philosophy with Process Mechanical	_____	_____	_____
- Advise Architectural on main control room locations, requirements	_____	_____	_____
<b>Security</b>			
- Establish level of security expected	_____	_____	_____
- Define Design Basis Threat (DBT) (based on BWW Vulnerability Assessment (VA) information)	_____	_____	_____
- Coordinate with Process Mechanical (and other disciplines) to identify potential critical assets	_____	_____	_____
- Advise Architectural on security impacts to concept building floor plans, co-location of equipment/personnel	_____	_____	_____
- Advise Site/Civil and Architectural on security impacts for concept design of perimeter layout, site egress requirements	_____	_____	_____
- Advise Structural and Architectural on security impacts requiring building hardening	_____	_____	_____
- Advise PM/DQL on procurement procedures to be employed (i.e., identify if any items need to be procured outside of the typical public bid process in order to limit knowledge of their details)	_____	_____	_____

TOPIC	YES	NO	N/A
- Document personnel needs and operational requirements	_____	_____	_____
- Develop the basis of design for securing the facility	_____	_____	_____

### Construction Cost Estimating

The designer will prepare updated construction budget cost estimate for the project as defined by AACE Class 4. The designer shall prepare an estimate that will be used for comparison of project's budget including a high level constructability review.

A&E Design Manager: \_\_\_\_\_

Date: \_\_\_\_\_

---

**Exhibit 3.2  
Preliminary Design (30%) Development Phase Form**

## Preliminary Design (30%) Development Form

Consultant:

Project Reference Information (Name, Number):

TOPIC	YES	NO	N/A
<b>Design &amp; Quality Coordination</b>			
- Conduct preliminary review of BWW "front end" documents if such documents are to be used.	_____	_____	_____
- Identify areas of uncertainty or areas where design, from a process perspective, has changed (alert all disciplines)	_____	_____	_____
- Determine specific location requirements and coordinate with BWW equipment/vendor preferences	_____	_____	_____
- Establish and distribute tag-naming convention for the unit treatment processes, piping systems, valves, panels, etc.	_____	_____	_____
- Establish and distribute seismic design approach	_____	_____	_____
- Identify BWW's requirements for bidding, bonding and insurance	_____	_____	_____
- Lead interdisciplinary operability, bidability, constructability reviews	_____	_____	_____
- Prepare an opinion of probable construction cost (with input from all disciplines) consistent with AACE Class 3	_____	_____	_____
- Compile Project Manual Table of Contents and Drawing List (see Appendix A for typical drawings to be included with each submittal)	_____	_____	_____
- Develop draft procurement documents for specialized equipment. Contact the PM for Standard Construction Documents in advance.	_____	_____	_____
- Assemble draft sequence of construction and MOPO plan for the work, with input from all disciplines	_____	_____	_____
- Compile and submit PDR	_____	_____	_____
To facilitate change control and design lock-in as the design proceeds:			
- Maintain design decision and change log	_____	_____	_____
- Update PDR information to include design changes from submittal comments; facilitate lock-in of preliminary design	_____	_____	_____

<b>Process Mechanical</b>			
- Verify existing conditions and prepare base plans and sections of existing facilities	_____	_____	_____
- Identify demolition needs and prepare demolition drawings	_____	_____	_____
- Identify relocation needs, existing facility tie-in requirements and future expansion provisions	_____	_____	_____
- Determine code seismic requirements for piping and equipment	_____	_____	_____
- Prepare Schematic layouts for all buildings and process tankage showing locations for major equipment and takeoffs	_____	_____	_____

TOPIC	YES	NO	N/A
- Develop site plan showing facility locations and interconnecting piping between the various unit treatment processes	_____	_____	_____
- Establish/confirm design parameters for chemical storage and feed equipment and develop initial layouts of the chemical areas	_____	_____	_____
- Prepare chemical feed system schematics	_____	_____	_____
- Perform hydraulic calculations for chemical systems	_____	_____	_____
- Contact equipment manufacturers for the various chemical storage and feed system equipment and select equipment to be used as the basis of design	_____	_____	_____
- Obtain standard details and equipment preferences from the BWW for process mechanical work	_____	_____	_____
- Establish method for handling removal of major equipment items	_____	_____	_____
- Prepare initial equipment/motor list for major equipment items and identify standby power requirements	_____	_____	_____
- Prepare technical design memorandum or PDR sections (if a condition of the contract) to document design parameters for the treatment facilities and major design decisions	_____	_____	_____
- Establish operation and control philosophy for the treatment facilities with Instrumentation	_____	_____	_____
- Identify scope of lab functions based on process/permits	_____	_____	_____
- Identify maintenance of MOPO issues with the BWW, plant operators, and regulators	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

**Site/Civil**

- Develop preliminary site plan with roadway access, major subsurface piping, and utility routing; coordinate with electrical and instrumentation groups for sizing and location of duct bank runs	_____	_____	_____
- Establish site drainage patterns	_____	_____	_____
- Determine storm drainage design parameters (e.g., design storm, system sizing criteria, etc.) and storm treatment facility requirements	_____	_____	_____
- Identify demolition needs and prepare demolition drawings	_____	_____	_____
- Identify utility services and extension needs:	_____	_____	_____
• Potable water	_____	_____	_____
• Telephone service	_____	_____	_____
• Natural gas	_____	_____	_____
• Electrical service	_____	_____	_____
- Establish sanitary discharge and/or treatment methods for plant facilities	_____	_____	_____
- Establish plant roadway and parking area requirements and determine materials of construction. Items include:	_____	_____	_____
• Requirements for curbs and gutters	_____	_____	_____



TOPIC	YES	NO	N/A
<ul style="list-style-type: none"> <li>• Concrete, asphalt and/or stone paving for roadway and parking areas</li> </ul>	<hr/>	<hr/>	<hr/>
- Establish noise attenuation requirements if facilities in a sensitive area	<hr/>	<hr/>	<hr/>
- Establish access requirements for persons with disabilities	<hr/>	<hr/>	<hr/>
- Coordinate with security group and establish site security provisions	<hr/>	<hr/>	<hr/>
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	<hr/>	<hr/>	<hr/>
- Evaluate alternative layouts for adverse impacts and cost implications	<hr/>	<hr/>	<hr/>
- Identify property acquisition and easement requirements	<hr/>	<hr/>	<hr/>

### Structural

- Verify prescribed building code requirements	<hr/>	<hr/>	<hr/>
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	<hr/>	<hr/>	<hr/>
- Issue estimated superstructure loads to geotechnical	<hr/>	<hr/>	<hr/>
- Determine site specific seismic design category (assumes geotechnical information is available)	<hr/>	<hr/>	<hr/>
- Preliminary design approach for each structure	<hr/>	<hr/>	<hr/>
- Preliminary design calculations	<hr/>	<hr/>	<hr/>
- Identify structural concepts where unique analysis or design issues may exist	<hr/>	<hr/>	<hr/>
- Develop structural design criteria	<hr/>	<hr/>	<hr/>
- Show approximate locations of expansion joints on plans	<hr/>	<hr/>	<hr/>
- Identify foundation requirements	<hr/>	<hr/>	<hr/>
- Identify structural systems to be used	<hr/>	<hr/>	<hr/>
- Identify major interfaces with existing facilities	<hr/>	<hr/>	<hr/>
- Show column/grid coordinate system, letters, and numbers on plans	<hr/>	<hr/>	<hr/>
- Create preliminary layout of all structures with overall dimensions and floor elevations	<hr/>	<hr/>	<hr/>

### Architectural

- Obtain architectural review board and art commission approvals as required	<hr/>	<hr/>	<hr/>
- Develop the preliminary legend sheet	<hr/>	<hr/>	<hr/>
- Develop preliminary floor plan layouts	<hr/>	<hr/>	<hr/>
- Develop preliminary elevations	<hr/>	<hr/>	<hr/>
- Develop preliminary wall sections	<hr/>	<hr/>	<hr/>
- Develop preliminary building sections	<hr/>	<hr/>	<hr/>
- Prepare outline specifications	<hr/>	<hr/>	<hr/>
- Prepare Energy Code Study	<hr/>	<hr/>	<hr/>
- Finalize Building Code Study/ADA Analysis	<hr/>	<hr/>	<hr/>

TOPIC	YES	NO	N/A
- Provide the building code analysis to all design disciplines identifying potential building code issues that may have impact on other design disciplines			
- Identify construction systems			
- Finalize exterior building materials			
- Establish interior building materials			
- Identify type of fire alarm system required			
- Coordinate structural system			
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning			

### Heating, Ventilation, and Air Conditioning

- Define equipment and system (heating and cooling) philosophy (type: gas, oil, electric)			
- Develop the preliminary legend sheet			
- Prepare preliminary calculations to determine equipment capacities			
- Locate mechanical and HVAC room space requirements, louver sizes and locations, roof-mounted equipment and sizes, access hatches (for Architectural)			
- Identify hot water, ventilation system requirements (for Process Mechanical)			
- Provide the preliminary equipment list, motor load, power data, units requiring emergency power (to Electrical)			
- Identify major pieces of equipment locations, size and weight, including major ductwork, floor openings, sizes and locations (for Structural)			
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning			
-			

### Plumbing/Fire Protection

- Provide equipment space/plumbing chase requirements (to Architectural)			
- Provide fire suppression types/information (to Architectural)			
- Establish/coordinate with Fire Marshall/authority, building department contacts			
- Provide code study for sprinkler/dry type fire suppression requirements (to Architectural)			
- Indicate type of building services connection to site utilities (for Site/Civil)			
- Coordinate backflow preventer requirements (with Site/Civil)			
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning			

### Electrical

- Identify distribution system and expected demands			
- Review and assess existing conditions			

TOPIC	YES	NO	N/A
- Identify staging, temporary equipment, and MOPO concepts	_____	_____	_____
- Establish contacts and coordinate with local power company	_____	_____	_____
- Establish major equipment and major duct bank locations, equipment weights and heat release	_____	_____	_____
- Establish standby-power, redundancy requirements	_____	_____	_____
- Identify applicable standard details	_____	_____	_____
- Identify extent of lightning protection required	_____	_____	_____
- Coordinate hazardous area designations (explosive/corrosive)	_____	_____	_____
- Develop load calculation sheets	_____	_____	_____
- Develop master and equipment one-line diagrams	_____	_____	_____
- Develop electric room plans and site plans of major equipment	_____	_____	_____
- Determine if conduits are to be exposed or embedded in concrete for each structure	_____	_____	_____
- Develop specification Division 16 table of contents	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

#### Instrumentation and Controls

- Establish control philosophy with Process Mechanical and Electrical (local, remote panel, and remote computer controls)	_____	_____	_____
- Establish tagging and instrument loop number convention specific to project, coordinate with existing BWW tagging system. Show on P&IDs. Distribute equipment/device tags among the Electrical/Mechanical/HVAC process.	_____	_____	_____
- Identify package control systems with process engineer while in the process of defining package unit	_____	_____	_____
- Work with or obtain from BWW a preferred list of instrumentations/ SCADA system vendors	_____	_____	_____
- Establish design criteria for actuator-type communication network requirements with Process Mechanical/ Electrical	_____	_____	_____
- Establish design criteria for Motor Control Centers (MCC), life safety systems, power monitoring and backup power systems with Electrical	_____	_____	_____
- Coordinate HVAC systems interface (with HVAC)	_____	_____	_____
- Establish design criteria for main and auxiliary control rooms with Architectural/HVAC/Structural	_____	_____	_____
- Establish design criteria for communication networks: type, architecture, and major "hub" locations	_____	_____	_____
- Identify the interface with existing equipment/systems; determine any temporary control system interfaces and staging in accordance with draft MOPO requirements	_____	_____	_____
- Develop draft system block diagram/function location	_____	_____	_____
- Develop all draft P&IDs for major systems and equipment showing critical field instruments and	_____	_____	_____

TOPIC	YES	NO	N/A
identifying panels (60% complete). Use these for lock-in of process design concept	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
- Develop the specification section list	_____	_____	_____
- Complete system architecture diagram	_____	_____	_____

### Security

- Identify all locations requiring increased level of protection for structural, architectural, and electronic protection requirements	_____	_____	_____
- Coordinate locations requiring controlled access with other disciplines	_____	_____	_____
- Establish design criteria and preliminary layouts for security command and control center(s) with HVAC, Architectural, Electrical, and Fire Protection	_____	_____	_____
- Provide building access control locations and elements, including space requirements for monitoring and computers to Architectural	_____	_____	_____
- Provide perimeter protection and site access control locations and elements to Site/Civil and Architectural	_____	_____	_____
- Provide design criteria for power, backup power, communication systems, and panel locations to Electrical	_____	_____	_____
- Establish security elements of design criteria for control system hardware/software with Instrumentation and Controls	_____	_____	_____
- Establish system design criteria for access control, Closed-Circuit Television (CCTV), perimeter detection	_____	_____	_____
- Identify any interfaces to existing systems, including integration needs with other facilities	_____	_____	_____
- Identify preferred vendor list (if available)	_____	_____	_____
- Review access control needs with BWW (e.g., locations, methods)	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Construction Cost Estimating

The designer will prepare updated construction budget cost estimate for the project as defined by AACE Class 3. The designer will prepare estimates for all major construction quantities and vendor quotes for all equipment including constructability review.

A&E Design Manager: \_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit 3.3**  
**Detailed Design (60%) Development Form**

## Detailed Design (60%) Development Form

Consultant:

Project Reference Information (Name, Number):

TOPIC	YES	NO	N/A
<b>Design &amp; Quality Coordination</b>			
- Identify requirements for ancillary systems including video, intercom, or other special systems	_____	_____	_____
- Prepare sequence of construction and MOPO plan for the work	_____	_____	_____
- Prepare front-end documents, and submit to BWW for review by BWW legal department	_____	_____	_____
- Update the opinion of probable cost (with input from all disciplines) consistent with AACE Class 2	_____	_____	_____
<b>Process Mechanical</b>			
- Finalize layout of all large-diameter, exposed process piping, establish support requirements and coordinate with structural group for hanger and support design	_____	_____	_____
- Finalize plan drawings for unit treatment processes and chemical storage and feed equipment	_____	_____	_____
- Perform check of hydraulic calculations for the various unit processes and systems	_____	_____	_____
- Prepare system schematics, plans and section drawings for ancillary systems such as plant air system, process sampling systems, etc.	_____	_____	_____
- Coordinate with Instrumentation and Controls group and finalize all P&ID drawings for the facilities with valve and equipment tagging	_____	_____	_____
- Coordinate with Instrumentation and Controls group and finalize operation and control descriptions for the facilities	_____	_____	_____
- Prepare section drawings for the various facilities	_____	_____	_____
- Prepare draft specifications for the major equipment items and systems, and forward to equipment manufacturers for comments	_____	_____	_____
- Prepare draft specifications for process piping and valves, ancillary systems, etc.	_____	_____	_____
- Complete all major systems: equipment, piping, valves, and pipe expansion/contraction on high temperature lines	_____	_____	_____
- Prepare exposed piping schedule	_____	_____	_____
- Prepare valve schedule	_____	_____	_____
- Develop requirements for pipe hangers and supports	_____	_____	_____
- Prepare final updates to the equipment list	_____	_____	_____
- Show critical elevations and external interfaces	_____	_____	_____
- Complete plan drawings. Sections developed, finalize details	_____	_____	_____

TOPIC	YES	NO	N/A
- Coordinate Division 1 facility startup and commissioning requirements with mechanical equipment and instrumentation specification	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

**Site/Civil**

- Finalize layout of all large-diameter outside process piping	_____	_____	_____
- Finalize layout and details of valve/meter vaults, flow control structures, and anyother site-related structure	_____	_____	_____
- Develop layouts for plant service lines (plant water, gas, fire protection, etc.) and storm drainage system piping and storm water control concepts (e.g., swales, curb, and gutter) on the design development drawings	_____	_____	_____
- Finalize roadway geometric design/road layout for access to all buildings and structures	_____	_____	_____
- Develop temporary access and haul route alternatives	_____	_____	_____
- Develop Erosion and Sediment control drawings and specs	_____	_____	_____
- Continue coordination of site utilities design (telecommunications, gas, sanitary)	_____	_____	_____
- Set coordinates and elevations for facilities and buried piping	_____	_____	_____
- Perform earthwork calculations (cut and fill)	_____	_____	_____
- Prepare site grading plan(s)	_____	_____	_____
- Prepare construction staging/ temporary facilities plan(s)	_____	_____	_____
- Prepare site piping plans	_____	_____	_____
- Establish contractor access and staging areas	_____	_____	_____
- Determine traffic and parking requirements	_____	_____	_____
- Establish piping materials for buried piping systems and prepare buried piping schedule	_____	_____	_____
- Establish pipe bedding details	_____	_____	_____
- Prepare draft specification for site/civil work	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
- Prepare site demolition plans and specifications	_____	_____	_____

**Structural**

- Locations of all major equipment for coordination	_____	_____	_____
- Final design approach for all buildings	_____	_____	_____
- Calculations 25% complete for tankage walls, base slabs, elevated floor systems in buildings	_____	_____	_____
- Complete layout of all structures with overall dimensions and floor elevations	_____	_____	_____
- Manufacturers' literature for monorails, cranes, lifting hooks, etc.	_____	_____	_____
- Show preliminary grid coordinate system for tanks and buildings	_____	_____	_____
- Create preliminary foundation drawing	_____	_____	_____

TOPIC	YES	NO	N/A
- Develop preliminary footing, beam and column sizes	_____	_____	_____
- Develop preliminary main sections without rebar	_____	_____	_____
- Identify all interfaces with existing facilities	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Architectural

- Resolve all code issues	_____	_____	_____
- Complete the legend sheet	_____	_____	_____
- Finalize floor plan layouts	_____	_____	_____
- Develop roof plans	_____	_____	_____
- Develop reflected ceiling plans	_____	_____	_____
- Finalize elevations	_____	_____	_____
- Develop wall sections	_____	_____	_____
- Develop building sections	_____	_____	_____
- Develop wall partition types	_____	_____	_____
- Finalize interior building materials	_____	_____	_____
- Develop the preliminary room finish schedule	_____	_____	_____
- Develop preliminary door and hardware schedules	_____	_____	_____
- Develop enlarged partial plans	_____	_____	_____
- Develop preliminary specifications	_____	_____	_____
- Complete lab equipment list	_____	_____	_____
- Prepare code compliance plan drawings	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
- Coordinate handicap requirements with architectural discipline and local site plan regulations	_____	_____	_____

### Heating, Ventilation, and Air Conditioning

- Develop floor plans	_____	_____	_____
- Develop sections	_____	_____	_____
- Start mechanical room layouts	_____	_____	_____
- Start equipment schedules	_____	_____	_____
- Develop preliminary specifications	_____	_____	_____
- Preliminary sequence of operations	_____	_____	_____
- Provide equipment room access, wall louver sizes and locations, roof-mounted equipment layouts (to Architectural)	_____	_____	_____
- Identify systems for odor control in special areas, heating and cooling in various areas, and ventilation of these spaces (for Process Mechanical)	_____	_____	_____
- Identify heat trace and snow melting requirements, HVAC equipment locations, locations of motorized dampers and control accessories (for Electrical)	_____	_____	_____
- Provide HVAC system controls, sequence of operation and specifications (to Electrical and Instrumentation and Controls)	_____	_____	_____
- Coordinate signal requirements for plant control system (with Instrumentation)	_____	_____	_____



TOPIC	YES	NO	N/A
- Provide HVAC equipment locations, sizes and weights, floor and wall penetrations, access hatch and monorail requirements, equipment supports, pad requirements and typical control diagrams (to Structural)	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Plumbing/Fire Protection

- Provide detailed equipment space and plumbing chase requirements, sprinkler layout in finished hung ceilings, roof drain types, quantities and sizes (to Architectural)	_____	_____	_____
- Washdown and drainage information, sizes, location of building services piping connected to site utilities, supply and make-up water system information (to Process Mechanical)	_____	_____	_____
- Provide floor slopes and drain locations (to Structural)	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Electrical

- Develop site plan duct bank locations and sections	_____	_____	_____
- Develop specification sections, confirm final design drawing list	_____	_____	_____
- Develop lighting, power and grounding plans	_____	_____	_____
- Establish a preliminary conduit layout for critical areas (i.e., space or structural limitations), check for physical conflicts	_____	_____	_____
- Develop equipment elevations and panel schedules	_____	_____	_____
- Develop short circuit, voltage drop and lighting calculations	_____	_____	_____
- Develop staging requirements	_____	_____	_____
- Identify fire alarm requirements	_____	_____	_____
- Select electrical equipment, prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
- Develop preliminary load study	_____	_____	_____

### Instrumentation and Controls

- Provide size and location of all panels to Electrical	_____	_____	_____
- Provide specific layout information, load information for Electrical, Architectural, Structural and HVAC design for main and auxiliary control rooms	_____	_____	_____
- Lead safety and operability analysis with process engineer and BWW, implement into next design stage	_____	_____	_____
- Provide network (local area network (LAN)/wide area network (WAN)) design including media, topology, routing, protocol, conduits and panels	_____	_____	_____
- P&IDs (90% complete) showing all typical loops and identifying duplicates	_____	_____	_____
- Instrument index and I/O list detailing typical only (expand to include duplicate loops later to reduce rework)	_____	_____	_____

TOPIC	YES	NO	N/A
- Draft specification for Process Control Narrative (control descriptions) in coordination with Process Mechanical	_____	_____	_____
- Draft Specifications for major control system and network equipment	_____	_____	_____
- Review and comment on major equipment specifications and package systems, communicate with potential package vendors and ensure the controls section is compatible with overall design	_____	_____	_____
- Preliminary layouts for major panels	_____	_____	_____
- Develop non-process communication risers	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

Security			
- Complete security system block diagram	_____	_____	_____
- Show all access control and CCTV locations on plans	_____	_____	_____
- Identify access control, fencing, and security arrangements	_____	_____	_____
- Develop draft security system configuration/operation descriptions	_____	_____	_____
- Finalize space requirements for monitoring and computers	_____	_____	_____
- Complete design calculations	_____	_____	_____
- Provide heat-load calculations to HVAC	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Construction Cost Estimating

The designer will prepare updated construction budget cost estimate for the project as defined by AACE Class 2. The designer will prepare estimates for all specified equipment and line item cost based on forced take-offs from design.

A&E Design Manager: \_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit 3.4**  
**Detailed Design (90%) Development Form**

## Detailed Design (90%) Development Form

Consultant:

Project Reference Information (Name, Number):

TOPIC	YES	NO	N/A
<b>Design &amp; Quality Coordination</b>			
- Identify changes from the Detailed Design (60%)	_____	_____	_____
- Incorporate BWW's 60% review comments into the drawings and project manual	_____	_____	_____
- Coordinate the final preparation of drawings and project manual	_____	_____	_____
• Check all pipes entering and leaving facility and confirm that they are correctly shown on the yard piping drawings and are consistent with the process drawings; check the size, designation, location, destination, and elevation	_____	_____	_____
• Check equipment and instrumentation numbers on piping plans with final P&IDs	_____	_____	_____
• Check flow schemes for process piping with the flow schemes shown on the P&IDs	_____	_____	_____
• Verify each valve type is correctly specified	_____	_____	_____
- Assist with coordination of other disciplines	_____	_____	_____
- Coordinate equipment specifications with painting, package control system, and electric motor specifications	_____	_____	_____
- Complete necessary forms and prepare submittal packages for building code and regulatory reviews	_____	_____	_____
- Finalize front-end documents and Division 1 specifications based on comments from the BWW	_____	_____	_____
- Update the opinion of probable cost (with input from all disciplines) consistent with AACE Class 1	_____	_____	_____
<b>Process Mechanical</b>			
- Complete process mechanical detail sheets	_____	_____	_____
- Finalize process mechanical specification incorporating comments from equipment manufacturers and BWW reviews	_____	_____	_____
- Assist with coordination of other disciplines. Check mechanical drawings for:	_____	_____	_____
• Piping conflicts with structure	_____	_____	_____
• Access around and near equipment	_____	_____	_____
• Piping conflict with HVAC equipment	_____	_____	_____
• Floor drain locations near equipment	_____	_____	_____
• Piping, roof drains, or HVAC ducts over mechanical equipment	_____	_____	_____
• Verify equipment specifications are coordinated with I&C and electrical where applicable	_____	_____	_____
- Coordinate the final preparation of drawings and specifications	_____	_____	_____
- Complete necessary forms and prepare submittal packages for the building code and regulatory reviews	_____	_____	_____

TOPIC	YES	NO	N/A
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning			
<b>Site/Civil</b>			
- Prepare site detail sheets			
- Complete specifications covering site work items (site layout, including road layout, building locations, and overall grading)			
- Perform check of drainage design calculations/ Finalize Stormwater			
- Complete coordination of site drawings and details with environmental permitting needs			
- Complete required permit forms and make submittals to regulatory agencies			
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning			
- Finalize pavement geometry and horizontal and vertical alignments			
- Finalize fencing, gates, security, and access control			
- Finalize roadway pavement design, sections and details			
- Locate sidewalks and door pads			
- Finalize grading and add spot elevations coordinate with architectural discipline for grades at building entrances			
- Finalize Erosion and Sediment Control Drawings and Specifications			
- Finalize Sanitary Design & Coordination with Proper Governing bodies.			
- Finalize all other utility coordination designs/connections			
• Finalize horizontal and vertical alignment of utility piping			
• Develop final standard and specialized details			
• Prepare structure schedules (manholes and inverts, inlets etc.)			
• Check for physical conflicts			
• Verify information on the plans is sufficient for locating utilities			
• Verify access provisions shown on site drawings (such as sidewalks and driveways) are suitable			
• Check grade at each facility and coordinate grade elevation with doorways, sidewalks, handrails, pipe covers and driveways			
• Coordinate interfaces with existing piping and other utilities			
• Coordinate site civil, electrical, and utility design plans			
• Check that the contractor's staging area is adequate			

TOPIC	YES	NO	N/A
<b>Structural</b>			
- Finalize notes and drawings	_____	_____	_____
- Finalize standard details on drawings	_____	_____	_____
- Complete the specifications	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
<b>Architectural</b>			
- Finalize all drawings	_____	_____	_____
- Finalize construction details	_____	_____	_____
- Complete final coordination with other groups	_____	_____	_____
- Finalize specifications	_____	_____	_____
- Prepare signage drawings	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
<b>Heating, Ventilation, and Air Conditioning</b>			
- Develop control schematics	_____	_____	_____
- Finalized Specifications, Sequence of Operations	_____	_____	_____
- Complete all calculations	_____	_____	_____
- Finalize opinion of probable cost from vendors	_____	_____	_____
- Provide specifications containing equipment and controls, equipment tabulation and schematics, fire suppression and auxiliary systems to Electrical	_____	_____	_____
<b>Plumbing/Fire Protection</b>			
- Enlarge or Detail Part Plans	_____	_____	_____
- Complete roof plans	_____	_____	_____
- Complete floor plans, details, schedules and riser diagrams	_____	_____	_____
- Provide domestic hot water heater locations, flue size/spaces requiring fire protection/sprinkler systems, location of make-up water connections and drains (to HVAC)	_____	_____	_____
- Provide specifications containing equipment and controls, equipment tabulation and schematics, fire suppression and auxiliary systems (to Electrical)	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____
<b>Electrical</b>			
- Develop interconnection/riser diagrams	_____	_____	_____
- Develop control schematics	_____	_____	_____
- Develop fire alarm, communications and security diagrams if required	_____	_____	_____
- Develop conduit and cable schedule if required	_____	_____	_____
- Review technical specifications for all discipline for final coordination of electrical requirements and equipment motor information	_____	_____	_____
• Annotate electrical sections and details	_____	_____	_____

TOPIC	YES	NO	N/A
<ul style="list-style-type: none"> <li>Finalize equipment specifications and schedules</li> <li>Coordinate equipment specifications with painting, package control system, and electric motor specifications</li> </ul>	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Instrumentation and Controls

- Finalize the P&IDs	_____	_____	_____
- Finalize network system design	_____	_____	_____
- Complete instrument installation detail drawings	_____	_____	_____
- Finalize panel layouts and details	_____	_____	_____
- Complete communication risers	_____	_____	_____
- Finalize instrument list/datasheets; include all instrument process and service criteria, input from Process Mechanical	_____	_____	_____
- Complete the instrument and input/output (I/O) lists	_____	_____	_____
- Complete specifications	_____	_____	_____
- Finalize Process Control Narrative (control descriptions) with all process parameters including control setting points, alarm settings, and scale settings, etc.	_____	_____	_____
- Finalize size and location of all panels with Electrical/Process Mechanical	_____	_____	_____
- Mark-up all instrument final locations on electrical plans/piping sheets (coordinate with Process Mechanical/Electrical)	_____	_____	_____
- Review control schematics from Electrical	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Security

- Show all security elements on plans and diagrams (or not, depending on procurement decision)	_____	_____	_____
- Complete installation drawings and details	_____	_____	_____
- Complete specifications	_____	_____	_____
- Develop equipment schedules	_____	_____	_____
- Finalize testing and training requirements for security system implementation	_____	_____	_____
- Finalize configuration/operation descriptions	_____	_____	_____
- Finalize panel layout drawings (if required)	_____	_____	_____
- Prepare material quantities and or opinions of probable cost, suitable to level established during project planning	_____	_____	_____

### Construction Cost Estimating

The designer will prepare updated construction budget cost estimate for the project as defined by AACE Class 1. The designer will prepare estimates for all specified equipment and detailed line items based on take-offs from actual design.

A&E Design Manager: \_\_\_\_\_

Date: \_\_\_\_\_



---

**Exhibit 3.5**  
**Bid Ready Document Development Form**

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**Appendix A  
Glossary**

## Bid Ready Document Development Form

Consultant:

Project Reference Information (Name, Number):

Bid ready documents will be provided in hard and electronic copy in both AutoCAD and Microstation V8 format. The Microstation drawings will be prepared using a straight conversion from AutoCAD. In general, during this phase of the task order, the designer will be expected to:

TOPIC	YES	NO	N/A
<b>Design &amp; Quality Coordination</b>			
- Prepare final bidding documents, including legal and general requirements	_____	_____	_____
- Prepare final construction drawings and specifications	_____	_____	_____
- Prepare final cost estimate	_____	_____	_____
- Obtain easements if needed	_____	_____	_____

### Construction Cost Estimating

The designer will prepare updated construction budget cost estimate for the project as defined by AACE Class 1. The designer will prepare estimates for all specified equipment and detailed line items based on take-offs from actual design.

A&E Design Manager: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX D – OXMOOR CORPORATE PARK –  
DECLARATIONS OF COVENANTS AND  
RESTRICTIONS**

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**OXMOOR CORPORATE PARK  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS**

---

This instrument prepared by and  
upon recording should be returned to:

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203  
(205) 521-8429

**TABLE OF CONTENTS**  
**OF**  
**OXMOOR CORPORATE PARK**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**ARTICLE I**

**DEFINITIONS**

1.01	ADDITIONAL PROPERTY .....	1
1.02	ARC .....	1
1.03	ARTICLES OF INCORPORATION .....	1
1.04	ARCHITECTURAL STANDARDS .....	2
1.05	ASSESSMENT .....	2
1.06	ASSOCIATION .....	2
1.07	BOARD or BOARD OF DIRECTORS .....	2
1.08	BUILDING .....	2
1.09	BYLAWS .....	2
1.10	COMMON AREAS .....	2
1.11	COMMON EXPENSES .....	2
1.13	DECLARATION .....	3
1.14	DEVELOPER .....	3
1.15	GOVERNMENTAL AUTHORITY .....	3
1.16	GROUND COVERAGE RATIO .....	3
1.17	IMPROVEMENT .....	3
1.18	LOT .....	3
1.19	MORTGAGE .....	3
1.20	MORTGAGEE .....	3
1.21	OCCUPANT .....	4
1.22	OWNER .....	4
1.23	PERSON .....	4
1.24	PROBATE OFFICE .....	4
1.25	PROPERTY .....	4
1.26	SETBACK LINE .....	4
1.27	TURNOVER DATE .....	4

**ARTICLE II**

**PROPERTY SUBJECT TO THE DECLARATION**

2.01	GENERAL DECLARATION .....	4
2.02	ADDITIONAL PROPERTY .....	5
2.03	MUTUALITY OF BENEFIT AND OBLIGATION .....	5
2.04	DEVELOPMENT OF PROPERTY .....	5
2.05	SUBDIVISION .....	6
2.06	OXMOOR DEVELOPMENT GUIDELINES .....	6

**ARTICLE III**

**EASEMENTS**

3.01 GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS ..... 6  
3.02 GRANT OF EASEMENT TO GOVERNMENTAL AUTHORITIES ..... 7  
3.03 RESERVATION OF CONTROLLED ACCESS EASEMENT ..... 7  
3.04 RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT ..... 8  
3.05 RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS ..... 8  
3.06 RESERVATION OF EASEMENT FOR UTILITIES ..... 9  
3.07 RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS AND LANDSCAPING ..... 9  
3.08 RESERVATION OF ENVIRONMENTAL EASEMENT ..... 10  
3.09 RESERVATION OF EASEMENT WITH RESPECT TO WATERFRONT LOTS ..... 10

**ARTICLE IV**

**ASSOCIATION**

4.01 MEMBERSHIP ..... 10  
4.02 BOARD ..... 11  
4.03 VOTING RIGHTS ..... 11  
4.04 DUTIES AND POWERS OF ASSOCIATION ..... 12  
4.05 AGREEMENTS ..... 12  
4.06 RULES AND REGULATIONS ..... 12  
4.07 INDEMNIFICATION ..... 13

**ARTICLE V**

**ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS**

5.02 APPOINTMENT AND REMOVAL OF ARC MEMBERS ..... 13  
5.03 PROCEDURE AND MEETINGS ..... 14  
5.04 ARCHITECTURAL STANDARDS ..... 14  
5.05 APPROVAL OF PLANS AND SPECIFICATIONS ..... 14  
5.06 CONSTRUCTION WITHOUT APPROVAL ..... 17  
5.07 INSPECTION ..... 17  
5.08 SUBSURFACE CONDITIONS ..... 17  
5.09 LIMITATION OF LIABILITY ..... 17  
5.10 COMMENCEMENT AND COMPLETION OF CONSTRUCTION ..... 17  
5.11 ENFORCEMENT AND REMEDIES ..... 18  
5.12 COMPLIANCE CERTIFICATION ..... 18  
5.13 INDEMNIFICATION ..... 18

**ARTICLE VI**

**USE AND PROPERTY RESTRICTIONS**

6.01 PROHIBITED AND PERMITTED USES ..... 19  
6.02 PLAN APPROVAL ..... 19

6.03	UNDERGROUND UTILITIES AND EXTERIOR UTILITY EQUIPMENT .....	20
6.04	SETBACK REQUIREMENTS .....	20
6.05	APPROVAL OF ALL SETBACK LINES BY ARC .....	21
6.06	MAXIMUM GROUND COVERAGE AND LANDSCAPING .....	21
6.07	HEIGHT LIMITATIONS .....	21
6.08	MAXIMUM FLOOR AREA RATIO .....	21
6.09	EXTERIOR LIGHTING .....	21
6.10	OFF-STREET PARKING AND ROADWAYS .....	21
6.11	FENCES .....	22
6.12	SERVICE AND STORAGE AREAS AND FACILITIES .....	22
6.13	SATELLITE DISHES AND ANTENNAE .....	23
6.14	DRAINAGE .....	23
6.15	ANIMALS AND PETS .....	23
6.16	TRASH, RUBBISH AND NUISANCES .....	23
6.17	SIGNAGE .....	24
6.18	EXTERIOR MATERIALS, GLASS AND WINDOW TREATMENTS .....	25
6.19	ABOVE GROUND TANKS AND WELLS .....	25
6.20	TEMPORARY STRUCTURES .....	25
6.21	LANDSCAPING FOR PARKING AREAS .....	25
6.22	SOIL EROSION AND DRAINAGE .....	25
6.23	REZONING .....	26
6.24	CONSTRUCTION OF IMPROVEMENTS .....	26
6.25	SUBDIVISION AND INTERVAL OWNERSHIP .....	27
6.26	TRAFFIC REGULATIONS .....	27
6.27	LAKES AND WATER FEATURES .....	27
6.28	COMPLIANCE WITH GOVERNMENTAL REGULATIONS .....	28
6.29	VARIANCES .....	28
6.30	ENFORCEMENT AND REMEDIES .....	28

**ARTICLE VII**

**MAINTENANCE RESPONSIBILITIES**

7.01	RESPONSIBILITIES OF OWNERS .....	29
7.02	RESPONSIBILITIES OF ASSOCIATION .....	30

**ARTICLE VIII**

**COMMON AREA ASSESSMENTS**

8.01	ASSESSMENTS AND CREATION OF LIEN .....	30
8.02	UNIFORM RATE OF ASSESSMENTS .....	31
8.03	COMPUTATION OF ANNUAL ASSESSMENTS .....	31
8.04	SPECIAL ASSESSMENTS .....	33
8.05	INDIVIDUAL ASSESSMENTS .....	33
8.06	DATE OF COMMENCEMENT OF ASSESSMENTS .....	33
8.07	EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION .....	34
8.08	SUBORDINATION OF LIEN .....	35
8.09	CERTIFICATES .....	36



**ARTICLE IX**

**CASUALTY, CONDEMNATION AND INSURANCE**

9.01 DAMAGE OR DESTRUCTION TO COMMON AREAS ..... 36  
9.02 DAMAGE OR DESTRUCTION TO LOTS AND IMPROVEMENTS ..... 36  
9.03 CONDEMNATION OF COMMON AREAS ..... 36  
9.04 CONDEMNATION OF LOTS AND IMPROVEMENTS ..... 37  
9.05 INSURANCE ..... 38

**ARTICLE X**

**TERM AND AMENDMENTS**

10.01 TERM ..... 38  
10.02 AMENDMENTS PRIOR TO TURNOVER DATE ..... 38  
10.03 AMENDMENTS AFTER TURNOVER DATE ..... 38  
10.04 RESTRICTIONS ON AMENDMENT ..... 39

**ARTICLE XI**

**DENIAL OF USE PRIVILEGES**

11.01 AUTHORITY AND ENFORCEMENT ..... 39  
11.02 PROCEDURE ..... 40  
11.03 NON-EXCLUSIVE REMEDIES ..... 40

**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

12.01 CONTROL BY DEVELOPER ..... 40  
12.02 LEGAL EXPENSES ..... 41  
12.03 SEVERABILITY ..... 41  
12.04 CAPTIONS AND HEADINGS ..... 41  
12.05 PRONOUNS AND PLURALS ..... 41  
12.06 BINDING EFFECT ..... 41  
12.07 CONFLICT OR AMBIGUITY ..... 41  
12.08 NO REVERTER ..... 41  
12.09 INTERPRETATION ..... 41  
12.10 RIGHTS OF THIRD PARTIES ..... 42  
12.11 NO TRESPASS ..... 42  
12.12 NO PARTITION ..... 42  
12.13 STANDARDS FOR REVIEW ..... 42  
12.14 ORAL STATEMENTS ..... 42  
12.15 NOTICES ..... 42  
12.16 ASSIGNMENT ..... 43  
12.17 FURTHER ASSURANCES ..... 43

12.18 NO WAIVER ..... 43  
12.19 PERPETUITIES ..... 43

EXHIBITS:

A Legal Description of Property

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**OXMOOR CORPORATE PARK**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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THIS OXMOOR CORPORATE PARK DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 14th day of August, 2000 by USX CORPORATION, a Delaware corporation.

**RECITALS:**

Developer, as hereinafter defined, is the owner of the Property, as defined in Section 1.25 below, and desires to own, develop, improve, lease and sell the Property subject to certain easements, covenants, conditions, restrictions, requirements and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration and maintenance of the Property.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Jefferson County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property described in Exhibit A attached hereto and any of the Additional Property, as defined in Section 1.01 below (but only to the extent that Developer submits any Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**ARTICLE I**

**DEFINITIONS**

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.01 **ADDITIONAL PROPERTY.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

1.02 **ARC.** The term or letters "ARC" shall mean the architectural review committee for the Association appointed by the Board pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration and any additional rights as may be authorized by the Board.

1.03 **ARTICLES OF INCORPORATION.** The term "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.04 **ARCHITECTURAL STANDARDS.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of reviewing and approving any Improvements which may be made to any Lot.

1.05 **ASSESSMENT.** The term "Assessment" shall mean, collectively, the Annual Assessments (as defined in Section 8.03 below), Special Assessments (as defined in Section 8.04 below), and Individual Assessments (as defined in Section 8.05 below).

1.06 **ASSOCIATION.** The term "Association" shall mean Oxmoor Corporate Park Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

1.07 **BOARD or BOARD OF DIRECTORS.** The term "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Articles of Incorporation and Bylaws.

1.08 **BUILDING.** The term "Building", with an initial capital letter, shall mean and refer to any building or other structure of any nature constructed, situated, erected, maintained, placed or installed on any Lots.

1.09 **BYLAWS.** The term "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

1.10 **COMMON AREAS.** The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners and shall also mean and include (regardless of whether legal title to the same has been conveyed to the Association) (a) all private roadways or easements upon which private roadways providing ingress to and from the Property have been constructed within the boundaries of the Property, (b) all private roadways or easements upon which private roadways providing ingress to and egress from the Property have been constructed which may be adjacent to or in close proximity with (but otherwise outside of) the Property (other than any such private roadways or easements which are located solely within the boundary lines of any Lot), (c) all signage, street lights, lighting, walkways, sidewalks, bridges, paths, bicycle and jogging paths and lanes, gates, walls, fences, guardhouses, Improvements, landscaping and landscaped or other areas immediately adjacent to any public or private roadways, including all medians within any public or private roadways, whether the same are located within the boundaries of the Property or on any public or private roadways which may be adjacent to or in close proximity with the Property which provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot); provided, however, that to the extent any Improvements are constructed by either Developer or the Association within the easement areas reserved pursuant to Sections 3.07 and 3.09(b) below, then such easement areas and any Improvements thereto shall be deemed Common Areas, (d) all lakes, water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot), (e) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers), and (f) all parks, nature trails and all other recreational facilities and areas and any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

1.11 **COMMON EXPENSES.** The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those

1.21 **OCCUPANT**. The term "Occupant" shall mean and include any guests, tenants, agents, servants, employees, licensees and invitees of any Owner and their respective guests, tenants, agents, servants, employees, licensees, invitees and any other person who occupies, uses or enters upon any Lot or Building with the permission, either express or implied, of the Owner or any Occupant of such Lot or Building. All actions or omissions of any Occupant are and shall be deemed the action or omission of the Owner of such Lot.

1.22 **OWNER**. The term "Owner", with an initial capital letter, shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Building solely by virtue of a lease, contract, installment contract or other agreement.

1.23 **PERSON**. The term "Person" with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

1.24 **PROBATE OFFICE**. The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Jefferson County, Alabama, Bessemer Division and any successors thereto which serves as the official public registry for the public recording of real estate documents in the Bessemer Division of Jefferson County, Alabama.

1.25 **PROPERTY**. The term "Property", with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama which is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference, together with all private roadways depicted on any subdivision plats for any of the Property and any and all rights-of-way therefore and any other private roadways and the rights-of-way therefore which are not located within the Property but provide access to and from the Property or any part thereof. The Property shall also include any Additional Property made subject to this Declaration pursuant to **Section 2.02** hereof.

1.26 **SETBACK LINE**. The term "Setback Line" shall mean a line within the boundaries of a Lot running parallel to the boundary lines of such Lot, as such boundary lines are reflected on a subdivision plat for the Property or any portion thereof which has been recorded in the Probate Office. All Setback Lines are measured from the boundary lines of such Lot. As provided in **Section 6.04** below, Setback Lines are established separately for Buildings and for parking areas for each Lot.

1.27 **TURNOVER DATE**. The term "Turnover Date" shall mean the earlier of (a) the date on which Developer no longer owns any of the Property or (b) the date on which Developer elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board pursuant to **Section 4.02** below and (ii) all voting rights in the Association reserved to Developer pursuant to **Section 4.03(c)** below.

## ARTICLE II

### **PROPERTY SUBJECT TO THE DECLARATION**

2.01 **GENERAL DECLARATION**. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved

and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to all of the Property and shall be binding upon and inure to the benefit of Developer and all Owners and Occupants of the Property and any Lot and Common Area thereof.

2.02 **ADDITIONAL PROPERTY.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the voting rights and percentages in the Association shall be changed so that each Lot is entitled to the voting percentage determined by dividing the gross acreage of each Lot by the gross acreage of all Lots (excluding Common Areas) within the Property, including all Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02 of this Declaration and (iii) if Developer elects to add Additional Property to this Declaration, then this Declaration may be amended in accordance with the provisions of this Section 2.02 without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

2.03 **MUTUALITY OF BENEFIT AND OBLIGATION.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of each and every Lot within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

2.04 **DEVELOPMENT OF PROPERTY.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot within the Property, to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) installation and maintenance of any sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas and (e) installation and maintenance of gates, guardhouses and other limited access devices and trash and refuse facilities on or within any of the Common Areas. Furthermore, Developer shall have the right, but not the obligation, to (i) make improvements and changes to all Lots and

to any other portions of the Property owned by Developer and (ii) change the location of the property lines or boundaries of any Lots or any other portion of the Property owned by Developer. The exercise by Developer of any of the rights set forth in this Section 2.07 may be exercised solely by Developer without any requirement that the consent or approval of any Owners be obtained. Each Owner, by acceptance of a deed to any Lot, acknowledges and agrees that Developer or affiliates thereof may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.02 above. Developer has heretofore formulated a general plan of development and use for the Property which may have previously been submitted to and reviewed by some or all of the Owners. Notwithstanding anything provided herein or in such general plan of development to the contrary, the general plan of development is subject to change from time to time and at any time as determined by Developer in its sole and absolute discretion.

2.05 **SUBDIVISION.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more subdivision plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, Setback Lines, lakes, retention ponds and drainage basins. Any such subdivision plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.05 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Common Areas and other portions of the Property owned by Developer and (b) amend from time to time and at any time Exhibit A to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property.

2.06 **OXMOOR DEVELOPMENT GUIDELINES.** The terms and provisions of this Declaration are in addition to, and each Owner covenants and agrees to be bound by, the Oxmoor Development Guidelines promulgated by the Oxmoor Steering Committee, as the same may be amended from time to time (the "Oxmoor Development Guidelines"). In the event of any conflict, ambiguity or inconsistency between this Declaration and the Oxmoor Development Guidelines, then the more restrictive of the two shall at all times control. Each Owner, by acceptance of a deed conveying any interest in any portion of the Property, acknowledges and agrees that, in addition to the requirements of this Declaration requiring that all Improvements to a Lot be approved by the ARC, the Oxmoor Steering Committee may also have the right under the Oxmoor Development Guidelines to review and approve any Improvements to be made to any Lot.

### ARTICLE III

#### EASEMENTS

3.01 **GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS.** Subject to the provisions of Section 3.03 below, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, and all other Owners, Occupants and other parties having any rights or interest therein. Subject to the provisions of Section 3.03 below, the easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot. The easements and rights granted pursuant to this Section 3.01 are expressly subject to the rights reserved by Developer and the Association to restrict access to the Property

as provided in Section 3.03 below. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Common Areas shall be subject to any and all rules and regulations established from time to time by the Board pursuant to Section 4.06 below. The easement and rights granted pursuant to this Section 3.01 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot.

3.02 **GRANT OF EASEMENT TO GOVERNMENTAL AUTHORITIES.** Subject to the provisions of Section 3.03 below, Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and non-exclusive easement over, across, through and upon all of the private roadways within the Property for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.03 **RESERVATION OF CONTROLLED ACCESS EASEMENT.**

(a) Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby waive all rights of uncontrolled and unlimited access, ingress to and egress from such Lot and acknowledges and agrees that (i) in order to provide a secure and safe environment, access and ingress to and egress from the Property may be controlled, restricted and limited to exclude the general public therefrom and (ii) access, ingress to and egress from such Owner's Lot shall be limited to the roads, sidewalks, walkways, paths, trails and bicycle and jogging paths and lanes designated as Common Areas by Developer and any public roads within the Property or directly adjacent thereto; provided, however, that, access to and from all Lots shall be provided at all times to all Owners and their Occupants.

(b) Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, the right and privilege, but not the obligation, to (i) maintain guarded or electronically-monitored gates controlling, limiting and restricting vehicular and pedestrian access to and from any portion of the Property and (ii) require payment of toll charges for use of any private roads within the Property by permitted commercial traffic or by members of the general public, provided that in no event shall any such tolls be applicable to (1) any Owner or Occupant, (2) any Mortgagee or its designated representative, (3) any of the Governmental Authorities or their designated agents and representatives or (4) Developer and those individuals designated from time to time by Developer to be afforded access to the Property.

(c) Notwithstanding anything provided to the contrary in this Declaration, Developer (i) does hereby establish and reserve the right, in its sole and absolute discretion, at any time and from time to time, to dedicate any of the private roadways within the Property as public roadways to any Governmental Authority designated by Developer without requirement that the approval or consent of any Owner, Occupant or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any of the private roadways within the Property are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot, and each Mortgagee, by the acceptance of any Mortgage on any Lot, shall be deemed to, and each does hereby, irrevocably appoint Developer as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of any of the private roadways within the Property to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors,



administrators, personal representatives, successors and assigns and anyone having any interest in any Lot or in any of the easement rights created or granted in this Declaration. The rights reserved by Developer pursuant to this Section 3.03(c) may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein to Developer.

(d) The easements, rights and privileges granted in Sections 3.01 and 3.03 shall pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot.

(e) Notwithstanding anything provided herein to the contrary, the placement or maintenance of a guardhouse, gatehouse, wall or any other improvements which limit or restrict access to the Property is not intended to obligate either Developer or the Association to provide any form of security within the Property and each Owner, for such Owner and any Occupant of any Lot or any Buildings thereon, and for their respective heirs, executors, personal representatives, administrators, successors and assigns, does hereby irrevocably and unconditionally waive, release and forever discharge Developer and the Association and their respective officers, directors, shareholders, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of any loss, damage or injury to person or property, including death, as a result of any entry, whether lawful or unlawful, onto the Property or any of the Lots or any Buildings thereon by any third party or arising out of the acts or omissions of any third party.

3.04 **RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purpose of (a) providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any Building, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of such Building directly affected thereby and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

3.05 **RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS.**

(a) Developer does hereby establish and reserve, for itself, the ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Improvements in and to any Lots and Common Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic, directional and street identification signage and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas. Developer hereby establishes and reserves for itself and its successors and assigns a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

3.06 **RESERVATION OF EASEMENT FOR UTILITIES.** Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots, which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property, or any other real property adjacent thereto or in close proximity therewith, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, communications, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduit, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property adjacent thereto or in close proximity therewith. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.06 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.06 shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot, (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.06 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.06 shall not create any obligation, responsibility or liability of Developer or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.06.

3.07 **RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS AND LANDSCAPING.**

(a) Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width on each Lot lying parallel to and running along the common boundary line between each Lot and any public or private roadway which is directly adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic and directional signage and landscaping and related improvements thereto (including, without limitation, irrigation systems and lighting); provided, however, that neither Developer nor the Association shall have any obligation to construct any of the foregoing improvements.

(b) Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land twenty (20) feet in width along that portion of each Lot lying parallel to and running along the common boundary line between each Lot and any public or private roadway which is directly

adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing and replacing thereon landscaping and related improvements, including, without limitation, irrigation systems and lighting, in order to provide a general plan of landscaping for all of the Property; provided, however, that neither Developer nor the Association shall have any obligation to construct or install any of the foregoing improvements within the aforesaid easement area.

3.08 **RESERVATION OF ENVIRONMENTAL EASEMENT.** Developer does hereby establish and reserve for itself, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, stormwater discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer, the ARC or the Association of the rights reserved in this Section 3.08 shall not unreasonably interfere with the use or occupancy of any Building.

3.09 **RESERVATION OF EASEMENT WITH RESPECT TO WATERFRONT LOTS.**

(a) Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any portion of any Lot or Common Area lying within thirty (30) feet of any lakes or other water features which abut or are contiguous to any such Lot or Common Area for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash therefrom so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that the reservation of the foregoing easements shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing action.

(b) Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement over, across, through, under and upon a twenty-five (25) foot strip of land running along that portion of any Lot which abuts or is contiguous to any lake, water feature, reservoir or waterway within the Property for the purposes of (i) installing, constructing, maintaining, repairing and replacing concrete or stone gutters and aprons thereon and walkways or paths adjacent to such lake, water feature, reservoir or waterway and (ii) providing to Developer and to all Owners and their respective Occupants, the non-exclusive use of any such walkways and paths constructed thereon; provided, however, that the reservation of the foregoing easements shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing action.

**ARTICLE IV**

**ASSOCIATION**

4.01 **MEMBERSHIP.** The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have the voting rights set forth in section 4.03(c) below at all times prior to the Turnover Date, (b) in the event any Lot is owned by more than one (1) Person, then the Owner of such Lot shall, by written notice to the Board, designate only

one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owner, (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed and (d) an Owner of a Lot may designate in a written instrument provided to the Association one (1) Person who may be a ground lessee of such Owner's Lot or an Occupant of any Building situated on such Owner's Lot who shall have the voting rights attributable to such Owner's Lot. Unless specifically designated by the Owner of a Lot, no ground lessee or Occupant shall be entitled to any voting rights in the Association. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 **BOARD.** The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. During the Control Period, the number of members of the Board shall be three (3). Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association during the Control Period. From and after the expiration of the Control Period, the number of members of the Board shall be increased to five (5), three of whom shall be appointed (and subject to removal) by Developer and two (2) of whom shall be elected by the Owners in accordance with the terms of the Bylaws. From and after the Turnover Date, the Owners shall have the exclusive right to appoint and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot, vests in Developer the authority to appoint and remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

4.03 **VOTING RIGHTS.**

(a) Subject to the rights reserved by Developer in Section 4.03(c) below and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, following the Turnover Date, the Owner of each Lot shall be entitled to that number of votes equal to one hundred (100) multiplied by the percentage obtained by dividing the gross acreage of such Owner's Lot by the total gross acres of all Lots within the Property (exclusive of Common Areas). To the extent any matter is presented to the members of the Association for a vote or approval at any time following the Turnover Date, then the voting requirements specified in the Bylaws shall at all times govern. Except as specifically authorized in Section 4.01(d) above, only those Owners who hold legal title to a Lot shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times at which the Owners are entitled to vote on any matters, Developer shall be entitled to all voting rights attributable to any Lots owned by Developer.

(b) Each Owner, by acceptance of a deed to a Lot, consents and agrees to the dilution of such Owner's voting interest in the Association by virtue of the resubdivision of any Lot by Developer pursuant to Section 2.05 above or the submission of any Additional Property to the terms of this Declaration. Fractional voting shall not be permitted.

(c) Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, until the occurrence of the Turnover Date, Developer shall have the sole, exclusive and absolute right to exercise all voting rights in the Association; provided, however, that with respect to any (i) the election of two (2) of the five (5) members of the Board by the Owners following the expiration of the Control Period, the Owners shall be entitled to vote on such two (2) members as provided in the Bylaws or (ii) any of those matters described in Section 10.04 below which require the consent or approval of the Owners, then such matters shall be submitted to the Owners for consent and approval as required by the terms and provisions of Section 10.04 below.

**4.04 DUTIES AND POWERS OF ASSOCIATION.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The powers and authority granted herein and in the Articles of Incorporation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**4.05 AGREEMENTS.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice, including third party management companies which may be affiliates of Developer, such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Common Areas, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incident to the employment of a manager of the Association or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board or the officers of the Association by this Declaration, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the cost of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the administration and operation of the Property and the Association, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association.

**4.06 RULES AND REGULATIONS.** In addition to the terms and provisions set forth in this Declaration, the Board may establish and enforce rules and regulations governing the use, improvement, maintenance and repair of all Lots and Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas by Owners and Occupants. Such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or by the vote of the members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

4.07 **INDEMNIFICATION.** The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on the ARC or any other committee established by the Board) may be entitled, including anything provided to the contrary in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.07 and the costs of such insurance shall constitute a Common Expense.

## ARTICLE V

### **ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS**

5.01 **COMMITTEE COMPOSITION.** For the purposes of this Declaration, the ARC shall be deemed a committee of the Association. The Board shall appoint not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below, to serve as agents of the Association on the ARC. The persons designated by the Board to serve on the ARC shall be agents and representatives of the Association and may, but shall not be required to be, members of the Association or Owners. The regular term of office for each member of the ARC shall be one (1) year, coinciding with the fiscal year of the Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below. Each member of the ARC shall be deemed an agent of the Association.

5.02 **APPOINTMENT AND REMOVAL OF ARC MEMBERS.** Subject to the terms and provisions of this Section 5.02, the Board shall have the sole and exclusive right to appoint and remove all persons who serve as agents and representatives of the Association on the ARC. Any person appointed as a member of the ARC may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC, then the Board shall appoint a substitute member of the ARC to fill the vacancy of such deceased or resigned member for the remainder of the term of such former member. Notwithstanding anything provided to the contrary in this Declaration, the Articles of Incorporation or the Bylaws, Developer may, in its sole and absolute discretion, elect to reserve the right following the Turnover

Date to exercise all rights and functions of the ARC set forth herein with respect to any Lots owned by Developer as of the Turnover Date and any Additional Property which Developer may on its sole discretion, elect to add to this Declaration at any time after the Turnover Date.

5.03 **PROCEDURE AND MEETINGS.** The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet on a regular basis as well as upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses and shall be paid by the Association. Each member of the ARC may be paid a stipend or honorarium as may from time to time be determined by the Board and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the ARC, subject to the approval of such expenses by the Board. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC, including, without limitation, the right to designate one (1) person to act on behalf of the entire ARC in all matters in which the ARC is granted the right to act under the terms of this Declaration.

5.04 **ARCHITECTURAL STANDARDS.** The ARC is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Improvements on a Lot are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

5.05 **APPROVAL OF PLANS AND SPECIFICATIONS.**

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT BY ANY OWNER, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR ANY IMPROVEMENTS THEREON UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY BUILDINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS AND AREAS, AWNINGS, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY BUILDING OR**

**IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW.**

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all Buildings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Building or other Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements, which shall include the following:

(i) Two (2) copies of a professionally and accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Building(s) to be constructed on said Lot, the location of all utilities, driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Lot;

(ii) Two (2) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Building to be constructed on the Lot;

(iii) Two (2) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Building on such Lot or any other Improvements thereto, including, without limitation, the type and color of all materials (including roofing and signage materials) to be utilized on the exterior of a Building and the color of paint or stain to be used on all exterior portions of such Building;

(iv) Two (2) copies of a landscaping plan, including appropriate screening for all trash receptacles, mechanical equipment, utility boxes and service areas, together with the irrigation (underground sprinkler) plan for such Lot;

(v) Two (2) copies of a lighting plan, including specifications, for any exterior lighting to be utilized on such Lot or with respect to any Improvements thereto; and

(vi) A certification by an independent professional engineer that the site meets the standards for drainage established in Section 6.14 hereof.

(vii) Such other plans, specifications or other information or documentation as may be required by the ARC or the Architectural Standards.

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property.



The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked "approved", "approved as noted" or "disapproved". Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within a Building that do not affect the exterior appearance of such Building without the necessity or requirement that the approval or consent of the ARC be obtained.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a soil erosion indemnity in favor of the ARC, the Association and Developer.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

(f) Any revisions, modifications or changes in any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of any Building or the other Improvements approved by the ARC has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing other related construction work) within one (1) year from the date on which the ARC has approved the plans and specifications for such Building or other Improvements, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all plans

and specifications for any Building or other Improvements to the ARC for approval in the same manner specified above.

5.06 **CONSTRUCTION WITHOUT APPROVAL.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any approved plans and specifications for any Improvements for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.11 below.

5.07 **INSPECTION.** The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

5.08 **SUBSURFACE CONDITIONS.** The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of plans and specifications by the ARC for any Building or other Improvements on a Lot Area shall not be construed in any respect as a representation or warranty by the ARC or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvements thereon.

5.09 **LIMITATION OF LIABILITY.** Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Buildings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Buildings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon.

5.10 **COMMENCEMENT AND COMPLETION OF CONSTRUCTION.** Upon commencement of construction of any Building, construction work thereon shall be prosecuted diligently and continuously and shall be completed within two (2) years of the commencement date of said construction (unless an extension

is granted in writing by the ARC), such completion to be evidenced by a final certificate of occupancy issued by the appropriate Governmental Authorities.

5.11 **ENFORCEMENT AND REMEDIES.** In the event any of the provisions of this Article V are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article V including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or Occupant or their respective contractors to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 5.11 shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

5.12 **COMPLIANCE CERTIFICATION.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Building or other Improvement has been constructed in accordance with the provisions of this Declaration.

5.13 **INDEMNIFICATION.** The Association shall and does hereby indemnify, defend and agree to hold each member of the ARC harmless from and against any and all costs and expenses, including court costs and reasonably attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding) to which such person may be made a party by reason of being or having been a member of the ARC. The members of the ARC shall not be liable for any mistake in judgment, negligence or otherwise except for their own wilful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The members of the ARC shall be deemed agents of the Association and shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the ARC and the Association shall and does hereby indemnify, agree to defend and hold each member of the ARC harmless from any and all liability to others on account of any such contract or commitment entered into by any member of the ARC in furtherance of their respective duties and responsibilities under this Declaration. The Association shall maintain adequate general liability and, to the extent financially feasible, directors' and officers' liability insurance (which shall also name the members of the ARC as agents of the Association as additional insureds thereunder), in order to fulfill its obligations under this Section 5.13 and the costs of such insurance shall constitute a Common Expense.

## ARTICLE VI

### USE AND PROPERTY RESTRICTIONS

#### 6.01 PROHIBITED AND PERMITTED USES.

(a) No Lot may be utilized for any of the following uses or purposes:

(i) Labor camps, prisons, jails or honor farms;

(ii) Commercial storage of building or construction materials (other than in connection with the construction of Buildings and other Improvements on a Lot);

(iii) Smelting of iron, tin, zinc or other ores, refining of petroleum or its products or mining activities;

(iv) Drive-in theaters;

(v) Stock yards or slaughter houses or commercial poultry, livestock, swine or other animal production or breeding farms or kennels;

(vi) Junk yards, baling, storage or processing of scrap metal, glass, paper or rags, storage or processing of wrecked or junked motor vehicles or any other type of outdoor storage, other than the storage of general office refuse stored within service or storage areas that comply with the terms and provisions of Section 6.12 below or in connection with the construction of Improvements to a Lot;

(vii) Racetracks, raceways or drag strips;

(viii) Landfills or garbage disposal areas or for the dumping, processing, incineration or reduction of garbage, sewage, dead animals, refuse or waste;

(ix) Trailer or mobile home parks;

(x) Mini-warehouses; or

(xi) Any other unsightly, obnoxious or objectionable businesses or uses which the ARC, in its sole and absolute discretion, may disapprove.

(b) Lots may be used for such uses as are compatible with the applicable zoning ordinances applicable to the Property and then, only to the extent that such use or purpose has been approved in writing by the ARC. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof may be utilized and developed for any of the uses included in the definition of the Common Areas.

6.02 PLAN APPROVAL. No Building or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Building or other Improvements have been approved by the ARC in the manner set forth in Article V above.

6.03 UNDERGROUND UTILITIES AND EXTERIOR UTILITY EQUIPMENT.

(a) All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground ; provided, however, that overhead or above ground wires, poles, pipes and other above ground machinery and equipment may be utilized for temporary electrical service to any Building during the initial construction of a Building on a Lot.

(b) All electrical, gas, telephone and cable television meters, transformers and junction boxes, if any, for each Lot, shall be located, to the greatest extent possible, so as not to be visible from any public or private roadway within or adjacent to the Property. All Owners shall install and maintain landscaping around all such meters and all electrical transformers and junction boxes situated on such Owner's Lot in a manner to visually screen, to the greatest extent practicable, all such meters, transformers and junction boxes from view from any public or private roadway within or adjacent to the Property. All exterior heating, ventilating and air conditioning compressor units and equipment, including cooling towers, storage tanks and other similar equipment, shall be located either within a wholly-enclosed penthouse (equipment room) on top of the Building or on the ground level of such Building in a location and with appropriate screening by either walls or landscaping so that the same is not visible from any of the public or private streets within or adjacent to the Property.

6.04 SETBACK REQUIREMENTS.

(a) Subject to the provisions of Section 6.05 below, if a Lot abuts or is contiguous to Lakeshore Parkway or Milan Parkway, then the Setback Line along and adjacent to Lakeshore Parkway and Milan Parkway for (i) a Building shall be a minimum of forty (40) feet from Lakeshore Parkway or Milan Parkway and (ii) any parking areas for any such Lot shall be a minimum of ten (10) feet from Lakeshore Parkway or Milan Parkway.

(b) Subject to the provisions of Section 6.05 below, if a Lot abuts any other public or private streets (other than those described in Section 6.04(a) above), then the Setback Line along any such public or private streets for (i) a Building shall be a minimum of forty (40) feet from all such public or private streets and (ii) any parking areas for such Lot shall be a minimum of ten (10) feet from all such public or private streets.

(c) Subject to the provisions of Section 6.05 below, if a Lot abuts another Lot, then the Setback Line along the Lot line of the contiguous Lot for (i) a Building shall be a minimum of twenty (20) feet from the property line of the contiguous Lot and (ii) any parking areas on such Lot shall be a minimum of ten (10) feet from the property line of the contiguous Lot.

(d) Subject to the provisions of Section 6.05 below, if a Lot abuts any lake or water feature within the Property, then the Setback Line along such lake or water feature for (i) a Building shall be a minimum of thirty (30) feet from such lake or water feature and (ii) any parking areas for such Lot shall be a minimum of thirty (30) feet from such lake or water feature.

(e) All parking areas or parking lots for a Lot shall be set back at least twenty (20) feet from the principal Building on such Lot. The areas located between the principal Building and the parking areas or parking lots for such Lot shall be landscaped in accordance with landscaping plans submitted to and approved by the ARC.

(f) Subject to the provisions of Section 6.05 below, no Building shall be built within the Setback Lines established pursuant to Section 6.04(a)(i), 6.04(b)(i), 6.04(c)(i) or 6.04(d)(i) above.

Furthermore, subject to the provisions of Section 6.05 below, no parking areas shall be built within the Setback Lines established pursuant to Sections 6.04(a)(ii), 6.04(b)(ii), 6.04(c)(ii) or 6.04(d)(ii) above.

6.05 **APPROVAL OF ALL SETBACK LINES BY ARC.** Notwithstanding anything provided in Section 6.04 above to the contrary, the ARC shall have the right to require Setback Lines applicable to both Buildings and parking areas for any Lot which are different than those described or established pursuant to Section 6.04 above, including establishing Setback Lines which are less than or greater than those specified in or established pursuant to Section 6.04 above. The approval or establishment of Setback Lines by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar Setback Lines for any other Lot.

6.06 **MAXIMUM GROUND COVERAGE AND LANDSCAPING.** The maximum Ground Coverage Ratio for each Lot shall in no event exceed seventy-five percent (75%) of the gross area of such Lot. All areas of a Lot which do not contain Buildings, parking areas, driveways, walkways or other impervious surfaces shall be landscaped in accordance with landscaping plans to be submitted to the ARC for approval as part of the requirements of Section 5.05(b) above. All landscaped areas of each Lot shall be irrigated by underground lawn sprinkler systems. All landscaping for each Lot must be installed no later than the date any portion of any Building situated on such Lot is occupied for the conduct of business. All exterior Improvements, including, without limitation, fountains, reflectors, flagpoles, statues, exterior sculptures, exterior furnishings and any and all fixtures or accessories of any nature, must be approved in writing by the ARC.

6.07 **HEIGHT LIMITATIONS.** The maximum height limitations for any Buildings to be constructed on each Lot shall be determined by the ARC, in its sole and absolute discretion; provided, however, that (a) the maximum height limitations for any Building shall not exceed the maximum height limitations, if any, established for that particular Lot by the applicable Governmental Authorities and (b) the approval or establishment of a maximum height limitation by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar Building heights for any other Lot or Building.

6.08 **MAXIMUM FLOOR AREA RATIO.** The maximum floor area ratio for each Building on each Lot shall be determined by the ARC, in its sole and absolute discretion; provided, however, that (a) the maximum floor area ratio for any Building shall not exceed the maximum floor area ratio, if any, established for that particular Lot by the applicable Governmental Authorities and (b) the approval or establishment of a maximum floor area ratio by the ARC for one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approval similar floor area ratios for any other Lot or Building.

6.09 **EXTERIOR LIGHTING.** All exterior lighting for any Building, including, without limitation, free standing lighting and accent lighting, shall be in keeping with the Architectural Standards and must be approved by the ARC. All lighting shall, to the greatest extent practicable, illuminate only the Lot on which it is located and shall be positioned in such a manner so as, to the greatest extent practicable, not to constitute a nuisance or hazard to any other Lots or Buildings within the Property.

6.10 **OFF-STREET PARKING AND ROADWAYS.**

(a) No on-street parking or parking in or upon any of the Common Areas shall be permitted. Adequate off-street parking shall be constructed on each Lot as part of the construction of Improvements thereon. The size and location of all off-street parking on a Lot and the landscaping of all such parking areas shall be approved by the ARC in accordance with the provisions of Article V hereof; provided, however, that (i) all Lots shall provide for off-street parking equal to at least three and one-half but no more than eight (8) parking spaces per each 1,000 gross square feet of space within any Building constructed on such Lot and (ii) all parking areas situated on any Lot shall be subject to the landscaping

provisions and requirements set forth in Section 6.21 below. No use shall be made of any Lot or Building(s) situated thereon which require or would reasonably be expected to require or attract parking in excess of the capacity of the parking facilities located on such Lot.

(b) All parking areas on each Lot shall (i) be paved to provide dust-free, all weather surfaces, (ii) be adequate in area and number of parking spaces provided in order to comply with the minimum standards required by any applicable Governmental Authorities, (iii) contain adequate driveways and space for movement of vehicles, (iv) meet at grade with connecting public or private streets, (v) be striped to designate parking spaces, (vi) contain concrete curbing, sidewalks and walkways as well as proper drainage, (vii) satisfy and comply with all applicable rules and regulations of all Governmental Authorities and (viii) satisfy the setback and landscaping requirements of Sections 6.04 and 6.21 hereof. Each Owner shall maintain all parking areas and driveways on its Lot in a clean and good condition at all times and clear of all refuse, rubbish, trash or debris of any nature.

(c) All curb cuts providing access between any Lot and any public or private roadway within or adjacent to the Property shall be subject to the prior written approval of the ARC.

(d) No portion of any Lot and no drive or roadway constructed within the boundary lines of any Lot may be utilized to provide access, ingress to or egress from any property lying outside of the boundaries of the Property without the express prior written consent of Developer, which consent may be withheld by Developer in its sole and absolute discretion.

(e) Except as otherwise expressly provided in this Section 6.10(e), mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar type of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot, which structure must be approved by the ARC. Notwithstanding the foregoing provisions of this Section 6.10(e), the (i) temporary parking of automobiles, small pick-up trucks and motorcycles by employees, tenants or invitees of any Owner or Occupant of any Lot during business hours or while working in any Building situated on any Lot, (ii) the use and temporary parking of golf carts, delivery trucks, vans and other vehicles which are making deliveries to any Lot or which are utilized in the maintenance or operation of any Improvements on any Lot or (iii) subject to the terms and provisions of Sections 6.20 and 6.24 hereof, the use and temporary parking of any construction-related vehicles, equipment or machinery which are utilized in the construction of Improvements on any Lot, shall, in each case, be permitted so long as such vehicles park in designated parking spaces and otherwise comply with the terms and provisions of this Declaration. Neither the Common Areas nor any public or private streets within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment. Furthermore, any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot (unless such repair work is conducted within a solely wholly-enclosed structure on any such Lot) or within any portion of the Common Areas.

6.11 **FENCES**. No fences of any kind or material shall be permitted within the Property except as approved by the ARC.

6.12 **SERVICE AND STORAGE AREAS AND FACILITIES**. No materials, supplies, equipment or machinery shall be stored on any Lot outside of a Building without the prior written approval of the ARC; provided, however, that temporary storage of construction materials may be utilized during the construction of any Building or Improvements on a Lot so long as the same are removed upon completion of construction.

Each Building constructed on a Lot shall include a service area of adequate size and location to facilitate trash removal and for the loading and unloading of merchandise, materials and otherwise handling deliveries. All service areas shall be paved, be accessible to a public or private street within the Property, be located at the side or rear of the Building situated on such Lot, be enclosed on at least three (3) sides and be screened from view from any public or private streets within or adjacent to the Property by either walls, fencing or landscaping as may be approved by the ARC.

6.13 **SATELLITE DISHES AND ANTENNAE.** No satellite dishes or radio, telephone (including cellular) or telecommunication antennae, receivers, aerials or other similar devices shall be attached to or installed on any Lot or Building unless the same are approved by the ARC, which approval may be conditioned upon, among other things, that such dishes, antennae and other devices not be visible from any adjoining Building or Lot or any public or private streets within or adjacent to the Property. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Building which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity with the Property.

6.14 **DRAINAGE.** Each Owner shall provide and maintain on such Owner's Lot adequate drainage facilities to accommodate any storm water runoff resulting from any Improvements being constructed on such Owner's Lot. Each Owner shall also insure that all storm water drainage is in compliance with all rules and regulations of applicable Governmental Authorities. Each Owner shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members, trustees and representatives harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and all other amounts suffered, paid or incurred by any of them in connection with any action, suit or other proceeding (including the settlement of any suit or proceeding) to which any such Person may be made a party by reason of the violation by such Owner of the terms and provisions of this Section 6.14.

6.15 **ANIMALS AND PETS.** No animals, livestock, birds, poultry or pets of any kind shall be kept, raised or bred by any Owner upon any Lot or any other portion of the Property; provided, however, that animals which are trained in or in fact providing security or assisting persons with disabilities shall be authorized and allowed on the Property.

6.16 **TRASH, RUBBISH AND NUISANCES.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Improvements which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots or Buildings within the Property. Each Owner and Occupant shall refrain from any act or use of a Lot or Building which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any of the Governmental Authorities. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Improvements or other portion of the Property. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot or Improvements or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same (although the Association shall be under no obligation to remove the same).



(b) All outdoor refuse collection areas for each Lot shall be located in the service area for such Lot or Building. No trash or refuse collection area shall be maintained within view of any public or private streets within or adjacent to the Property.

(c) Except during initial construction of Improvements to a Lot, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot.

(d) No noxious or offensive activities shall be carried on upon any portion of the Property nor shall anything be done or placed on any part of the Property which is or may become a nuisance or cause any unreasonable disturbance or annoyance to others, including, without limitation, smokestacks, incinerators, waste disposal ponds or lagoons, exterior waste or byproduct holding tanks, grain or feed mills or processing facilities, vegetable or animal oil mills or processing facilities, animal slaughter, packing or other processing facilities, animal byproduct packing or processing facilities, smelt or other mineral processing facilities, resource recovery or other recycling facilities, motor vehicle service or maintenance facilities (except as otherwise incident to other permissible uses) or heavy industrial facilities or manufacturing. No use shall be permitted to exist or operate upon any Lot or from any Improvement thereon which:

(i) Emits dust, sweepings, dirt, cinders, fumes, odors, radiation, gases or vapors or which discharges liquid or solid waste or any other harmful matter into the atmosphere or into any stream, river, or any other body of water;

(ii) Produces any intense glare or heat unless such use is performed only within enclosed or screened areas and then only in such manner that the glare or heat emitted will not be discernible from the boundary lines of such Lot;

(iii) Creates a sound pressure level in violation of any regulation of any of the Governmental Authorities or which is offensive and creates a nuisance to any other Owner or Occupant;

(iv) Allows the visible emission of smoke (outside of any Building or Improvement) or allows emissions which would violate any regulation of any of the Governmental Authorities;

(v) Creates a ground vibration that is perceptible, without instruments, at any point beyond the boundary lines of such Lot; or

(vi) Results in the production, generation, transportation, treatment, storage, discharge, disposal or use of any petroleum products or any toxic or hazardous chemical, material, substance, pollutant or waste in such quantities or concentrations which would be regulated by or violate the environmental or other rules, regulations, statutes, laws, ordinances or decrees of any of the Governmental Authorities.

6.17 **SIGNAGE.** All Building and other signage (whether attached to a Building or constructed as a freestanding sign) must satisfy all signage ordinances of applicable Governmental Authorities having jurisdiction over the Property and must be approved by the ARC. No signs or advertising posters of any kind shall be maintained or permitted within any windows or glass doors or on the exterior of any Lot or Building or elsewhere on any portion of the Property without the express written permission of the ARC. If required by the ARC, all traffic, safety, informational and other signage constructed or installed by an Owner on such Owner's Lot shall be uniform in design and style as that type of signage used throughout the Property. The approval of any signs and posters, including, without limitation, political campaign signs,

name and address signs, building and monument signage and for-sale and for-lease signs, shall be upon such terms and conditions as may from time to time be determined by the ARC. All banners and streamers of every kind, nature or description are prohibited. Any signage which any Owner desires to place on such Owner's Lot at such time as such Owner is constructing Improvements thereon shall be considered a part of the Improvements, the plans and specifications for which must be approved in writing by the ARC. Notwithstanding anything provided herein to the contrary, Developer shall have the right (but not the obligation) to construct, erect and maintain on any of the Property owned by Developer or within any of the easement areas described in Sections 3.07 and 3.09 above no trespassing signs, traffic control signage, parking regulation signage, for sale or lease signage, signage identifying the Property, any of the Lots and any of the Common Areas as well as restrictions on the use of the Common Areas.

6.18 **EXTERIOR MATERIALS, GLASS AND WINDOW TREATMENTS.** Unless otherwise approved by the ARC, all Buildings (including parking garages, if any) shall have exterior walls of face brick, stone, precast concrete, marble, granite, anodized aluminum or glass or an equivalent, permanent, architecturally finished material to finished grade. Unless otherwise approved by the ARC, no Building shall be covered with sheet or corrugated aluminum, asbestos, non-architectural quality iron, non-architectural quality steel or dryvit. No foil or other reflective material shall be installed on any windows or used for sunscreen, blinds, shades or other purposes on any Buildings. Appropriate window treatments shall be used on all windows of all Buildings. All window treatments (*i.e.*, blinds, shades, draperies, etc.) which are visible from the exterior of a Building shall be approved by the ARC as to the color, material and type, and shall be uniformly installed throughout each Building. All window treatments shall be maintained at uniform heights or levels if the same are visible from the exterior of the Building.

6.19 **ABOVE GROUND TANKS AND WELLS.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot, except as approved by the ARC, which approval may be conditioned upon such above-ground tanks being screened from view from any public or private streets within or adjacent to the Property by either walls, fencing and/or landscaping. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Building. Only public sewage systems shall be utilized for the discharge of sewage from any Lot or any Improvements thereto.

6.20 **TEMPORARY STRUCTURES.** No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted from time to time by the ARC or the rules and regulations of the Board of the Association, (b) construction trailers and sales offices of Developer and (c) construction trailers utilized during the construction of any Buildings. To the extent allowed by the terms and provisions of this Section 6.20, any construction trailers shall be located as inconspicuously as possible in locations approved by the ARC and shall be removed as soon as possible after completion of construction of all Improvements on such Lot.

6.21 **LANDSCAPING FOR PARKING AREAS.** A minimum of twelve percent (12%) of all parking areas located on each Lot shall be landscaped in accordance with landscaping plans approved by the ARC (which percentage in area shall not include perimeter landscaping on a Lot or any landscaping between the parking areas of a Lot and the principal Building on such Lot). Perimeter landscaping shall be required on all Lots. In addition to the foregoing, each Owner will be required, to the extent reasonably practicable, to employ berming in conjunction with landscaping for any parking areas located on such Owner's Lot in order to screen parking and vehicular turn areas.

6.22 **SOIL EROSION AND DRAINAGE.** Each Owner shall provide and maintain on such Owner's Lot adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting

from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that such Owner's Lot and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. No Owner shall construct, install or maintain or authorize any third party to construct, install or maintain on such Owner's Lot any drainage facility which, in the sole opinion of the ARC, would result in any damage or possible damage to any of the lakes or water features which constitute any of the Common Areas or which would or could result in the pollution, discoloration of any of the lakes or water features which constitute Common Areas or which would otherwise result in such lakes or water features becoming unsightly or subject to any foul odor or discoloration. **Each Owner, by acceptance of a deed to such Owner's Lot, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts suffered, paid or incurred by Developer, the ARC, the Association and their respective agents, employees, officers, directors, shareholders, members and representatives in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.22.**

6.23 **REZONING.** No Owner shall seek or obtain any rezoning of such Owner's Lot without first obtaining the prior written consent of the ARC to any such zoning or rezoning.

6.24 **CONSTRUCTION OF IMPROVEMENTS.**

(a) During the construction of any Improvements, (i) all Lots shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property at least weekly. Used construction materials may be burned on-site only in accordance with the laws, ordinances, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or any other portion of the Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas and (ii) utilize off-street parking only. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements on a Lot, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot and such Lot shall be kept and maintained in a clean and uncluttered condition.

(c) All Improvements to a Lot shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules,

regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

6.25 **SUBDIVISION AND INTERVAL OWNERSHIP.** No Lot may be subdivided or resubdivided without the prior written approval of the ARC; provided, however, that the provisions of this Section 6.25 shall not be applicable to the subdivision, resubdivision or combination of any Lots or other real property owned by Developer. No Lot shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

6.26 **TRAFFIC REGULATIONS.** All vehicular traffic on the private streets and roads in the Property shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the private roads within the Property. The Board shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof.

6.27 **LAKES AND WATER FEATURES.**

(a) The lakes and water features which constitute Common Areas shall not be utilized for swimming, wading, fishing, boating or other activities by any Owners or Occupants; provided, however, that the foregoing shall not prohibit Developer or the Association from utilizing boats and otherwise entering onto any such lakes or water features in connection with the maintenance of the same.

(b) In addition to the easements and rights established and reserved by Developer pursuant to Article III hereof, Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual easement appurtenant over, across, through and upon a strip of land twenty (20) feet in width lying parallel to and running along the common boundaries of any Lots lying directly adjacent to and contiguous with any lakes or water features within the Property, which easement shall allow and be used for the flow and drainage of surface water accumulating in, upon or as a result of the construction and maintenance of any such lakes or water features on or within the Property and to otherwise allow for the rise and fall of the water level of such lakes or water features.

(c) The Owner of each Lot, for such Owner and such Owner's Occupants, by acceptance of a deed to such Owner's Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot, for themselves and their respective successors and assigns, do hereby:

(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and each Governmental Authority and their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of: (1) any loss, damage or injury to person or property, including death, as a result of any entry onto any lakes or water features, by any such Owner, Occupant, Mortgagee or any of their respective

guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and (2) the rise and fall of the water level of any lake or water feature, including, without limitation, the flow of water onto and out of such lakes or water features which could result in or cause damage, by flooding or otherwise, to any Improvements or any other personal property situated on any portion of such Lot or which would result in or cause any Improvements situated on or adjacent to any such lakes or water features to be unusable due to low or high water levels; and

(ii) Acknowledge and agree that: (1) neither Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about any such lakes or water features; (2) no Owner, Occupant or Mortgagee is authorized to enter upon or into any such lakes or water features and any such entry shall be deemed a trespass and a violation of this Declaration; (3) neither Developer, the Association, the ARC, any Governmental Authority nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take any action to maintain a specific water level for any such lakes or water features on, within or adjacent to the Property; and (4) any lakes and water features on, within or adjacent to the Property, as with any other body of water, pose a potential threat of life threatening harm and each Owner or Occupant and their respective family members, guests and invitees should exercise utmost care and safety precautions in and around any such lakes or water features.

6.28 **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of all Governmental Authorities.

6.29 **VARIANCES.** Notwithstanding anything provided herein to the contrary, the ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above and this Article VI. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairman or vice chairman of the ARC.

6.30 **ENFORCEMENT AND REMEDIES.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article VI, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth in this Section 6.30 shall not be deemed exclusive of any other rights and remedies

which the ARC or the Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

## ARTICLE VII

### MAINTENANCE RESPONSIBILITIES

#### 7.01 RESPONSIBILITIES OF OWNERS.

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Lots and all Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot shall be the sole responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining such Owner's Lot and all Improvements thereto in a neat, clean and sanitary condition. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Buildings and other Improvements thereto, paving, repaving, patching and striping all drives, walkways, parking lots and areas and service areas within the Lot and replacing light fixtures when necessary.

(b) Each Lot shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.05(b) above. All areas of any Lot which are not improved by the construction of Improvements thereon shall at all times be maintained by the Owner thereof in a fully and well kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot up to the edge of the pavement of the roadway abutting such Lot and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, trees, vines and any other vegetation of any type on any Lot shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Any vegetation which has been installed or placed on a Lot in accordance with a landscaping plan submitted to and approved by USX in accordance with the provisions of Section 5.05(b) hereof which subsequently dies, becomes diseased or becomes damaged by storm or other casualty shall be promptly removed and replaced with living vegetation of like kind and quantity. All dead or damaged vegetation, diseased or fallen trees or stumps which are visible from any other Lots or any public or private roadways within or adjacent to the Property and all trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot and properly disposed of outside of the Property. In no event shall any Owner or Occupant place, deposit or discard any dead or fallen trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste on or within any of the Common Areas.

(c) In the event that the Board determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by either the negligence or willful act of an Owner or Occupant, or their respective invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have seven (7) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such seven (7) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or

the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, said cost shall be a personal obligation of such Owner, shall constitute an Individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.07 below. If, and to the extent that, the Association undertakes any action pursuant to this Section 7.01(c) on behalf of any Owner, then all costs and expenses incurred by or on behalf of the Association, including, without limitation, reasonable administrative costs and expenses, attorneys' fees and court costs, if any, shall be due and payable by such Owner and such costs and expenses shall be deemed to constitute Individual Assessments and shall be recoverable by the Association in accordance with the terms and provisions of this Declaration.

7.02 **RESPONSIBILITIES OF ASSOCIATION.** Except as otherwise provided in this Declaration to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep all portions of the Common Areas in good repair and in a condition substantially similar to that of other comparable class "A" office park developments in the greater Birmingham, Alabama metropolitan area which are not managed by Developer or the then current manager of the Association and the Property. The Association shall not be liable for injuries or damages to any person or property (i) caused by the elements, acts of God or any Owner or other person, (ii) resulting from any surface or subsurface conditions or which may be caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or any Improvements thereto or (iii) resulting from thief, burglary or other illegal entry onto the Property or any Lot or any Improvements thereto. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

## ARTICLE VIII

### COMMON AREA ASSESSMENTS

8.01 **ASSESSMENTS AND CREATION OF LIEN.** Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.07(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot and all Improvements thereto for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.07(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while such Person is the Owner of a Lot and such Owner's grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his, her or its grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.07(a) below, court costs and attorneys' fees incurred with respect thereto by the Association shall also be a personal obligation of the Person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot as provided in Section 8.06 below and be paid in such manner and on such

dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Common Area or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Board. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property.

#### 8.02 UNIFORM RATE OF ASSESSMENTS.

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot at a uniform rate, with the Owner of each Lot being required to pay his, her or its prorata portion of such Annual Assessments and Special Assessments, as determined by multiplying the total amount of the then applicable Annual Assessments or Special Assessments for all the Property by a fraction, the numerator of which shall be the gross acreage of such Owner's Lot and the denominator of which shall be the gross acreage of all Lots within the Property, including any Additional Property (but specifically excluding all Common Areas therefrom).

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then (i) the Lots within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots in the Property (computed on the basis set forth in Section 8.02(a) above), subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property, (ii) the Annual Assessments and Special Assessments, if any, which have been levied in the calendar year in which Additional Property has been added to the Property shall not be recomputed for such calendar year and (iii) in no event shall Annual Assessments or Special Assessments paid by any Owners which are allocable to any periods of time prior to the addition of any Additional Property to this Declaration be subject to any refund to any of the Owners.

(c) Each Owner of a Lot, by acceptance of a deed to such Lot, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or (ii) any portion of the Property becomes Common Areas.

#### 8.03 COMPUTATION OF ANNUAL ASSESSMENTS.

(a) The Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account, if necessary, for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of Annual Assessments for all of the Property for the then applicable year and each Owner shall pay his, her or its prorata share of the same as provided in Section 8.02 above. As used herein, the term "Annual Assessments" with respect to each Lot shall mean the prorata portion of the Common Expenses payable each calendar year by the Owner of each Lot in accordance with the provisions of this Section 8.03. A copy of the budget setting forth the amount



of Annual Assessments to be levied against the Lots for the following year shall be delivered to each Owner upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, trash collection and security services; provided, however, that the foregoing shall not impose any obligation on the Association to contract for or provide trash collection or security services for any Lot or any Improvements thereto;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association (including members of the ARC);

(v) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property which the Board, in its sole discretion, determines from time to time would be in the best interest of the Association to so maintain, operate, repair or replace;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(vii) The expenses of the ARC which are not paid in full by plan review charges;

(viii) The costs and expenses for conducting recreational, cultural or other related programs for the benefit of the Owners and Occupants;

(ix) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots; and

(x) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

8.04 **SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized in Section 8.03 above, the Board may levy in any year Special Assessments for Common Expenses or for any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments must be approved by a majority in interest of the members of the Association voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the Bylaws. As used herein, the term "Special Assessments" shall mean those assessments made to all Owners pursuant to this Section 8.04. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

8.05 **INDIVIDUAL ASSESSMENTS.** The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, "Individual Assessments") against any Lot: (a) fines against an Owner and such Owner's Lot in accordance with the terms and provisions of Sections 11.01 hereof or adopted by the ARC or Association pursuant to Section 6.30 hereof and (b) any costs or expenses, including, without limitation, collection costs, attorneys' fees, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration. The Individual Assessments provided for in this Section 8.05 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner.

8.06 **DATE OF COMMENCEMENT OF ASSESSMENTS.** Assessments shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer or any affiliate thereof and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board, subject to proration for the remainder of the then calendar year in which such Lot was conveyed to a person other than Developer or any affiliate thereof; provided, however, that no Annual Assessments shall be payable by any Owner until the latter to occur of either (a) construction of Milan Parkway has been completed by Developer, landscaping for Milan Parkway has been installed by Developer and the Board has engaged or contracted with a landscape maintenance contractor for the maintenance of such landscaping or (b) January 1, 2002. Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the day on which such Lot is conveyed to a person other than Developer or any affiliate thereof, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such

Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, Developer shall pay Annual Assessments on Lots owned by Developer; provided, however, that in lieu of paying Annual Assessments on Lots owned by Developer, Developer may, at Developer's option, fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual cost incurred by the Association for Common Expenses in any particular year. At such time as Developer no longer has any interest in any Lot, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

**8.07 EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION.**

(a) Each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association, all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot shall be deemed in default hereunder and (ii) a late fee in an amount determined by the Board (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot and all Improvements thereto for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late fee charge and interest at the Applicable Rate, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Sections 8.01 and 8.07(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and all Improvements thereto, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot and all Improvements thereto, all late fees or charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for

more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot and all Improvements thereto of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address, if any, of the Lot and Improvements upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot and the Improvements thereto in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property containing a power of sale under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot and Improvements thereto. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association and its agents, the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (2) grant to and vest in the Association and its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

8.08 **SUBORDINATION OF LIEN.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot within the Property is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.07(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot.

8.09 **CERTIFICATES.** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

## ARTICLE IX

### **CASUALTY, CONDEMNATION AND INSURANCE**

#### **9.01 DAMAGE OR DESTRUCTION TO COMMON AREAS.**

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article IX, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners pursuant to the provisions of Section 8.04 above, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner as provided in Section 8.02 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

9.02 **DAMAGE OR DESTRUCTION TO LOTS AND IMPROVEMENTS.** In the event of any fire or other casualty which damages or destroys any portion of any Lot or any Improvements thereto, then the Owner of such damaged Lot or Improvements shall, at such Owner's option, either (a) promptly repair and otherwise restore such Lot or the Improvements thereto to the condition to which the same existed immediately prior to such fire or other casualty or (b) clear away any Improvements damaged or destroyed by such fire or other casualty and leave such Lot and any remaining Improvements thereto in a clean, orderly, safe and sightly condition. In the event any Owner elects to rebuild following any such fire or other casualty, then such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

#### **9.03 CONDEMNATION OF COMMON AREAS.**

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by

private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners pursuant to the provisions of Section 8.04 above, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (2) levied against each Owner as provided in Section 8.02 above; and

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot which is subject to any such taking and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

**9.04 CONDEMNATION OF LOTS AND IMPROVEMENTS.** In the event that all or any portion of a Lot is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot and all Improvements thereto as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article V above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

9.05 INSURANCE.

(a) The Board shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Board may from time to time deem appropriate for the benefit of the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Board in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his, her or its Lot and all Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot, does hereby waive and release the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE X

TERM AND AMENDMENTS

10.01 TERM. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by Owners having at least seventy-five percent (75%) of the total voting rights of all Owners of the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

10.02 AMENDMENTS PRIOR TO TURNOVER DATE. Subject to the provisions of Section 10.04 below, until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee. Any amendment made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.02. Except as specifically provided in Section 10.04 below, only Developer shall have the right to amend this Declaration prior to the Turnover Date.

10.03 AMENDMENTS AFTER TURNOVER DATE. After the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of two-thirds (2/3) in interest of those Owners (including Developer who shall have the voting rights attributable to any Lots owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot

vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite percentage in interest of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

#### **10.04 RESTRICTIONS ON AMENDMENT.**

(a) Notwithstanding anything provided in this Declaration to the contrary, if, prior to the occurrence of the Turnover Date, any amendment proposed by Developer to this Declaration (other than an amendment to add Additional Property to this Declaration) (i) materially and adversely alters or changes the rights of any Owner to the use of such Owner's Lot, as determined solely by Developer, in its reasonable discretion, (ii) involves the levy of a Special Assessment or an amendment to Section 8.04 of this Declaration or (iii) involves an amendment to Section 4.02 (relating to the increase in the number of members of the Board to five (5) following the expiration of the Control Period or the manner in which the two (2) Board members are to be elected by the Owners following the expiration of the Control Period), Section 4.03(a) hereof (relating to voting rights attributable to the Lots based on the gross acreage of such Lot), or Section 8.06 (relating to the date that Annual Assessments commence), then, in any such event, such amendment shall be valid only upon the written consent or ballot vote of (1) both (x) Developer and (y) sixty-seven percent (67%) in interest of those Owners (including Developer who shall have the voting rights attributable to any and all Lots owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws and (2) if the amendment materially and adversely alters or changes the rights of any Owner to the use of such Owner's Lot, then such Owner must also consent to such amendment. Notwithstanding anything provided in this Declaration to the contrary, each Owner, by acceptance of a deed to any Lot, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot, acknowledges and agrees that the addition of Additional Property to this Declaration pursuant to Section 2.02 above and the amendment of this Declaration to add Additional Property to the terms and provisions hereof (x) shall not and does not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of such Owner's Lot and (y) may be undertaken unilaterally by Developer without the consent or approval of any Owner or Mortgagee.

(b) Notwithstanding anything provided in this Declaration to the contrary, none of the easement rights established or reserved in favor of Developer pursuant to the terms and provisions of Article III hereof may be modified or amended at any time either prior to or after the Turnover Date without the prior written consent of Developer.

### **ARTICLE XI**

#### **DENIAL OF USE PRIVILEGES**

11.01 **AUTHORITY AND ENFORCEMENT.** In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Board from time to time, then the Board shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment or (b) suspend an Owner's right, if any, to vote in the Association. Any action



to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

**11.02 PROCEDURE.**

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine or suspend voting rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation;

(iii) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions; and

(iv) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

**11.03 NON-EXCLUSIVE REMEDIES.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

**12.01 CONTROL BY DEVELOPER.** NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OR A MAJORITY OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE

**ASSOCIATION (EXCEPT TO THE EXTENT THE OWNERS ARE ENTITLED TO VOTE ON THOSE MATTERS SPECIFICALLY PROVIDED IN SECTION 10.04 ABOVE).**

12.02 **LEGAL EXPENSES.** The prevailing party in any legal action shall be entitled to recover from the non-prevailing party in such action all costs and expenses incurred by the prevailing party in such action, including, without limitation, attorneys fees and court costs.

12.03 **SEVERABILITY.** If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

12.04 **CAPTIONS AND HEADINGS.** The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

12.05 **PRONOUNS AND PLURALS.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

12.06 **BINDING EFFECT.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Developer, the Association, the ARC, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

12.07 **CONFLICT OR AMBIGUITY.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein. In the event of any conflict, ambiguity or inconsistency between this Declaration, the Articles of Incorporation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. In the event of any conflict, ambiguity or inconsistency between this Declaration and any statutes, ordinances, code provisions, rules, regulations or requirements of any Governmental Authority (including, without limitation, any of the terms and provisions of the Oxmoor Development Guidelines adopted by the Oxmoor Steering Committee), then the more restrictive provisions set forth in either this Declaration or the applicable statute, ordinance, code, provision, rule, regulation or requirement shall at all times control.

12.08 **NO REVERTER.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

12.09 **INTERPRETATION.** In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer

or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

12.10 **RIGHTS OF THIRD PARTIES.** This Declaration shall be recorded for the benefit of Developer, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

12.11 **NO TRESPASS.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot, the entering thereon and the taking of such action shall not be deemed a trespass.

12.12 **NO PARTITION.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

12.13 **STANDARDS FOR REVIEW.** Whenever in this Declaration the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of the ARC or the Association, as the case may be.

12.14 **ORAL STATEMENTS.** Oral statements or representations by Developer, the Association, the ARC, or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Association or the ARC.

12.15 **NOTICES.** Each Owner shall be obligated to furnish to the Association, in writing, the address, if other than the Lot of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot of such Owner. Any Owner may, for the purposes of notices hereunder, specify in writing to the Association that all notices be submitted to such Owner by facsimile transmission or through the Internet utilizing a specific electronic mailbox for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Association (or if no address has been furnished, then to the mailing address maintained by the Jefferson County, Alabama Tax Assessor's Office for the Owner of such Lot for ad valorem tax purposes), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Building, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to, or the attachment of such notice to the front door of, an office or house address if such Owner has provided (or is deemed to have provided) a street address within the greater Birmingham, Alabama metropolitan area as such Owner's address for notice purposes hereunder, (c) sent by facsimile transmission to a facsimile number provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such facsimile notice or (d) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Association, which notice shall be deemed to have been given upon transmission of such electronic mail

by the Association. All notices to the Association (or to the ARC) shall be delivered or sent to the following address:

Oxmoor Corporate Park Association, Inc.  
c/o USX Realty Development  
6200 E. J. Oliver Boulevard, Suite 183-C  
P.O. Box 599  
Fairfield, Alabama 35064  
Attention: General Manager-Southeast

or to such other address as the Association (or ARC) may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other address as Developer may notify the Association.

12.16 **ASSIGNMENT.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

12.17 **FURTHER ASSURANCES.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

12.18 **NO WAIVER.** All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer, the ARC or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

12.19 **PERPETUITIES.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States.

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

ATTEST:

USX CORPORATION, a Delaware corporation

By: Michael Martini  
Its: Assistant Secretary

By: Thomas G. Howard  
General Manager - Southeast of USX Realty  
Development, a Division of U.S. Steel Group,  
USX Corporation

APPROVED:  
AS TO FORM:  
LAW DEPT.  
*[Signature]*

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Thomas G. Howard whose name as General Manager - Southeast of USX REALTY DEVELOPMENT, a Division of U. S. Steel Group, USX CORPORATION, a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of such corporation.

Given under my hand and official seal this the 14th day of August, 2000.

[Signature]  
Notary Public  
My Commission Expires: 08/08/01

**EXHIBIT A**

WALTER SCHOEL ENGINEERING COMPANY, INC.  
CONSULTING ENGINEERS  
1001 22ND STREET SOUTH  
BIRMINGHAM, ALABAMA 35205  
PHONE (205) 323-6166  
FAX (205) 328-2252

**USX OXMOOR CORPORATE PARK**

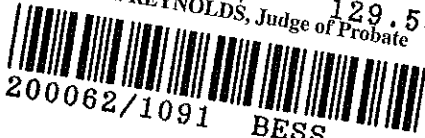
**LEGAL DESCRIPTION**

Part of the East ½ of Section 31, Township 18 South, Range 3 West and part of the West ½ of Section 32, Township 18 South, Range 3 West, all in the City of Birmingham, Jefferson County, Alabama, being more particularly described as follows:

That part of the N.E.1/4 of Section 31, township 18 South, Range 3 West lying East of Venice Road and South of Sydney Drive, that part of the N.E.1/4 of the S.E.1/ 4 of Section 31, Township 18 South, Range 3 West lying East of Venice Road and North of Lakeshore Parkway, that part of the N.W.1/4 of Section 32, Township 18 South, Range 3 West lying West of Lakeshore Parkway and South of Sydney Drive and that part of the N.W.1/4 of the S.W.1/4 of Section 32, Township 18 South, Range 3 West lying North and West of Lakeshore parkway.

LESS AND EXCEPT a cemetery situated at the Southeast corner of the intersection of Venice Road and Sydney Drive and any rights-of-way or easements of record.

desc1178

State of Alabama - Jefferson County  
I certify this instrument filed on:  
2000 AUG 15 P.M. 13:56  
Recorded and \$  
and \$  
Deed Tax and Fee Amt. 129.50  
Total \$ 129.50  
GEORGE R. REYNOLDS, Judge of Probate  
  
200062/1091 BESS