

**STATE OF NORTH CAROLINA**  
**COUNTY OF MECKLENBURG**

**INFRASTRUCTURE**  
**DEVELOPMENT AGREEMENT**

**THIS AGREEMENT**, entered into as of this \_\_\_\_ day of May, 2007 ("Effective Date"), by and between the **CITY OF CHARLOTTE**, a North Carolina municipal corporation, (hereinafter referred to as the "City") and **CRESCENT RESOURCES, LLC**, a Georgia limited liability company (hereinafter referred to as "Developer").

**WHEREAS**, the City has previously identified the need to construct an extension of City Boulevard from its existing terminus east of I-85 in Charlotte, North Carolina to the intersection with North Tryon Street (US 29) (hereafter referred to as the "City Boulevard Extension" and has begun the design work necessary to make certain road improvements to US 29 to address vehicular congestion in the area through a project commonly referred to as the US 29/NC 49 Roadway Improvement Project (hereafter referred to as the "City Road Improvement Project"); and

**WHEREAS**, the Developer is the owner and contract buyer of property at the northeast and southeast quadrants of City Boulevard and I-85 adjacent to the proposed City Boulevard Extension and plans to design, develop and construct a commercial development on said property that will include the IKEA retail store and other amenities (collectively the "Development") which will cause an increase in the volume of vehicular traffic on City Boulevard Extension and increase the amount of commercial and residential development in the area; and

**WHEREAS**, the City and the Developer have identified the need to construct a water line to serve the area in and around the City Boulevard Extension and the Development (hereafter the "Utility Improvements"), and desire to include the Utility Improvements in the City's Roadway Improvement Project; and

**WHEREAS**, the Developer is required to make certain improvements to the proposed City Boulevard Extension in order to accommodate the Development, including utility extensions, turn lanes and traffic signals (the "Enhanced Infrastructure Improvements") and the parties agree that it is in their mutual best interest to consolidate the design and construction of the work associated with the City Roadway Improvement Project, the Utility Improvements and the Enhanced Infrastructure Improvements into one project (hereinafter the "Project"), so that the current and future needs of the public are met in a timely manner with as little disruption as possible;

**WHEREAS**, pursuant to N.C. S.L. 2001-329 and Sec. 2-2 of the Charlotte City Code, the City is authorized to contract with a private developer or property owner for the design and construction of municipal infrastructure that is included in the City's capital improvement plan and serves the private developer or property owner, including water mains, sewer lines, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices and other associated facilities, if the City determines that the cost will not exceed the estimated cost of

providing for such improvements through a public contract let pursuant to G.S. 143-128 et seq., or if it would be impracticable to coordinate construction of these facilities separately and the private developer or property owner agrees to comply with the public advertising and bid opening requirements that would apply if the construction contract were awarded by the City;

**WHEREAS**, the City and the Developer agree that the above-stated requirements are met in this municipal infrastructure reimbursement agreement and desire to memorialize the terms of their agreement with regard to their respective contributions of capital and services and contractual obligations to accomplish the design and construction of the Project which will improve and enhance that area of the City of Charlotte.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Description of the Project. The Project consists of three primary components: the roadway improvements required for City Boulevard Extension (the "City's Roadway Improvements"), the roadway improvements required for the Development (the Enhanced Infrastructure Improvements"), and the improvements to a water line near or adjacent to City Boulevard Extension and the Development (the "Utility Improvements"). The Project is in the location generally shown on the site map attached hereto as Exhibit A and incorporated hereby reference. The City's Roadway Improvements will consist of a four-lane divided highway, approximately one (1) mile in length, running from I-85 to US 29, improvements at the intersection of City Boulevard Extension and US 29, an interchange connection with US 29/US 49, and rough grading reasonably necessary or convenient to facilitate future improvements the City has planned for the intersection of US 29 and US 49 (the "Future City Roadway Improvements"). The Enhanced Infrastructure Improvements will consist of the turn lanes/deceleration lanes (including curbs, gutters and storm drain inlets) at the intersection of City Boulevard Extension and the proposed "Connector Road," as shown on Exhibit A, and at each of the four (4) proposed right-in right-out entrances to City Boulevard Extension from the Development. The Utility Improvements will consist of approximately 3,400 linear feet of a 24" water main, running westward from U.S. Highway 29 to the existing terminus of City Boulevard near I-85. The parties agree that the Project shall be constructed pursuant to a construction budget as described in Paragraph 4 which has been agreed upon by both parties and that the Project shall be constructed in accordance with final plans and specifications approved by North Carolina Department of Transportation ("NCDOT") and the City.

2. Identification of Design Professionals for the Project. Prior to the execution of this Agreement, the City selected Gannett Fleming, Inc. (hereafter the "Engineer") to provide the professional services required for the design of the City's Roadway Improvements, the Future City Roadway Improvements and to obtain the requisite permits for construction (hereafter the "Professional Services"), which include the preparation of plans and specifications for grading, roadway, drainage, signage, curb, gutter, driveways and certain other elements as required for construction of the Project. The Engineer has submitted 50% plans for the City Road Improvement Project dated May 4, 2007. Charlotte-Mecklenburg Utilities selected Kimley Horn, Inc. (hereafter "Utilities Engineer") to provide the professional services required for the design of the Utilities Improvements (the Utilities Professional Services").

The Utilities Engineer will submit a set of design plans for the Utilities Improvements to the Engineer that do not conflict and are coordinated with the Engineer's design of the City's Roadway Improvements.

3. City's Responsibilities for Final Design. Consistent with the terms and conditions of this Agreement, and subject to the limitations described herein, the City agrees to increase the scope of the Engineer's Professional Services to include the design of all improvements required for the Project (hereafter the "Additional Professional Services") and preparation of a final set of plans and specifications suitable for bidding and construction of the Project. These Additional Professional Services shall encompass the inclusion and coordination of the Utilities Improvements as designed by the Utilities Engineer into the overall Project, however, nothing contained in this Agreement shall be construed to impose any responsibility upon the Engineer for the design work associated with the Utilities Improvements for which the Utilities Engineer remains solely responsible.

4. Construction Budget. The general elements of the Project and the estimated costs thereof are set out in the construction estimate prepared by the Engineer attached hereto as Exhibit B and incorporated herein by reference (the "Construction Estimate"). As part of the Additional Professional Services, the Engineer shall prepare a detailed construction budget for the use and benefit of the parties that sets out the estimated costs associated with the Project (the "Construction Budget"). Like the Construction Estimate, the Construction Budget shall provide the estimated construction costs for the Project as a whole and shall also delineate the costs associated with each of the three components of the Project, i.e., the City's Roadway Improvements, the Enhanced Infrastructure Improvements and the Utility Improvements.

5. Review and Approval of Design Plans. The parties understand and agree that the City and the North Carolina Department of Transportation (NCDOT) must review and approve the design plans and specifications for the Project. The Developer shall have the right to review and comment on the design plans at the completion of the 50% plans, the 90% plans and the construction documents phase, and has a commitment from the City that such plans will include street and driveway connections for the Development. The Developer understands and agrees, however, that final location of street and driveway connections is subject to the approval of NCDOT and the City's Department of Transportation (CDOT) and that it must obtain the requisite permits as described in Paragraph 20. The finalized plans and specifications approved by the City and NCDOT for the Project shall be referred to as the "Approved Plans."

6. Design Schedule. The City shall direct the Engineer to have final plans and specifications for the Project completed by September 30, 2007 to conform to the Project schedule, but no later than October 31, 2007. The parties acknowledge that completion by this date will be contingent upon the approval of NCDOT and other regulatory agencies, as well as timely receipt from such agencies and Developer of any items to be incorporated into the plans for the Development.

7. City's Payment Responsibilities for Design. The City agrees that it is responsible for making all payments to the Engineer and the Utility Engineer for the Professional Services rendered in connection with the design of the City's Roadway Improvement and the Utility

Improvements. And, except as otherwise provided herein, the City shall be responsible for making all payments to the Engineer for the Additional Professional Services rendered in connection with the Project.

8. Developer's Payment Responsibilities for Design. The Developer agrees to be responsible for payment of the actual costs associated with the design of the Enhanced Infrastructure Improvements for the Development. As of the date of this Agreement, these costs are estimated to be \$37,536, but the parties understand and agree that the final actual costs could exceed this amount; provided, however, that the Developer's total contribution for engineering services shall not exceed \$75,000. Upon completion of the Approved Plans, the City shall prepare and submit to Developer an invoice for the design costs of the Enhanced Infrastructure Improvements. The Developer shall review and approve the invoice within ten (10) working days and notify the City by fax that the invoice is approved or request modifications. Upon receipt of a faxed notification from the Developer that the invoice is approved, that amount will be due and owing to the City from the Developer and said amount shall be credited against the invoice(s) submitted to the City pursuant to the provisions in Paragraph 23 as a construction draw until said amount is fully recovered.

9. Changes in Design. Without invalidating this Agreement, the parties may agree to add and/or modify services to the Engineer's contract. Payment for any such additional and/or modified services shall be the responsibility of the party that requires or requests the additional service. If the service applies to and benefits the parties equally, payment for the additional services shall be shared by the parties equally, or be made in accordance with an agreement reached between the parties.

10. City's Financial Contribution for Construction. The City agrees to contribute an amount not to exceed: (1) \$2,980,000 for all work associated with the construction of the City's Roadway Improvements (hereafter "Maximum Roadway Contribution"); and (2) one-half (50%) of the bid line item amount received from the lowest, responsible bidder, up to a maximum amount of \$600,000, for the work associated with the construction and installation of the Utility Improvements (hereafter "Maximum Utility Contribution"). In addition, the City agrees to contribute a fixed amount of \$100,000 as its share of the landfill remediation costs described in Paragraph 30. The City's obligation for payment shall be pursuant to the method and process set out in Paragraph 23.

11. General Construction Conditions of the Project. The Developer agrees to solicit bids for the construction of the Project, including all of the labor, materials and services necessary to execute the work associated with the Approved Plans (hereafter the "Work") in accordance with N.C.G.S. §§143-129 relating to public advertising and bid opening requirements. The bid solicitation shall include all documents reasonably necessary or convenient to award a contract for the construction of the Project. The terms, form and method of the bid solicitation and the contract documents for the construction of the Project (hereafter "Construction Contract") shall be subject to the prior, written approval of the City, such approval not to be unreasonably denied or delayed, and shall, to the extent reasonably practicable and possible, require the Contractor to separate out the portions of the contract sum allocable to each of the three components of the Project, i.e., the City's Roadway Improvements, the Enhanced Infrastructure Improvements and the Utility Improvements. The

bid documents shall prohibit bids that are materially unbalanced. A bid is materially unbalanced and nonresponsive when it is based on prices that are significantly less than cost for any portion of the Work and prices that are significantly overstated in relation to cost for any other portion of the Work. The Developer shall give the City two (2) days advance notice in writing of the bid opening and the bid opening shall be open to the City and all bidders. Subject to approval of the City Project Manager (such approval not to be unreasonably denied or delayed), the Developer may reject all bids, solicit new bids and re-schedule the bid opening in accordance with N.C.G.S. §§143-129 relating to public advertising and bid opening requirements.

12. Award of the Construction Contract. The Developer will award the Construction Contract to a properly licensed and qualified contractor or contractors (the "Contractor"). Award of the Construction Contract need not be based solely on pricing, but may take into consideration other factors, such as past performance, commitment to timeframes, and the bonding capacity of the Contractor. Subject to compliance with the foregoing, the Developer shall have the right to select the successful bidder only from responsible bidders submitting responsive bids. No term of the bid solicitation may be waived, deleted or otherwise not enforced by the Developer without the prior, written approval of the Key Business Executive of the City's Engineering and Property Management Department.

13. Bidding Constraints for Utility Improvements. The bid documents for the Project shall require a lump sum line item for all portions of the Work associated with the Utility Improvements. In the event or to the extent there are other water line improvements associated with the Development or required by the Developer (hereinafter the "Development Utility Improvements"), they shall be set out in a separate bid item that is clearly not included in the Utility Improvements lump sum line item and the cost of the Development Utility Improvements will be fully borne by the Developer.

14. Termination if Bids Exceed Budget for City's Roadway Improvements. In the event the bid of the selected bidder allocable to the City's Roadway Improvements exceeds the Maximum Roadway Contribution, the Developer shall negotiate with the selected bidder and/or work with the City to reduce the scope of the portion of the Work associated with the City's Roadway Improvements to come within the constraints of the budget. If it is determined that the City's Roadway Improvements, including appropriate contingencies in the amount of 10% of other hard costs, cannot be constructed for an amount equal to or less than the Maximum Roadway Contribution, the City may terminate this Agreement by giving the Developer written notice of termination (hereafter "City's Notice of Termination") to be effective thirty (30) days after receipt of the notice, or on such later date as specified in the City's Notice of Termination or that the parties may agree to in writing (hereafter the "Effective Termination Date"). Notwithstanding the foregoing, the Developer may negate the City's termination of this Agreement by giving written notice to the City that the Developer agrees to pay the amount of all costs associated with the City's Roadway Improvements in excess of the Maximum Roadway Contribution. To be effective, such notice must be signed by an authorized representative of the Developer and delivered to the City's authorized representative prior to the Effective Termination Date. If the Developer does not give timely notice that it agrees to pay the excess amount described above this Agreement shall automatically terminate at the Effective Termination Date and the Developer shall remain

obligated to reimburse the City for all of the design costs associated with the Enhanced Infrastructure Improvements. Except as otherwise expressly provided herein, neither party shall have any obligation to the other upon the termination of this Agreement pursuant to this Paragraph.

15. Termination if Bids Exceed Budget for the Utility Improvements. In the event the bid of the selected bidder allocable to the Utility Improvements exceeds the Maximum Utility Contribution, the Developer shall negotiate with the selected bidder and/or work with the City to reduce the scope of the portion of the Work associated with the Utility Improvements to come within the constraints of the budget. If it is determined that the Utility Improvements, including appropriate contingencies in the amount of 10% of other hard costs, cannot be constructed for an amount equal to or less than the Maximum Utility Contribution, the City may terminate this Agreement by giving the Developer written notice of termination in accordance with the City's Notice of Termination provisions described above. Notwithstanding the foregoing, the Developer may negate the City's termination of this Agreement by giving written notice to the City that the Developer agrees to pay the amount of all costs associated with the Utility Improvements in excess of the Maximum Utility Contribution. To be effective, such notice must be signed by an authorized representative of the Developer and delivered to the City's authorized representative prior to the Effective Termination Date. If the Developer does not give timely notice that it agrees to pay the excess amount described above this Agreement shall automatically terminate at the Effective Termination Date and the Developer shall remain obligated to reimburse the City for all of the design costs associated with the Enhanced Infrastructure Improvements. Except as otherwise expressly provided herein, neither party shall have any obligation to the other upon the termination of this Agreement pursuant to this Paragraph.

16. Condition Precedent. The obligation of the Developer under this Agreement to construct the Project is contingent upon the successful rezoning of the IKEA parcel within the Development (zoning application number 2007-01, as modified from time to time), and the issuance by NCDOT of the curb cut permits for the following: (a) one full signalized intersection with the Developer's proposed "Connector Road" (as shown on Exhibit A), (b) two right-in-right-outs on west-bound City Boulevard Extension, and (c) two right-in-right-outs on east-bound City Boulevard Extension. If any of the foregoing conditions have not been satisfied on or before December 31, 2007, Developer shall have the right to terminate this Agreement by delivery of written notice to the City prior to the award of the contract to construct all or any part of the Project; provided that, the Developer shall remain obligated to pay for all design costs associated with the Enhanced Infrastructure Improvements. Under no circumstances shall this Agreement be construed to constitute any obligation by the City to approve such rezoning request, including any modifications. The City's authority to approve or reject such rezoning request, including any modifications, shall remain unaffected by the approval of this Agreement. Notwithstanding the foregoing provisions of this Paragraph, under no circumstances shall this Agreement be construed to affect or limit in any manner the discretion that the City or any related entity (including without limitation the Charlotte City Council, the Charlotte-Mecklenburg Planning Commission, and the Charlotte-Mecklenburg Board of Adjustment) may exercise in accordance with applicable law in the consideration of any rezoning of the IKEA parcel within the Development that has been or may be proposed by the Developer.

17. Construction Management Services. The Developer shall provide (a) construction management and contract administration services and (b) payment verification services with respect to the construction elements of the Project at no cost to the City.

18. Performance and Payment Bonds. The terms of the Construction Contract between the Developer and the Contractor shall require the Contractor to furnish separate payment and performance bonds in conformance with N.C.G.S. 44A-33. Each bond shall be in the full amount of the Contractor's contract price and shall name the Developer and the City as dual obligees. Before submitting a request for payment to the City pursuant to Paragraph 23, the Developer shall provide the City with a copy of said payment and performance bonds.

19. Applicable Construction Standards. NCDOT Standard Specifications shall apply to all of the Work described in this Agreement, except to the extent superseded by the Approved Plans, and except for the Utility Improvements. The construction standards for the Utility Improvements shall be in accordance with the CMUD Design Manual.

20. Driveway Permits. The parties understand and agree that driveway locations and dimensions included in the Project are subject to approval by the CDOT and NCDOT. The parties further understand and acknowledge that the Developer desires driveway connections for ingress and egress to the Development from City Boulevard Extension as part of its Enhanced Infrastructure Improvements (hereafter the "Developer's Driveways"). Developer agrees that issuance of permits for the Developer's Driveways will be in accordance with the City's formal review and approval process administered by the CDOT's Development Services Section. The Developer further agrees that it is responsible for all design costs and work associated with the permitting process and all costs associated with the construction of the Developer's Driveways in order for them to properly connect to City Boulevard Extension. Upon issuance of the requisite permits for the Developer's Driveways, the City agrees to request the Engineer to make modifications to the plans to show the location and relationship between the Developer's Driveways and the Project.

21. Inspections and Approval. The City and an NCDOT resident engineer appointed to the Project by the Division Engineer ("State Engineer") shall each have the right to inspect the Project at any time to verify that the Work is being performed in accordance with the Approved Plans. In addition, upon notification by the Developer that the Project has been completed, the City and the State Engineer shall inspect the Project and determine whether the Work has been completed in accordance with the Approved Plans. If the City and the State Engineer determine that the Project has been completed in accordance with the Approved Plans, the City shall provide the Developer written notice of approval and acceptance of the Work. If the City and the State Engineer determine that the Project has not been completed in accordance with the Approved Plans, the City shall provide the Developer written notice of deficiencies and defects. The Developer shall then correct the deficiencies and defects and request another acceptance inspection. Approval and acceptance of the Work pursuant to this paragraph shall not constitute acceptance for maintenance by either the City or NCDOT. Acceptance for maintenance shall be through normal regulatory processes. The City and NCDOT shall, at no cost or expense to Developer, provide inspection services and/or construction verification of the Project, including construction testing and quantity verification for proper invoicing, so as to enable the City and/or NCDOT to monitor compliance with the

Approved Plans and all applicable standards. In the event said testing indicates or identifies areas of noncompliance with the Approved Plans and/or any applicable standards, Developer agrees to make the changes necessary at no cost to the City, including repair or replacement of defective materials and/or Work, until construction testing indicates compliance with the Approved Plans and all applicable standards.

22. Payment Responsibilities of the Developer. The Developer shall be responsible for making all payments to the Contractor for costs incurred in the performance of the Work. The Developer shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate the costs incurred under this Agreement. Further, Developer shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the City and/or NCDOT's Fiscal Section.

23. Payment Responsibilities of the City. Subject to the Maximum Roadway Contribution and Maximum Utility Contribution referenced in Paragraph 10, the Developer shall submit invoices to the City for reimbursements of the fees and costs in connection with this Agreement on a monthly basis. Each invoice will state the nature and quantity of work performed, will certify that all portions of the Work included in the invoice have been completed in compliance with the Approved Plans and all applicable standards and will include such proper supporting documentation as the City may reasonably require. Payments will be made to the Developer via wire transfer or check within 30 business days of the date of receipt of a complete and correct invoice. Any payment not made within 30 days of the receipt of the correct invoice will incur interest at the then legal rate until paid in full.

24. Construction Schedule. The Developer agrees to use its best efforts to prosecute or cause to be prosecuted the Work diligently and without interruption to completion in a good and workmanlike manner and to cause the Project to be substantially completed in compliance with the Approved Plans and all applicable standards no later than December 1, 2008.

25. Termination to Effectuate Phase Two Roadway Improvements. The parties understand that the City anticipates it will be ready to advertise bids for the construction of the Phase Two Roadway Improvements by April 1, 2009. If the Developer has not completed construction of the Project by that date, regardless of the reason therefor, the City shall have the option to modify this Agreement in accordance with the City's Notice of Termination provisions in Paragraph 14 to remove some or all of the incomplete improvements from the scope of Construction Contract and construct the remaining elements of the City's Roadway Improvements and Utility Improvements that have not been completed. If the Utility Improvements have not been completed, the City will proceed to complete them within a reasonable time and the Developer shall remain fully obligated to pay 50% of all costs incurred by the City to complete the Utility Improvements. Developer agrees to reimburse the City within thirty (30) days of receipt of an invoice from the City, complete with actual cost documentation supporting the invoice, showing the amount paid by the City for construction of the Utility Improvements. Any payment not made within 30 days of the receipt of an invoice will incur interest at the then legal rate until paid in full.



26. Administration. The Developer shall identify one or more of its employees to serve as the construction manager (the "Construction Manager") to: (i) act as the Developer's authorized representative, (ii) coordinate the Work, (iii) facilitate communication with the City and others concerning the Work, (iv) coordinate the Work with all affected utility companies and (v) to forward invoices to the City for review, approval and payment. The City shall identify an employee to act as its project manager ("Project Manager") to (a) act as the City's authorized representative, (b) assign City inspection staff to make periodic inspections on behalf of the City to verify that the Work is being performed in accordance with this Agreement and the Construction Contract, (c) serve as liaison between the Developer and agencies/departments of the City, and (d) review and approve invoices and make the periodic payments to the Developer based upon approval of such approved invoices. All communications from the City related to construction shall be through the Developer and at no time will any City representative give the Contractor any directions or instruction. The names and addresses of the initial Construction Manager and Project Manager for the parties are as follows:

Developer's Construction Manager:

Eric Jaegers  
400 S. Tryon Street, Suite 1300  
Charlotte, NC 28285  
(704) 321-6157

City's Project Manager:

Sonji Mosley  
Engineering & Property Management  
600 East Fourth Street  
Charlotte, NC 28202  
(704) 336-3214

27. Changes. If it appears during the course of the Work that any of the estimated fees and allowances for the cost of the City's Roadway Improvements or the Utility Improvements will be exceeded, the Developer shall immediately notify the City's Project Manager in writing. Any adjustment to individual line items may be made only in accordance with the terms of the Construction Contract and with the prior written approval of the City's Project Manager. So long as such adjustment is not the result of any of the following, approval by the City's Project Manager shall not be unreasonably withheld: negligence of the Developer, Contractor or any subcontractor/supplier providing services or suppliers associated with the Project; breach of this Agreement or the Construction Contract by the Developer, the Contractor or any subcontractor/supplier providing services or supplies associated with the Project; or violation of applicable law by the Developer, the Contractor or any subcontractor/supplier providing services or supplies associated with the Project. The total estimated fees and allowances shall not be exceeded except by approved change order or by a written amendment to this Agreement. Any work performed without prior written approval shall be at the Developer's expense. Once a change order is approved by the City, any additional costs associated with the improvements will be reimbursed by the City. The City will not pay: any amount arising from acceleration of the Project in excess of the base bid; any amount arising from any breach of this Agreement or the Construction Contract by the Developer, the Contractor or any subcontractor/supplier providing services or supplies associated with the Project; any amount arising from the violation of applicable law by the

Developer, the Contractor or any subcontractor/supplier providing services or supplies associated with the Project; or any management or overhead fees except as set forth in the Construction Contract. Except as otherwise expressly provided in this Agreement, the Construction Contract may not be amended in any manner without the prior, written approval of the City. Such approval may be granted, denied or delayed as the City determines in its sole discretion to be in its best interests.

28. Notices. All notices, requests for payment, requests to modify the Project or its costs, and any other questions concerning this Project should be addressed as follows:

If to the City:	Sonji Mosley City of Charlotte Engineering & Property Management 600 East Fourth Street - CMGC 12 <sup>th</sup> Floor Charlotte, NC 28202-2844 Fax No.: 704/336-4554
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If to the Developer:	David J. Niekamp Crescent Resources, LLC 400 South Tryon Street, Suite 1300 Charlotte, NC 28285 Fax No: 980/321-6170
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Notice shall be effective upon the date of receipt by the intended recipient, provided that any notice that is sent by tele-fax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

29. Access by Developer. The City agrees that prior to the date that the Project is open to the public the Developer shall have the right to use the right-of-way of City Boulevard Extension to park construction vehicles, to locate mobile construction trailers, and to stage construction materials, whether for the Project or the Development. In addition, the Developer shall have the right to use the road within the right-of-way as a haul road for fill dirt or construction materials being delivered to the Development. Developer agrees, at its sole cost and expense, to repair any damage to the City's Roadway Improvements, the Utility Improvements and other improvements in the right-of-way area resulting from its activities under this paragraph.

30. Landfill Remediation and Dedication of Right-of-Way. The parties understand and agree that construction debris and other organic materials from a pre-existing landfill (hereafter the "Landfill Material") exist in and around the site of the proposed City Boulevard Extension on land owned or controlled by the Developer that is also required for construction of the Project (hereafter the "Required ROW"). The parties further understand and agree that the Landfill Material must be removed or relocated from the Required ROW in order for the Project to be constructed. Developer agrees to assume full responsibility for said action as part of this Agreement. Thereafter, upon completion of the Project, and prior to the City's

acceptance of the City's Roadway Improvements and Utility Improvements, Developer agrees to dedicate the Required ROW to the City at no cost to the City.

31. Indemnification. To the fullest extent permitted by law, the Developer shall indemnify, save and hold the City and NCDOT, and their respective officers, agents and employees, harmless from liability of any kind, suits, actions or claims of any character resulting from the negligence or willful misconduct of one or more of its officers, agents, employees, contractors or subcontractors (including, but not limited to, any liability caused by an accident or occurrence resulting in bodily injury, death, sickness or disease to any person(s), or damage to or destruction of any property, real or personal) in the performance of this Agreement.

32. Insurance. The Developer shall purchase and maintain the following insurance during the life of this Agreement with a company acceptable to the City and authorized to do business with the State of North Carolina:

- Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
- Commercial General Liability - Bodily injury and property damage liability as shall protect the Developer and any contractor performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement whether such operations are performed by the Developer, any contractor or any person directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of this Agreement.
- Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.
- Professional Liability Insurance In an amount of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

The City shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Developer and/or Contractor providing such insurance.

The City of Charlotte and NCDOT shall be named as additional insured under the commercial general liability insurance for operations and services rendered under this Agreement.

Certificates of all required insurance shall be furnished to the City and shall contain the provision that the City will be given 30 day written notice of any intent to amend or terminate by either the insured or the insuring company.

33. Warranty. The Developer and its contractor shall warrant, for a period of one (1) year from the substantial completion of the Project, that all Work performed under this Agreement will be in accordance with the Approved Plans and be free of latent defects. The Developer will assign to the City any and all warranties that it may receive from contractors or suppliers relating to the City Roadway Improvements and the Utility Improvements. Nothing in this provision shall be construed to limit or restrict the limitations period that applies to any claims or causes of action for breach of contract or latent defects.

34. Small Business Opportunity Program. The Developer understands that the City has adopted a Small Business Opportunity Program, the applicable terms and conditions of which are set out in Exhibit C attached hereto and incorporated herein by reference and agrees to complete all documentation required by said Program and to comply with all applicable provisions of said Program.

35. Commercial Non-Discrimination Policy. The Developer understands that the City has adopted a Commercial Non-Discrimination Policy as set out in Section 2, Article V of the Charlotte City Code, and agrees to complete the Commercial Non-Discrimination Certification attached hereto as Exhibit D and incorporated herein by reference and to comply with all applicable provisions of said Policy.

36. Developer's Obligation to Enforce Contract with Contractor. The Developer agrees that it will use reasonable efforts to enforce all contractual obligations on the part of the Contractor performing the Work. In the event of a breach or default on the part of the Contractor, the Developer agrees to reasonably enforce all rights and remedies against the Contractor.

37. No Third-Party Rights. This Agreement is entered into by and between the parties hereto for their exclusive benefit. The parties do not intend to create or establish by this Agreement any third-party beneficiary status or rights, and no such third-party shall be entitled to enforce any right of obligation or enjoy any benefit created or established by this Agreement.

38. Assignment. Subject to the City's reasonable approval, the Developer shall have the right to assign this Agreement to a third party having the financial strength and motivation to complete the Project.

39. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

40. Applicable Law. This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

41. Entire Agreement. This Agreement is the entire agreement between the parties with respect to its subject matter and there are no other representations, understandings or agreements between the parties relative to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals ("prior agreements"), written or oral, except to the extent such prior agreements are incorporated by reference into this Agreement.

42. Amendments. No amendment or modification to the Agreement shall be valid unless it is in writing and duly entered into and executed by the parties with the same formality as this Agreement.

43. Compliance with Laws. In performing this Agreement, the Developer shall make itself aware of and comply with, and shall cause each of its contractors to comply with, all applicable federal, state and local laws and regulations (including without limitation obtaining all required permits and licenses).

**[signatures on following page]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESS:

**CRESCENT RESOURCES, LLC**  
Federal Tax I.D. No. 57-0443582

\_\_\_\_\_

By: \_\_\_\_\_  
Vice President

ATTEST:

**CITY OF CHARLOTTE**

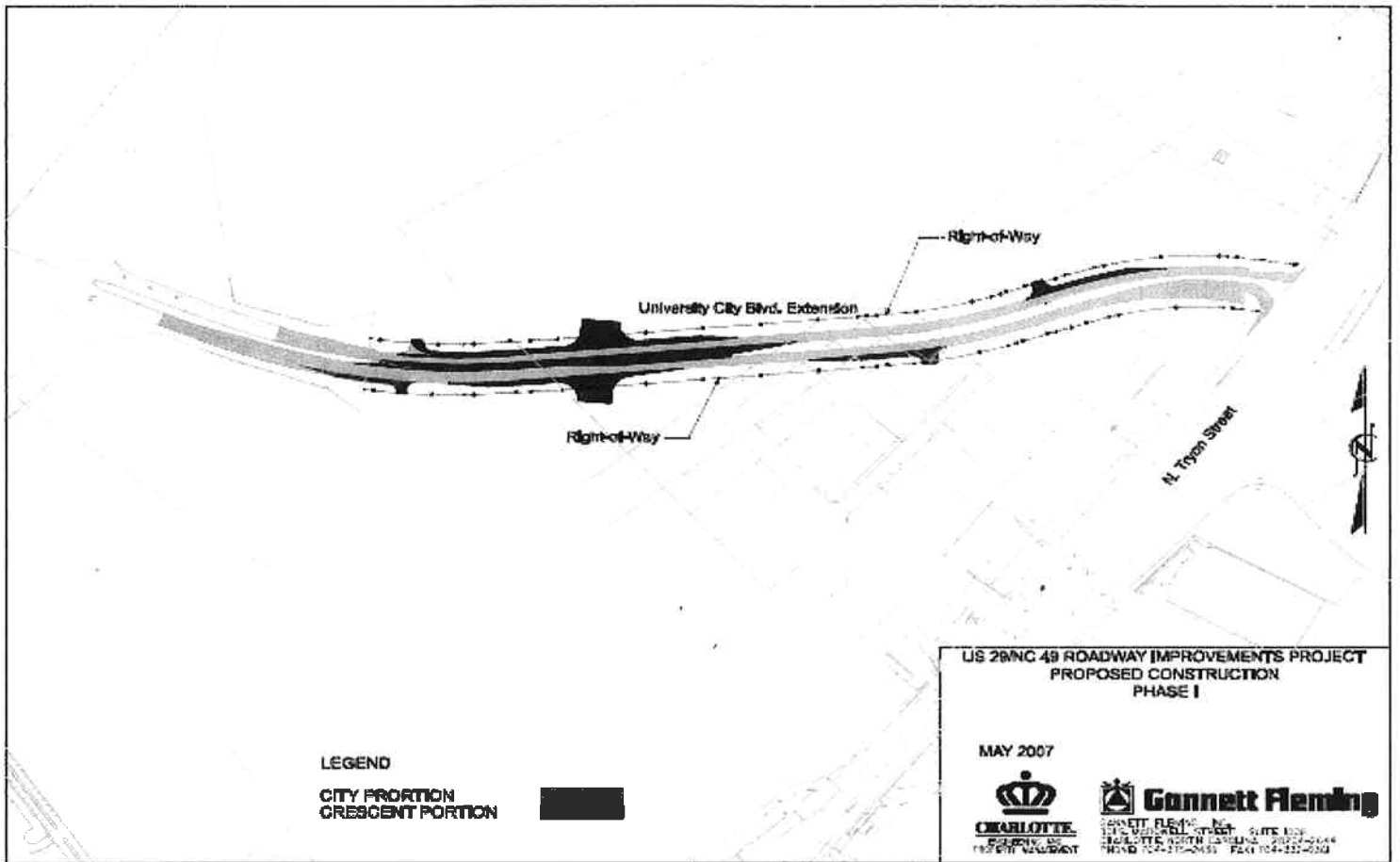
\_\_\_\_\_

By: \_\_\_\_\_  
Contracts Officer

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

\_\_\_\_\_  
Deputy Finance Officer

EXHIBIT A  
"Site Map"



**EXHIBIT B**  
**“Construction Estimate”**



GANNETT FLEMING, INC.  
ROADWAY, DRAINAGE AND SITE IMPROVEMENT PROJECTS  
ENGINEER'S ESTIMATE

301 S. McDOWELL STREET, SUITE 914  
CHARLOTTE, NORTH CAROLINA 28204  
(704) 375-2438 FAX (704) 332-9361

PROJECT: US 29/NC 49 Roadway Improvement Project - Phase I - University  
City Blvd. Ext.

**Total Cost of Phase I, Including -Y1- Intersection**

NUMBER: City Project No. 512-99-009; GF Project No. 36088; TIP  
No. R-2420CA

ESTIMATOR: Lambert,RWM 04/17/2007

Item No.	Sect. No.	Item Description	Quantity and Unit	Unit Price	Amount
ROADWAY ITEMS					
1	800	Mobilization	1 LS	\$250,000.00	\$250,000.00
2	200	Clearing and Grubbing	11.8 AC	\$7,000.00	\$82,600.00
3	225	Unclassified Excavation	12,300 CY	\$15.00	\$184,500.00
4	225	Undercut Excavation	2,450 CY	\$10.00	\$24,500.00
5	SP	Landfill Remediation	5,280 TN	\$55.00	\$290,400.00
6	230	Borrow Excavation	73,040 CY	\$10.00	\$730,400.00
7	310	Storm Drainage Allowance	1 LS	\$254,500.00	\$254,500.00
8	545	Incidental Stone Base	300 TN	\$35.00	\$10,500.00
9	607	Milling Existing Asphalt Pavement 1.5-2.5 inches	1,125 SY	\$8.00	\$9,000.00
10	610	Bituminous Concrete Base Course, Type B 25.0 C	11,330 TN	\$60.00	\$679,800.00
11	610	Bituminous Concrete Intermediate Course, Type I 19.0 C	5,960 TN	\$60.00	\$357,600.00
12	610	Bituminous Concrete Surface Course, Type S 9.5 C	4,710 TN	\$60.00	\$282,600.00
13	620	Asphalt Binder for Plant Mix Type 64-22/70-22	1,105 TN	\$410.00	\$453,050.00
14	654	Bituminous Plant Mix, Pavement Repair	35 TN	\$250.00	\$8,750.00
15	806	Concrete Right-of-Way Markers	16 EA	\$250.00	\$4,000.00
16	846	2'-6" Concrete Curb and Gutter	4,800 LF	\$20.00	\$96,000.00
17	846	1'-6" Concrete Curb and Gutter	3,190 LF	\$15.00	\$47,850.00
18	848	4" Concrete Sidewalk	2,825 SY	\$30.00	\$84,750.00
19	848	Concrete Wheelchair Ramps (12 EA)	90 SY	\$150.00	\$13,500.00
20	852	Monolithic Concrete Islands Various Widths	430 SY	\$60.00	\$25,800.00
21	862	Steel Beam Guardrail	100 LF	\$25.00	\$2,500.00
22	862	Guardrail Anchor Units, Type GRAU-350	1 EA	\$2,000.00	\$2,000.00
23	862	Guardrail Anchor Units, Type CAT-1	1 EA	\$500.00	\$500.00
24	825	Saw Cutting Existing Pavement	325 LF	\$4.00	\$1,300.00
25	1660	Seeding and Mulching	8.0 AC	\$2,500.00	\$20,000.00
26	1100	Traffic Control Plan Allowance	1 LS	\$40,000.00	\$40,000.00
27	1200	Pavement Marking/Signage Allowance	1 LS	\$33,000.00	\$33,000.00
28	1500	Utility Relocation/Adjustment Allowance	1 LS	\$20,000.00	\$20,000.00
29	SP	Water Line Extension	1 LS	\$1,090,900.00	\$1,090,900.00
30	1600	Erosion Control Plan Allowance	1 LS	\$33,500.00	\$33,500.00
31	1700	Traffic Signal Interconnect Allowance	1 LS	\$42,000.00	\$42,000.00
Subtotal					\$5,175,800.00

10 % Contingency	\$517,600.00
Additional Contingency for Landfill Remediation	\$0.00
Additional Lump Sum Contingency	\$60,000.00
Contract Sum	\$5,753,400.00

SAY	\$5,753,000
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GANNETT FLEMING, INC.

ROADWAY, DRAINAGE AND SITE IMPROVEMENT PROJECTS

ENGINEER'S ESTIMATE

**CITY PORTION**

PROJECT:

US 29/NC 49 Roadway Improvement Project - Phase I - University  
City Blvd. Ext.

NUMBER:

**Cost of Phase I, NOT Including -Y1- Intersection**  
City Project No. 512-99-009; GF Project No. 36088;  
TIP No. R-2420CA

ESTIMATOR:

Lambert,RWM 04/17/2007

301 S. McDOWELL STREET, SUITE 914

CHARLOTTE, NORTH CAROLINA 28204

(704) 375-2438 FAX (704) 332-9361

Item No.	Sect. No.	Item Description	Quantity and Unit	Unit Price	Amount
ROADWAY ITEMS					
1	800	Mobilization	1 LS	\$165,000.00	\$165,000.00
2	200	Clearing and Grubbing	7.8 AC	\$7,000.00	\$54,600.00
3	225	Unclassified Excavation	12,300 CY	\$15.00	\$184,500.00
4	225	Undercut Excavation	2,450 CY	\$10.00	\$24,500.00
5	SP	Landfill Remediation	0 TN	\$55.00	\$0.00
6	230	Borrow Excavation	38,660 CY	\$10.00	\$386,600.00
7	310	Storm Drainage Allowance	1 LS	\$154,500.00	\$154,500.00
8	545	Incidental Stone Base	150 TN	\$35.00	\$5,250.00
9	607	Milling Existing Asphalt Pavement 1.5-2.5 inches	1,125 SY	\$8.00	\$9,000.00
10	610	Bituminous Concrete Base Course, Type B 25.0 C	8,530 TN	\$60.00	\$511,800.00
11	610	Bituminous Concrete Intermediate Course, Type I 19.0 C	4,410 TN	\$60.00	\$264,600.00
12	610	Bituminous Concrete Surface Course, Type S 9.5 C	3,380 TN	\$60.00	\$202,800.00
13	620	Asphalt Binder for Plant Mix Type 64-22/70-22	810 TN	\$410.00	\$332,100.00
14	654	Bituminous Plant Mix, Pavement Repair	10 TN	\$250.00	\$2,500.00
15	806	Concrete Right-of-Way Markers	16 EA	\$250.00	\$4,000.00
16	846	2'-6" Concrete Curb and Gutter	4,800 LF	\$20.00	\$96,000.00
17	846	1'-6" Concrete Curb and Gutter	3,190 LF	\$15.00	\$47,850.00
18	848	4" Concrete Sidewalk	2,825 SY	\$30.00	\$84,750.00
19	848	Concrete Wheelchair Ramps (12 EA)	90 SY	\$150.00	\$13,500.00
20	852	Monolithic Concrete Islands Various Widths	0 SY	\$60.00	\$0.00
21	862	Steel Beam Guardrail	100 LF	\$25.00	\$2,500.00
22	862	Guardrail Anchor Units, Type GRAU-350	1 EA	\$2,000.00	\$2,000.00
23	862	Guardrail Anchor Units, Type CAT-1	1 EA	\$500.00	\$500.00
24	825	Saw Cutting Existing Pavement	250 LF	\$4.00	\$1,000.00

25	1660	Seeding and Mulching	7.3 AC	\$2,500.00	\$18,250.00
26	1100	Traffic Control Plan Allowance	1 LS	\$36,500.00	\$36,500.00
27	1200	Pavement Marking/Signage Allowance	1 LS	\$13,000.00	\$13,000.00
28	1500	Utility Relocation/Adjustment Allowance	1 LS	\$20,000.00	\$20,000.00
29	SP	Water Line Extension	1 LS	\$545,450.00	\$545,450.00
30	1600	Erosion Control Plan Allowance	1 LS	\$13,500.00	\$13,500.00
31	1700	Traffic Signal Interconnect Allowance	1 LS	\$0.00	\$0.00

Subtotal	\$3,196,550.00
10 % Contingency	\$319,700.00
Additional Contingency for Landfill Remediation	\$100,000.00
Additional Lump Sum Contingency	\$60,000.00
Contract Sum	\$3,676,250.00

<b>SAY</b>	<b>\$3,676,000</b>
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GANNETT FLEMING, INC.

ROADWAY, DRAINAGE AND SITE IMPROVEMENT PROJECTS

ENGINEER'S ESTIMATE

**CRESCENT PORTION**

PROJECT:

US 29/NC 49 Roadway Improvement Project - Phase I - University  
City Blvd. Ext.

**Difference Btwn. Total Cost of Phase I and Phase I NOT Including the -Y1- Intersection**

NUMBER:

City Project No. 512-99-009; GF Project No. 36088;  
TIP No. R-2420CA

ESTIMATOR:

Lambert,RWM 04/17/2007

301 S. McDOWELL STREET, SUITE 914

CHARLOTTE, NORTH CAROLINA 28204

(704) 375-2438 FAX (704) 332-9361

Item No.	Sect. No.	Item Description	Quantity and Unit	Unit Price	Amount
ROADWAY ITEMS					
1	800	Mobilization	1 LS	\$85,000.00	\$85,000.00
2	200	Clearing and Grubbing	4.0 AC	\$7,000.00	\$28,000.00
3	225	Unclassified Excavation	0 CY	\$15.00	\$0.00
4	225	Undercut Excavation	0 CY	\$10.00	\$0.00
5	SP	Landfill Remediation	5,280 TN	\$55.00	\$290,400.00
6	230	Borrow Excavation	34,380 CY	\$10.00	\$343,800.00
7	310	Storm Drainage Allowance	1 LS	\$100,000.00	\$100,000.00
8	545	Incidental Stone Base	150 TN	\$35.00	\$5,250.00
9	607	Milling Existing Asphalt Pavement 1.5-2.5 inches	0 SY	\$8.00	\$0.00
10	610	Bituminous Concrete Base Course, Type B 25.0 C	2,800 TN	\$60.00	\$168,000.00
11	610	Bituminous Concrete Intermediate Course, Type I 19.0 C	1,550 TN	\$60.00	\$93,000.00
12	610	Bituminous Concrete Surface Course, Type S 9.5 C	1,330 TN	\$60.00	\$79,800.00
13	620	Asphalt Binder for Plant Mix Type 64-22/70-22	295 TN	\$410.00	\$120,950.00
14	654	Bituminous Plant Mix, Pavement Repair	25 TN	\$250.00	\$6,250.00
15	806	Concrete Right-of-Way Markers	0 EA	\$250.00	\$0.00

16	846	2'-6" Concrete Curb and Gutter	0 LF	\$20.00	\$0.00
17	846	1'-6" Concrete Curb and Gutter	0 LF	\$15.00	\$0.00
18	848	4" Concrete Sidewalk	0 SY	\$30.00	\$0.00
19	848	Concrete Wheelchair Ramps	0 SY	\$150.00	\$0.00
20	852	Monolithic Concrete Islands Various Widths	430 SY	\$60.00	<b>\$25,800.00</b>
21	862	Steel Beam Guardrail	0 LF	\$25.00	\$0.00
22	862	Guardrail Anchor Units, Type GRAU-350	0 EA	\$2,000.00	\$0.00
23	862	Guardrail Anchor Units, Type CAT-1	0 EA	\$500.00	\$0.00
24	825	Saw Cutting Existing Pavement	75 LF	\$4.00	<b>\$300.00</b>
25	1660	Seeding and Mulching	0.7 AC	\$2,500.00	<b>\$1,750.00</b>
26	1100	Traffic Control Plan Allowance	1 LS	\$3,500.00	<b>\$3,500.00</b>
27	1200	Pavement Marking/Signage Allowance	1 LS	\$20,000.00	<b>\$20,000.00</b>
28	1500	Utility Relocation/Adjustment Allowance	1 LS	\$0.00	\$0.00
29	SP	Water Line Extension	1 LS	\$545,450.00	<b>\$545,450.00</b>
30	1600	Erosion Control Plan Allowance	1 LS	\$20,000.00	<b>\$20,000.00</b>
31	1700	Traffic Signal Interconnect Allowance	1 LS	\$42,000.00	<b>\$42,000.00</b>

Subtotal	<b>\$1,979,250.00</b>
10 % Contingency	<b>\$197,900.00</b>
Additional Contingency for Landfill Remediation	-\$100,000.00
Additional Lump Sum Contingency	\$0.00
Contract Sum	<b>\$2,077,150.00</b>

<b>SAY</b>	<b>\$2,077,000</b>
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**EXHIBIT C**  
**SMALL BUSINESS OPPORTUNITY PROGRAM**  
**REQUIREMENTS FOR CONTRACTS**

The City's Small Business Opportunity Program (SBO Program) applies to all aspects of the City's contracting and procurement programs and its provisions are incorporated in their entirety into this Agreement by reference. In order to comply with the SBO Program, the Developer will need to complete the SBO Program forms referenced below at appropriate times during the term of the Agreement.

This Agreement is considered an "Exempt Contract" under the provisions of the SBO Program since it is being entered into without a competitive process. According to the provisions of the SBO Program, Sections VI, VII and VIII of the SBO Program do not apply to Exempt Contracts. However, Business Enterprises that enter into Exempt Contracts shall be required to:

- a. Notify Small Business Enterprises (SBEs) of any subcontracting opportunities that may exist on the Exempt Contract for which there are Qualified SBEs listed in the City's database; and
- b. Report to the City the total dollars of SBE utilization on the Exempt Contract. The City, on a periodic basis or upon completion of the Exempt Contract, may condition payment to submission of an accurate and properly prepared report.

Failure to comply with this Section of the SBO Program shall be deemed a material breach of contract. In the event the Business Enterprise fails to comply with this Section, the City shall be entitled to terminate or suspend the Exempt Contract, withhold payment under the Exempt Contract, impose any liquidated damages that may be included in the Exempt Contract, or impose any other remedy allowed under the Exempt Contract, at law, or in equity for material breach of contract.

**SBOP Form 2 – Good Faith Efforts**

The Developer will identify subcontracting opportunities. The subcontract opportunities will be matched to the City's SBE database to identify eligible SBEs for the work. The Developer will contact one or more SBEs and/or non-SBEs for each subcontract opportunity to discuss and negotiate a subcontract scope of services. In order to comply with the SBE Program, the Developer is encouraged to seriously consider SBEs for any and all subcontract and supplier opportunities.

You must negotiate in good faith with all interested SBE firms. Section 6.2 of the SBO Program defines what negotiating in "good faith" means. **Use SBOP Form 2** to report on your negotiations with SBE firms.

**SBOP Form 3 – Subconsultant/Supplier Utilization Commitment**

Once all subcontracts have been finalized, the Developer will complete **SBOP Form 3** and

submit it for inclusion in the Agreement. This will constitute the Developer's formal commitment to utilize the specified SBE and non-SBE firms as subconsultants or suppliers in the performance of the Agreement.

#### SBOP Form 4 – Small Business Enterprise Letter of Intent

For each SBE firm listed on **SBOP Form 3**, the Developer will complete a Letter of Intent in the form of **SBOP Form 4**. A copy of each Letter of Intent, properly signed by the Developer and the SBE, will become part of the Agreement. A copy of each Letter of Intent, signed by both the Developer and the SBE, will be provided to the E&PM SBE Liaison and kept in the contract file as an official record.

#### SBOP Form 6 – Subcontractor/Supplier Utilization and Payment Affidavit

The Developer must submit a completed **SBOP Form 6** with the payment request. All payments made by the Developer to any SBE in any amount must be listed on this form.

#### SBO Program Provisions Applicable After Contract Award

Please note that the SBO Program includes specific provisions regarding:

- Schedule of work to be performed by SBEs
- Compliance with committed SBE utilization level throughout the term of the Agreement
- Changes in Scope of Work
- Payments to subcontractors, joint venturers, suppliers, manufacturers and brokers
- Replacing an SBE on a Contract or Adding Subcontracting Opportunities

**Small Business Opportunity Program  
Subcontractor / Supplier Utilization Commitment**

**SBO Form 3**  
(Page 1)

of 2)

*You **must** submit this form with the bid. Copy this form as needed.*

**Bidder Name:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_  
**Project Number:** \_\_\_\_\_  
**VMS Number:** \_\_\_\_\_

**3. Below is a list of all SBEs that you intend to use on this contract.**

SBE Name	Description of work / materials	NIGP code	VMS #	Total Projected \$

**3. Below is a list of all non-SBEs that you intend to use on this contract.**

Non-SBE Name	Description of work / materials	NIGP code	VMS #

**Total Subcontractor / Supplier Utilization (including SBEs and Non-SBEs)** \$ \_\_\_\_\_  
**Total SBE Utilization** \$ \_\_\_\_\_  
**Total Bid Amount (including Contingency)** \$ \_\_\_\_\_  
**Percent SBE Utilization** (Total SBE Utilization *divided by* Total Bid Amount) \_\_\_\_\_ %

The undersigned Developer certifies and agrees that (a) it has complied with all provisions of the SBO Program and (b) failure to properly document such compliance in the manner and within the time periods established by the SBO Program shall constitute a forfeiture of the Developer's bid bond, and shall entitle the City to recover under the bid bond and, (c) in the absence of a bid bond, such failure shall entitle the City to recover damages for breach of contract.

Signature of Authorized Official \_\_\_\_\_ Title \_\_\_\_\_ Submittal Date \_\_\_\_\_

## Small Business Opportunity Program

SBO

Form 3

### Subcontractor / Supplier Utilization Commitment

(Page 2 of

2)

You **must** submit this form with the bid. Copy this form as needed.

**All Subcontractors and Suppliers must be registered with the City of Charlotte.** Each subcontractor or supplier (non-SBE and SBE) that you use on this contract must be registered in the City's vendor registration database. You will need to provide the vendor registration number for each subcontractor and supplier used on this contract as a condition for receiving final payment on this Contract.

**What happens if you add subcontractors or suppliers after submitting this form?** Nothing in this certification shall be deemed to preclude you from entering into subcontracting arrangements after submission of this form. However, you must comply with the following:

- Except in the case of an emergency or where the work to be performed is very minor in amount all subcontractors that will work on this contract must be approved in advance by the City;
- You must maintain the level of SBE participation proposed on this form throughout the duration of the Contract, except as specifically allowed in Section 10 of the SBO Program;
- If the scope of work on the Contract increases you must comply with Section 10.3 of the SBO Program;
- If you need to add or replace an SBE, or if you elect to subcontract any portion of work not identified on this form as being subcontracted, then you must comply with Section 11 of the SBO Program
- You must maintain and if requested, provide to the City documentation sufficient to establish that all qualified businesses were afforded equal opportunity to participate in your subcontracting opportunities, regardless of race, ethnicity, gender, age, religion, national origin or disability.

**Certification of SBE Utilization.** The undersigned Developer certifies that (a) each SBE listed on the preceding chart submitted a bid for the amount indicated; and (b) if awarded the Contract, the Developer will enter into a formal agreement with each SBE identified on the preceding chart, and that such agreements will be for work and products indicated on the chart and in the approximate dollar amount projected on the chart. The undersigned Developer further acknowledges that it must submit a Letter of Intent (**Form 4** or an equivalent containing the same information) for each SBE identified on the preceding chart. Letters of Intent must be signed by the SBE and the Developer, and are due 3 business days after the City requests them.



**Small Business Opportunity Program  
Letter of Intent**

**SBO Form 4**  
(Page 1 of

1)

Bidder can submit this form with the Bid.

This form must be received and completely filled from Apparent Low Bidder within 3 business days after bid opening.

Copy this form as needed.

**Bidder Name:** \_\_\_\_\_  
**Project Name:** \_\_\_\_\_  
**Project Number:** \_\_\_\_\_

A Letter of Intent is required for each SBE listed on the Subcontractor Utilization Form 3 and must be signed by both the Bidder and the SBE firm.

3. To be completed by the Bidder

Name of Bidder: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

3. To be completed by SBE

Name of SBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

3. Identify IN COMPLETE DETAIL the scope of work to be performed or item(s) to be supplied by the SBE. On unit price bids, identify which bid line item the SBE's scope of work or supply corresponds:

\_\_\_\_\_  
\_\_\_\_\_

**D. Cost of work to be performed by SBE:** \_\_\_\_\_

**E. Cost of work to be performed by SBE as a percentage of total amount of City contract:** \_\_\_\_\_

Bidder certifies that it intends to utilize the SBE listed above, and that the description, cost and percentage of work to be

performed by the SBE as described above is accurate. The SBE Firm certifies that it has agreed to provide such work/supplies for the amount stated above.

Bidder: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature and Title  
SBE Firm: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature and Title

## Small Business Opportunity Program

## SBO Form 6

## Payment Affidavit - Subcontractor / Supplier Utilization

To be submitted with each request for payment from the City of Charlotte. Copy this form as needed.

Invoice Amount: \_\_\_\_\_ Payment or Invoice #: \_\_\_\_\_  
Project Name: \_\_\_\_\_ Contract Number: \_\_\_\_\_  
Payment Period: From \_\_\_\_\_ To \_\_\_\_\_ City KBU: \_\_\_\_\_  
(Department)

FINAL PAYMENT ☐

**Section 1: Payments to SUBCONTRACTORS**

Complete the chart below for all subcontractors used on the Project/Contract regardless of dollar amount. All subcontractors must be registered in the City's Vendor Registration System.

Subcontractor's Name	Description of Work Performed	NIGP Code	City VMS Number	Payment this Pay Period	Cumulative Payments

**Section 2: Payments to SUPPLIERS**

All suppliers providing goods under City contracts must be listed on the Sales Tax Statement submitted with each pay request. The City may request on a case-by-case basis that the Contractor require certain suppliers to be registered in the City's Vendor Registration System and may withhold payment of any amounts due the Contractor in the event the Contractor fails to comply with such request.

The undersigned Developer certifies the preceding chart is a true and accurate statement of all payments that have been or will be made to subcontractors and suppliers on this Project/Contract. If no subcontractors or suppliers are listed on the preceding chart, the Developer certifies that no subcontractors or suppliers were used in performing the Project/Contract for the payment period indicated. Failure to provide accurate and truthful information is a violation of the Small Business Opportunity Program and is subject to the sanctions prescribed therein.

This \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_\_

\_\_\_\_\_  
Name of Developer

\_\_\_\_\_  
VMS #

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

To be completed by KBU for FINAL PAYMENT

Total Paid to Contractor \_\_\_\_\_

Total Paid to SBEs \_\_\_\_\_

SBE Goal \_\_\_\_\_

SBE Goal Attainment \_\_\_\_\_

SBE Goal Commitment \_\_\_\_\_

**STATE/COUNTY SALES/USE TAX STATEMENT**

PROJECT:

\_\_\_\_\_

CONTRACTOR/SUBCONTRACTOR:

\_\_\_\_\_

PERIOD COVERED:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

INVOICE NO	INVOICE DATE	VENDOR'S NAME	AMOUNT BEFORE TAXES	4.5% NC TAX	3.0% COUNTY TAX	TOTAL INVOICE AMOUNT	COUNTY PAID
Subtotal (Page 1)			\$	\$	\$	\$	\$
Plus total cost of material withdrawn from our warehouse stock							
GRAND TOTAL			\$	\$	\$	\$	\$

I certify that the above-listed vendors were paid sales tax upon purchases of building material during the period covered by the construction estimate, and the property upon which such taxes were paid were, or will be, used in the performance of this Contract. The list above does not include any taxes paid on purchases of tangible personal property that does not annex to, affix to, or in some manner become a part of the project, building, structure or repairs.

Signed: \_\_\_\_\_

Title:

\_\_\_\_\_

**EXHIBIT D**  
**COMMERCIAL NON-DISCRIMINATION CERTIFICATION**

**Project:** City Boulevard

**Name of Company (Proposer):** Crescent Resources, LLC

The undersigned Proposer hereby certifies and agrees that the following information is correct:

1. In preparing the enclosed proposal, the Proposer has considered all proposals submitted from qualified, potential subconsultants and suppliers and has not engaged in discrimination as defined in Section 2.
2. For purposes of this certification *discrimination* means discrimination in the solicitation, selection, or treatment of any subconsultant, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability or any other unlawful form of discrimination. Without limiting the foregoing, *discrimination* also includes retaliating against any person or other entity for reporting any incident of prohibited discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the proposal submitted with this certification and terminate any contract awarded based on such proposal. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Proposer to any remedies allowed thereunder, including possible disqualification from participating in City contracts or bid processes for up to two years.
4. As a condition of contracting with the City, the Proposer agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subconsultants in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the proposal submitted by the Proposer and terminate any contract awarded on such bid. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Proposer to any remedies allowed thereunder.
5. As part of its proposal, the Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against the Proposer in a legal or administrative proceeding alleging that the Proposer discriminated against its subconsultants, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a proposal to the City, the Proposer agrees to comply with the City's Commercial Non-Discrimination Policy as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

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

Signature of Authorized Official

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