PROJECT MANUAL

CHARLOTTE MECKLENBURG SCHOOL

3301 STAFFORDDRIVE

CHARLOTTE, NC 28208

Bid for:

Switchboard Replacement/Upgrade at Olympic High School

Olympic High School
4301 Sandy Poter Road
Charlotte, North Carolina 28273

Pre-Bid Meeting Date and Time:
Monday November 16, 2026
Time: 9:30 AM

Bid Due Date:
Monday November 30, 2026
Time: 2:00 PM

Olympic High School

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000100

DOCUMENT 00 06 10
PAYMENT BOND

Date of Execution of this bond	_____
Name and Address of Principal (Bidder)	_____
	_____
Name and Address of Surety	_____
	_____
Name and Address of Contracting Body	THE CHARLOTTE-MECKLENBURG COUNTY BOARD OF EDUCATION
	a body corporate of the State of North Carolina,
	PO Box 30035, Charlotte, North Carolina, 28230-0035
Amount of Bond	_____
Contract	That certain contract by and between the Principal and the Contracting Body above named dated
	_____
	_____ for _____
	_____

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above-named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successor, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached;

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications and extensions of time of said contract may be here-after be made, notice of which modification and extension of time to the Surety being hereby waived, then this obligation to be void; otherwise, to remain in full force and virtue.

THIS PAYMENT BOND is made and given pursuant to the requirements and provisions of Section 129 of Chapter 143 of the General Statutes of North Carolina and pursuant to Article 3 of Chapter 44-A of the General Statutes of North Carolina, and each and every provision set forth and contained in Article 3 of Chapter 44-A of the General Statutes of North Carolina is incorporated herein, made a part hereof, and deemed to be conclusively written into this Bond.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals of the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned and representative, pursuant to authority of its governing body.

WITNESS:

_____
Principal (Name of individual, and trade Name, partnership, corporation, or joint venture)

_____
(Proprietorship or Partnership)

BY_____(Seal)

TITLE_____
(Owner, Partner, Office held in corporation, joint venture)

(Corporate Seal)

ATTEST (Corporation)
BY_____

TITLE_____
(Corporation Secretary or Assistant Secretary Only)

_____
Surety (Name of Surety Co.)

WITNESS:

BY_____

TITLE _____Attorney in Fact_____

_____

(Corporate Seal of Surety)

_____
(Address of Attorney in Fact)

COUNTERSIGNED:

_____

_____
N.C. Licensed Resident Agent

The Formal bid for Switchboard Replacement/Upgrade at Olympic High School, 4301 Sandy Porter Road, Charlotte, NC 28273 will be received by the Owner at 3301 Stafford Drive, Charlotte, NC 28208 by 1:45 PM, on Monday November 30, 2026.

All quotes must be held for 90 days to allow enough time for contract/board approval.
Formal Bid Documents, Drawings, and Specifications can be downloaded from the following site beginning **Monday November 9, 2026** at www.cms.k12.nc.us and search for formal bids.

A Mandatory Pre-Bid Meeting will take place at Olympic High School on **Monday November 16, 2026** at 9:30 AM.

All questions should be directed to Coretta Haskins-Hall at c1.haskins-hall@cms.k12.nc.us and received by email only until 10AM NLT **Tuesday November 24, 2026**.

Bids will be due by mail, or hand delivered only to 3301 Stafford Drive, Charlotte, NC 28208 NLT 1:45 PM**, November 30, 2026**, Attn: Coretta Haskins-Hall, at which time they will be publicly opened at 2:00 PM.

5% Bid Bond is required with all bid submissions over $500K and above.

100% Payment and Performance Bonds will be required for successful bidder before contract execution.

The Owner reserves the right to reject any and all bids and to waive informalities

DOCUMENT 00 21 13
INSTRUCTIONS TO BIDDERS

PART 1 - GENERAL

1.1 SECURING DOCUMENTS

A. Obtain procurement documents for bidding purposes under conditions as set forth in the Advertisement for Bid.

1.2 BID FORM

A. Submit Bids on the forms provided, properly executed and with all items filled out. Modification of the Bid Form, attachment of conditions or limitation of provisions may be cause for rejection of the Bid. Alterations, erasure or interlineations must be noted with explanation on the Bid Form over the signature of the Bidder.

1.3 SUBMISSION OF BIDS

A. Deliver Bid to the location indicated in the Advertisement for Bid before time set for receipt of bids. Submit Bid in an opaque, sealed envelope and marked in the lower left-hand corner with the following information:

1. Bidder's Name
2. Bidder's Address
3. Bidder's Phone
4. Contractor's License No.
5. Title of Project
6. Date and Time of the Bid Opening

B. If not delivered in person, envelope shall be enclosed in a second envelope for posting to the location indicated for receipt of bids. Address outside envelope as follows:

Charlotte-Mecklenburg Schools
3301 Stafford Drive
Charlotte, North Carolina 28208

Label Packages “URGENT – TIME SENSITIVE BID ENCLOSED”

C. It is the sole responsibility of the Bidder to submit Bid prior to time fixed for receipt.

D. Electronic submission of Bids or Bid modifications will not be accepted. Bids received after the time fixed for receipt will be considered late and will be returned to the Bidder unopened.

1.4 BID SECURITY

A. A Bid Security in the amount of 5 percent of the Bid Sum shall be furnished with the submission of the Bid. Acceptable Bid Securities include a bid bond, certified check, or other type of security, as stipulated by the North Carolina General Statutes. Submit Bid Security should be on the Owner’s form, attached in the Project Manual.

B. Performance Bond and Labor and Material Payment Bonds, each in the amount of 100 percent of the Contract Sum, shall be furnished prior to Contract execution. Submit Bonds on the Owner’s forms attached in the Project Manual.

1.5 EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

A. Prior to submitting Bid, each Bidder shall carefully examine the proposed Contract Documents and visit the project site. Bidders shall fully inform themselves, prior to Bidding, as to all existing conditions and limitations under which the Work is to be performed and shall include in the Bid Sum an amount to cover the cost of all items necessary to perform the Work as set forth in the proposed Contract Documents. No allowance will be made due to lack of such examination or knowledge. The submission of a Bid shall be construed as conclusive evidence that the Bidder has made such examination.

1.6 MODIFICATION AND WITHDRAWAL OF BIDS

A. Bids may be withdrawn upon request from the Bidder prior to opening time. Withdrawn Bids may be resubmitted up to opening time. Negligence or error on the part of the Bidder in preparing his Bid confers no right for withdrawal of the Bid after it has been opened. No Bid may be withdrawn for 90 calendar days after opening except as provided by North Carolina G.S. 143-129.1.

B. When an offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within (10) Ten consecutive calendar days from the date of the contract award and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Offerors may call the Procurement Official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of receipt of the protest letter. If not, The Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.

1.7 AWARD OR REJECTION OF BIDS

A. Award of Contract, if awarded, will be based on, but not limited to, the following criteria:

1. Cost (best advantage for the Owner)
2. Submission of the Owner’s required qualification documents before or with the Bid.
3. Acceptance of the contractor’s qualifications based on the response to the contractor qualification documents demonstrating his past performance and ability to complete similar work.
4. Conformance with contract documents
5. Acceptable date of delivery
6. Acceptable Form of Bid Security
7. Other reasonable factors deemed fit, by the Owner.

B. A single Contract will be awarded.

C. All bids are subject to the Owner’s right to reject any or all bids and to waive any informality in the bids or in the bidding. Failure to provide qualifications, complete all information required on the bid form, or provide adequate bid security may result in rejection of bid.

1.8 EXECUTION OF AGREEMENT

A. The Standard Form of Agreement between Owner and Contractor will as included in the Project Manual. The successful Bidder, as Contractor, will be required to execute this agreement.

B. The successful Bidder, to whom the Contract is awarded by the Owner, shall, within 10 days after Notice of Award from the Owner, sign and deliver to the Owner all required copies of the Agreement.

C. Prior to or in conjunction with delivery of the executed Agreement, the Contractor shall deliver to the Owner documents described in the Project Manual and the policies or certificates of insurance as required by the Contract Documents. The Owner shall approve all bonds and policies or certificates of insurance before the Contractor may proceed with the Work.

D. Failure or refusal to furnish Bonds or insurance policies or certificates in a form satisfactory to the Owner shall subject the Bidder to forfeiture of Bid Security.

1.9 INTERPRETATION OF CONTRACT DOCUMENTS PRIOR TO BIDDING

A. If any person contemplating submitting a Bid for the construction of the Work is in doubt as to the true meaning of any part of the proposed Contract Documents, or finds discrepancies in or omissions from any part of the Contract Documents, they may submit to the Architect a written request for interpretation or correction thereof, no later than 7 calendar days prior to the receipt of Bids.

B. Interpretation or correction of the Contract Documents shall be made by written addendum and will be mailed, faxed or delivered to each Bidder of record. The Owner will not be responsible for any other explanations or interpretation of the Contract Documents.

C. It is the responsibility of each Bidder to verify that they have received all Addenda before submitting a Bid. It is the responsibility of all sub-bidders and material suppliers to be familiar with and to include in their price, all Addenda issued up to the time of Bid opening. Requests for clarification or additional information shall be accepted only from Bidder submitting as the General Contractor, sub-Bidders and suppliers shall coordinate their requests through these Bidders.

1.10 PRE-BID MEETING

A. A pre-bid meeting will be held at time and location indicated in the Advertisement for Bids. All prospective bidders are required to attend. The conference will include a discussion of the proposed site of the work, discussion of the scope and nature of the work, review of the proposed Contract Documents, and discussion of questions submitted by the Bidders.

1.11 CONTRACTOR QUALIFICATION

A. Bidders are required to submit the Bidder’s Qualification Forms Document 00 45 13 included in the Project Manual with their Bid, regardless of previously submitted qualification information submitted to the Owner. Failure to provide this information with Bid may result in the Bid being considered non-responsive and rejected.

PART 2 - PRODUCTS

(NOT USED)

PART 3 - EXECUTION

(NOT USED)

END OF DOCUMENT

DOCUMENT 00 41 13
BID FORM STIPULATED SUM (SINGLE-PRIME CONTRACT)

PROJECT: Switchboard Replacement/Upgrade – Olympic High School

DATE: _____

BIDDER: _____

TO: Charlotte-Mecklenburg Schools
3301 Stafford Drive
Charlotte, NC 28208

In compliance with the Advertisement for Bids, the undersigned proposes to furnish all labor and materials and perform all work necessary for construction of the referenced project, in strict accordance with all the Contract Documents, including Addenda

Base Bid: Stipulated sum for the Work, completed in accordance with the Contract Documents Breakdown as follows:

Total Bid Amount $_____ **(Inclusive of 8.25% on Materials as this a Capital Improvement Project which Taxes Materials only)**

Bid Security in the sum of _____ in the form of _____ _____ is submitted herewith in accordance with 00 21 13 – Instruction to Bidders.

If notice of acceptance of this bid is given to the undersigned within 90 days after the date of opening of bids, or any time thereafter before this bid is withdrawn, the undersigned will execute and deliver an Agreement in the prescribed form within 10 days after the Agreement has been presented to him for signature. Certificates of Insurance and Bonds shall be furnished to the Owner at the execution of this Agreement.

I certify that the firm signing this bid and registered under that name is legally qualified to perform all work included in the scope of the contract as determined by the State of North Carolina, in granting the registration.

Licensed Contractor No.: _____

Bidder: _____

By (Sign.): _____

(Typed): _____

Title: _____

Business Address:: _____

_____

_____

Telephone Number::_____

END OF DOCUMENT

DOCUMENT 00 45 13
BIDDER'S QUALIFICATIONS

The NC Statute requires that the board or governing body shall award contracts to the lowest responsible bidder. The governing authority has determined that "responsible" refers to the "quality, experience, performance, fitness and capacity of the bidder to satisfactorily perform the proposed work". It is the intent of this document to ensure that appropriate standards of experience, performance and financial integrity will be met, assist in determining "responsibility" and to aid the Owner in selecting the lowest responsible bidder.

Bidders shall complete the entire Bidder's Qualification Questionnaire and submit it with their Bid. Inclusion of any false statement is grounds for immediate disqualification. Failure to submit a completed questionnaire with the Bid may be cause for the Bid to be considered a non-responsive. The Owner reserves the right to waive minor irregularities and to make all final determinations.

The Owner and/or Architect will evaluate the information contained in each applicant's questionnaire and responses received in reference checks. Contractor will be comparatively judged on the basis of, but not limited to, responses to this questionnaire, completion of work similar in scope, performance and quality of work previously completed, organizational capacity, quality of persons and financial criteria. The sole and discretionary judgment of the awarding authority will determine if the applicant is deemed qualified. The Owner may take such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the work/furnish the items(s), and the bidder shall furnish to the Owner all such information and data for this purpose as may be requested. Owner reserves the right to reject any bid if the evidence submitted by, or investigations of, such Bidder fail to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract, complete the work, or furnish the item(s) contemplated therein.

All information provided by the Bidder, will be used only for purposes of qualification, and will not be disclosed except as required by law. Only Bid proposals from qualified Bidders will be considered for award of a Contract.

Each Bidder must have a current and active North Carolina contractor's license at the time of the Bid opening.

The undersigned declares under penalty of perjury that all of the qualification information submitted with this form is true and correct, that the Bidder fully understands this qualification information is being considered for this project only, that being declared non-qualified for this project by the Owner excludes the Bidder from award of this project regardless of an appeal being filed, and that this declaration was executed in _____ County, North Carolina, on _____.

(Name and Title) printed or typed	(Telephone Number)
(Signature)	(FAX Number)
(Firm Name)	(Type of Firm)
(Address)	(Tax I.D. or SSN for sole proprietorships)
(City, State, Zip Code)	(Date Firm Established)

Bidder must answer all of the following questions and provide all requested information, where applicable. If the answer to any question is "none" or if the question is not applicable, please state in writing. Any Bidder failing to do so may be deemed non-responsive with respect to this qualification at the sole discretion of the Owner. All information submitted for qualification evaluation will be considered official information acquired in confidence, the Owner will maintain its confidentiality to the extent permitted by law. If the Bidder can refute some of the facts upon which the decision was based, the Bidder can ask the Owner to appeal the decision in accordance with the appeal procedure contained in Appendix "A" of the qualification document. (See Appendix A for details). The Bidder agrees and acknowledges that being rendered not qualified applies to this project. Bidder further agrees that once the Owner considers the Bidder "not qualified", award cannot be made to the Bidder on this project regardless of an appeal being filed. The decision of the Owner on an appeal is final and not appealable.

Bidder further authorizes the Charlotte-Mecklenburg Board of Education or its Designee to contact any entity named in the qualification document for purposes of verifying the information supplied by the contractor. A copy of this authorization shall have the same force and effect as the original.

PART A: ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Complete Part A before proceeding to Part B

1. Contractor possesses a valid and current unlimited North Carolina Electrical license for the work proposed at the time of bid.

   YES☐ NO☐

2. Contractor has ~~a~~ minimum liability insurance coverage as indicated in part B paragraph 8 of this document at the time of bid.

   YES☐ NO☐

3. The Contractor agrees that if they are the apparent low bidder and if requested by the Owner, they will provide their most recent financial statement or other equivalent documentation not more than one year old at the time of the bid to support the financial strength of your company.

   YES☐ NO☐

4. Contractor has current workers' compensation insurance policy as required by the Labor Code and NC General statutes or is legally self-insured pursuant to Labor Code and NC State statutes.

   YES☐ NO☐ ☐ Contractor is exempt from this requirement, because it has no employees

5. Have you attached the surety's statement of intent as requested in paragraph 7b from an admitted surety insurer (approved by the North Carolina Department of Insurance) and authorized to issue bonds in the State of North Carolina, which states that your firm will provide a payment and performance bond sufficient for the project for which you are seeking qualification?

   YES☐ NO☐

6. Contractor has demonstrated school experience as a General Contractor and completed two or more school or university projects of similar size and complexity in North or South Carolina in the last three years.

   YES☐ NO☐

7. Contractor has been "default terminated" by an owner (other than for convenience), or Surety has completed contract within the last five (5) years.

   YES☐ NO☐

8. Contractor has been cited more than twice for failure to pay prevailing wages in the last five (5) years.

   YES☐ NO☐

9. Contractor's license has been revoked at any time in the last five (5) years.

   YES☐ NO☐

10. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public contract.

    YES☐ NO☐

11. At any time during the last five years, has your firm or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

    YES☐ NO☐

Contractor will be immediately disqualified if answer to either statement 1, 2, 3, 4, 5 or 6 is No.

Contractor will be immediately disqualified if answer to either statement 7, 8, 9, 10 or 11 is YES.

PART B: ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

1. **Current Organization and Structure of the Business.** Provide company organizational chart regardless of business structure. Identify total numbers of employees in each position of the organizational chart.

For Firms That Are Corporations:

a. Date incorporated: _____

b. Type of corporation: _____

c. Under the laws of what state: _____

d. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name	Position	Years with Company	% Ownership

e. Is this firm a certified M/W/SBE: YES ☐ NO ☐

Indicate certification authority – City of Charlotte ☐ or State of North Carolina ☐

For Firms That Are Partnerships:

a. Date of formation: _____

b. Under the laws of what state: _____

c. Provide all the following information for each partner who owns 10% or more of the firm.

Name	Position	Years with Company	% Ownership

d. Is this firm a certified M/W/SBE: YES ☐ NO ☐

Indicate certification authority – City of Charlotte ☐ or State of North Carolina ☐

For Firms That Are Sole Proprietorships:

a. Date of commencement of business: _____

b. Social security number of company owner: _____

c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.
NOTE: For this question, "owner" and "partner" refer to ownership of 10% or more of the business, or 10% or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

d. Is this firm a certified M/W/SBE: YES☐ NO ☐

Indicate certification authority – City of Charlotte ☐ or State of North Carolina ☐

For Firms That Intend to Make a Bid as Part of a Joint Venture:

a. Name of the Joint Venture: _____

b. Date of commencement of joint venture: _____

c. Provide copies of formal joint venture agreement.

d. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm	% Ownership of Joint Venture

e. Is this firm a certified SBE: YES ☐ NO☐

Indicate certification authority – City of Charlotte ☐ or State of North Carolina ☐

2. License

Bidder must be a licensed contractor in North Carolina for the appropriate classification. Submit license number, classification, date issued, and expiration date below.

If submitting as a joint venture, provide this information for each joint venture partner.

a. Name of license holder exactly as on file with the North Carolina Contractors State License Board:

_____

b. License number: _____

c. License classification: _____

d. Date issued: _____

e. Expiration date: _____

f. Has the license ever been revoked or suspended? (Applies to all parties of a joint venture) YES☐ NO☐

If yes, provide explanation (include dates, alleged misconduct finings and terms of the revocation or suspension).

_____

_____

g. Has a complaint ever been filed with the Contractors State License Board against your company that required a formal hearing or inquiry? YES☐ NO☐

If yes, provide explanation:

_____

_____

_____

h. Have you ever been licensed in North Carolina under a different name or license number? YES☐ NO☐

If yes, provide name and/or license number. _____

Was that license ever revoked or suspended? YES☐ NO☐

If yes, provide explanation.

_____

_____

_____

i. List all North Carolina construction license numbers, classifications and expiration dates of the North Carolina contractor licenses held by your business.

_____

_____

_____

j. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the North Carolina licensing boards' records who meet(s) the experience and examination requirements for each license. Provide resume of each individual listed and organizational position they hold in your company.

_____

_____

_____

3. Construction Experience and References

a. Complete a **Type of Project** form using Exhibit "A" for five **(5)** of your firm's projects that were similar in building size, structure, contract value and complexity to the proposed project completed **within the last three years**. Two of the five (5) must be North Carolina or South Carolina school or university projects.

b. Provide a separate list of other School or University projects and/or public works projects you have completed in the past 3 years. Provide name of project, name of owner, brief project description, and dollar value of contract.

c. Was there any inspection failure charges charged to your permit account by Mecklenburg Code Enforcement officers? YES☐ NO☐

d. What is your companies Mecklenburg County inspection failure rate for the last year_____%

e. Furnish a client reference list for each project identified in (3a) using Exhibit "B" Pages 1 & 2.

4. Current workload and capacity to contract for this project. Provide the information in each category.

A. Firms average annual work $ volumes in past three years.	B. Firm's current bonding capacity $	C. Total $ amount of work under contract at time of this qualification.	D. Amount of work $ in "C" that will be completed in the next 12 months (months 1-12).	E. Amount of work $ in "C" that will be completed in the following 12 months (months 13 - 24).	F. Amount of new contract awards expected this year to be billed in the next 12 months.	G. Total number of projects in $3-$10 million category completed each year.	H. Total number of projects in $10-$20 million dollar category completed each year.

5. Safety

a. Provide your firm's current worker's compensation Experience Modification Rate (EMR): _____ (office serving this project)

b. Provide your firm's current Incident Recordable Rate (IRR):_____(office serving this project)

c. Provide your firm's Lost Day Case Rate (LDCR):_____(office serving this project)

d. Does your firm have a written Safety Program that complies with OSHA requirements? YES ☐ NO ☐

If selected, you will be required to provide to Owner a copy of the written program upon owner request.

e. Has NC OSHA, Federal OSHA, NCDEHNR, the EPA or any Air or Water Quality Management District cited your firm for a violation or applicable regulatory requirements in the past five (5) years? YES ☐ NO☐

If yes, attach a description of each citation/violation/NOV and final disposition of the action.

f. Please indicate below, the company's required frequency of documented safety meetings on projects constructed by the contractor:

Field Supervisor	Weekly ☐	Bi-weekly ☐	Monthly ☐	Less than monthly ☐
Employees	Weekly ☐	Bi-weekly ☐	Monthly ☐	Less than monthly ☐
New Hires	Weekly ☐	Bi-weekly ☐	Monthly ☐	Less than monthly ☐

g. How often do you conduct documented safety inspections?

Quarterly ☐ Semi-annually ☐ Annually ☐

h. Do you have home office safety representatives who visit/audit the job site?

YES☐ NO☐

If yes, how often? Quarterly ☐ Semi-annually ☐ Annually ☐

6. Arbitration, Mediation and Litigation History

a. Has your firm had any claims, disputes ending in mediation, arbitration or litigation associated with any project (either by your company or against your company) in the past five years? If yes, attach a description of each such instance including details of total claim amount, settlement amount outcome of the dispute (settlement in the favor of the contractor or other party) and owner's name and phone number.

YES☐ NO☐

b. Has your firm been terminated for cause on any project within the past 10 years? If yes, attach a description of each instance.

YES☐ NO☐

7. Surety Bid, Performance and Payment Bonds are required for this contract

a. Please provide the following Bonding company information:

Name of Bonding Company/Surety: _____

Name of Surety Agent: _____

Surety Agent Address: _____

Surety Agent telephone number: _____

Is Surety a North Carolina-admitted surety? YES NO ☐

Is surety listed in the current edition of the North Carolina Department of the Treasury's Listing of approved sureties? YES NO ☐

Is surety approved to conduct business in the state of North Carolina? YES NO ☐

List surety's A.M. Best Rating: _____ (**A rating less than A is not acceptable**)

How long has the named surety provided bonding for your firm in its present name or other names of the business noted in paragraph 2? _____

In the past has your firm requested and received bonding from the named surety on projects of similar size, scope and value to the project being bid? _____

b. Provide a completed and signed copy of the surety's Statement of Intent included as Exhibit 'C' at the end of this section.

c. List below the surety companies utilized by your firm in the last three (3) years. List the surety's name, address, year used, and the number of times the surety had to complete any part of bidder's work. Provide information on a company letterhead if more space is needed. If there has been more than one surety, list reason for change.

Surety Name	**Address (City and State)**	**Period Covered (Year)**	**# Jobs Surety Completed**

Attach a letter dated within the last 30 days from your surety company or its agent licensed to do business in North Carolina, verifying your company's capability and capacity based on your current value of work

for providing sufficient performance and payment bonds for this project. Attach a copy of the surety's power of attorney. (See Exhibit “C”)

8. Insurance

The successful bidder for this project will be required to furnish certificates of general liability insurance on the District's form in the minimum amounts of $1,000,000 per occurrence and $2,000,000 annual aggregate, and $1,000,000 business automobile liability and workman’s compensation at the statutory requirements of the State of NC.

a. Provide a copy of your company’s certificate of insurance from your insurance carriers that demonstrate the contractor is insured to the limits required. Binders are not acceptable

b. Have you ever had insurance terminated by a carrier?

YES☐ NO☐ If yes, explain on a separate signed sheet.

c. Please provide the following information for your Worker Compensation insurance:

Agency Name: _____

Contact Name: _____

Phone Number: _____

Carrier: _____

A.M. Best Rating: _____

9. Staff Roster

a. Provide a functional organizational chart identifying key personnel who will manage the project including Principals-in-Charge, Project Managers, Superintendent and Scheduler.

b. List below members of your staff (except clerical staff) who will be assigned to this project, and show their job titles or functions (attach a separate sheet if necessary). Provide a resume for each company officer, Project Manager, Superintendent that will be assigned to this project.

Name	**Job Title/Function**	**Years of Experience in Contracting Firm**

List other concurrent construction contracts obligations for staff proposed for this project during the duration of this project.

_____

_____

_____

10. Quality Assurance

a. Does your company currently have a Quality Assurance Program? YES☐ NO☐

b. If yes, provide a copy of your firm's quality assurance program.

c. If yes, provide the name of the contact person in charge of the QA Program.

d. Describe your firm's plan for handling warranty service required on this project during the warranty period.

_____

_____

_____

e. Describe your firm's plan to insure non-conforming work deficiencies identified during the construction of this project are corrected as the work progresses.

_____

_____

_____

f. Describe your firm's experience working with Owner hired third party building system commissioning firms and the processes your firm will use on this project to ensure work is completed and commissioned by the time the project is substantially complete.

_____

_____

_____

11. Prior Disqualification

a. Has your firm has ever been disqualified from performing work for the Charlotte Mecklenburg Board of Education?

YES☐ NO☐

If yes, provide the following information:

1. Project name: _____
2. Date of disqualification: _____
3. Duration of disqualification: _____
4. Reason for disqualification: _____

b. Has your firm has ever been disqualified from performing work for any contracting entity other than the Charlotte Mecklenburg Board of Education:

YES☐ NO☐

If yes, provide the following information:

1. Name and telephone number of contracting entity: _____
2. Project name: _____
3. Date of disqualification: _____
4. Duration of disqualification: _____
5. Reason for disqualification: _____

(Repeat items 11a. and 11b. for each disqualification.)

12. Criminal Matters and Related Civil Suits

a. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

YES☐ NO☐

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

b. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

YES☐ NO☐

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

c. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

YES☐ NO☐

If "yes," identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

13. Lead Renovation Firm Certification

Provide a copy of the current certification as a Lead Renovation Firm by the NC Department of Health and Human Services or state the intention to attain certification and planned date in a letter attached to this questionnaire as a prerequisite to the award for any contract for school renovation and /or demolition project with CMS.

14. CMCSI Certification

Provide a copy of the current certification of the proposed Superintendent's CMCSI Certification (Charlotte Mecklenburg Certified Site Inspector) by Charlotte Engineering & Property Management Department or state the intention to attain certification on a letter attached to this questionnaire as a prerequisite to the award of a contract for construction, renovation and /or demolition herein the project that has a soil and sedimentation plan requirement.

15. OSHA Trained Supervisory Personnel

Contractor will have one (1) OSHA Construction Safety 30 hour trained employee on site at all times. Provide either copies of the current OSHA Construction Safety 30 hour training certification of all proposed full time supervisory personnel or a letter, on the bidder's letterhead, attached to this questionnaire stating the bidder's intention to have at least one of the proposed full time supervisory personnel attain the required OSHA training and certification as a prerequisite to the award of any contract for construction, renovation and /or demolition Letter should include the anticipated date of training and certification.

16. Contractor's Comments

The following space is provided for further explanations of the answers to any questions asked in this Pre-qualification Questionnaire:

_____

_____

_____

_____

_____

I, the undersigned, certify and declare that I have read all the foregoing answers to this qualification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of North Carolina, that the foregoing is correct.

Dated:_____ _____

(Signature)

_____

(Printed Name/Title)

Appendix "A"
Request for Contractor Qualifications

A. Suspension, Revocation or Rejection
The Board or its Designee may, for good cause, suspend a contractor from working for CMS or bidding on CMS projects for a specified period of time, revoke a qualification certificate or reject a qualification application submitted by a contractor with any bid solicitation requested by the Board of Education. Causes for suspension, revocation or rejection shall include, but are not limited to, one or more of the following:

(1) Inaccurate or misleading statements in the application.
(2) Declared in default by the Board.
(3) Adjudged to be bankrupt.
(4) Performance, in connection with contract work, becomes unsatisfactory, based on the assertion and recovery of liquidated damages in an action against the contractor.
(5) Payment record, in connection with contract work, becomes unsatisfactory, based on the contractor's failure to comply with the Construction Prompt Pay Act after payment from the owner.
(6) Becomes delinquent on a construction project pursuant to Section B below.
(7) Contractor's license is suspended or revoked.
(8) No longer meets the uniform qualification criteria established in this policy.
(9) Declared unqualified based on information contained in qualification documents submitted with a bid.

B. Delinquency Disqualification
The decision to declare a contractor delinquent or disqualified may be made by the Associate Superintendent of Auxiliary services or his Designee. Should the contractor be determined to be delinquent or disqualified, the Board or its Designee shall notify the contractor in writing, that the contractor is disqualified from bidding, proposing or otherwise receiving consideration, for work with the Board as long as the delinquency exists. A delinquent condition exists when one (1) or more of the following conditions occur without justifiable cause:

(1) A substantial or repeated failure on past or current projects to comply with contract documents after written notice of such non-compliance.
(2) A substantial or repeated failure on past or current projects to provide supervision and coordination of subcontractor's work after written notice of such failure.
(3) Substantial deviation from project time schedules on past or current projects which is not corrected within a reasonable time after written notice of non-compliance.
(4) Substantial or repeated failure to pay subcontractors on past or current projects after the Board has paid the contractor for the work performed by the subcontractors in accordance with approved requisitions for payment.
(5) Substantial or repeated failure on past or current projects to provide the quality for workmanship compatible with the trades' standards for the community after written notice of such failure.
(6) Substantial or repeated failure on past or current projects to comply with the warranty requirements of previous contracts after written notice of such failure.
(7) Failure to maintain the required insurance coverage on past or current projects after written notice of such failure.
(8) Failure to follow safety codes and standards on past or current projects.
(9) Any of the above conditions (1-8) found present in construction work performed for other owners.

C. Appeal

A contractor whose qualification application has been rejected or whose certificate or right to bid has been suspended, revoked or rejected by the Board or its Designee shall be given the benefit of reconsideration and appeal as follows:

1. The contractor may within ten (10) calendar days after receiving notification of such action submit a formal written Notice of Protest to the CMS Associate Superintendent of Auxiliary Services and CMS Building Program Director. The notice shall contain the following information:

   a. Contents: The formal written protest shall contain the following information:
      (1) Project(s) name, number and title.
      (2) The name and address of the protesting party and the title or position of the person submitting the protest.
      (3) A statement of the facts alleged and the rules, regulations, statutes and constitutional provisions entitling the protesting party to relief.
      (4) A statement indicating the relief sought by the protesting party.
      (5) Such other information as the protesting party deems to be material to the issues.

   b. Cost Deposit: The protesting party shall deposit $2,000 in the form of a cashier's check, made payable to the Charlotte Mecklenburg Board of Education.

      (1) Said amount shall be deposited with the Director of Purchasing to defray the costs incurred in considering the protest.
      (2) Said amount shall be recovered if the protesting party shall prevail.

   c. The Board shall act upon the contractor's request within thirty (30) calendar days after the filing and shall notify the contractor of its action to adhere to, modify or reverse its original action. The Board may require additional information to justify the reconsideration.

2. Waiver of Remedies: Failure to file the protest within ten (10) calendar days shall constitute a waiver of the right to seek any remedy provided under the protest procedure.

Exhibit "A"
Type of Project Form
Request for Contractor Qualifications

Complete the following information for similar projects completed **within the last three years** by your firm**.** A maximum of five projects will be evaluated. (Copy additional sheets as needed)

A. Project Name: _____

Address: _____

Date completed: _____

Name of contractor's senior executive in charge of project:

Name of contractor's project manager:

Name of contractor's project superintendent:

Are these individuals still working for your firm? YES☐ NO☐

If yes, provide resume

If no, provide reason for their leaving:

B. Building information:

Gross Square Footage: _____

Project Type: _____

Similarities to the proposed project: _____

_____

C. Owner's / Owner's Representative Name: _____

Contact: _____

Address: _____

Phone number: _____

D. Design Professional Name: _____

Contact: _____

Address: _____

Phone number: _____

G. Your Company's base contract amount: $_____

H. Final contract amount (with your firm): $_____
Explain the difference from Base Contract amount, if any. If any amount of the difference represents a delay claim against the project owner (plus +), or a liquidated damages charge made by the owner (negative -) or other deduction made by the owner against the contractor provide explanation of the charge.

I. Initial contract duration/time: _____ calendar days

J. Final contract duration/time: _____ calendar days

K. Time extensions: _____ calendar days (authorized)

Exhibit "A"
Type of Project Form
Request for Contractor Qualifications

L. Days past contract completion date (exclude authorized time extensions):_____days. Please explain reason for additional time. Liquidated damages:_____days

M. How long from date of substantial completion of the project did it take to close out the project and reach final completion:_____calendar days. Has final payment been made? YES ☐ NO☐

N. If this was a multi-prime project, were there any claims made against your firm by other primes or claims made by your firm against other primes? YES☐ NO☐ Provide explanation of each:

_____

_____

O. Were there any pay claims made against your payment or performance bond on this project? YES ☐ NO☐ Provide explanation of each:

_____

_____

P. List any major warranty claims made by the owner on this project. Have any warranty calls made by owner gone unaddressed?
YES☐ NO☐

_____

_____

Q. Were any Stop Notices filed by Code Enforcement officials? YES☐ NO☐

If yes, how many Stop Work order were filed and what was the reason for the action?

_____

How much time required to lift the Stop Work order?

_____

R. List the percentage of your contract amount that was paid to:

Minority Firms_____%

Women Owned Business_____%

Total_____%

S. Were there any claims made against your firm for failure to make prompt payment? YES☐ NO☐

T. Were any NOV citations filed by NCDENR or others having jurisdiction on the project? YES☐ NO☐

If yes, describe circumstances and final disposition of the NOV.

Exhibit "B"
Client Reference List
Request for Contractor Qualifications

1. Company Name: _____

Contact Person_____ Telephone _____

Address _____

Description of Services Provided _____

_____

_____

Value of contract: _____

2. Company Name: _____

Contact Person_____ Telephone _____

Address _____

Description of Services Provided _____

_____

_____

Value of contract: _____

3. Company Name: _____

Contact Person_____ Telephone _____

Address _____

Description of Services Provided _____

_____

_____

Value of contract: _____

Exhibit "B"
Client Reference List
Request for Contractor Qualifications

4. Company Name: _____

Contact Person _____ Telephone _____

Address _____

Description of Services Provided _____

_____

_____

Value of contract: _____

5. Company Name: _____

Contact Person _____ Telephone _____

Address _____

Description of Services Provided _____

_____

_____

Value of contract: _____

Exhibit "C"
Statement of Surety Intent
Request for Contractor Qualifications

To: _____

(Owner)

We are aware of the bid of: _____

(Contractor)

_____

(Address)

For the following project _____

For which bids will be received on _____ and wish to advise that should this bid of the Contractor be accepted and the Contract awarded to said Contractor, it is our present intention to become Surety on the Performance Bond and Labor and Material Payment Bond required by the Contract.

Any arrangement for the Bonds required by the Contract is a matter between the Contractor and ourselves and we assume no liability to you or third parties if for any reason we do not execute the requisite Bonds.

We _____ are duly authorized to do business in the State of North Carolina.
(Name of Surety)

Date: _____ By: _____
(Attorney- in-Fact)

DOCUMENT 00 43 13
BID SECURITY FORM

Date of Execution of this bond _____

Name and Address of Principle (Bidder) _____

_____

Name and Address of Surety _____

_____

Name and Address of Contracting Body THE CHARLOTTE-MECKLENBURG COUNTY BOARD OF EDUCATION
a body corporate of the State of North Carolina,
PO Box 30035, Charlotte, North Carolina, 28230-0035

Amount of Bond Bid Amount and Proposal Dated: _____

_____ for _____

_____

KNOW ALL MEN BY THESE PRESENTS, that we the PRINCIPLE above named and SURETY above named who is duly licensed to act as SURETY in the State of North Carolina, are held and firmly bound unto THE MECKLENBURG COUNTY BOARD OF EDUCATION, a body corporate of the State of North Carolina, as Obligee, in the penal sum of five percent (5%) of the amount bid in the bid and proposal described in lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such, that if the PRINCIPLE shall be awarded the contract for which the bid and proposal above described is submitted and shall execute the contract, give bond for the faithful performance of the contract, and give bond for the payment of all persons supplying labor and materials in the prosecution of the work provided for in said contract, within ten (10) days after the award of the same to the PRINCIPLE above named, then this obligation shall be null and void; but if the PRINCIPLE above named fails to so execute such contract and give performance bond and payment bond as required by Section 129 of Chapter 143 of the General Statutes of North Carolina, as amended, the Article 3 of Chapter 44-A of the General Statutes of North Carolina, as amended, the Surety shall upon demand, forthwith pay the Obligee the amount of this bond set forth above.

IN WITNESS WHEREOF, the Principle above named and the Surety above named have executed this instrument under their several seals on the date set forth above.

WITNESS:

_____
Principle (Name of individual, and trade Name, partnership, corporation, or joint venture)

_____
(Proprietorship or Partnership)

BY_____(Seal)

TITLE_____
(Owner, Partner, Office held in corporation, joint venture)

(Corporate Seal)

ATTEST
BY_____
(Corporation)

TITLE_____
(Corporation Secretary or Assistant Secretary Only)

_____
Surety (Name of Surety Company)

WITNESS:

BY _____

_____

TITLE Attorney in Fact

(Corporate Seal of Surety)

_____
(Address of Attorney in Fact)

COUNTERSIGNED:

_____

_____
N.C. Licensed Resident Agent

Charlotte- Mecklenburg Schools
M/W/SBE Documentation Overview

Form	Submission Requirements	Required Form
Subcontractor / Supplier Identification Form Lists the total dollar amount of such participation by MBEs, WBEs, and SBE subcontractors and suppliers the Bidder **will use** on the project.	Due with bid/proposal	Minority, Women, and Small Business Enterprise Identification Form
Listing of Good Faith Efforts (GFE) Indicates the actions you undertook to recruit and solicit minority vendors, subcontractors, vendors, or suppliers for this project.	Due with bid/proposal (if subcontracting)	Affidavit A
Intent to Perform Contract with Own Workforce Indicates that the Bidder does not customarily subcontract elements of this type project, normally performs all elements of work on this project with his/her own current work force **AND** will not purchase any materials or supplies in the performance of the contract.	Due with bid/proposal (self-performing)	Affidavit B
Portion of Work to be Performed by M/W/SBE Firms Identifies minority participation that is equal to or greater than the M/W/SBE total goal for construction 21%, Other Services 14%, and/or Goods 11% of the bidders total contract price (See form for additional information). **Appendix I is signed by the M/W/SBE**.	Within three (3) business days after notification of being the **apparent low bidder** Appendix I is submitted upon substantial completion of the project.	Affidavit C and Appendix I
Documentation of Good Faith Efforts (GFE) Indicates GFEs of bidders who do not achieve the total M/W/SBE goal for construction 21%, Other Services 14%, and/or Goods 11% participation by M/W/SBEs. Documentation provided should correspond with the items checked on Affidavit A. **Appendix I is signed by the M/W/SBE firms.**	Within three (3) business days after notification of being the **apparent low bidder** Appendix I is submitted upon substantial completion of the project.	Affidavit D and Appendix I
Professional Services Indicates the minimum percent of the total dollar amount of the contract with M/W/SBEs. **Appendix I is signed by the M/W/SBE firms.**	Within three (3) business days after receiving Letter of Commitment	Appendix I, II and/or III
Documentation for All Contract Payments Contractor shall provide with each pay request to CMS all payments to contractors, subcontractors, supplies and service providers.	Must submit with each pay request and final payment	Appendix IV

Minority, Women, and Small Business Enterprise Identification Form

I, _____
(Name of Bidder)
do hereby certify that on this project, we will use the following minority, women, or small business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*M/W/SBE Category

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The total value of M/W/SBE firms contracting will be ($)_____.

Attach this form and AFFIDAVIT A or this form and AFFIDAVIT B to the Bid

Attach AFFIDAVIT A or AFFIDAVIT B to the Bid

State of North Carolina AFFIDAVIT A – Listing of the Good Faith Effort

County of _____

Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:
Bidder must earn at least 50 points from the Good Faith Efforts list for their bid to be considered responsive.

☐ **1 – (10 Points)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.

☐ **2 – (10 Points)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.

☐ **3 - (15 Points)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.

☐ **4 – (10 Points)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.

☐ **5 – (10 Points)** Attended pre-bid meetings scheduled by the public owner.

☐ **6 – (20 Points)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.

☐ **7 – (15 Points)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.

☐ **8 – (25 Points)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

☐ **9 - (20 Points)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.

☐ **10 – (20 Points)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

In accordance with GS143-128.2(d) and Board of Education Policy the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority, Women, and Small Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Minority, Women, and Small Business Enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:_____ **Name of Authorized Officer:**_____

Signature:_____

Title:_____

SEAL

State of_____ ***County***_____

Subscribed and sworn to before me this_____ ***day of*** _____ ***20***____

Notary Public_____

My commission expires _____

Attach AFFIDAVIT A or AFFIDAVIT B to the Bid

DO NOT USE AFFIDAVIT 'B' UNLESS YOU ARE ONLY PROVIDING LABOR AND NOT PURCHASING ANY MATERIALS OR SUPPLIES

State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements of the work** on this project with his/her own current work forces; **AND** the bidder will not purchase any materials or supplies in the performance of the contract

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date:_____ Name of Authorized Officer:_____

Signature:_____

SEAL

Title:_____

State of_____, County of_____

Subscribed and sworn to before me this_____day of_____20___

Notary Public _____

My commission expires_____

State of North Carolina --- AFFIDAVIT C --- Portion of the Work to be Performed by M/W/SBE Firms

County of _____

******* (NOTE: THIS FORM IS TO BE SUBMITTED ONLY BY THE APPARENT LOWEST RESPONSIVE BIDDER) *******

If the portion of the work to be executed by M/WBE firms as defined in GS143-128.2(g) and Board of Education M/W/SBE Policy is equal to or greater than the M/W/SBE aspirational goal of MBE 10%, WBE 6%, and SBE 5% in **Construction**, and/or MBE 5%, WBE 4%, and SBE 5% in **Other Services** and/or MBE 3%, WBE 3%, and SBE 5% in **Goods** participation of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being the apparent low bidder.

Affidavit of _____ (Name of Bidder) I do hereby certify that on the

_____ (Project Name)

Project ID# _____ Amount of Bid $ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (**N**), Female (**F**) Socially and Economically Disadvantaged (**D**), Small (**S**)

In accordance with GS143-128.2(d) and Board of Education Policy the undersigned will enter into a formal agreement with the firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of contract. The undersigned hereby certifies that he or she has read the terms of the Minority, Women, and Small Business Enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

SEAL

Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20_____

Notary Public _____

My commission expires _____

State of North Carolina **AFFIDAVIT D – Good Faith Efforts**

Project_____ **County of** _____

If the aspirational goal of MBE 10%, WBE 6%, and SBE 5% in **Construction**, and/or MBE 5%, WBE 4%, and SBE 5% in **Other Services** and/or MBE 3%, WBE 3%, and SBE 5% in **Goods** participation by M/W/SBE businesses **is not** achieved, the apparent lowest responsible, responsive bidder shall provide the following documentation to the Owner of his good faith efforts **and** the M/W/SBE firms that **will** be used on the project:

(Name of Bidder)

Affidavit of: _____

I do certify the attached documentation as true and accurate representation of my good faith efforts.

I will expend a minimum of_____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**), Small (**S**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions. Examples of documentation include, but are not limited to, the following evidence:

A. Copies of solicitations for quotes to at least three (3) M/W/SBE firms from the source list provided by the State for each subcontract to be let under this contract. Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.

B. Copies of quotes or responses received from each firm responding to the solicitation.

C. A telephone log of follow-up calls to each firm sent a solicitation.

D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.

E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

G. Letter detailing reasons for rejection of minority business due to lack of qualification.

H. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date:_____ **Name of Authorized Officer:** _____

Signature:_____

Title:_____

SEAL

State of_____, County of _____

Subscribed and sworn to before me this_____day of_____20

Notary Public_____My commission expires _____

APPENDIX I
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR OR SUBCONSULTANT
(PROVIDE MATERIALS OR/& SERVICES)

PROJECT: _____
(Project Name)

TO: _____
(Name of Prime Bidder/Architect)

The undersigned intends to perform work in connection with the above project as

_____ Minority Business Enterprise _____Women's Business Enterprise

_____ Small Business Enterprise

The M/W/SBE status of the undersigned is/is not certified by the City of Charlotte or the Carolinas Minority Suppliers Development Council or other governmental entities. Our M/W/SBE certification number is _____.

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials or services to be performed or provided) at the following price:_____.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date

Subcontracting at any tier must be reported and is subject to all M/W/SBE compliance requirements. This form shall be used for M/W/SBE subcontracting at any level.

Date: _____ _____
(Name & Phone No. of M/W/SBE Company)

_____
(Name & Title of Authorized Office)

_____
(Signature)

THE PRIME CONTRACTOR OR ARCHITECT MUST GET THIS FORM COMPLETED BY THE SUBCONTRACTORS/SUPPLIERS

APPENDIX II
M/W/SBE UTILIZATION COMMITMENT FORM
FOR
PROFESSIONAL SERVICES

We,_____, do certify that on the
(Architect)

_____
(Project Name)

_____,_____
(Project Number) (Dollar Amount of Bid)

If the bidder intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

I will expend a minimum of_____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (N),Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:_____Name of Authorized Officer:_____

SEAL

Signature:_____

Title:_____

State of_____, County of _____

Subscribed and sworn to before me this_____day of_____20_____

Notary Public_____

My commission expires_____

APPENDIX III
M/W/SBE UTILIZATION COMMITMENT FORM
FOR
PURCHASES OF GOODS & OTHER SERVICES

We,_____, do certify that on the
(Bidder)

_____
(Project Name)

_____,_____
(Project Number) (Dollar Amount of Bid)

If the bidder intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

I will expend a minimum of_____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (N), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date:_____Name of Authorized Officer:_____

SEAL

Signature:_____

Title:_____

State of_____, County of _____

Subscribed and sworn to before me this_____day of_____20_____

Notary Public_____

My commission expires_____

APPENDIX IV

DOCUMENTATION FOR All PAYMENTS TO CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #:_____ Period: _____

Current Requested Payment Amount _____

The following is a list of payments to be made to all contractors/suppliers & other providers on this project for the above-mentioned period.

Firm Name and Address	*M/W/SBE Category	Amount to be Paid form this pay Request	Total Payments to date	Total Amount Committed
Totals				

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (N), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

Date:_____ Approved/Certified By: _____
Name

_____
Title

_____
Signature

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****

APPENDIX V
WAIVER REQUEST
FOR GOOD FAITH EFFORTS

PROJECT: _____
COMPANY: _____
ADDRESS: _____
CITY: _____ **STATE:** _____ **ZIP:** _____
CONTACT PERSON: _____ **PHONE NO**: _____
TITLE: _____

The said company request a Full ( ) or Partial ( ) waiver for the M/W/SBE aspirational goals for this particular project for the following reasons:

Signature: _____ Date: _____

CMS USE ONLY

Good Faith Efforts Verified: _____

Request of Waiver Granted: **YES (_____) NO (_____)**
Comments: _____

M/WBE Administrator: _____ **Date:** _____

Contract #:
Lawson Req#:
Budget Transfer:

CONTRACT FOR SERVICES
(SMALL CONSTRUCTION/REPAIR)

This Contract for Services ("Contract") is made and entered into **April 1, 2024,** between **The Charlotte-Mecklenburg Board of Education**, located in Charlotte, North Carolina ("CMBE") and **USA** ("Contractor", also referenced as "Seller" in the Standard Terms and Conditions).

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of Contractor.

The Contractor agrees to provide the labor, services, materials, and equipment (the "Work" or the "Services") needed to complete that certain project known as Restroom Modifications at Elon Park Elementary (the "Project") in accordance with the Scope of Work document attached hereto and incorporated herein by reference as Exhibit 1.

The Contractor will supervise and direct the Work and shall furnish, provide, and pay for all labor, materials, equipment, machinery, utilities, and services reasonably necessary for the execution and completion of the Work.

The Contractor agrees to fully complete the Work by June 30, 2025 (the "Date of Completion").

The Contractor agrees to coordinate its Work with the work of any other separate contractors or with the work of the CMBE's own forces to avoid delaying or interfering with their work. The Contractor further agrees to inform the CMBE on a regular basis or at the CMBE's request of the progress of the Work.

Unless otherwise provided, the Contractor shall secure and pay for all permits, licenses, or inspections necessary for the proper execution and completion of the Work; shall comply with all laws, ordinances, or regulations bearing on the performance of the Work; shall enforce good order and discipline among his employees and subcontractors on the Project; and shall keep the Project reasonably free from waste materials or rubbish resulting from the Contractor's operations.

Contractor certifies that it currently has and agrees to purchase and maintain during its performance under this Contract insurance coverage as required by Section 16 of the Standard Terms and Conditions.

The Contractor warrants that the Contractor has visited the location of the Project and is familiar with all field conditions bearing upon the Contractor's performance of the Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. The Contractor further warrants and promises that the Work shall be free from defects and nonconformities in materials and workmanship for a period of one year from the later of the Date of Completion or such date as the Contractor completes all the Work. During such period, the Contractor will remedy at Contractor's expense nonconformities or defects in the Work within a reasonable time after receiving notice thereof from CMBE.

In addition to the indemnification obligations contained in the attached terms and conditions to this Contract, the Contractor further agrees to defend and indemnify the CMBE from and against all claims,

SAMPLE

damages, losses, and expenses, including reasonable attorneys' fees, arising out of the Contractor's failure to pay subcontractors or materials suppliers.

The Contractor agrees that the CMBE may order changes in the general scope of the Work, including additions, deletions, and similar revisions. The parties agree to adjust the Contract Price and Date of Completion to reflect the effects of such changes, which adjustments shall be authorized only upon execution of a written change order (a "Change Order"). In case of emergency or extenuating circumstances or if a construction contingency is provided as stated below, approval of changes may be obtained verbally by telephone or field orders approved by the CMBE Project Coordinator and promptly thereafter substantiated in writing as outlined under normal procedures. The amount of any increase or decrease in the Contract Price shall be by mutual acceptance of a total amount supported by sufficient data and information to substantiate the change. Any decrease in Contract Price for a decrease in the Work will be the reasonable costs of the Work deleted, including a reasonable amount for the decrease in the Contractor's overhead.

The Contractor agrees to perform the Work in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Contractor represents and warrants that (i) it is duly qualified to provide the Work, (ii) it will provide the Work in a manner consistent with the level of care and skill ordinarily exercised by others practicing under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Work, and (iv) it shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2. Obligations of CMBE. The CMBE hereby agrees to pay to the Contractor for the faithful performance of this Agreement, and the Contractor hereby agrees to perform all of the Work, for the sum not to exceed **$84,400.00** ("Contract Price") subject to adjustments as provided for in the Contract Documents.

3. Project Coordinator. is designated as the Project Coordinator for CMBE. The Project Coordinator shall be CMBE's representative in connection with the Contractor's performance under this Contract. CMBE has complete discretion in replacing the Project Coordinator with another person of its choosing.

4. Contractor Supervisor. is designated as the Contractor Supervisor for the Contractor. The Contractor Supervisor is fully authorized to act on behalf of the Contractor in connection with this Contract.

5. Terms and Methods of Payment. The CMBE will make payment after invoices are approved on a net 30-day basis. The CMBE will not pay for services or materials in advance without the prior approval of the Finance Officer.

6. Additional Provisions.
   a. Standard Terms and Conditions: Contractor agrees to the Standard Terms and Conditions set forth as Attachment A attached hereto and incorporated herein by reference.

   b. Iran Divestment Act: Contractor certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.

   c. E-Verification: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

   d. Federal Uniform Guidance: "Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under

SAMPLE

the Uniform Guidance (2 C.F.R. Part 200).” Additional information can be found at: http://www.cms.k12.nc.us/cmsdepartments/Finance/procurementservices/Pages/default.aspx.

7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic “PDF” to the same and full extent as the originals.

[THE REST OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]
[SIGNATURES ON NEXT PAGE]

SAMPLE

IN WITNESS WHEREOF, the CMBE and the Contractor have executed this Contract on the day and year first written above.

Contractor Name

Signature of Authorized Representative Date

Contractor's Federal Identification #
[if Contract is with Organization or Social Security Number if individual]

Originator/Fund Owner Date

Executive Director of Building Services Date

REVIEWED BY:

Procurement Lead

Executive Director Federal Programs Date

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Finance Officer Date

APPROVED AS TO FORM:

School Board Attorney Date

REVIEWED BY:

Division of Insurance and Risk Management

SAMPLE

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Chief Operations Officer Date

Superintendent (if applicable) Date

Board Chairperson (if applicable) Date

Attachment A

Standard Terms and Conditions

1. Acceptance. Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and The Charlotte-Mecklenburg Board of Education ("CMBE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CMBE with respect to the purchase by CMBE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CMBE shall control. This Order constitutes an offer by CMBE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to CMBE shall be deemed accepted by or binding on CMBE. CMBE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CMBE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CMBE are subject to correction.

2. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by CMBE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.

3. Prices. If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CMBE the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CMBE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

4. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to CMBE's accounts payable department with a copy to the CMBE Project Coordinator.

5. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.

6. Taxes. Applicable taxes shall be invoiced as a separate item.

7. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.

8. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

SAMPLE

9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

10. Risk of Loss. Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.

11. Rejection. All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

12. Compliance with All Laws. Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.

13. Registered Sex Offenders. Contractor acknowledges that CMBE Policy ADDA, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMBE Property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMBE Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. "CMBE Property" includes all property owned or operated by the Charlotte-Mecklenburg Board of Education, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by CMS.

If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMBE Property.

14. Warranties. Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.

15. Indemnification. Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

SAMPLE

16. Insurance. Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management ("DIRM"), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

17. Termination for Convenience. In addition to all of the other rights which CMBE may have to cancel this Order, CMBE shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from CMBE to Seller. If the Contract is terminated by CMBE in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services delivered or performed to the total originally contemplated in the Contract. CMBE will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.

18. Termination for Default. CMBE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CMBE law or equity, CMBE may procure upon such terms as CMBE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CMBE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

19. Contract Funding. It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

20. Accounting Procedures. Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

21. Improper Payments. Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.

22. Contract Transfer. Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.

23. Contract Personnel. Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

SAMPLE

24. Key Personnel. Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).

25. Contract Modifications. The Contract may be amended only by written amendment duly executed by both CMBE and Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

26. Relationship of Parties. Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.

27. Advertisement. The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.

28. Nondiscrimination. During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person based on sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.

SAMPLE

29. Conflict of Interest. Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is able to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

30. Gratuities to CMBE. The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.

31. Kickbacks to Seller. Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.

32. Monitoring and Evaluation. Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE Property and from performing services under the Contract following provision of notice to Seller of the reasons for CMBE’s dissatisfaction with the services of Seller’s employee.

33. Financial Responsibility. Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the

appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.

34. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

35. Inspection at Seller's Site. CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

36. Confidential Information. Student Information: If, during Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

37. Intellectual Property. Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.

38. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

39. Background Checks. At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.

40. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.

SAMPLE

41. No Third-Party Benefits. The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.

42. Force Majeure. If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. “Force Majeure” shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.

43. Ownership of Documents. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

44. Strict Compliance. CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing orcourse of performance between the parties to the contrary.

45. General Provisions. CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.

46. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.

SAMPLE

DOCUMENT 00 61 13
PERFORMANCE BOND

Date of Execution of this bond _____

Name and Address of Principal (Bidder) _____

_____

Name and Address of Surety _____

_____

Name and Address of Contracting Body THE CHARLOTTE MECKLENBURG COUNTY BOARD OF EDUCATION
a body corporate of the State of North Carolina
PO Box 30035, Charlotte, North Carolina, 28230-0035

Amount of Bond _____

Contract named dated That certain contract by and between the Principal and the Contracting Body above

_____

_____ for _____

_____

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above-named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successor, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract, with the Contracting Body, identified as shown above and hereto attached;

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice of the Surety, and during the life of any guarantee required under the contract, and shall also well and truly perform and fulfil all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise, to remain in full force and virtue.

THIS PERFORMANCE BOND is made and given pursuant to the requirements and provisions of Section 129 of Chapter 143 of the General Statutes of North Carolina and pursuant to Article 3 of Chapter 44-A of the General Statutes of North Carolina, and each and every provision set forth and contained in Article 3 of Chapter 44-A of the General Statutes of North Carolina is incorporated herein, made a part hereof, and deemed to be conclusively written into this Bond.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals of the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned and representative, pursuant to authority of its governing body.

WITNESS:

_____
Principal (Name of individual, and trade Name, partnership, corporation, or joint venture)

_____
(Proprietorship or Partnership)

BY_____(Seal)

TITLE_____
(Owner, Partner, Office held in corporation, joint venture)

(Corporate Seal)

ATTEST (Corporation)

BY_____

TITLE_____
(Corporation Secretary or Assistant Secretary Only)

_____
Surety (Name of Surety Co.)

WITNESS:

BY_____

TITLE_____Attorney in Fact_____

_____

(Corporate Seal of Surety)

_____
(Address of Attorney in Fact)

COUNTERSIGNED:

_____

_____
N.C. Licensed Resident Agent

DOCUMENT 00 62 76.13
STATE AND COUNTY SALES/USE TAX STATEMENT AND CERTIFICATION

Contractor: _____ Sheet #_____

Project Name:_____ For Sales Taxes Paid from:_____to _____

Payment Application Number: _____

Invoice #	Invoice Date	Vendor	Type of Materials	Total Amount of Invoice (w/o Taxes)	NC Tax	Meck. County Tax	Other NC County Tax	Total Taxes
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
TOTALS								

We certify that the above listing includes all materials purchased by us and incorporated into the above referenced project for the period stated, became a permanent part of the project, and that the sales tax shown has been paid. The above represents a complete listing of these sales taxes paid for the pay application number.

SWORN AND SUBSCRIBED BEFORE ME THIS_____DAY OF_____20____

NOTARY PUBLIC

MY COMMISSION EXPIRES _____

By: _____

Title: _____

END OF DOCUMENT

SECTION 01 23 00
ALTERNATES

PART 1 - GENERAL

1.1 SECTION INCLUDES
- A. Administrative and procedural requirements for Alternates

1.2 DEFINITIONS
- A. Alternate: An amount proposed by bidders and stated on the Bid Form for certain work defined in the Bidding Requirements that may be added to or deducted from the Base Bid amount if Owner decides to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.
  1. The cost or credit for each alternate is the net addition to or deduction from the Contract Sum to incorporate alternate into the Work. No other adjustments are made to the Contract Sum.

1.3 PROCEDURES
- A. Coordination: Modify or adjust affected adjacent work as necessary to completely integrate work of the alternate into Project.
- B. Execute accepted alternates under the same conditions as other work of the Contract.
- C. Schedule: A Schedule of Alternates is included at the end of this Section. Specification Sections referenced in schedule contain requirements necessary to achieve the work described under each alternate.

1.4 OWNER ACCEPTANCE OF ALTERNATES
- A. The Owner reserves the right to accept alternates and to amend the Contract accordingly during the period of the Contract. The price for each alternate indicated on the Bid Form shall remain valid for a period of 90 days from the receipt of Bids.

PART 2 - PRODUCTS

(Not Used)

PART 3 - EXECUTION

3.1 SCHEDULE OF ALTERNATES
- A. Alternate 1:
- B. Alternate 2:

END OF SECTION

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AFFIDAVIT of COMPLIANCE with N.C. E-Verify Statutes

I,_____(hereinafter the "Affiant"), duly authorized by and on behalf of_____(hereinafter the "Employer") after being first duly sworn hereby swears or affirms as follows:

1. I am the_____(President, Manager, CEO, etc.) of the Employer and possess the full authority to speak and act on behalf of the Employer identified above.

2. Employer desires to enter into a contract (or has contracted) with the Charlotte-Mecklenburg Board of Education ("CMBE"). Employer acknowledges and understands that by law the CMBE is prohibited from entering into contracts with contractors or subcontractors that do not comply with the requirement to use E-Verify.

3. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

   _____ Employer employs 25 or more employees in the State of North Carolina, and is in compliance with the provisions of N.C. Gen. Stat. §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification while the employee is employed and for a period of at least one year thereafter.

   _____ Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. Gen. Stat. §64-26.

4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. Gen. Stat. §64-26. Employer acknowledges that it has an obligation to verify and attests that it has taken every reasonable step to ensure all subcontractors it employs as part of any contract with the Charlotte-Mecklenburg Board of Education are in compliance with the requirement to E-Verify the employment status of the employees of the subcontractor.

5. Employer shall keep Charlotte-Mecklenburg Board of Education informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes.

This the_____day of_____, 20_____

_____
Affiant-Sign here please

STATE OF NORTH CAROLINA
COUNTY OF _____

Sworn to and subscribed before me, this the_____day of_____, 20_____

[SEAL]

_____
Notary Public

My commission expires: _____

SECTION 00 72 13
GENERAL CONDITIONS

NOTICE OF DISCLAIMER

TAKE NOTICE, that these General Conditions may contain language and Article, Section or Paragraph headings or names which appear similar to or the same as the provisions of the "General Conditions of the Contract for Construction", published by the American Institute of Architects, AIA Document A-201.

TAKE NOTICE, however, that these General Conditions are substantially and materially different in many respects from the AIA Document A-201 and that certain additions, deletions or other modifications have been made to provisions similar to those contained in the AIA Document. This document, further, contains provisions, which do not appear in the AIA document.

The use of any language or Article or Paragraph format similar to or the same as AIA Document A-201 does not constitute an endorsement by the American Institute of Architects of this document.

GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. DESIGN CONSULTANT
3. OWNER
4. CONTRACTOR
5. SUBCONTRACTORS
6. WORK BY OWNER OR BY SEPARATE CONTRACTORS
7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION
14. TERMINATION OF THE CONTRACT
15. DISPUTE RESOLUTION

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 AS SHOWN, AS INDICATED, AS DETAILED: These words, and words of like implication, refer to information contained in Drawings and Specifications describing the Work, unless explicitly stated otherwise in the Contract Documents.

1.1.2 CLAIM: A Claim as used in the Contract is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, a credit against the payment of money, extension of time or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between the parties to a contract involved in the Owner’s construction and repair projects arising out of or relating to the Contract or the construction process.

1.1.3 CONTRACT: The Contract is the sum of all the Contract Documents. The Contract represents the entire

and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Paragraph 1.1.4. The Contract may also be referred to in the Contract Documents as “this Contract”, “this Agreement” or “the Agreement”.

1.1.4 CONTRACT DOCUMENTS: The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General and Supplemental Conditions), the Plans, Drawings, and Specifications, and all Addenda thereto issued prior to and all Modifications thereto issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties; (2) a Change Order or a Construction Change Directive issued pursuant to the provisions of Article 12; (3) a written interpretation issued by the Design Consultant pursuant to Paragraph 2.2.7; or (4) a written order for a minor Change in the Work issued pursuant to Section 12.4. The Contract Documents do not include any other documents including but not limited to soils, geotechnical or other reports, surveys and analysis, which may be printed, bound or assembled with the Contract Documents, or otherwise made available to the Contractor for review or information under this Contract, unless specifically enumerated and directly incorporated by reference in the Contract Documents.

1.1.5 HE/HIS: The term He or His is not intended to be gender specific.

1.1.6 MANUFACTURER: An individual, company, or corporation who manufactures, fabricates, or assembles a standard product. A standard product is one that is not made to special design, and if furnished by either direct sale or by contract to the Contractor, Subcontractor or Vendor.

1.1.7 MATERIAL SUPPLIER OR VENDOR: A person or organization who supplies, but who is not responsible for the installation of, materials, products and equipment.

1.1.8 NOTICE: The term Notice as used herein shall mean and include written notice. Notice shall be deemed to have been given when delivered to the address of the person, firm or corporation for whom intended, or to his, their or its duly authorized agent, representative or officer; or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at his, their or its Notice Address and deposited in a United States mailbox by registered or certified mail. To “Notify” means to give Notice. The Notice Addresses for the Owner and Contractor are stated in the Owner-Contractor Agreement and may be changed by a party by giving Notice to the other of such change.

1.1.9 PLANS OR DRAWINGS: All drawings or reproduction of drawings pertaining to the Work.

1.1.10 PRODUCT: The term Product includes materials, systems and equipment.

1.1.11 PROJECT: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.12 PROPOSAL: A complete and properly signed document whereby the Contractor proposes to provide additional or a reduced scope of construction work on the Project for the sums stipulated therein, supported by data required by the Design Consultant or Owner.

1.1.13 PROVIDE: As a directive to the Contractor, and as pertaining to labor, materials or equipment, "provide" means "furnish and install completely".

1.1.14 SPECIFICATIONS: Descriptions, provisions and requirements, pertaining to method and manner of performing the Work, or to quantities and qualities of materials or equipment to be furnished under terms of the Contract.

1.1.15 WORK: The Work comprises the construction and services required of the Contractor by the Contract Documents and includes all labor, supplies and other facilities or things necessary to produce such construction, and all materials, equipment, and supplies incorporated or to be incorporated in such

construction.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contractor and Owner acknowledge that neither these General Conditions, nor any other Contract Document shall be construed against the Owner due to the fact that they may have been drafted by the Owner or the Owner's agent. For the purposes of construing these General Conditions, and any other Contract Document, both the Contractor and the Owner shall be considered to have jointly drafted them.

1.2.2 The Owner-Contractor Agreement shall be signed in not less than three (3) copies by the Owner and Contractor, and each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

1.2.3 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless otherwise specifically defined herein. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

1.2.5 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings are for convenience only. The Contractor may subcontract the Work in such divisions as he sees fit consistent with applicable law and he is ultimately responsible for furnishing all of the Work.

1.2.6 Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Detailed specifications take priority over general specifications and detailed drawings take precedence over general drawings. Any Work shown on one drawing shall be construed to be shown in all drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Owner-Contractor Agreement; the Supplemental Conditions; the General Conditions; the Specifications; the Drawings. The Contractor shall notify the Design Consultant and the Owner of all such inconsistencies promptly. Any such conflict or inconsistency between or in the Drawings or Specifications shall be submitted by the Contractor promptly to the Owner and Design Consultant and the Design Consultant's decision thereon shall be final and conclusive.

1.2.7 The Contractor agrees that nothing contained in the Contract Documents or any contract between the Owner and the Design Consultant shall create any contractual relationship between the Design Consultant and the Contractor, or between the Design Consultant and any Subcontractor or Sub-subcontractors. The Contractor acknowledges and agrees that this Contract is not intended to create, nor shall any provision be interpreted as creating, any contractual relationship between the Owner or Contractor and any third parties.

1.2.8 The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to

those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.2.9 Any material or operation specified by reference to published specifications of a Manufacturer, a society, an association, a code, or other published standard, shall comply with requirements of the listed document which is current on date the Owner received bids for the construction of the Project. In case of a conflict between referenced document and the Specifications, Specifications shall govern. In case of a conflict between such listed documents, the one having more stringent requirements shall govern.

1.2.10 The Contractor, if requested, shall furnish an affidavit from each or any Manufacturer certifying that materials or products delivered to the job meets requirements specified.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Design Consultant are and shall remain the property of the Owner. They are to be used by Contractor only with respect to the Project and are not to be used by Contractor on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Owner on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Owner’s rights or the Design Consultant's common law copyright or other reserved rights.

ARTICLE 2

THE DESIGN CONSULTANT

2.1 DEFINITIONS

2.1.1 The term "Design Consultant" or "A/E" or "Architect" or "Engineer" as used or set forth in the Contract Documents, shall mean the entity and its consultants or agents, or their duly authorized representatives, that is responsible for designing or engineering the Work, and performing the activities specified herein, and in the Agreement for Design Consultant Services, including any consultants to said entity or firm acting within the scope of their agreements with the Design Consultant. Such firm or agency and its representatives shall act severally within the scope of particular duties entrusted to them, unless otherwise provided for in the Contract Documents or in the Agreement for Design Consultant Services.

2.1.2 The Design Consultant may be identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The Design Consultant is further described as and, throughout this document, shall mean one or both of the following:

2.1.2.1 ARCHITECT, a person or other legal entity lawfully licensed to practice architecture in the State wherein the Project is located; or

2.1.2.2 ENGINEER, a person or other legal entity lawfully licensed to practice engineering in the State wherein the Project is located.

2.2 SERVICES OF THE DESIGN CONSULTANT

2.2.1 The Design Consultant will provide certain services as hereinafter described and further described in the Agreement for Design Consultant Services.

2.2.2 Should errors, omissions, or conflicts in the Drawings, Specifications, or other Contract Documents prepared by or on behalf of the Design Consultant be discovered, the Design Consultant will prepare such amendments or supplementary documents and provide consultation as may be required.

2.2.3 The Design Consultant will visit the site at intervals appropriate to the stage of construction to familiarize itself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Design Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, but it shall make as many inspections as may reasonably be required to fulfill its obligations to the Owner. On the basis of such on-site observations, the Design Consultant and his consultants shall endeavour to guard the Owner against defects and deficiencies in the Work. The Design Consultant will conduct the construction meeting and shall be responsible for preparing accurate and complete minutes of all such meetings and other Project meetings and distributing same to all participants.

2.2.4 The Design Consultant will render written field reports to the Owner in the form required by the Owner relating to the periodic visits and inspections of the Project required by Paragraph 2.2.3.

2.2.5 The Design Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Design Consultant will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any portion of the Work.

2.2.6 The Design Consultant shall at all times have access to the Work wherever it is in preparation or progress.

The Contractor shall provide safe facilities for such access so the Design Consultant may perform his functions under the Contract Documents.

2.2.7 As required, the Design Consultant will render to the Owner, within a reasonable time, interpretations concerning the design and other technical aspects of the Work and the Contract Documents.

2.2.8 All communications, correspondence, submittals, and documents exchanged between the Design Consultant and the Contractor in connection with the Project shall be in the manner prescribed by the Owner. Further, all communications, correspondence, submittals and documents transmitted from the Owner or Design Consultant will be directed to the Contractor and copied to the Owner or Design Consultant.

2.2.9 All interpretations and decisions of the Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents.

2.2.10 The Design Consultant's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.11 If the Design Consultant observes any Work that does not conform to the Contract Documents, the Design Consultant shall report this observation to the Owner. The Design Consultant will prepare and submit to the Owner and Contractor a list of the Contractor's work which is not in conformance with the Contract Documents.

2.2.12 The Design Consultant has the authority to condemn or reject any or all of the Work on behalf of the Owner when, in its opinion, the Work does not conform to the Contract Documents. Whenever, in the Design Consultant's reasonable opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Design Consultant will have the authority to require special inspection or testing of any portion of the Work in accordance with the provisions of the Contract Documents whether or not such portion of the Work be then fabricated, installed or completed.

2.2.13 The Design Consultant will review the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and for general compliance with the Contract Documents. Such action shall be taken within fourteen (14) days of receipt unless otherwise authorized by the Owner.

2.2.14 The Owner will establish with the Design Consultant procedures to be followed for review and processing of all Shop Drawings, catalogue submittals, project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.

2.2.15 The Design Consultant will prepare Change Orders and Construction Change Directives when requested by the Owner.

2.2.16 The Design Consultant and the Owner will conduct inspections to determine the dates of Substantial Completion and Final Completion. The Design Consultant will provide a final Certification of Payment.

2.2.17 The Design Consultant will prepare record documents showing significant Changes in the Work made during the construction process, based on neatly and clearly marked-up Drawings, prints, and other data furnished by the Contractor(s) and the applicable Addenda, clarifications and Change Orders which occurred during the Project.

2.2.18 In case of the termination of the employment of the Design Consultant, the Owner may appoint a Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and may be referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative or agent. The phrase "Owner or its agent" as used in this Agreement, does not include the Separate Contractors or their Subcontractors.

3.1.2 Owner: Charlotte-Mecklenburg Board of Education
Post Office Box 30035
Charlotte, North Carolina, 28230

3.2 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

3.2.1 The Owner will provide administration of the Contract as herein described. The Design Consultant shall also provide aspects of administration of the Contract as herein described or as specified in the Agreement for Design Consultant Services.

3.2.2 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

3.2.3 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

3.2.4 The Owner will have authority to require special inspection or testing of portions of the Work to the same extent as the Design Consultant in accordance with Paragraph 2.2.12 whether or not such portion of the Work be then fabricated, installed, or completed. However, neither the Owner's authority to act under Paragraph 3.2.4, nor any decision made by the Owner in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

3.2.5 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.

3.2.5.1 The Contractor is requested and required to attend job site progress conferences as called by the Design Consultant. The Contractor shall be represented at these job progress conferences by project personnel authorized by the Contractor to make schedule and financial decisions and by project personnel representatives. These meetings shall be open to Subcontractors, Material Suppliers, and any others who can contribute shall be encouraged by the Contractor to attend. It shall be the principal purpose of these meetings, or conferences, to affect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified Contract Time. The Contractor shall be prepared to assist progress of the Work as required in his particular contract and to recommend remedial measures for the correction of progress as may be appropriate. The Design Consultant shall be the coordinator of the conferences and shall preside as chairman.

3.2.5.2 If the Project is awarded as a single prime construction contract, the Design Consultant shall determine which, if any, Subcontractors and/or Material Suppliers shall be required to attend job site progress conferences. The Contractor shall comply with this request and the meeting shall be conducted as described in Subparagraph 3.2.5.1.

3.2.6 The Owner will establish procedures to be followed for processing all Shop Drawings, catalogues, and other project reports, and other documentation, test reports, and close-out manuals.

3.2.7 The Owner and Design Consultant will review all requests for changes and shall implement the processing of Change Orders, including applications for extension of the Contract Time.

3.2.8 The Owner, will not be responsible for the failure of the Contractor to plan, schedule, and execute the Work in accordance with the approved schedule or the failure of the Contractor to meet scheduled Completion Dates or the failure of the Contractor to schedule and coordinate the Work of his own trades and Subcontractors or to coordinate and cooperate with any Separate Contractors.

3.2.9 The Owner, in consultation with the Design Consultant, will review and process all Applications for Payment by the Contractor, including the final Application for Payment.

3.2.10 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons performing any of the Work or working on the Project.

3.2.11 The Owner shall furnish surveys describing the physical characteristics and legal limitations for the site of the Project, which are in its possession and are relevant to the Work.

3.2.12 The Owner shall secure and pay for necessary easements, required for permanent structures or for permanent changes in existing facilities.

3.2.13 The Owner shall furnish information or services under the Owner’s control with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.

3.2.14 The Owner will make reasonable efforts to make available for the Contractor's reasonable review, at the Owner's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Project site of which the Owner is aware, has in its possession and are relevant to the Work. Any boring logs that are provided to the Contractor are only intended to reflect conditions at the locations of the borings and do not necessarily reflect site conditions at other locations. Any reports, surveys and analyses provided by Owner are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the Owner or the Design Consultant, and such reports are not adopted by reference into, nor are they part of the Contract Documents. Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor shall not rely upon the accuracy or completeness of any reports, surveys and analyses.

3.2.15 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

3.3 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Section 13.2 or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written Notice may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

3.3.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.

3.3.3 If the performance of all or any part of the Work (including the work of the Contractor and its

Subcontractors) is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant , or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no Claim shall be made under this Paragraph for any suspension, delay, or interruption pursuant to Paragraph 3.4.1, or for which Claim is provided or excluded under any other provision of this Contract. No Claim under this Paragraph shall be allowed on behalf of the Contractor or its Subcontractors, unless within twenty (20) days after the act or failure to act involved, and for continuing or ongoing acts or failures to act within twenty (20) days of the first day of the act or failure to act, the Contractor submits to the Owner a written statement setting forth, as fully as then practicable, the extent of such Claim, and unless the Claim is asserted in writing within thirty (30) days after the termination of such suspension, delay, or interruption. For continuing or ongoing acts or failures to act, the Contractor shall update its written statement every twenty (20) days until the suspension, delay or interruption is terminated. The Contractor shall waive any and all Claims under this Paragraph 3.3.3 which are not filed in strict conformance with Paragraph 3.3.3. The Contractor shall indemnify, defend and hold the Owner harmless from any Claim by a Subcontractor that is waived because it is not filed in strict conformance with this Paragraph 3.3.3 or any other provision of the Contact regarding Claims.

3.3.4 In the event of a suspension of the Work or delay or interruption of the Work per Paragraph 3.3.3, the Contractor will and will cause his Subcontractors to protect carefully his, and their, materials and Work against damage, loss or injury from the weather and maintain completed and uncompleted portions of the Work as required by the Contract Documents. If, in the opinion of the Owner, any Work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors to so protect same, such Work and materials shall be removed and replaced at the expense of the Contractor.

3.3.5 No Claim by the Contractor under Paragraph 3.3.3 shall be allowed if asserted after final payment under this Contract or if it is not asserted in strict conformance with Paragraph 3.3.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or otherwise neglects to carry out the Work in accordance with the Contract Documents and fails within ten (10) days after the date written Notice is given by the Owner, with a copy of such Notice sent to the Contractor's Surety, to commence and continue remedy of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the Owner may select, including the use of a new contractor pursuant to Paragraph 3.4.2. In such case, the Owner shall provide Notice to the Contractor's Surety and an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Consultant's additional services made necessary by such default, neglect or failure and any other damages suffered by Owner as a result of Contractor’s breach, including but not limited to Owner’s reasonable attorney’s fees and litigation costs and expenses. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor or its Surety shall pay the difference to the Owner. Notwithstanding the Owner's right to carry out a portion of the Work, warranty, maintenance and protection of the Work remains the Contractor's and Surety's responsibility. Further, the provisions of this Paragraph do not affect the Owner's right to require the correction of defective or non-conforming Work in accordance with Section 13.2.

3.4.2 Whenever the Contractor shall be, and declared by the Owner to be in default under the Contract, the Owner having substantially performed Owner's obligations thereunder, the Surety shall promptly remedy the default, or shall be liable to Owner for damages pursuant to the Performance Bond and as provided by law. Any action by Surety or by Owner against the Surety shall not relieve Contractor of its duties, responsibilities and liabilities to Owner pursuant to the Contract or as allowed by law.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or organization identified as such in the Owner-Contractor Agreement and may be referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative, who shall have authority to bind the Contractor in all matters pertinent to the Contract.

4.1.2 The Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor represents that prior to executing this Contract, the Contractor carefully reviewed and studied the Contract Documents and notified the Owner and Design Consultant of any errors, inconsistencies or omissions of which the Contractor is aware. The Contractor agrees to continuously and carefully study and compare the Contract Documents after the execution of this Contract and shall at once report to the Owner and Design Consultant any error, inconsistency or omission he may discover, including, but not limited to, any requirement which may be contrary to any law, ordinance, rule, regulation, building code, or order of any public authority bearing on the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected Work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without it being specified in Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.2.2 The Contractor and his Subcontractors shall keep at the site of the Work at least one copy of the Drawings and Specifications and shall at all times give the Owner, the Design Consultant, inspectors, as well as other representatives of the Owner access thereto.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.1.1 It shall be the Contractor's responsibility to schedule the Work; to maintain a progress schedule for the Project; and to notify the Design Consultant and the Owner of any changes in the progress schedule. He shall be responsible for providing adequate notice to all Subcontractors to insure efficient continuity of all phases of the Project. The Contractor is responsible for keeping the Owner and Design Consultant fully informed as to the work progress, including immediate notification of any work progress changes.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub-subcontractors, Suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly contracted by the Contractor.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in

their administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Section 7.6 by persons other than the Contractor.

4.3.4 Before starting a section of the Work, the Contractor shall carefully examine all preparatory work that has been executed to receive his work to see that it has been completed in accordance with the Contract Documents. He shall check carefully, by whatever means are required, to ensure that his work and adjacent, related work will finish to proper and required standards for quality, contours, planes, and levels.

4.3.5 The Contractor understands and agrees that the Owner and Design Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and they will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and the Design Consultant will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

4.3.6 The Contractor shall not use or provide Subcontractor equipment, materials, methods or persons to which Owner and Design Consultant have a reasonable objection and shall remove no portion of the Work or stored materials from the site of the Work, except for defective Work the Contractor may be required to replace or repair as set forth herein.

4.3.7 The Contractor shall verify all grades, lines, levels and dimensions as indicated and shown on the Drawings and in the Specifications prior to beginning any portion of the Work and shall immediately report in writing any errors or inconsistencies to the Design Consultant before commencing that portion of the Work.

4.4. CONTRACTOR'S REPRESENTATIONS

4.4.1 By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:

.1 That he is experienced in and competent to perform the type of work required and to furnish the Subcontractors, materials, supplies, equipment and services to be performed or furnished by him;

.2 That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to initiate and complete the Work required under the Contract;

.3 That he is familiar with all Federal, State, County, municipal and department laws, ordinances, permits, regulations, building codes and resolutions which may in any way affect the Work or those employed therein, including but not limited to any special laws or regulations relating to the Work or any part thereof;

.4 That such temporary and permanent Work required by the Contract Documents will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;

.5 That he has carefully examined the Contract Documents and the site of the Work and that from his own investigations, he has satisfied himself and made himself familiar with: (1) the nature and location of the Work; (2) the character, quality and quantity of surface and subsurface materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the Project site, both natural and man-made; (3) the character of equipment and other facilities needed for the performance of the Work; (4) the general and local conditions including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract

Documents; and (6) all other matters or things which could in any manner affect the performance of the Work;

.6 That he will fully comply with all requirements of the Contract Documents;

.7 That he will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner;

.8 That he will furnish efficient business administration and experienced project management and supervision, and an adequate supply of workers, equipment, tools and materials at all times;

.9 That he has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to ensure completion of the Work in accordance with the Contract Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work;

.10 That he will complete the Work within the Contract Time and all portions thereof within any required Completion Dates;

.11 That his Contract Sum is based upon the labor, materials, systems and equipment required by the Contract Documents, without exception; and

.12 That he and all subcontractors acting on his behalf have obtained and shall retain throughout the duration of this Agreement all required licenses and certifications required in order to perform the work identified in the Contract Documents, that he will not permit any such licenses or certifications to lapse at any time during the course of his work on this Project, and that he and all subcontractors acting on his behalf are fully licensed and certified to perform all work required by the Contract Documents and this Agreement.

4.5 LABOR AND MATERIALS

4.5.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed and Contractor has otherwise complied with the Contract Documents in full.

4.5.2 The Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors performing any of the Work and shall not employ or contract with on the Work any unfit person or entity or anyone not skilled in the task assigned to him. The Owner may, by Notice, require the Contractor to remove from the Work any employee or employee of a Subcontractor performing any of the Work, that the Owner deems incompetent, careless or otherwise objectionable.

4.5.3 The Contractor shall be responsible for ensuring that the Work is completed in a skillful and workmanlike manner.

4.5.4 All equipment, apparatus and/or devices of any kind to be incorporated into the Work that are shown or indicated on the Drawings or called for in the Specifications or required for the completion of the Work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete

accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

4.6 WARRANTY

4.6.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be in accordance with generally accepted industry standards, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 13.

4.6.2 The Contractor will be required to complete the Work specified and to provide all items needed for construction of the Project, complete and in good order.

4.6.3 The warranties set forth in this Section 4.6 and elsewhere in the Contract Documents shall survive Final Completion of the Work under Section 9.9.

4.6.4 The Contractor guarantees and warrants to the Owner all Work as follows:

.1 That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;

.2 That all Work will be in accordance with generally accepted industry standards and free of omissions and faulty, poor quality, imperfect and defective material or workmanship;

.3 That the Work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;

.4 That the Work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

.5 That consistent with requirements of the Contract Documents, the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment;

.6 That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage; and

.7 That the products or materials incorporated in the Work will not contain asbestos.

4.6.5 All Work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Design Consultant or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.6.5.1 The Contractor will submit a written affidavit certifying that none of the materials incorporated in the Project contain asbestos.

4.6.6 If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof

as defined in Paragraph 8.1.3 or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of Notice from the Owner to do so. The Owner shall give such Notice with reasonable promptness after discovery of the condition. For items that remain incomplete or uncorrected on the date of Substantial Completion, the one (1) year warranty shall begin on the date of Final Completion of the Work or upon correction of the defective Work.

4.6.7 If at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

4.6.8 Any materials or other portions of the Work, installed, furnished or stored on site which are not of the character or quality required by the Specifications, or are otherwise not acceptable to the Design Consultant or the Owner, shall be immediately removed and replaced by the Contractor to the satisfaction of the Design Consultant and Owner, when notified to do so by the Design Consultant or Owner.

4.6.9 If the Contractor fails to correct defective or non-conforming Work as required by Paragraph 4.6.6, or if the Contractor fails to remove defective or non-conforming Work from the site, as required by Paragraph 4.6.8, the Owner may elect to either correct such Work in accordance with Section 3.4 or remove and store materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days written Notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Design Consultant's additional services and Owner’s reasonable attorney’s fees made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

4.6.10 The Contractor shall bear the cost of making good all of the Work of the Owner, Separate Contractors or others, destroyed or damaged by such correction or removal required under this Article 4, Article 13 or elsewhere in the Contract Documents.

4.7 TAXES

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time the Owner received bids for the construction of the Project, whether or not yet effective.

4.7.2 Sales and Use Tax. Contractor shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes. Where Contractor has been contracted with to oversee “new construction” or “reconstruction” as defined in G.S. 105-164.4H, Contractor shall be responsible for issuing and maintaining an Affidavit of Capital Improvement.

4.8 PERMITS, FEES AND NOTICES

4.8.1 Unless otherwise provided in the Contract Documents, The initial building permit fees required by the Charlotte Mecklenburg Building Standards (CMBS) to commence the work will be paid by the Owner. The Contractor shall, immediately following award of the Contract apply for and secure the building permit and shall secure and pay for all other permits, fees, so as not to delay the progress of the Work. The Contractor shall furnish the Owner with copies of all permits, certificates, licenses, and inspections

necessary for the proper execution and completion of the Work, including, without limitation, all building permits and other similar items. All utility company connection charges (including water & sewer tap, and associated impact fees), assessments or CMBS re-inspection fees as may be imposed by CMBS or inspections fees of any other governmental agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

4.8.2 The Contractor is responsible for all fees, permits and other costs associated with temporary utilities, including but not limited to installation, use, disconnection, removal and/or relocation.

4.8.3 The Contractor will pay for his own license, inspection and re-inspection fees for the proper execution and completion of the Work.

4.8.4 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work, including but not limited to all applicable building codes. If Contractor believes that any part of the Drawings or Specifications are inconsistent with applicable laws, rules, regulations, lawful orders of public authorities or building codes, Contractor shall Notify the Owner and Design Consultant of such inconsistencies immediately.

4.9 ALLOWANCES

4.9.1 The Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by these Allowances shall be supplied for such amount and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.9.2 Unless otherwise provided in the Contract Documents:

.1 Allowances for Work: These allowances shall cover the cost to the Contractor for the materials and equipment required by the allowance delivered at the site, all applicable taxes, unloading, uncrating and storage, protection from elements, labor, installation and finishing and other expenses required to complete the installation, time, and a fixed percentage for overhead and profit as defined in Article 12.

.2 Allowances for Products/Materials: Allowance includes the cost of the product, delivery to the site and applicable taxes. The Contractor's costs for unloading and handling on the site, labor, installation, time, overhead, profit and other expenses contemplated for the material allowance shall be included in the Contract Sum and not in the allowance;

.3 Whenever the cost is more than or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expense.

4.9 SUPERINTENDENT

4.10.1 The Contractor shall employ, and have approved by the Owner, a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. If the Contractor employs more than a single individual in this role, the Owner shall be provided an organizational chart and personnel listing for the staff performing the functions of a superintendent. In such event, all references to the superintendent elsewhere in the Contract Documents shall mean the staff performing the functions of a superintendent.

4.10.2 It is understood that such superintendent shall be acceptable to the Owner and shall be the one who will be continued in that capacity for the duration of the Project, unless he ceases to be on the Contractor's payroll or the Owner otherwise agrees. The superintendent shall not be employed on any other project for or by Contractor or any other entity during the course of the Work. The Contractor, as soon as

practicable after award of the Contract but not more than 14 days after the award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of the proposed project manager and superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed project manager or superintendent or (2) that the Architect requires additional time to review. Notwithstanding the above, the Owner and Architect reserve the right to notify the Contractor of their reasonable objection to the project manager and/or superintendent based upon their performance or failure to perform their duties and responsibilities.

4.11 PROGRESS SCHEDULE

4.11.1 The Contractor shall prepare and submit to the Owner for the Owner's review and approval an estimated progress schedule for the Work pursuant to the Specifications.

4.12 RESPONSIBILITY FOR COMPLETION

4.12.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work the required hours to ensure the performance of the Work within the Completion Dates specified in the Owner-Contractor Agreement.

4.12.2 If it becomes apparent to the Design Consultant or Owner that the Work will not be completed within required Completion Dates, the Contractor agrees to undertake some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Design Consultant and Owner, that the Contractor will comply with all Completion Date requirements:

.1 Increase manpower, materials, crafts, equipment and facilities;

.2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing, including but not limited to night shifts, overtime operations and Sundays and holidays;

.3 Reschedule activities to achieve maximum practical concurrence of accomplishment of activities;

.4 Require that his superintendent be at the Project site not less than ten (10) hours per day, six (6) days per week; and

4.12.3 In undertaking the actions required under Paragraph 4.12.1, Contractor shall provide and comply with a recovery schedule as set forth in the Specifications.

4.12.4 If the actions taken by the Contractor are not satisfactory, the Design Consultant or Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Completion Dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

4.12.5 If, in the opinion of the Design Consultant or Owner, the actions taken by the Contractor pursuant to this Article or the progress or sequence of the Work are not accurately reflected on the construction schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of the Work.

4.12.6 Failure of the Contractor to substantially comply with the requirements of this Article and the Specifications, may be considered grounds for a determination by the Owner, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

4.12.7 The Owner may, at its sole discretion and for any reason, other than due to the fault of Contractor require

the Contractor to accelerate the Work by providing overtime, Saturday, Sunday and/or holiday work and/or by having all or any Subcontractors designated by the Owner provide overtime, Saturday, Sunday, and/or holiday work. In the event that the Owner requires such acceleration a Change Order shall be issued in accordance with Article 12.

4.12.8 This Section 4.12 does not eliminate the Contractor's responsibility to comply with the local noise ordinances, all highway permit requirements and all other applicable laws, regulations, rules, ordinances, resolutions, and permit requirements.

4.13 DOCUMENTS AND SAMPLES AT THE SITE

4.13.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Design Consultant upon completion of the Work.

4.14 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.14.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, Manufacturer, Supplier or distributor to illustrate some portion of the Work.

4.14.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.14.3 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.14.4 Manuals are manufacturer's installation, start-up, operating, and maintenance and repair instructions together with parts lists, pictures, sketches and diagrams, which set forth the manufacturer's requirements for the benefit of the Contractor and the Owner.

4.14.5 The Contractor shall prepare or have prepared at its expense and shall review, indicate approval thereupon, and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the other work of the Owner or any Separate Contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Contract Documents.

4.14.5.1 Where the Contract calls for the submittal of manufacturer's data to the Design Consultant for information only, such submittals shall be made before the commencement of any portion of the Work requiring such submission. Work performed without benefit of approved Shop Drawings for any portion of the Work is subject to removal and replacement at no cost to the Owner.

4.14.5.2 When the Shop Drawings are checked "revise and resubmit", the Contractor shall make corrections and submit new copies for review. The Shop Drawings shall contain the Contractor’s "approval" and corrections.

4.14.5.3 Contractor shall submit names of proposed Manufacturers, Material Suppliers, dealers, who are to furnish materials, fixtures, appliances or other fittings for approval as early as possible, to afford proper investigation and checking.

4.14.5.4 Whenever item or class of material is specified exclusively by trade name, manufacturer's name, or by catalogue reference, Contractor shall use only such item, unless written approval for substitution is secured. Contractor shall not order materials until receipt of written approval. Contractor shall furnish materials equal in every respect to approved samples.

4.14.6 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings, which may be issued by the Design Consultant.

4.14.6.1 Parts and details not fully indicated on the Drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the Drawings, as well as detailed drawings themselves are subject in every case to measurements of existing, adjacent, incorporated and completed, which shall be taken by the Contractor before undertaking any Work dependent on such data.

4.14.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of Shop Drawings, Product Data, Samples or Manuals unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility to Owner for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by virtue of the Design Consultant's review or approval thereof.

4.14.8 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Shop Drawings or new Product Data or Samples. The Contractor shall direct specific attention, in writing on resubmitted Shop Drawings, Product Data or Samples or Manuals, to revisions other than those requested by the Design Consultant on previous submittals. Re-submittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time or an increase in the Contract Sum.

4.14.8.1 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples or Manuals shall be commenced until the submittal has been approved by the Design Consultant as provided in Article 2. All such portions of the Work shall be in accordance with approved submittals.

4.14.9 Shop Drawings, Product Data and Samples shall be dated and shall bear the name of the Project; a description or the names or equipment, materials and items; and complete identification of locations at which materials or equipment are to be installed. Shop Drawings shall be stamped and signed stating that the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.15 EQUAL PRODUCTS AND SUBSTITUTIONS

4.15.1 All materials, supplies and articles furnished under the Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner’s written approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Design Consultant is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner and Design Consultant (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the Work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the Specifications. Approval by the Owner and Design Consultant will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, warranty and

acceptability for use on the Project.

4.15.2 To obtain such approval on makes or brands of material other than those specified in Contract Documents, and not previously approved at the time the Owner received bids for the construction of the Project, the Contractor's request for approval of any substitution shall include:

.1 Complete data substantiating compliance of the proposed substitution with the Contract Documents;

.2 Product identification including manufacturers' name, address, and phone number;

.3 Manufacturer's literature showing complete product description, performance and test data, and all reference standards;

.4 Samples and colors in the case of articles or products;

.5 Names and addresses of similar projects on which the product was used and date of installation;

.6 For construction methods, include a detailed description for the proposed method and drawings illustrating same;

.7 Itemized comparison of proposed substitution with product or method specified and any cost reduction, which shall benefit the Owner;

.8 Accurate cost data on proposed substitution in comparison with product or method specified;

.9 All directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation; and

.10 Item by item comparison of characteristics of substitution item with those items specified.

4.15.3 The Contractor shall also submit with his request for approval a sworn and notarized statement which shall include all of the following representations by the Contractor, namely that:

.1 He has investigated the proposed product or method and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;

.2 He will meet all contract obligations with regard to this substitution;

.3 He will coordinate installation of accepted substitutions into the Work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;

.4 He waives all Claims for additional costs and additional time related to substitutions, which consequently become apparent. He also agrees to hold the Owner harmless from Claims for extra costs and time incurred by other Subcontractors and suppliers, or additional services which may have to be performed by the Design Consultant, for changes for extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;

.5 He will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the substitution that is applicable to the specified item for which the substitution is requested;

.6 Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents.

.7 In all cases new materials will be used unless this provision is waived by Notice from the Owner or his Design Consultant, or unless otherwise specified in the Contract Documents;

.8 All material and workmanship will be in every respect in accordance with that which, in the opinion of the Owner or Design Consultant, is in conformity with approved modern practice; and

.9 He has provided accurate cost data on the proposed substitution in comparison with the product or method specified.

4.15.4 Subject to the provisions of any applicable laws, approval for substitutions or equal products shall be at the sole discretion of the Owner, shall be in writing to be effective, and the decision of the Owner shall be final. The Owner or Design Consultant may require tests of all materials proposed for substitution so submitted to establish quality standards, at the Contractor's expense. After approval of a substitution, if it is determined that the Contractor submitted defective information or data regarding the substitution upon which Owner's approval was based, and that unexpected or uncontemplated extensive redesign or rework of the Project will be required in order to accommodate the substitution, or that the substituted item will not perform or function as well as the specified item for which substitution was requested, the Contractor will be required to furnish the original specified item or obtain approval to use another substitution; the Contractor shall pay all costs, expenses or damages associated with or related to the unacceptability of such a substitution and the resultant utilization of another item and no time extension shall be granted for any delays associated with or related to such substitution.

4.15.5 If a substitution is approved, no further change in brand or make will be permitted unless satisfactory, written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved substituted item. The Owner will not consider substitutions for approval if:

.1 The proposed substitution is indicated or implied on the Contractor's Shop Drawing or product data submittal and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements, or

.2 Acceptance of the proposed substitution will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the Owner and Design Consultant.

4.15.6 Except as otherwise provided for by the provisions of any applicable laws, the Contractor shall not have any right of appeal from the decision of the Owner rejecting any materials submitted if the Contractor fails to obtain the approval for substitution under this Article.

4.16 USE OF SITE

4.16.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and within the limits of construction as shown on the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within twenty four (24) hours of notification by the Owner, to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this Paragraph.

4.17 CUTTING AND PATCHING OF WORK

4.17.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and in accordance with the Contract Documents.

4.17.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any Separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any Separate Contractor except with the written consent of the Owner and of such Separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any Separate Contractor his consent to cutting or otherwise altering the Work. The Owner shall not be required to accept work with a cut, splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the Design Consultant or the Owner.

4.17.3 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Design Consultant and the Owner of such structures and facilities and authorities having jurisdiction. In event the local jurisdictional authorities require that such repairing and patching be done with their own labor and materials, the Contractor shall abide by such regulations and pay for such work with no increase in the Contract Sum.

4.18 CLEANING UP

4.18.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work and before final payment is made, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.18.2 If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so as provided in Section 6.3 and the cost thereof shall be charged to the Contractor.

4.19 COMMUNICATIONS

4.19.1 All communications from the Contractor relating to the Contract Documents or the construction schedule will be directed to the Design Consultant and copied to the Owner. Similarly, all correspondence from the Owner or Design Consultant will be directed to the Contractor and copied to the Owner or Design Consultant.

4.20 ROYALTIES AND PATENTS

4.20.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights arising out of the Work and shall save the Owner harmless from loss on account thereof.

4.21 INDEMNIFICATION

4.21.1 To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, indemnify, defend, and hold harmless the Owner and its agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of and/or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense is caused by any negligent act, error or omission of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be legally liable. The above obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 4.21.1. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.

4.21.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives,

or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 4.21 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.21.3 No provision of this Section 4.21 shall give rise to any duties on the part of the Design Consultant or the Owner, or any of their agents, representatives, or employees.

4.22 PERSONS AUTHORIZED TO SIGN DOCUMENTS

4.22.1 The Contractor, within five (5) days after the earlier of the date of a Notice to Proceed or the date of the Owner-Contractor Agreement, shall file with the Owner a list of all persons who are authorized to sign documents such as contracts, certificates, and affidavits on behalf of the Contractor and to fully bind the Contractor to all the conditions and provisions of such documents, except that in the case of a corporation he shall file with the Owner a certified copy of a resolution of the Board of Directors of the corporation in which are listed the names and titles of corporation personnel who are authorized to sign documents on behalf of the corporation and to fully bind the corporation to all the conditions and provisions of such documents.

4.23 CONDITIONS AFFECTING THE WORK

4.23.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions that can affect the Work or the cost thereof. Failure by the Contractor to fully acquaint himself with conditions which may affect the Work, including, but not limited to conditions relating to transportation, handling, storage of materials, availability of labor, water, roads, weather, topographic and subsurface conditions, Multi-Prime Contract conditions, applicable provisions of law, and the character and availability of equipment and facilities needed prior to and during the execution of the Work, shall not relieve the Contractor of his responsibilities under the Contract Documents and shall not constitute a basis for an adjustment in the Contract Sum or the Contract Time under any circumstances. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

4.23.2 If in the execution of the Work any valuable items or materials of any kind are discovered buried or hidden within the Work, such items or materials shall be the property of the Owner. The Contractor shall take reasonable precautions to prevent any persons from removing or damaging such items or materials and shall immediately upon discovery thereof and before removal, acquaint the Owner or the Design Consultant with such discovery and carry out, at the expense of the Owner, the Owner's or the Design Consultant's orders as to disposal of the same.

4.24 COMPLIANCE WITH BOARD POLICIES AND PROCEEDURES

The Contractor acknowledges that Board policies are available for review at www.cms.k12.nc.us and agrees to comply with the policies. The Contractor also agrees to comply with the following provisions:

4.24.1 The Contractor, its Subcontractors and employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles or firearm racks within vehicles. The Contractor, its Subcontractors and employees shall not cause, encourage or aid a minor, who is less than 18 years old to possess or carry, whether openly or concealed, any weapons on any property owned by the Owner.

4.24.2 The Contractor, its Subcontractors and employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

4.24.3 The Contractor and its Subcontractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the Owner.

4.24.4 The Contractor and its Subcontractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on school premises, both indoor and outdoor. The prohibition of the display of tobacco or nicotine products shall not extend to a display that has a legitimate instructional or pedagogical purpose. For purposes of this Contract, "tobacco product" is defined to include cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco, tobacco products, or any facsimile thereof. "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

4.24.5 The Contractor, its Subcontractors and employees shall not solicit from or sell to students or staff within the Owner's facilities or campuses, and shall not give gifts of any value to school system employees.

4.24.6 Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion and follow-up testing for drugs and alcohol.

4.24.7 The Contractor, its Subcontractors and employees are prohibited from using access to the site pursuant to this Agreement as a means to date, court, or enter into a romantic or sexual relationship with any student enrolled in the Charlotte-Mecklenburg Schools. The Contractor agrees to indemnify the Owner for claims against the Owner resulting from relationships which have occurred or may occur between a student and an employee of the Contractor or Subcontractor.

4.24.8 Lunsford Act/Criminal Background Checks. The Contractor shall conduct at its own expense sexual offender registry checks on each of its owners, employees, agents, or Subcontractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites.. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at http:// www. nsopw.gov/. The Contractor shall provide certification that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, Contractor agrees to conduct the registry checks and provide a supplemental certification before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the school system upon request. Contractor specifically acknowledges that the school system retains the right to audit these records to ensure compliance with this Section at any time in the school system's sole discretion. Failure to comply with the terms of this provision shall be grounds for immediate termination of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the school system exercises this right to conduct additional criminal records checks, Contractor agrees to provide within seven (7) days of request the full

name, date of birth, state of residency for the past ten years, and any additional information requested by the school system for all contractual personnel who may deliver goods or perform services under this Agreement. Contractor further agrees that it has an ongoing obligation to provide the school system with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of Contractor from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

4.24.9 Contractor shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Contractor represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. Contractor shall also ensure that any of its Subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the School System. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

4.24.10 The Contractor, its Subcontractors and employees shall not interact with any students. Nothing in Paragraph 4.24 shall be construed to prevent the Contractor, its Subcontractors and employees from taking necessary measures to protect students, staff or other employees.

4.24.11 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to it. The Owner may require the Contractor to remove any employee the Owner deems incompetent, careless or otherwise objectionable.

4.24.12 All agents and workers of the Contractor and its Subcontractors shall wear identification badges provided by the Contractor at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number, employee name and a picture of the employee.

4.24.13 The Contractor shall comply with the Owner's site or school building access procedures when working on any existing school campus.

4.24.14 Anti-Nepotism. The Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Owner's Board of Education or of any principal or central office staff administrator employed by the Owner. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent. Unless formally waived by the Owner, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Contractor.

4.24.15 Restricted Companies Lists. Contractor represents that as of the date of this Agreement, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Agreement, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any Separate Contractor or his subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site or who contracts to perform or supply any of the Work under the scope of a Subcontractor's subcontract. The term Sub-subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, Supplier or Vendor of the Contractor, except the relationship between Owner and Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.

5.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor, Sub-subcontractor or Material Supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or Material Suppliers shall route requests for information or clarification through the Contractor to the Design Consultant.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 The Contractor, in compliance with the requirements of the Contract Documents and within ten (10) days after the Notice to Proceed, shall furnish in writing to the Owner the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that he alone is responsible to the Owner for the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.

5.2.1.1 The Contractor shall identify in the list of names of the Subcontractors proposed, those Subcontractors that are MWSBE Businesses and indicate the portion of the Work that each Subcontractor will perform.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Paragraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the Owner has reasonable objection to any proposed person or entity under Paragraph 5.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; provided,

however, that no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Paragraph 5.2.1 and the original proposed Subcontractor was: (i) able to carry out his work under his proposed subcontract, (ii) able to comply with all applicable laws, (iii) was an ongoing business in the field of his proposed subcontract, and (iv) had a labor force, capital and a means of supply compatible with the scope of his proposed subcontract.

5.2.4 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by him on the Project, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

5.2.5 The Contractor shall notify the Owner and the Design Consultant of any substitution for any Subcontractor identified in accordance with Subparagraph 5.2.1.1. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or the Design Consultant makes reasonable objection to such substitution. Also, Contractor may make no substitution of Subcontractors in violation of applicable law.

5.2.6 If during the duration of the Project, the Contractor effects a substitution for any Subcontractor per Paragraph 5.2.5, or if additional subcontract opportunities become available, the Contractor shall make a good faith effort to utilize MWSBE Businesses.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the agreement between the Contractor and Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors.

5.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract with any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner the Work required by this Contract.

5.3.3 The Contractor shall submit Notice to the Owner of any Claims by Subcontractors for which the Owner is believed to be responsible, in strict conformance with the same time requirements and other procedures established for the submission of the Contractor's Claims to the Owner.

5.4 QUALIFICATION SUBMITTALS

5.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant.

All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal.

5.4.2 The Owner and Design Consultant shall reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:

.1 The Contractor's failure to submit requested information within the specified time; or

.2 The Contractor's failure to provide all of the requested information; or

.3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner or Design Consultant.

5.4.3 Should the Owner or Design Consultant have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another person or firm who are reasonably acceptable to the Owner and Design Consultant.

5.5 PREPARATORY WORK

5.5.1 Before starting a portion of the Work, the Contractor and the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to proper contours, planes and levels. He shall promptly notify the Contractor and the Design Consultant of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work and later Claims of defects therein will not be recognized.

5.5.2 Under no conditions shall a portion of the Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford Separate Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with that of the Owner and other contractors to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the Work as will not unduly or unreasonably interfere with the progress of the Work or the work of any other contractors.

6.2.1.1 If the execution or result of any part of the Work depends upon any work of the Owner or of any Separate Contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any Separate Contractor that render it unsuitable for such proper execution or result of any part of the Work.

6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or Separate Contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or Separate Contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

6.2.2 Should the Contractor cause damage to the Work or property of the Owner or of any Separate Contractor on the Project, or to other work on the site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said Separate Contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said Claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the other contractor.

6.2.2.1 Should a Separate Contractor be declared in default by the Owner, the Owner shall not be obligated to hire a contractor to perform the work of the Separate Contractor during the time the Separate Contractor's surety is remedying the default pursuant to Paragraph 3.4.2.

6.2.2.2 If such Separate Contractor sues the Owner or Design Consultant on account of any damage, delay or interference cause or alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend the Owner and Design Consultant in such proceedings at the Contractor's expense. If any judgment or award is entered against the Owner or Design Consultant in such proceedings, the Contractor shall satisfy the same and shall reimburse the Owner and Design Consultant for all damages, expenses, attorney's fees and other costs which the Owner or Design Consultant incurs as a result thereof.

6.2.3 Should a Separate Contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said Separate Contractor any Claims it may have as a result of such damage, delay or interference (with an information copied to the Owner) and shall attempt to settle its Claim against said Separate Contractor prior to the institution of litigation or other proceedings against said Separate Contractor.

6.2.3.1 In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor hereby waives any Claims against the Owner and Design Consultant relating to any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any Separate Contractor.

6.2.4 Whenever Contractor receives items from another contractor or from Owner for storage, erection or installation, the Contractor receiving such items shall give receipt for items delivered, and thereafter will be held responsible for care, storage and any necessary replacing of item or items received.

6.2.5 When certain items of equipment and other work are indicated as "NIC" (not in contract), or to be furnished and installed under other contracts, any requirements set forth in the Contract Documents for preparation of openings, provision of backing, etc., for receipt of such "NIC" work will be furnished upon written request of the Contractor who shall properly form and otherwise prepare his work in a satisfactory manner to receive such "NIC" work.

6.3 OWNER'S RIGHT TO PERFORM DISPUTED WORK

6.3.1 If a dispute arises between the Contractor and Separate Contractors as to their responsibility for cleaning up as required by Section 4.18 or for accomplishing coordination or doing required cutting, filling, excavating or patching as required by Section 4.17, the Owner may carry out such work and charge the

cost thereof to the responsible party as the Owner shall determine to be just.

6.4 COORDINATION OF THE WORK

6.4.1 By entering into this Contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of his own. Contractor expresses, warrants and guarantees that he will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other Separate Contractors, the Owner or Design Consultant. Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a Separate Contractor, his sole remedy will be a direct action against the Separate Contractor as described in this Article 6. Contractor will have no remedy, and hereby expressly waives any remedy, against the Owner and/or the Design Consultant on account of delay, hindrance, interference or other event caused by a Separate Contractor.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 This Contract shall be governed by the laws of the State of North Carolina. The Contractor and Owner agree that Mecklenburg County, North Carolina shall be the proper venue for any litigation arising out of this Agreement.

7.1.2 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly or fully inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

7.3 CLAIMS AND DAMAGES

7.3.1 Should the Contractor, Subcontractor or any Sub-subcontractor suffer injury or damage to person or property because of any act or omission of the Owner or Design Consultant, or of any of their employees, agents or others for whose acts either is legally liable, the Claim on behalf of the Contractor its Subcontractors or Sub-subcontractors shall be made by giving Notice to the Owner, as provided in Article 15 ; otherwise, the Contractor, Subcontractors and Sub-subcontractors shall have waived any and all rights he may have against the Owner or the Design Consultant, or their employees, representatives and agents. The Contractor shall indemnify, defend and hold the Owner harmless from any Claim by a Subcontractor that is waived because it is not filed in strict conformance with this Paragraph or any other provision of the Contract regarding Claims.

7.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.4.1 The Contractor shall furnish bonds covering the faithful performance of the Contract and the payment of

all obligations arising thereunder in a form and with a Surety satisfactory to the Owner.

7.4.2 The Contractor is required to furnish in duplicate a Performance Bond and a Labor and Material Payment Bond, each in the amount of one hundred percent (100%) of the Contract Sum, written by a surety company licensed to do business in North Carolina and with a minimum AM Best "A" rating or comparable rating from another service reasonably acceptable to Owner.

7.5 RIGHTS AND REMEDIES

7.5.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.5.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provisions or right(s) or of the right to subsequently demand such strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

7.5.3 The Contractor agrees that he can be adequately compensated by money damages for any breach of the Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of the Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, save only his right to money damages.

7.6 TESTS AND INSPECTIONS

7.6.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner and Design Consultant timely Notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. Unless otherwise specifically provided in the Contract Documents, the Contractor shall bear all costs of such inspections, tests or approvals, except that Owner shall pay for "special inspections" as defined and required in Section 1704, the North Carolina State Building Code, or successor section. In the event that such "special inspections" reveal a failure of the Work to comply with the Contract Documents or applicable laws, ordinances, regulations or orders of public authorities having jurisdiction, Contractor shall reimburse the Owner for the costs of such "special inspections".

7.6.1.1 Unless otherwise stipulated in the Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of his work and work of each Subcontractor. Boiler fuel other than gas shall be provided by Subcontractor furnishing boilers. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

7.6.2 If the Design Consultant or the Owner determines that any portion of the Work requires additional inspection, testing, or approval which Paragraph 7.6.1 does not include, the Owner will instruct the Contractor to order such additional inspection, testing or approval, and the Contractor shall give Notice as provided in Paragraph 7.6.1. If such additional inspection or testing reveals a failure of any portion of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Design Consultant's and Owner's additional construction management expenses made necessary by such failure.

7.6.3 With regard to inspections and tests, the costs of which the Owner is responsible for paying, they will be made by a pre-qualified, independent testing agency selected by the Owner. The cost of the initial services of such agency will be paid by the Owner. When the initial tests indicate non-compliance with the Contract Documents, any subsequent testing occasioned by non-compliance shall be performed by the same agency and the cost thereof shall be borne by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

7.6.4 The independent testing agency, contracted by the Owner, shall prepare the test reports, logs, and certificates applicable to the specific inspections and tests and promptly deliver the specified number of copies to the designated parties. Certificates of inspection, testing or approval required by public authorities shall be secured by the Contractor and promptly delivered by him to the Owner, in adequate time to avoid delays in the Work or final payment therefore.

7.6.5 If the Design Consultant or the Owner is to observe the inspections, tests or approvals required by the Contract Documents, laws, ordinances, rules, regulations, or order of any public authority having jurisdiction or that are required to establish compliance with the Contract Documents, he will do so promptly and, where practicable, at the normal place of testing.

7.6.6 The Contractor shall pay for and have sole responsibility for inspections or testing performed exclusively for his own convenience.

7.7 UNENFORCEABILITY OF ANY PROVISION

7.7.1 If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

7.8 ATTORNEYS' FEES AND OTHER EXPENSES

7.8.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated Claims or Claims he has specifically waived under the terms of the Contract Documents. In the event that the Contractor's or its Subcontractor’s or Sub-subcontractor’s Claims, or any separate item of a Claim, is without substantial justification, the Contractor shall reimburse the Owner or Design Consultant for all costs and expenses associated with defending such Claim or separate item, including but not limited to, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, or services and any other consultant costs.

7.8.2 If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

7.8.3 If the Owner or Design Consultant substantially prevails in a Claim brought against the Contractor, or in defending a Claim brought by the Contractor, including but not limited to, Claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner and/or Design Consultant for all costs and expenses incurred by them relating to such Claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work as defined in Paragraph 8.1.4, including authorized adjustments thereto. The Contractor shall achieve Final Completion within the Contract Time.

8.1.2 The date of commencement of the Work is the date established in the Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein. The Contractor shall not commence work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Design Consultant and the Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully and legally occupy and utilize the Work or designated portion thereof for the use for which it is intended, with all of the parts and systems operable as required by the Contract Documents, including a test and balance report for the mechanical system. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for Final Completion. The Contractor acknowledges and agrees that the intercom, telephone, data security, building automation system (including functional graphics at the site), MATV, and other educational operational systems are required for the Owner’s use of the building for its intended purpose. The Contractor shall provide operation and maintenance manuals to the Owner as required by the Contract Documents prior to Substantial Completion and shall provide the required training on the operation of the equipment and systems within two weeks of Substantial Completion or later date as approved by the Owner. The Contractor shall achieve Substantial Completion by the date specified in the Supplemental Conditions including authorized adjustments thereto. The Owner’s occupancy of incomplete work shall not alter the Contractor’s responsibilities pursuant to this paragraph. Only incidental corrective work and any final cleaning beyond that needed for the Owner’s full use may remain for Final Completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Substantial Completion.

8.1.4 Final Completion of the Work occurs on the date certified by the Design Consultant and the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the Work for the use for which it is intended. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Final Completion.

8.1.5 The term Day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. All dates shall mean midnight of the indicated day unless otherwise stipulated.

8.1.6 Completion Dates shall mean the dates set forth in the Supplemental Conditions for Substantial Completion and Final Completion.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract with respect to the Contractor’s performance.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Paragraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the time frames stated in the Contract Documents.

8.2.3 Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason, it shall be

agreed that the Contractor and its Subcontractors will achieve Substantial Completion of the Work under the Contract within the time established under Paragraph 8.2.4 of the Supplemental Conditions after award of Contract, or Notice to Proceed, and that he will achieve Final Completion of the Work in all its details for final acceptance within the time established under Paragraph 8.2.4 of the Supplemental Conditions.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 The time during which the Contractor or any of the Subcontractors is delayed in the performance of the Work by the issuance of any required permits, acts of god, excessive inclement weather, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's or the Subcontractors' control and which the Contractor or the Subcontractors could not reasonably have foreseen and provided against, except for delays caused solely by the Owner, Design Consultant or their consultants, shall be added to the time for completion of the Work stated in the Contract. Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or the Subcontractors for indirect or direct damages, costs or expenses of any nature which the Contractor, the Subcontractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence in the Work included in this Section 8.3.1. The Contractor hereby expressly waives any Claims against the Owner and the Design Consultant on account of any indirect or direct damages, lost profits, costs or expenses of any nature which the Contractor, the Subcontractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, and it is understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract time in accordance with the Contract Documents.

8.3.2 In the event Project delays arise from or out of any act or omission of the Owner, Design Consultant or their consultants, the time during which the Project is delayed shall be added to the Contract and the Contractor may be reimbursed for its direct Project damages, excluding general overhead expenses and indirect costs, if the Contractor strictly complies with this Article 8.3. Notwithstanding the previous sentence, if the Contractor or Subcontractor in any way shares in responsibility for the delay, neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or the Subcontractors for indirect or direct damages, costs or expenses of any nature which the Contractor, the Subcontractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence of the Work, and the Contractor's sole remedy, if any, shall be an extension of the Contract time.

8.3.3 In the event Project delays arise solely from or out of any act or omission of the Contractor, Subcontractors or their agents, the Contractor shall not be entitled to extension of the Contract time and shall be subject to the payment of Liquidated Damages as provided in this Contract.

8.3.4 The Contract time shall be adjusted only for changes pursuant to section 12.1, suspension of the Work pursuant to paragraph 3.3.2 or paragraph 3.3.3, and excusable delays pursuant to paragraph 8.3.4. In the event the Contractor requests an extension of the Contract time or files a Claim related to any form of delay, it shall furnish such justification and supporting evidence as the Owner may deem necessary for a determination of whether or not the Contractor is entitled to an extension of time under the provisions of the Contract, and shall further conform to all of the requirements of the specifications. The burden of proof to substantiate a Claim shall rest with the Contractor, including evidence that the cause was beyond its control. The Owner shall base its findings of fact and decision on such justification and supporting evidence, including a finding that the alleged delay impacted the Project's critical path, and shall advise the Contractor in writing thereof. If the Owner finds that the Contractor is entitled to any extension of the Contract time, the Owner's determination of the total number of days of extension shall be based upon the currently approved progress schedule and on all data relevant to the extension. Such data will be incorporated into the schedule in the form of a revision thereto, accomplished in a timely manner. The Contractor acknowledges and agrees that actual delays (due to said changes, suspension of Work or excusable delays) in activities which, according to the schedule, do not affect the Contract time, do not have any effect upon the Contract time and therefore will not be the basis for a change therein. The Contractor acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the critical path activities in the Contractor's currently approved schedule.

8.3.4.1 Extensions in the Contract time by Change Orders are subject to extension-in-time audit by the Owner as follows:

8.3.4.1.1 The Contractor agrees that, even though the Owner, Contractor and Design Consultant have previously signed a Change Order containing an extension-in-time resulting from a change in or addition to the Work that said extension in the Contract time may be adjusted by an audit after the fact by the Owner. If such an audit is to be made, the Owner must undertake the audit and make a ruling within thirty (30) days after the completion of the Work under the Change Order.

8.3.4.1.2 The Contractor agrees that any extension of the Contract time to which it is entitled arising out of a Change Order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the Owner after the Work of the Change Order is completed. Such rulings shall be made by the Owner within thirty (30) days after a request for same is made by the Contractor or Design Consultant, except said thirty (30) days will not start until the Work under the Change Order is completed.

8.3.4.1.3 Should a time extension be granted for Substantial Completion, the date for Final Completion shall be appropriately adjusted unless specifically stated otherwise.

8.3.4.2 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract time (but no increase in the Contract sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, the Subcontractors or suppliers as follows:

8.3.4.2.1 Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly delay the progress of the Work on the critical path; however, an extension of Contract time on account of an individual labor strike shall not exceed the number of days of said strike;

8.3.4.2.2 Acts of nature: tornado, fire, hurricane, blizzard, earthquake, or flood that damage Work in place or stored materials or adversely impact the schedule's critical path;

8.3.4.2.3 Excessive inclement weather; however, the Contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this Contract, the Contractor agrees that the number of calendar days per month stated below are to be considered reasonably anticipated inclement weather and planned for in the construction schedule per the specifications, , construction schedules and reports. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than the reasonably anticipated inclement weather considering the time from the notice-to-proceed until the building is enclosed using data from the national weather service station at Charlotte Airport (CLT), North Carolina, or a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract time, the Contractor shall not be entitled to an extension of time.

8.3.4.2.4 Delays in the issuance of the building permit required for construction of the Project, acts of the public enemy, acts of the State, Federal or local government in its sovereign capacity, and acts of another Contractor in the performance of a Contract with the Owner relating to the Project.

8.3.5 If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay the Owner the amount specified in the Contract, not as a penalty but as Liquidated Damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages

which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

8.3.6 The Contractor and the Subcontractors shall not be entitled to and hereby expressly waive any extension of time resulting from any condition or cause unless said Claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay for all delays, except excessive inclement weather which shall be made in writing to the Owner within forty-five (45) days after the date the structure is enclosed. Circumstances and activities leading to such Claim shall be indicated or referenced in a daily field inspection report for the day(s) affected. In every such written Claim, the Contractor shall provide the following information:

8.3.6.1 Nature of the delay;

8.3.6.2 Date (or anticipated date) of commencement of delay;

8.3.6.3 Activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

8.3.6.4 Identification of person(s) or organization(s) or event(s) responsible for the delay;

8.3.6.5 Anticipated extent of the delay; and

8.3.6.6 Recommended action to avoid or minimize the delay.

8.3.7 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Section 2.2 shall be furnished, then no Claim for delay shall be allowed on account of failure to furnish such interpretations until twenty (20) days after request is made for them, and not then unless such Claim is reasonable.

8.3.8 No Claim by the Contractor for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article. All Claims not filed in accordance with this Article shall be waived by the Contractor.

8.4 RESPONSIBILITY FOR COMPLETION

8.4.1 The Contractor shall be responsible for completion in accordance with Paragraph 4.12.1.

8.4.2 The Owner may require the Contractor to submit a recovery schedule in accordance with Specifications, Construction Schedules and Reports demonstrating his program and proposed plan to make up the lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Owner finds the proposed plan not acceptable, he may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are not satisfactory, the Owner may require the Contractor to take any of the actions set forth in Paragraph 4.12.2 without additional cost to the Owner, to make up the lag in scheduled progress.

8.4.3 Failure of the Contractor to substantially comply with the requirements of this Section 8.4 may be considered grounds for a determination by the Owner, pursuant to Section 14.3, that the Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work, as set forth in the Specifications, Construction Schedules and Reports, and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment and only for this purpose. If approved by the Owner, the Contractor may include in his schedule of values a line item for mobilization which shall include a reasonable amount of mobilization for the Contractor and his Subcontractors. The Contractor shall not front-end load his schedule ofvalues.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, in accordance with the Specifications, Construction Schedules and Reports, shall submit to the Design Consultant an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Design Consultant and the Owner may require, including but not limited to the Contractor's certification that all work for which payment is requested has been completed in full in accordance with the Contract Documents, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. If requested by the Owner, the Contractor shall also certify that he has paid all due and payable amounts for which previous Applications for Payment were issued and payments received from the Owner, by providing waivers of liens for said payments.

9.3.1.1 The Contractor shall submit with the Application for Payment a list of those MWSBE Subcontractors whose work is included in the application and the amount due each. In addition, the MWSBE Business must itself perform satisfactory work or services or provide supplies under the Contract and not act as a mere conduit.

9.3.2 The Owner will withhold retainage from Contractor on all Applications for Payment to the maximum extent and in the maximum amount allowed by law (currently codified at N.C.G.S. 143-134.1) and in accordance with that statute or applicable successor statute. In the event that N.C.G.S 143-134.1 or applicable successor statute are not in effect or do not apply at the time the Contract is executed, Owner will retain ten percent (10%) of the amount of each Application for Payment from the Contractor as retainage, until Contractor achieves Final Completion, whether or not the Owner has occupied any or all of the Project before such time. However, if the Owner, at any time after fifty percent (50%) of the Work has been completed, finds that satisfactory progress is being made, he may authorize payment to the Contractor in full of each Progress Payment for work performed beyond the fifty percent (50%) stage of completion. If a reduction in retainage has been made, the Owner may increase the retainage back to original percentage at any time if the Owner concludes that the Contractor is not progressing with the Work in a timely or satisfactory manner.

9.3.3 Payments may be made by the Owner, at its sole discretion, on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site or in a bonded warehouse by the Contactor. Payments for materials or equipment stored shall only be considered upon submission by the Contractor of satisfactory evidence (for example, releases or paid invoices from the seller) that the Contractor has acquired title to such material, that it will be utilized on the work under this Contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the Owner that will protect the Owner's interests have been taken. In the event the materials are stored in a bonded warehouse that is not located in the county of the project, the Contractor shall reimburse the travel cost

and hourly billing expenses incurred by the Design Consultant for travel to view and assess whether the materials meet the requirements of the Contract Documents. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site or bonded warehouse, other than to be delivered from the warehouse to the site, without the Owner's written permission. Responsibility for such stored materials and equipment shall remain with the Contractor regardless of ownership.

9.3.3.1 Owner will not make payment to the Contractor on account of materials or equipment not incorporated in the Work but delivered and stored at the site if the Contractor, in his schedule of values, does not includes line items for such delivered and stored materials or equipment.

9.3.3.2 It is specifically understood and agreed that an inspection and approval of the materials by the Owner, the Design Consultant or any agency retained by any of them shall not in any way subject the Owner to pay for the said materials or any portion thereof, even though incorporated in the Work, if said materials shall in fact turn out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

9.3.4 The Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.5 The Contractor shall submit with the Application for Payment a notarized Contractor’s Sales Tax Report of N.C. State and County sales taxes paid during the payment period with respect to building materials, supplies, fixtures, and equipment that have become a part of, or annexed to, a building or structure erected, altered or repaired for the Owner. The Sales Tax Report shall include the vendor from whom the property was purchased, the dates and number of invoices covering the purchase, the total amount of the invoices of each vendor, the North Carolina State and County sales and use tax paid thereof, and the cost of the property withdrawn from the warehouse stock and North Carolina sales or use taxes paid thereof. Items that should not be included are: scaffolding, forms for concrete, fuel for operation of machinery and equipment, tools, equipment, equipment repair parts and equipment rentals.

9.3.6 Unless an interest rate is required by law, Owner shall not pay any interest on an amount owed to Contractor. No interest shall accrue on amounts Owner is authorized by law or by the Contract to withhold or backcharge to Contractor.

9.4 CERTIFICATION OF PAYMENT

9.4.1 The Design Consultant will, after receipt of the Contractor's Application for Payment either issue a Certification of Payment to the Owner, with a copy to the Contractor, for such amount as the Design Consultant determines is properly due, or notify the Contractor in writing of their reasons for withholding a Certification as provided in Paragraph 9.6.1.

9.4.2 The submission and approval of the progress schedule and monthly updates thereof as required by the Specifications, Construction Schedules and Reports, shall be an integral part and basic element of the application upon which progress payment shall be made. The Contractor shall be entitled to progress payments only as determined from the currently approved and updated schedule.

9.4.3 The signing of a Certification of Payment will constitute a representation by the Design Consultant to the Owner, based on their observations at the site pursuant to their agreements with the Owner, and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the

best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in their Certification); and that the Contractor is entitled to payment in the amount certified. However, by signing a Certification of Payment, the Design Consultant shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After a Certification of Payment has been issued, the Owner shall make payment in the manner and within the time provided in the Contract Documents, unless Contractor is in breach of the Contract or otherwise owes the Owner, in which case Owner may withhold an appropriate amount.

9.5.2 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material-men) performing labor or furnishing material or equipment for the Work, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his Sub-subcontractors in similar manner. The Owner may at any time require proof of payment to a Subcontractor or Sub-subcontractor for work paid by the Owner. Notwithstanding any other provision of the General Conditions, no Contractor, Subcontractor, Sub-subcontractor or Material Supplier shall have any Claim against the Owner, by virtue of the Contract, under any theory, including breach of contract, or third party beneficiary. The Owner shall not be in privy of any contract with any Subcontractor, Sub-subcontractor or Material Supplier pertaining to the Work, the Project and these General Conditions. Also, neither the Contractor, or any Subcontractor or Sub-subcontractor shall have any right to assert a lien on Owner’s real property or on any funds held by Owner.

9.5.3 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Design Consultant on account of work done by such Subcontractor.

9.5.4 Neither the Owner nor the Design Consultant shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certification for a progress payment, nor any progress payment or final payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.5.6 The Contractor agrees to keep the Work and the site of the Project free and clear of all liens related to labor and materials furnished in connection with the Work. Furthermore, pursuant to and in compliance with requirements of Paragraph 9.3.4, the Contractor waives any right he may have to file any type of lien in connection with the Work. Notwithstanding anything to the contrary contained in the Contract Documents, if any such lien is filed or there is evidence to believe that any lien may be filed at any time during the progress of the Work or within the duration of this Contract, the Owner may refuse to make any payment otherwise due the Contractor or may withhold from any payment due the Contractor a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such lien or the underlying claim represented by such lien. The Owner may withhold such payment unless or until the Contractor, within ten (10) days after demand thereof by the Owner, shall furnish satisfactory evidence that the indebtedness and any lien in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien to be released of record pending the resolution of any

dispute between the Contractor and the person or persons filing such lien. If the Contractor shall fail to furnish such satisfactory evidence within ten (10) days of the demand thereof, the Owner may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs, damages and attorney's fees suffered or incurred by the Owner from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained percentage. This Paragraph 9.5.6 shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor. Notwithstanding any other provision of the Contract, nothing in the Contract shall affect the rights of Subcontractors, Sub-subcontractors, Material Suppliers and Vendors from enforcing any lien rights they have against parties other than the Owner.

9.6 PAYMENTS WITHHELD

9.6.1 The Design Consultant may decline to certify payment and may withhold their Certification of Payment in whole or in part, to the extent necessary to reasonably protect the Owner, if in the Design Consultant's opinion it is unable to make representations to the Owner as provided in Paragraph 9.4.3. If the Design Consultant is unable to make representations to the Owner as provided in Paragraph 9.4.3 and to certify payment in the amount of the Application for Payment, it will notify the Contractor as provided in Paragraph 9.4.1. If the Contractor and the Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue a Certification of Payment for the amount for which it is able to make such representations to the Owner. The Design Consultant may also decline to certify payment because of subsequently discovered evidence or subsequent observations that may nullify the whole or any part of any Certification of Payment previously issued to such extent as may be necessary in its opinion to protect the Owner from loss, because of:

.1 Defective Work not remedied,

.2 Third party claims filed, whether in court, in arbitration or otherwise, or reasonable evidence indicating probable filing of such claims,

.3 Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,

.5 Damage to the Owner or another contractor,

.6 Reasonable evidence that Contractor will not achieve Substantial Completion and/or Final Completion by the dates specified in the Supplemental Conditions.

.7 Failure or refusal of the Contractor to carry out the Work in accordance with or to otherwise substantially or materially comply with the Contract Documents,

.8 Liens filed or reasonable evidence that a lien may be filed for any portion of the Work,

.9 Failure or refusal of the Contractor to properly schedule and coordinate the Work, to provide progress schedules, reports and updates, or to otherwise fully comply with the Specifications, Construction Schedules and Reports,

.10 Failure or refusal of the Contractor to fully comply with the provisions of Section 6.2 requiring the Contractor to direct certain Claims to Separate Contractors and to defend and indemnify the Owner and/or the Design Consultant in the event Separate Contractors file certain Claims, or

.11 Failure or refusal of the Contractor to submit the required information on MWSBE Businesses.

.12 Failure or refusal of the Contractor to submit a notarized North Carolina State and County Sales Tax Report.

.13 Any other breach of the Contract by Contractor which has or is likely to cause monetary damages or loss to Owner.

.14 Any other reason authorized by the Contract Documents or by law.

9.6.2 When the above grounds in Paragraph 9.6.1 are removed to the Design Consultant's and Owner's satisfaction, payment shall be made for amounts withheld because of them.

9.6.3 In addition to the reasons outlined in section 9.6.1 payment may be withheld for the following reasons: The Contractor shall reimburse the Owner or the Owner will retain from the compensation otherwise to be paid to the Contractor funds sufficient to cover the payment of the following additional services performed by the Architect: (1) services required pursuant to the Owner's dispute resolution policy; (2) expense of overtime work requiring higher than regular rates when such work is required due to the failure of the Contractor to perform in accordance with the Contract Documents; (3) review of the Contractor's submittal or shop drawing out of sequence of the submittal schedule agreed to by the Contractor and Architect; (4) responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior project correspondence or documentation; (5) evaluation of an extensive number of substitutions proposed by the Contractor and making subsequent revisions to instruments of service resulting therefrom; (6) design services related to the default of the contractor; (7) contract administration services provided 60 days after the date of substantial completion of the work if required due to the Contractor's failure to complete its punchlist work in a timely fashion; (8) more than two inspections or reviews of the same area or areas for the purpose of determining substantial completion; (9) more than two inspections or reviews of the same area or areas for the purpose of determining final completion; and (10) multiple reviews of incomplete or deficient submittal or shop drawings from the Contractor.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not make payment to the Contractor within the forty-five (45) calendar days after receipt of the Contractor's approved Application for Payment from the Design Consultant through no fault of the Contractor, and the Owner otherwise not being entitled under the Contract Documents or applicable law to withhold payment, then the Contractor may, upon seven (7) additional days' Notice to the Owner, stop the Work until payment of the amount owed according to the Contract Documents has been received. In such event, the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order as provided herein.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Paragraph 8.1.3, the Contractor shall prepare for submission to the Owner a comprehensive list of items which in his opinion are to be completed or corrected and shall request in writing that the Design Consultant and the Owner perform a Substantial Completion inspection. The Design Consultant and the Owner shall review the Contractor's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents. When the Design Consultant and the Owner on the basis of an inspection jointly determine that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed

therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Design Consultant, the Owner shall make payment, except retainage held pursuant to Paragraph 9.3.2, for such work or portion thereof, as provided in the Contract Documents unless Contractor is in breach of the Contract in which case Owner may withhold an appropriate amount.

9.8.3 The acceptance of Substantial Completion payment shall constitute a waiver of all Claims by the Contractor and its Subcontractors and Sub-subcontractors except those previously made in writing and identified by the Contractor as unsettled at the time the Contractor submits the Application for Payment for Substantial Completion, and except for the retainage sums due at Final Completion. The Contractor shall indemnify and hold the Owner harmless against any Claims by its Subcontractors and Sub-subcontractors that are waived because they were not made in writing and identified by the Contractor as unsettled when the Contractor submitted the Application for Payment for Substantial Completion.

9.8.4 The Owner shall have the option to correct or conclude any and all punch list items not completed by the Contractor to the satisfaction of the Design Consultant and the Owner within thirty (30) days from the actual date of Substantial Completion by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the final payment to the Contractor. If Contractor does not complete certain punch list items within this time period, specified in Paragraph 9.8.4, all warranties and guarantees for such incomplete punch list items shall become effective upon issuance of final payment for the Project. Paragraph 9.8.4 does not limit the Liquidated Damages provisions related to failure to reach Final Completion by the date stipulated in the Contract Documents.

9.8.5 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the Project by the Owner, and the Contractor is not relieved of any responsibility for the Project except as specifically stated in the Certificate of Substantial Completion.

9.8.6 Should the Design Consultant and the Owner determine that the Work or a designated portion thereof is not substantially complete, they shall inform the Contractor in writing stating why the Project or designated portion is not substantially complete. The Contractor shall expeditiously complete the Work and shall re-request in writing that the Design Consultant and the Owner perform a Substantial Completion inspection. Costs (if any), associated with such inspection shall be assessed to the Contractor.

9.8.7 The date of Substantial Completion will not be established until the following is completed by Contractor:

.1 Submit Contractor’s punch list of work not yet complete with proposed time for completion signed by Contractor’s project superintendent;

.2 Submit Certificate of Occupancy;

.3 Submit maintenance manuals as required by the contract documents;

.4 Complete start-up testing of all systems;

.5 Discontinue and remove temporary facilities from the site;

.6 Compliance with the requirements of Section 8.1.3 and Section 9.8.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of the documentation required by Section 9.8, and of written Notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Consultant and the Owner will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, the Design Consultant shall issue a final Certification of Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents. The final Certification of Payment will constitute that the conditions precedent to the Contractor's being entitled to final payment as set forth in Section 9.8 have been fulfilled. Payment shall be made in full to the Contractor within forty five (45) calendar days after receipt by the Owner of the final Certification of Payment except for any Work for which the Owner is entitled a credit under the Contract Documents.

9.9.1.1 Final Completion will not be met until the following:

.1 Coordinate and complete changeover of security, telephone, cable and other services;

.2 Instruction of the Owner’s personnel;

.3 Coordinate and complete final changeover of permanent locks and transmit keys to Owner;

.4 Deliver tools, spare parts, extra stock and similar items;

.5 Submit warranties, bonds, maintenance agreements and final certifications;

.6 Submit record drawings, final project photos, property surveys;

.7 Complete final cleaning;

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

.1 An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied;

.2 Consent of Surety to final payment;

.3 If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner; and

.4 A written certification that:

.1 The Contractor has reviewed the requirements of the Contract Documents,

.2 The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,

.3 Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,

.4 The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with

the Specification requirements and are operational, and

.5 The Contractor hereby certifies and represents that the Work is complete in all respects and ready for final inspection.

9.9.3 If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any loss. If any such lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claims, including all costs and reasonable attorney's fees. The Owner may withhold from the final payment any sum that the Owner has reason to believe may be needed to satisfy any lien, claim or threat of lien arising from the Work. The Owner may deduct from the final payment an amount equal to any costs, expenses and attorney's fees incurred by the Owner in removing or discharging any liens or claim arising from the Work.

9.9.4 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting Final Completion, and the Owner so confirms, the Owner shall, upon application by the Contractor and certification by the Design Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for the portion of the Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Section 7.4, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Consultant prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

9.9.5 The making of final payment shall constitute a waiver of all Claims by the Owner against the Contractor except those arising from:

.1 Unsettled liens, and claims against the Owner or the Design Consultant, or their employees, agents, or representatives;

.2 Faulty, defective or non-conforming Work;

.3 Failure of the Work to comply with the requirements of the Contract Documents;

.4 Terms of any warranties contained in or required by the Contract Documents;

.5 Damages incurred by the Owner resulting from lawsuits brought against the Owner, the Design Consultant, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, Sub-subcontractors, or any of their employees, agents or representatives;

.6 Fraud or bad faith committed by the Contractor or any Subcontractor or supplier during performance of the Work but discovered by Owner after final payment; or

.7 Claims about which Owner did not have actual knowledge or which increase in scope or amount at the time of final payment.

9.9.6 The acceptance of final payment shall constitute a waiver of all Claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

9.9.6.1 Notwithstanding any other provision of the Contract, Owner may withhold from Contractor payment otherwise due, as a result of any losses, expenses costs or damages suffered or anticipated to be suffered by Owner as a result of Contractor's breach of any provision of the Contract, including but not limited to.

9.10 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

9.10.1 Should the Project, or any portion thereof, be incomplete for Substantial or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner or by the Owner's use of the Project, nor shall the Contractor interfere in any way with said use of the Project. Further, in such an event, the Contractor shall not be entitled to any extra compensation on account of the Owner's occupancy and use of the Project, nor shall the Contractor be relieved of any responsibilities of the Contract including the required times of completion. Such occupancy by the Owner shall not, in itself, constitute Substantial or Final Completion.

9.10.2 If the Owner exercises his rights under the foregoing and occupies the full Project, then there shall be no Liquidated Damages on account of failure on the Contractor's part to reach Substantial Completion from that date forward. This provision does not affect, however, any Liquidated Damages that would be assessed for any period of time between the contractual date of Substantial Completion and the date of any such occupancy. Further, this provision would have no effect on Liquidated Damages assessed on account of late Final Completion.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Owner, the Design Consultant, or their agents, employees or representatives are not responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Contract performance, until final payment is made and all punch list and warranty work is performed properly, and is not limited to regular working hours.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

.1 All employees on the Work and all other persons who may be affected thereby;

.2 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors, machinery, equipment and all hazards shall be guarded or eliminated in accordance with all applicable safety regulations; and

.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and overhead or underground utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, permits, rules, regulations and lawful orders of any public authority bearing on the safety or persons or property or their protection from damage, injury or loss.

10.2.2.1 The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with the Contract. He shall at all times safely guard and protect his own work and adjacent property as

provided by law and the Contract Documents, from damage. All passageways, guard fences, lights and other facilities required for protection by applicable safety regulations must be provided and maintained.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy at his own cost and expense all damage or loss to any property referred to in Subparagraphs 10.2.1.2 and 10.2.1.3 caused by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Subparagraphs 10.2.1.2 and 10.2.1.3, except damage or loss attributable solely to the acts or omissions of the Owner or Design Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Section 4.21. The Contractor shall perform such restoration by underpinning, repairing, rebuilding, replanting, or otherwise restoring as may be required or directed by the Owner, or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of the Contractor to promptly restore such property or make good such damage, the Owner may, upon two (2) calendar days Notice, proceed to repair, rebuild or otherwise restore such property as may be necessary and the cost thereof, or a sum sufficient in the judgment of the Owner to reimburse the owners of property so damaged, will be deducted from any monies due or to become due the Contractor under the Contract.

10.2.6 The Contractor is responsible for the proper packing, shipping, handling and storage (including but not limited to shipment or storage at the proper temperature and humidity) of materials to be incorporated in the Work, so as to insure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work, as required by the Contract Documents. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground and/or place such material under cover in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the Owner or lessee unless otherwise within the terms of the easements obtained by the Owner.

10.2.6.1 It shall be the responsibility of the Contractor in his preparation of phasing schedule of work operations after consulting with the other Prime Contractors to designate areas in which each Prime Contractor may store materials. Areas designed shall meet with the approval of the Design Consultant.

10.2.7 The Contractor shall give notice in writing at least forty eight (48) hours before breaking ground, to all persons, public utility companies, owners of property having structures or improvements in proximity to site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representative on site to see that their property is properly protected. Such notice does not relieve the Contractor of responsibility for all damages, claims, or defense or indemnification of all actions against Owner resulting from performance of such work in connection with or arising outof Contract.

10.2.8 The Contractor shall investigate, locate, mark and protect all utilities encountered or to be encountered while performing the Work, whether indicated on the Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to

starting the Work, at no cost to the Owner. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use.

10.2.9 The Contractor shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting the Work. The Contractor shall video record all areas or otherwise document the conditions existing at the site and in and around existing buildings prior to starting the Work. Submit documentation to the Design Consultant prior to beginning the Work.

10.2.10 The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon his performance or that of his Subcontractors, caused by or due to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris; for example, but not by way of limitation, Contractor shall, when necessary, utilize temporary dikes, channels or pumping to carry-off divert or drain water, and shall as necessary tie-down or otherwise secure the Work and employ appropriate covers and screens.

10.2.11 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the protection of material, equipment and property. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.12 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.13 Notification to the Contractor by the Owner or the Design Consultant of a safety violation will in no way relieve the Contractor of sole and complete responsibility for the correctness of said violation or of sole liability for the consequences of said violation.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the Owner of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner of the emergency situation and proceed in accordance with the Owner's instructions. Provided, however, if any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable for all costs, damages, claims, actions, suits, attorney's fees and all other expenses arising therefrom or relating thereto.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain in companies properly licensed by the Insurance Department of the State of North Carolina and acceptable to the Owner such insurance as will protect him, the Owner, and the Owner’s agents, representatives, and employees from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts (with Workmen's Compensation and Employer's Liability Insurance in amounts not less

than those necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work);

.2 Claims for damages because of bodily injury, sickness or disease, or death of his employees; the Contractor will require his Subcontractors to similarly provide Workmen's Compensation Insurance for all of the latter's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

.6 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 The insurance required by Paragraph 11.1.1 shall be primary and non-contributing to any insurance possessed or procured by the Owner, and limits of liability shall be not less than those set forth in these General Conditions of the Contract or required by law, whichever is greater.

11.1.3 The insurance required by the Contract shall include contractual liability insurance applicable to the Contractor's obligations under the Contract

11.1.4 Without limiting the above during the term of the Contract, the Contractor and each Subcontractor shall, at their own expense, purchase and maintain the following insurance with companies properly licensed by the Insurance Department of the State of North Carolina and satisfactory to the Owner.

.1 Worker's Compensation including Occupational Disease and Employer's Liability Insurance.

.1 Statutory - Amount and coverage as required by State of North Carolina Worker's Compensation laws.

.2 Employer's Liability
$1,000,000 Each Accident
$1,000,000 Policy Limit
$1,000,000 Each Employee

.2 Commercial General Liability (Occurrence Form) - The Contractor shall provide during the life of the Contract such Commercial General Liability (Occurrence Form) Insurance as shall protect him and any Subcontractor performing work under the Contract from claims for damages for Bodily Injury including accidental death, as well as from claims for Property Damage which may arise from operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. This insurance shall be on the Standard Insurance Services Office, Inc. (ISO) Commercial Liability Occurrence Form or other form reasonable acceptable to Owner. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

.1 A Combined Single Limit for Bodily Injury, Property Damage and Personal Injury of:
Limits of Insurance
$2,000,000 General Aggregate (except Products – Completed Operations) Limit

$2,000,000 Products – Completed Operations Aggregate Limit
$1,000,000 Personal and Advertising Injury Limit
$1,000,000 Each Occurrence Limit

.3 Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary;

.4 Completed Operations Liability: Continuous coverage in force for one year after completion of the Work;

.5 Commercial Automobile Insurance, including coverage for owned, non-owned and hired vehicles - with limits not less than those stated below:

.1 A Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.

.6 Umbrella Liability Insurance: Policy to "pay on behalf of the Insured" Limits of Liability:

.1 Contract Amount: $1,000,000-$2,000,000:
Requires Umbrella Liability Insurance Limit of $1,000,000.

.2 Contract Amount: $2,000,000 and above:
Requires Umbrella Liability Insurance Limit of $2,000,000.

11.1.5 The insurance required by Section 11.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

11.1.6 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days' prior written Notice has been given to the Owner. Failure to provide such Notice shall not limit the liability of the Insurer, its agents or representatives.

.1 Description of operations/locations/vehicles/special items should contain the following statement along with any items particular to your company:
CHARLOTTE MECKLENBURG BOARD OF EDUCATION IS NAMED AS ADDITIONAL INSURED IN RESPECT TO GENERAL LIABILITY.

2. The certificate holder is:
CHARLOTTE MECKLENBURG BOARD OF EDUCATION
P.O Box 30035
Charlotte, NC 28230

3. The cancellation statement is:
SHOULD ANY OF THE ABOVE- DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANIES WILL MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

11.1.7 All insurance policies required in this Article, except Worker's Compensation and Commercial Automobile, shall name the Owner as additional named insured for the insurance.

11.1.8 The Contractor shall not commence the Work under the Contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all similar insurance required of the

Subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

11.1.9 The Commercial General Liability and Workers Compensation Policies provided by the Contractor shall have endorsements waiving subrogation against the Owner.

11.2 PROPERTY INSURANCE

11.2.1 The Contractor shall purchase and at all times maintain such insurance as will protect the Contractor, the Owner, Subcontractors and Sub-subcontractors from loss or damage to the Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished Work until Final Completion. This insurance shall be in the form of "Builders Risk Covered Cause of Loss Form", or equivalent form, to include but not limited to theft, collapse, earth movement, flood, and portions of the Work stored on site, off site and in transit. Any deductible provision in such insurance shall not exceed ten thousand dollars ($10,000). Notwithstanding any such deductible provision, the Contractor shall remain solely liable for the full amount of any item covered by such insurance. Such insurance shall be in the initial Contract Sum and shall be increased at Contractor's expense in the amount of all additions to the Contract Sum. Such insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.2.2 Any loss insured under Paragraph 11.2.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of Paragraph 11.2.4. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.2.3 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent their Claims are covered by insurance obtained pursuant to this Section 11.2, or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. The Contractor shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Owner and the Contractor by Subcontractors and Sub-subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, his consultants, employees, and agents and representatives. The Contractor waives as against any Separate Contractor described in Article 6, all rights for damages caused by fire or other perils in the same manner as is provided above as against the Owner. The Owner shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Contractor by any Separate Contractor and his subcontractors and sub-subcontractors.

11.2.4 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss to the Owner's exercise of this power, and if such objection is made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the orders of the court or as otherwise agreed by the parties in interest.

11.2.5 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

11.2.6 The Contractor bears the risk of loss or damage to the Work, the Project, materials stored on site or off site, and Owner's improvements and property under Contractor's control, both during construction and

prior to Substantial Completion.

11.3 EFFECT OF SUBMISSION OF CERTIFICATES

11.3.1 The Owner shall be under no obligation to review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. The Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by the Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.

11.4 FAILURE OF COMPLIANCE

11.4.1 Should the Contractor fail to provide and maintain in force any and all insurance, or insurance coverage required by the Contract Documents or by law, or should a dispute arise between Owner and any insurance company of Contractor over policy coverage or limits of liability as required herein, the Owner shall be entitled to recover from the Contractor all amounts payable, as a matter of law, to Owner or any other parties, had the required insurance or insurance coverage been in force. Said recovery shall include, but is not limited to interest for the loss of use of such amounts of money, plus all attorney's fees, costs and expenses incurred in securing such determination and any other consequential damages arising out of the failure of the Contractor or insurance company to comply with the provisions of the Contract Documents, or any policy required hereby, or any other requirements regarding insurance imposed by law. Nothing herein shall limit any damages for which Contractor is responsible as a matter of law.

11.5 OWNER'S INSURANCE

11.5.1 Property Insurance: The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

11.5.2 Commercial Public Liability Insurance: The Owner, at his option, may purchase and maintain insurance which will insure and protect him against claims involving bodily injury and property damage to the public. The Owner does not request his insurer to waive any right of subrogation against the Contractor from claims under this coverage.

11.6 LICENSED INSURANCE COMPANIES

11.6.1 All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and have a minimum AM Best “A” rating or similar rating from another rating agency reasonably acceptable to Owner.

ARTICLE 12

CHANGES IN THE WORK

12.1 GENERAL PROVISIONS RELATED TO CHANGES

12.1.1 A Construction Change Directive is a document issued pursuant to this Paragraph 12.1.1. The Owner may, at any time, without the agreement of the Contractor, by written order signed by the Owner and Design Consultant designated or indicated to be a Construction Change Directive, make any Changes in the Work or add to or subtract from the Work within the general scope of the Contract. A Change in the Work is defined as changes within the general scope of the Contract, including, but not limited to changes:

.1 In the Specifications or Drawings;

.2 In the sequence, method or manner of performance of the Work;

.3 In the Owner-furnished facilities, equipment, materials, services or site; or

.4 Directing acceleration in the performance of the Work.

12.1.2 A Change Order is a document executed pursuant to this Paragraph 12.1.2. The Owner and Contractor may agree to Changes in the Work, the Contract Sum, the Contract Time and any other change in the Contract by written agreement signed by Owner, Contractor and Design Consultant designated or indicated to be a Change Order. If the Contractor, subsequent to the issuance of a Construction Change Directive, agrees to its terms including any applicable adjustment to the Contract Sum and Contract Time, Contractor shall sign it and it shall become a Change Order.

12.1.3 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the Proposal is based and to which the parties have agreed pursuant to the provisions of Article 12, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all Changes in the Work performed pursuant to this Article 12, unless the delay is caused solely by the Owner or its agent. It is understood and agreed that the Contractor's sole and exclusive remedy in the event the delay is caused solely by the Owner or its agent shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents. The phrase “Owner or its agent” as used in the Contract, does not include the Prime Contractors or their Subcontractors.

12.1.4 No Claim by the Contractor shall be allowed if asserted after final payment under this Contract. No Claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change or commencement of the change by the Contractor except as specifically provided in Paragraph 12.2.4.

12.1.5 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the Contractor up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work will result in an increase in the Contract Sum; and the Owner shall have the right to withhold payment from the Contractor in an amount up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work will result in a decrease in the Contract Sum.

12.1.6 No Change in the Work shall be performed without a fully executed Change Order to the Contract, a fully executed Construction Change Directive or other Modification to the Contract.

12.1.7 If the Contractor intends to assert a Claim under this Article, he must, within ten (10) days after receipt of a Construction Change Directive, Notify the Owner by written statement setting forth the specific nature and cost of such Claim, unless this period is extended by the Owner. The statement of Claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. The Contractor and its Subcontractors shall not be entitled to reimbursement for any Claims that are not submitted in strict conformance with the Contract. The Contractor shall indemnify and hold the Owner harmless against any Claims by Subcontractors that are waived because they are not submitted in strict conformance with the Contract.

12.2 OWNER DIRECTED CHANGES REQUIRING AN INCREASE IN CONTRACT SUM.
(For decreases in Contract Sum, refer to Section 12.6)

12.2.1 If the Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such Change in the Work).

If the Owner elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum Proposal which shall be submitted by the Contractor to the Owner within ten (10) days of the Contractor's receipt of a request therefore (but the Owner's request for a lump sum Proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's Proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed Proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The Proposal shall also include the Contractor's estimate of the time required to perform said changes. The Contractor shall provide any documentation that may be requested by the Owner or Architect to support the change proposal, including but not limited to payroll records, insurance rates, material quotes, and rental quotes.

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime time, if overtime is anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). Payroll costs are limited to 39% of the net pay of the worker.

The portion of the Proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work (either actual or discounted local published rates), plus up to seven and 1/2 percent (7.5%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. The Contractor shall provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses. If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum Proposal may include up to seven and 1/2 percent (7.5%) of the amount which the Contractor will pay to any of its Subcontractors for Changes in the Work as overhead and profit for the Contractor. The Contractor shall not be reimbursed for the costs of the Subcontractors' Payment and Performance Bonds, as such bonding is not required by the Owner.

12.2.2 In the event that the Contractor fails to submit his Proposal within the designated period, the Owner may order the Contractor to proceed with the Change to the Work and the Contractor shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor. The Contractor may dispute such action in

accordance with the Article 15.

12.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's Proposal and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based upon its own estimates, the Contractor's submission or a combination thereof. A Construction Change Directive shall be issued in this case for the amounts of cost and time determined by the Owner and shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with Article 15. Owner has the right to direct by Construction Change Directive a Change in the Work, which is the subject of such Change Order. Failure of the parties to reach agreement regarding the cost and time of the performing the Construction Change Directive, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.

12.2.3.1 The Owner reserves the right to reject the Contractor's Proposal for a Change in the Work and to elect to perform said Work using a Separate Contractor. Under such circumstances, all provisions of Article 6 shall be in force.

12.2.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit (except that said fifteen percent (15%) shall not be applied against any payroll costs, as set forth in Paragraph 12.2.1.) The Contractor shall submit to the Owner daily time and material tickets, on a daily basis to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed, the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any Claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

12.2.5 No overhead and profit will be paid by the Owner on account of a Change in the Work except as specifically provided in Section 12.2. Overhead and profit, as allowed under Section 12.2, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to Section 12.2.

12.3 CONTRACTOR NOTICE OF CHANGE

12.3.1 If the Contractor or any of its Subcontractors asserts that any event or occurrence has caused a Change in the Work which change causes an increase or decrease in the Contractor's or its Subcontractors cost or the time required for the performance of any part of the Work under the Contract, including Work not affected directly by the change, the Contractor shall, within ten (10) days of such event, give the Owner written Notice as herein required. Said Notice shall include the instructions or circumstances that are the basis of the Claim and the Contractor's best estimate of the cost and time involved.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Owner shall have authority to order minor Changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the

Contractor. The Contractor shall carry out such written orders promptly.

12.4.2 The Contractor shall not perform any Changes in the Work unless authorized in writing by the Design Consultant or Owner.

12.5 DIFFERING SITE CONDITIONS

12.5.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the Drawings or indicated in the Specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, or different from that shown on surveys or tests provided in the bid materials at the time the Owner solicited bids from the construction of the Project, he shall immediately give Notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the Drawings or indicated in the Specifications, they shall at once make such changes in the Drawings and/or Specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes.

12.6 OWNER DIRECTED CHANGES REQUIRING A DECREASE IN CONTRACT SUM.

12.6.1 If the Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease. The following provisions shall apply:

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, shall include reasonably anticipated gross wages of job site labor, including foremen, who would have been directly involved in the Work that has been deleted from the Contract, (for such time as they would have been so involved), plus payroll costs (including premium costs of overtime time, if overtime was anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit not incurred or earned by the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen).

The portion of the Proposal relating to materials shall include the reasonably anticipated direct costs which would have been incurred by the Contractor or to any of its Subcontractors of materials which would have been purchased for incorporation in the Work but which has been deleted from the Contract, plus transportation and applicable sales and use taxes which will be avoided and fifteen percent (15%) of said direct material costs as overhead and profit not incurred or earned by the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and shall further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs which will be avoided (either actual or discounted local published rates). If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may elect to use these unit prices in determining the amount of reduction to the Contract Sum as a result of a deletion of Work from the Contract. No overhead and profit shall be applied to any unit prices for purposes of calculation such reduction in the Contract Sum.
The lump sum Proposal for Work which would have been performed by any Subcontractors shall include seven and 1/2 percent (7.5%) of that amount as an estimate of the Contractor’s overhead and profit that will not be earned by Contractor due to the decrease in the Contract Sum.

The Contractor's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease

shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner in its reasonable judgment, plus overhead and profits stated above. This shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with the Article 15.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work is covered contrary to the request of the Owner or the Design Consultant or to requirements specifically expressed in the Contract Documents or to requirements of applicable construction permits, it must, if required in writing by the Design Consultant or Owner, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Design Consultant or the Owner has not specifically requested to observe prior to being covered, either may request to see such portion of the Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner, in which event the Owner shall be responsible for the payment of such costs. If such condition was caused by a Separate Contractor, Contractor may proceed against and only against, said Separate Contractor as provided in Article 6. Any costs to the Owner pursuant to this Paragraph shall be determined in accordance with the provisions of Article 12.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly reconstruct, replace or correct portions of the Work rejected by the Design Consultant or Owner as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected portions of the Work, including compensation for the Design Consultant's and the Owner's additional construction management services made necessary thereby.

13.2.2 The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such portions of the Work in place at his own expense promptly after receipt of Notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.

13.2.3 If the Contractor does not proceed with the correction of such defective or non-conforming portions of the Work within a reasonable time fixed by written Notice from the Owner or Design Consultant, the Owner may either (1) by separate contract or otherwise replace or correct such portions of the Work and charge the Contractor the cost incurred by the Owner thereby and remove and store the materials or equipment at the expense of the Contractor, or (2) terminate this Contract for default as provided in Section 14.3, or both, or take any other measure allowed by law.

13.2.4 The Contractor shall bear the cost of making good all work of the Owner or Separate Contractors destroyed or damaged by such correction or removal.

13.2.5 Nothing contained in this Section 13.2 shall be construed to establish a period of limitation with respect

to any other obligation which the Contractor might have under the Contract Documents, including Section 4.6 hereof. The establishment of the time period of one year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable, or the Owner may elect to accept payment in materials or services, in lieu of a reduction in the Contract Sum. If the amount of a reduction is determined after final payment, it shall be paid to the Owner by the Contractor.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of one hundred twenty (120) days by the Owner or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, and through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon fourteen (14) additional days' written Notice to the Owner and the Design Consultant, terminate the Contract and recover from the Owner payment on a quantum merit basis, for all Work executed for which Contractor has not previously been paid, less any amounts Contractor may owe Owner under the Contract Documents and less any amounts Owner is entitled to withhold from Contractor or backcharge to the Contractor under the Contract Documents or pursuant to law. The Contractor shall not be entitled to collect and hereby expressly waives any overhead or profit on Work not performed and any damages related to that portion of the Contract which has been terminated.

14.2 TERMINATION FOR CONVENIENCE OF THE OWNER

14.2.1 The Owner may, at any time upon ten (10) days written Notice to the Contractor and to the Contractor's Surety, which Notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Section 14.4. Contractor shall include termination clauses identical to Article 14 in each of his subcontracts.

14.3 DEFAULT TERMINATION

14.3.1 Ten (10) days after written Notice is mailed to the Contractor and to the Contractor's Surety, the Owner may terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) the employment of the Contractor and his right to proceed either as to the whole or any portion of the Work required by the Contract Documents and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:

.1 If the Contractor or its Surety refuses or fails to prosecute the Work or any separable part thereof

with such diligence as will ensure the Substantial and Final Completion of the Work by the dates specified in the Supplemental Conditions for Substantial and Final Completion or fails to complete the Work or remedy a default within said period;

.2 If the Contractor is in material default in carrying out any provisions of the Contract;

.3 If the Contractor fails to supply a sufficient number of properly skilled workers or proper equipment or materials;

.4 If the Contractor fails to make prompt payment to Subcontractors or for materials or labor, unless he otherwise provides the Owner satisfactory evidence that payment is not legally due;

.5 If the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;

.6 If the Contractor substantially violates any provisions of the Contract Documents; or

.7 If the Contractor refuses or fails to properly schedule, plan, coordinate and execute the Work, as specified herein, so as to perform the Work within the specified Completion Dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents.

14.3.2 The right of the Contractor to proceed shall not be so terminated under this Section 14.3 if the delays in the completion of the Work are due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor or his Subcontractors as specifically set forth in Section 8.3 hereof.

14.3.3 If, after the Contractor has been terminated for default pursuant to Section 14.3, it is determined that none of the circumstances set forth in Paragraph 14.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Section 14.2. In such case, the Contractor's sole remedy will be the costs permitted by Section 14.4.

14.3.4 If the Owner so terminates the employment of the Contractor due to the Contractor's default, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, consultant and inspection services, attorney's fees and any damages for delay) such excess shall be paid to the Contractor.

14.3.5 If such expenses referenced in Paragraph 14.3.1, shall exceed the unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the Work that is not terminated.

14.3.6 If the Owner terminates the whole or any part of the Work pursuant to Section 14.3, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

14.4 ALLOWABLE TERMINATION COSTS

14.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Section 14.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Paragraph 14.4.2, plus a markup of ten percent (10%) for profit and overhead on the actual fully accounted

costs specified under Paragraph 14.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit or overhead shall be included or allowed hereunder for the Work performed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Under no circumstances shall the Contractor be entitled to any loss profit on the Work terminated pursuant to Section 14.2.

14.4.1.1 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination Claim, in the form and with certification prescribed by the Owner. Such Claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination Claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination Claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and such termination shall be final and binding on the Contractor.

14.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Section 14.2, the Owner shall pay the Contractor an amount for supplies, services, or property accepted by the Owner, and which is in accordance with the Contract Documents, in an amount as if the Contract had not been terminated. In addition, in such event, the Owner shall pay to Contractor an amount representing Contractor's actual cost, excluding any overhead and profit for the items and things specified in Subparagraph 14.5.1.6 and not heretofore paid for, appropriately adjusted for any saving of freight or other charges. Under no circumstances shall the Contractor be entitled to any loss profit on the Work terminated pursuant to Section 14.2.

14.4.2.1 The Contractor agrees that neither the Owner nor the Design Consultant will be liable for payments to Contractors or Subcontractors pursuant to Section 14.4.2 unless each contract and subcontract contains termination provisions identical to those set forth in this Article 14. The Owner and the Design Consultant will not be liable to the Contractor or any of the Subcontractors for any costs associated with termination if the contract or subcontract of the party involved does not include the required termination language.

14.4.3 In arriving at any amount due the Contractor pursuant to Section 14.4, there shall be deducted the following:

.1 All unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;

.2 Any Claim which the Owner may have against the Contractor;

.3 Such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and

.4 The agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor sold, pursuant to the provisions of Subparagraph14.5.1.7, and not otherwise recovered by or credited to the Owner, or returned for a refund by the Contractor.

.5 All other amounts the Owner is entitled to withhold form the Contractor or charge to the Contractor pursuant to the Contract or as allowed by applicable law.

14.4.4 The total sum to be paid to the Contractor under Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Paragraph 14.4.2, the fair value, as determined by the Owner, of property which

is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Subparagraph 14.5.1.7.

14.5 GENERAL TERMINATION PROVISIONS

14.5.1 After receipt of a Notice of termination from the Owner, pursuant to Section 14.2 or 14.3, and except as otherwise directed by the Owner, the Contractor shall:

.1 Stop work under the Contract on the date and to the extent specified in the Notice of termination;

.2 Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;

.3 Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the Notice of termination;

.4 At the option of the Owner, and in lieu of terminating such orders and subcontracts, assign to the Owner in the manner, at the times and to the extent directed by the Owner in writing, all of the rights in the such orders and subcontracts,

.5 Settle all outstanding liabilities and all Claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner in writing, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;

.6 Transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:

(1) The fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the Notice of termination; and

(2) The completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;

.7 Use his best efforts to return for a refund or sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Subparagraph 14.5.1.6; provided, however, that the Contractor:

(1) Shall not be required to extend credit to any buyer, and

(2) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner in writing; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;

.8 Complete performance of such part of the Work as shall not have been terminated by the Notice of termination;

.9 Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and

in which the Owner has or may acquire an interest; and

.10 Otherwise mitigate any damages Contractor claims to suffer as a result of a termination.

14.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

14.5.3 If the termination, pursuant to Section 14.2, be partial, the Contractor may file with the Owner a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
Any Claim by the Contractor for an equitable adjustment under this Paragraph must be asserted within thirty (30) days from the effective date of the Notice of termination.

14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Section 14.4.

14.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 14.

ARTICLE 15

DISPUTE RESOLUTION

15.1 INITIATING CLAIMS

15.1.1 Claims must be initiated by written Notice to the Owner and to the party against whom the Claim is made with a copy to the Design Consultant. The responsibility to substantiate Claims shall rest with the party making the Claim.

15.1.2 Nothing in the Contract shall be construed as meaning that the Owner's assessment of Liquidated Damages is a Claim as defined herein, or that the Owner has the burden of proof to assess Liquidated Damages. Should the Owner assess Liquidated Damages, the burden of proving that such damages should not have been assessed shall rest upon the Contractor.

15.2 RESOLUTION OF CLAIMS AND DISPUTES BETWEEN CONTRACTOR AND OWNER

15.2.1 Claims by Contractor against Owner and by Owner against Contractor, including those alleging an error or omission by the Design Consultant shall be subject to the process set forth in this Section 15.2. Such Claims shall be referred initially to the Design Consultant for a decision. A final decision by the Design Consultant, or the failure of the Design Consultant to issue a final decision shall be required as a condition precedent to mediation or litigation of all such Claims arising prior to the date final payment is due. The Design Consultant will initially decide disputes between Owner and Contractor.

15.2.2 The Design Consultant will review Claims by Contractor and Owner against each other and within twenty (20) days of the receipt of the written Claim and take one or more of the following actions:

.1 Request additional supporting data from the claimant or a response with supporting data from the other party;

.2 Reject the Claim in whole or in part;

.3 Approve the Claim;

.4 Suggest a compromise; or

.5 Advise the parties that the Design Consultant is unable to resolve the Claim if the Design Consultant lacks sufficient information to evaluate the merits of the Claim or if the Design Consultant concludes that it would be inappropriate for the Design Consultant to resolve the Claim.

15.2.3 In evaluating Claims made under this Section 15.2, the Design Consultant may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who assist the Design Consultant in rendering a decision.

15.2.4 If the Design Consultant requests a party to provide a response to a Claim under this Section 15.2, or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall within such time period, either provide a response to the requested supporting data, advise the Design Consultant when the response or supporting data will be furnished, or advise the Design Consultant that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Design Consultant will either reject or approve the Claim in whole or in part.

15.2.5 The Design Consultant will approve or reject Claims under this Section 15.2 by written decision, which shall state the reason thereof and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Design Consultant under this Section 15.2 shall be final and binding on the parties but subject to mediation and litigation.

15.2.6 When a written decision of the Design Consultant under this Section 15.2 states that the decision is final but subject to mediation, then a demand for mediation of a Claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand receives the final written decision. Any failure to demand mediation within said thirty (30) days' period shall result in the Design Consultant's decision becoming final and binding to all parties. Claims not resolved in mediation shall be subject to litigation if in accordance with the applicable statutes of limitation and repose.

15.2.7 Upon receipt of a Claim under Section 15.2 against the Contractor or at any time thereafter, the Design Consultant or the Owner may, but is not obligated to, notify the Surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Design Consultant or the Owner may, but are not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

15.2.8 If the Design Consultant deems that a Claim under this Section 15.2 is valid, the Design Consultant shall require all parties to the dispute to share the cost of the Design Consultant's review equitably. If the Design Consultant deems that a Claim under this Section 15.2 is invalid, the Design Consultant shall require the complaining party to bear the cost of the Design Consultant's review. In any event, the Design Consultant may require the complaining party to submit a deposit equivalent to the Design Consultant's hourly rate multiplied by the amount of time the Design Consultant estimates, in the Design Consultant sole discretion, that will be necessary to review the Claim. The Design Consultant shall return any unused portion of this initial deposit to the complaining party following the Design Consultant's completion of the Design Consultant's review of the Claim. Nothing in these procedures shall entitle the Design Consultant to compensation for additional services from the Owner that is not authorized pursuant to the terms and conditions of the Agreement for Design Consultant Services.

15.3 TIME LIMITS ON CLAIMS

15.3.1 Unless a shorter time is provided in the Contract Documents, Claims by Contractor or any party except Owner must be initiated within twenty (20) days after occurrence of the event giving rise to such Claim

or within twenty (20) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims against the Owner shall be initiated in strict conformance with the Contract Documents. Nothing in these procedures shall extend the period within or the manner in which Claims against the Owner must be submitted. Claims must be initiated by written Notice to the Owner and written notice to the other party and to the Design Consultant. Any Claim against the Owner that is not initiated within the applicable time period is waived. Claims by Owner may be made at any time within the applicable statute of limitations and repose.

15.4 CONTINUING CONTRACT PERFORMANCE

15.4.1 Pending final resolution of a Claim, the Contractor shall proceed diligently with the performance of the Contract, unless instructed otherwise in writing by the Owner.

15.5 MEDIATION

15.5.1 As required by N.C.G.S 143-128 (f1), any Claim as defined herein, which exceeds fifteen thousand dollars($15,000.00), and which concerns a party involved in the Project, including the Owner, Contractor, Design Consultant, any construction manager, Separate Contractors, or first and lower tier Subcontractors and which arise out of the Contract or the construction process, except those waived Claims shall, be subject to mediation as a condition precedent to the institution of legal proceedings by any party, except that any party may institute legal proceedings or perfect any mechanic's or materialmen's lien in order to meet any applicable statute of limitations or similar deadline prior to engaging in mediation.

15.5.2 The parties shall endeavor to resolve their Claims under this Section 15.5 by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the rules established by the Owner.

15.5.3 The parties shall share cost of the mediation equally except that if the Owner is a party to the dispute, the Owner shall pay at least one third of the cost of the mediation.

15.5.4 The mediation shall be held in a place where the Project is located, unless another location is mutually agreed upon.

15.5.5 Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

END OF GENERAL CONDITIONS