



County of Orange  
Financial Services Department - Purchasing Division

**REQUEST FOR QUALIFICATIONS # 5218**  
**Orange County Sportsplex Fieldhouse**  
January 14, 2016

**REQUEST FOR QUALIFICATIONS (RFQ)**

**DESIGN-BUILD SERVICES FOR ORANGE COUNTY SPORTSPLEX FIELDHOUSE PROJECT**

Pursuant to N.C. Stat. Sec. 143-128.1(A), Orange County, North Carolina is seeking proposals from qualified design-build teams interested in providing design and construction services for the Orange County Sportsplex Fieldhouse Project. The fieldhouse will be located adjacent to the existing Orange County Sportsplex, and will consist of approximately 50,000 square foot, pre-engineered metal field house structure. The addition of these facility will improve the functionality and program offerings of the overall Orange County Sportsplex operation. The intent of this RFQ is to select a Design-build team, by Qualifications-Based Selection (QBS), to provide design and construction services for the Orange County Sportsplex Fieldhouse project.

The complete RFQ can be obtained from the County's website at:

[http://www.orangecountync.gov/departments/purchasing\\_division/current\\_bids.php](http://www.orangecountync.gov/departments/purchasing_division/current_bids.php)

A **mandatory pre-submittal conference** will be held on **Friday January 29, 2016 at 10:00 am.** at 131 W Margaret Lane, Room 004, , Hillsborough, North Carolina, 27278.

**Sealed proposals are due by 5 pm on Thursday, February 11, 2016 and will be received at the following location:**

David Cannell  
Orange County Finance Department  
200 S Cameron Street/ PO Box 8181  
Hillsborough, NC 27278

Inquiries:

All inquiries and questions about this RFQ must be submitted in writing by email to David Cannell at the following address: [dcannell@orangecountync.gov](mailto:dcannell@orangecountync.gov) Questions will be received until Wednesday February 3, 2016 at 5:00 .

Orange County reserves the right to accept or reject any or all Statement(s) of Qualifications with or without cause. Issuance of this Request for Qualifications does not commit Orange County to award a contract, to pay any costs incurred in preparation of a proposal or to procure or contract for related services or supplies. The County must receive at least (3) proposals or must re-solicit. The successful bidder(s) shall be required to comply with all applicable Equal Employment Opportunity laws and regulations. Orange County has adopted a Minority Business Plan to encourage participation by minority businesses in the award of contracts. Participants are hereby notified that this RFQ is subject to the provisions of that plan.

# Orange County Sportsplex Field House

## Request for Qualifications for Design-Build Services

RFQ 5218

**Caution:** The only official source for this document is the one cited in the advertisement. Not getting this document directly from that source could mean that this document has been superseded by a later version. Only those requesting this document from the advertised source will be included on a mailing list for updates. The Owner is not responsible for any reader's failure to heed this warning.

**Qualifications Due: February 11, 2016 at 5:00 PM**

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**Attachments:**

- A - “Building Program Information”
- B - “SportsPlex Conceptual Field House”
- C – E-Verify Affidavit and Non-Collusive Affidavit
- D - “MB Documentation”
- F – Contractor Safety Record
- G – Template Contract
- H – General Conditions

**Request for Qualifications (RFQ)**  
**Orange County, North Carolina (Owner)**

Written Submittals of Qualifications to provide Design-Build Services for the construction of —

**Orange County Sportsplex Fieldhouse**  
**101 Meadowlands Parkway, Hillsborough, NC 27278**

**1. Introduction**

**1.1. Purpose of Procurement**

**1.1.1.** Pursuant to N.C. Stat. Sec. G.S. 143-128.1A, Orange County, North Carolina, hereinafter referred to as “Owner” or “County,” will undertake the design and construction of the Orange County Sportsplex Fieldhouse to be located at 101 Meadowlands Drive, Hillsborough, NC 27278 (see attachment B). The fieldhouse will be located adjacent to the existing Orange County Sportsplex, and will consist of a pre-engineered metal field house structure with an estimated footprint dimension of a 250’ x 200’ (approximately 50,000 square feet) and related site work. The addition of this facility will improve the functionality and program offerings of the overall Orange County Sportsplex operation. Preliminary programming for the facility is located at Attachment A.

With County Commissioner approval, the Owner is preceding this project with a qualification process (this RFQ) to determine and approve interested and competent Design-Build teams, hereinafter referred to as “Design-Builder(s).”

**1.2. Purpose of the RFQ**

**1.2.1** Selection of the Design-Builders will be by Qualifications-Based Selection (QBS) beginning with the review of this RFQ submittal. Factors and/or criteria to be used in the evaluation of this RFQ are listed and described in this document. The Owner will adhere to the weightings specified for each evaluation factor stated. These selections are made **solely as judged by the Owner.**

**1.2.2** In selecting a firm, the Owner will emphasize the experience of the firm and of assigned personnel in providing like functions on projects of similar magnitude and complexity as the proposed project. Selection preference will be toward firms that have depths of knowledge and resources for this type facility design, general contracting, scheduling, contract coordination and compliance, budget control, and design experience in this building type, as well as familiarity with laws, ordinances, and codes applicable to this project.

**1.2.3** The window of construction opportunity requires the Owner to make, as an important selection criterion, the ability of firms to place quality personnel on this job ready to work within an effective timeframe.

**1.2.4 Minority Business Plan**

Orange County has adopted a Minority Business (MB) Plan to encourage participation by minority businesses in the award of contacts. Bidders are hereby notified that this bid is subject to the provisions of that Plan. It is the policy of the County to (1) provide minorities an equal opportunity to participate in all aspects of its contracting and procurement programs and (2) prohibit any and all discrimination against persons or businesses in pursuit of these opportunities. **Please direct all questions about the**

**Minority Business Plan to David Cannell, Purchasing Agent, Orange County, P.O. Box 8181, Hillsborough, NC 27278, (919) 245-2651 or**

**dcannell@orangecountync.gov**. Minority business outreach resource on this project can be accessed via [www.doa.state.nc.us/hub](http://www.doa.state.nc.us/hub). At a minimum, the Bidder shall either establish or certify that they will do the work for this contract with its own forces (no subcontracting), or the Bidder shall make a good faith effort to recruit and select minority owned businesses among the bidder's subcontractors. **\*\*\*Failure to provide MB documentation with the bid per MB Plan instructions may result in rejection of the bid as not responsive and award to the next lowest responsible bidder.\*\*\*** **SEE ATTACHMENT D FOR APPLICABLE FORMS**

The Design-Build team will be required to implement this MB policy on behalf of the owner for all phases of the construction project. Each submitter should provide a strategy for meeting the County's goals and describe their prior experience in this area. *A formal strategy—subject to review--should be submitted after award.*

**1.2.5** It is the responsibility of each submitter to examine the entire RFQ, seek clarifications in writing, and review their submittal for accuracy before submitting their qualifications. Once submission deadlines have passed, all submissions will be final. The Owner will not request clarification from any individual submitter relative to their submission, but reserves the right to ask for additional information from all parties that have submitted qualifications. If there are multiple firms proposed as one team, each firm must describe itself according in the RFQ submittal. **Indicate on the first page of the submittal which firm/company is the lead Design-Builder. Indicate, by firm, those qualifying as a minority firm.**

**1.2.6** It is the sincere intention of the Owner to make every effort to be fair and equitable in its dealings with all candidates for selection. If, however, the County should determine that none of the Design-Build teams submitting are advantageous to Orange County, **the County shall have the absolute right to reject any and all submittals.**

### **1.3. Project Delivery and Objectives**

**1.3.1** The delivery method for this project will be **Design-Build**. There will ultimately be a single contract from the Owner with a lead Design-Builder who will be expected to fulfill the terms of the contract through delivery of a finished, fully usable facility, on a turnkey basis, that satisfies the Owner's project requirements. The Owner chose the Design-Build delivery method specifically to give them a single point of responsibility on the part of the Design-Builder for every design service and construction need. Moreover, the Design-Build delivery method is expected to allow concurrent design and construction activities. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) shall act in the best interests of the Owner. At all times and project stages, the Design-Builder shall use their best efforts to perform the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints, and budget. The lead Design-Builder shall hold all design professionals, testing services, trade contractors, and trade supplier contracts. The Design-Builder shall develop an overall project schedule, which will be a contractual obligation. In addition, the lead Design-Builder will be responsible for methods of construction and safety, as well as for the scheduling and coordination of the

work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

**1.3.2** The total project budget for the Orange County Sportsplex Fieldhouse project is anticipated to not exceed **\$3,750,000** for the entire project, turnkey, including all costs and fees. All costs include site and building construction related expenses; architectural programming, design, construction related services; testing services; public jurisdiction fees and charges; permits, signage, reasonable design and construction contingency amounts, and other building related professional service fees necessary to fully build the Owner's project.

**1.3.3** The construction for the Owner's project shall be developed having a substantial completion date no later than winter 2016-17.

#### **1.4. RFQ**

**1.4.1.** The RFQ selection process will produce a preliminary ranking list for Design-Build candidates. The County reserves the right to ask the highest ranking teams to interview with an official Selection Committee consisting of various County and Sportsplex personnel. The County may then create a final ranking of Design-Builders based upon the interview results, in conjunction with their previously submitted written responses.

**1.4.2.** No formal design competition will be included.

**1.4.3.** Once the single Design-Builder is determined, they will be responsible for pricing and value-engineering issues. Prior to contracting, the Owner will ask the Design-Builder to commit to a Lump Sum price for all its design and construction services.

**1.4.4.** Owner / Design-Builder Contract will be lump sum contract utilizing Orange County standard contract for "building and construction and repair contracts". Thirty percent of any savings, excluding unused contingency (which returns to the Owner at 100%), will be returned to the Design-Builder. The remaining 70% will be returned to the Owner.

**1.4.5.** In order to consider proposals the County must receive at least 3 responses to its RFQ. If the County receives less than three responses, it must resolicit. After the second solicitation, the County may consider proposals even if three are not received. The County will follow the same procedures used for the initial solicitation.

**1.4.6.** Orange County reserves the right to accept or reject any or all Statement(s) of Qualifications with or without cause Issuance of this Request for Qualifications does not commit Orange County to award a contract, to pay any costs incurred in preparation of a proposal or to procure or contract for related services or supplies.

#### **1.5. Project Assumptions**

**1.5.1.** The Owner does not desire to enter into "joint-venture" agreements with multiple firms. At the same time, the Owner recognizes that the Design-Build delivery method often involves partnerships between or among firms to combine design and construction management capabilities. In the event that two or more firms desire to establish a joint venture, it is expected that one firm shall become the lead Design-Build firm for the purpose of contract execution, with the remaining firms being consultants to them. The County shall contract with the lead Design-Build firm only.

**1.5.2.** The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. **A spirit of**

**cooperation and collaboration among professional construction services providers is of utmost importance.**

**1.5.3.** The Design-Builder will employ the Architect of Record (AOR) and/or Engineer of Record (EOR). These professionals must personally ensure the integrity of all extensions of the design and ensure that all equipment and material meet the design criteria requirements. Insuring compliance with this condition shall be the lead Design-Builder's function, not an owner function.

**1.5.4.** The Design-Builder, as a part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project. For example without limitation, the Design-Builder will provide guidance and assistance in the preparation of a schedule and a reliable, preliminary cost estimate.

## **1.6. Definitions of Terms**

**1.6.1.** Whenever the term "RFQ," is used, the reference is to this Request for Qualifications or portions thereof, together with any exhibits, attachments, or addenda it may contain.

**1.6.2.** Whenever the terms "shall," "will," "must," or "is required" are used in the RFQ, the referenced task is a mandatory requirement of this RFQ. Failure to meet any mandatory requirement will be cause for rejection of a submittal.

**1.6.3.** Whenever the terms "can," "may," or "should" are used in the RFQ, the referenced specification is discretionary. Therefore, though the failure to provide any items so termed will not be cause for rejection, the Selection Committee may consider such failure in evaluating the quality of the submittal.

**1.6.4.** Whenever the terms "apparent successful" or "top-ranked" or "highest ranking" firm or offerer are used in this document, the reference is to the firm that the Selection Committee ultimately judges to have submitted the case best satisfying the needs of the Owner in accordance with the RFQ. The selection of an apparent successful firm does not necessarily mean the Selection Committee accepts all aspects of the firm's submittal or proposal.

**1.6.5.** Whenever the term "submittal" is used in the RFQ, the reference is to the response offered by a firm in accordance with the RFQ. The submittal responds only to the RFQ.

**1.6.6.** Whenever the term "Selection Committee" or "Review Committee" is used in the RFQ, the reference is to the Owner's representatives responsible for administering and conducting the evaluation and selection process of the RFQ.

**1.6.7.** "Design-Build" refers to the construction project delivery method in which, among other things, the Owner holds a single contract with a business entity that has responsibility both to design and to construct a project, and that holds the trade contracts.

**1.6.8.** "Lead Design-Builder" refers to the design-build team member that will contract with the Owner for all work and holds all responsibility of project success, performance, and completion.

**1.6.9.** "Design Professional"(an inclusive term for all licensed building professionals), "Architect of Record," an/or "Engineer of Record" all refer to the project's architect(s) and/or engineer(s), whose responsibilities generally include programming, design, code compliance, and detailing of the facility. Under the Design-Build delivery methodology, the Design Professional is an integral part of the Design-Builder entity under single

contract with the Owner. These entities also operate under legal definitions of the State of North Carolina with statutory liability and responsibility.

**1.6.10.** “Building Commissioning” refers to a formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed specifically to ensure that the finished facility operates in accordance with the Owner’s documented project requirements and the construction documents.

**1.6.11.** “Commissioning Provider” refers to the entity or person providing building commissioning services for a project.

**1.6.12.** “Owner’s Project Requirements” is a written document that details the functional requirements of a project and the expectations of how it will be used and operated.

**1.6.13.** “Qualifications Submittal” and “Initial Written Submittal” both refer to a firm’s response to the RFQ.

**1.6.14.** “Qualifications-Based Selection” and “QBS” both refer to a procurement process for the selection of professional construction services for public projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (Owner) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and price.

**1.6.15.** “Firm” shall be interpreted as referencing the design entity, the construction entity, or the combined (e.g., joint venture) entity, as is reasonable.

**1.6.16.** “Fixed Fee” shall be proposed by the Design Builder and shall be defined as a specific dollar amount (stated as a lump sum) and agreed upon by all parties at the time of Contract Negotiation. This fee shall not be a percentage of the cost of the work.

## **2. General Instructions**

### **2.1. Project Site & Scope: Building Program and Schematic Plans**

**2.1.1. Project Site:** The project will be located at 101 Meadowlands Drive, Hillsborough, NC 27278 (**Attachments A-B**).

**2.1.2. Building Program:** The project will be designed and constructed to a level of quality that reflects the current design features as described in **Building Program Information (attachment A)**

**2.1.3. Schematic Plans:** The Owner’s present schematic building plan and site plan are attached to this RFQ (**Attachments B**) as information to help with understanding site & building layout requirements of this Design-Build project.

### **2.2. Selection Process for the RFQ**

**2.2.1. Request for Qualifications:** This document is a Request for Qualifications (RFQ). All interested Design-Build parties shall respond to this document in the appropriate format and required quantity.

**2.2.2. Qualification Review Committee:** The review of RFQ submittals will be by a Review Committee comprising representatives of the Owner. Questions should be submitted **in writing** via email to the County Purchasing Agent [dcannell@orangecountync.gov](mailto:dcannell@orangecountync.gov)

### **2.2.3. Design-Build Qualifying Process for the RFQ**

**Written Submittal (RFQ Submittal):** The Review Committee will receive and review statements of qualifications and performance data in response to this RFQ. The Review

Committee will evaluate all firms first against a set of criteria, provided in **Section 3** below, to determine those firms most qualified and suited for this particular project. Qualifications will create a list of three Design-Build teams who may be interviewed by the County. After the completion of interviews (if required), a Design-Build team will be selected and negotiations of fees will begin. If the selected Design-Build team and the County do not come to an agreement, the County reserves the right to enter negotiations with the next highest ranking Design-Build team.

**2.3. Pre-submittal Conference:**

There will be a **mandatory** pre-submittal conference for all interested Design-Build parties to take place at the time and place listed on the Project Schedule (Section 2.4).

**2.4. Project Schedule:** The following Project Schedule represents the Owner’s best estimate of the schedule that will be followed. The Owner reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Project Schedule shall be provided to all who have requested this RFQ.

<b>Project Schedule:</b>	<b>Date</b>	<b>Time</b>
Advertisement on IPS/Orange County Purchasing website	Thurs., 1/14/16	
Owner conducts a <b>mandatory</b> pre-submittal conference for all interested firms. Meeting to be held at the WCOB, 131 W Margaret Lane, Room 004	Fri., 1/29/16	10:00 am
Deadline for written questions and clarification on Request for Qualifications	Wed., 2/3/16	5:00 pm
Deadline for submission of Qualifications	Thurs., 2/11/16	5:00 pm
Owner completes qualification evaluation to establish a shortlist of firms remaining in the competition. Owner notifies short-listed firms and schedules interviews (if required)	Thurs., 2/18/16	
Complete interviews of short-listed firms (if required)	Thurs., 2/25/16	
Notify selected Design-Build firm, begin contract negotiations	Tues., 3/1/16	
Complete contract negotiations with selected firm	Tues, Mar 8, 2016	
County Commissioner award of contract	Mar., 2016	
Notice to Proceed	Mar., 2016	
Project Completion	Jan-Mar 2017	

**3. RFQ Submittal – Qualifications Submission Format and Requirements**

**3.1. Physical Submittal**

**One (1) original and five (5) copies** of the information shall be submitted. Each submittal shall be identical in content. Submitters shall follow in their responses the sequence of the Initial Written Submittal outlined here. Responses should be concise, clear, and relevant. Submitter's cost incurred in responding to this RFQ is the submitter’s alone and the Owner does not accept

liability for any such costs. The Owner will not and shall not be required to return any item submitted.

**3.1.1.** The pages of the qualification submittals must be numbered consecutively. A table of contents, with corresponding tabs/dividers in the body of the submittal, must be included as well to identify each section. Placing multiple tabs on a single page is perfectly acceptable. If more than one item in the table of contents can be started on the same page, you may do so and place all corresponding tabs on that page. Any affidavits, certifications, or signed statements called for are to be included in an appendix. Please do not place or ask to place in the appendix any additional information not explicitly required to be placed there. Submittals are not limited in page quantity (The Owner intends to limit the cost that submitters incur to respond to this solicitation. Therefore, submitters are encouraged to be brief and succinct. Thick volumes of background and general marketing material are not desired. A firm should highlight instead its responsiveness to the evaluation criteria. If there are multiple firms proposed as one team, each component firm should describe its own relevant qualifications within the same submittal.)

**3.1.2.** Submittals of qualifications will be accepted until time and date shown in the Project Schedule (Section 2.4). **This is a firm deadline.** The Owner is not responsible for the proper or timely delivery of submittals. Failure to meet the deadline for receipt of submittals will result in rejection of the submittal. Submittals received after the deadline will not be considered whether delayed in transit or for any other cause whatsoever. Each firm is solely responsible for the accuracy and completeness of its submittal. Errors and omissions may constitute grounds for rejection.

**3.1.3.** Firms should deliver their submittals. The name and address of the firm should appear on the outside of the submittals, and the package should reference the project; i.e., **“RFQ 5218 for Design-Build Services, Orange County Sportsplex Fieldhouse”**

**3.1.4.** Submit qualifications document to the following **STREET** address:

Orange County – Finance Department  
200 S. Cameron Street  
Hillsborough NC, 27278  
**Attn: David Cannell**

**3.1.5.** Except for submission of questions, discussed further below, proposers shall not contact any members or employees of Orange County regarding any aspect of this procurement until after the award of the contract. Contact with these persons could be grounds for elimination from the competition. Questions may be asked at the pre-submittal conference. Questions not asked at the pre-submittal conference must be submitted in writing via email to:

**David Cannell**  
[dcannell@orangecountync.gov](mailto:dcannell@orangecountync.gov)

**3.1.6.** All follow-up questions from the pre-submittal conference, as well as any questions that have been submitted in writing before the deadline, will be compiled and answered in writing. The deadline for submission of questions relating to the RFQ is the time and date shown in the Project Schedule (Section 2.4). Answers will be distributed simultaneously by email to the contact person in the firms that attended the pre-submittal conference and to the firms that have made their interest in the project known.

### 3.2. Criteria for Selection & Weighting of Qualifications Criteria

Evaluative Criteria – The Review Committee will evaluate the submittals uniformly based upon the criteria listed in the table below. The Owner has listed each major category of criteria in order of importance. The services being sought under this RFQ are considered professional in nature. Consequently, the evaluation of submittals will be based upon consideration of the demonstrated qualifications and capabilities of the offerers.

MAJOR CATEGORY	CRITERIA SUMMARIES
<p><b>Design-Build Team: 30 points</b> Evaluation of lead Design-Builder and Design-Builder’s General Contractor/Builder (if different)</p>	<ul style="list-style-type: none"> <li>• GC experience with Design-Build Process.</li> <li>• GC experience with similar project types.</li> <li>• GC experience renovating facilities while operational.</li> <li>• GC experience with additions adjacent to operating businesses.</li> <li>• GC offering Project Managers and Superintendents experienced on similar project types.</li> <li>• GC track record of “on-time and on-budget” projects.</li> <li>• GC litigation, legal action and safety records.</li> <li>• GC reputation, references and referrals.</li> </ul>
<p><b>Design-Build Team: 25 points</b> Evaluation of Design Professionals</p>	<ul style="list-style-type: none"> <li>• Arch/Eng experience with Design-Build process.</li> <li>• Arch/Eng experience with the Team’s GC.</li> <li>• Arch/Eng experience with similar projects.</li> <li>• Arch/Eng firm’s litigation and/or arbitration records.</li> <li>• Arch/Eng firm’s reputation, references and referrals.</li> </ul>
<p><b>Project Schedule: 10 points</b> Evaluation of Design-Build Team’s</p>	<ul style="list-style-type: none"> <li>• Team’s ability to provide a proposed milestone schedule that illustrates the total project time (in weeks) to complete the project.</li> <li>•</li> </ul>
<p><b>Statement of WHY: 10 points</b> Evaluation of Design-Build Team’s</p>	<ul style="list-style-type: none"> <li>• Statement of Why Team should be selected.</li> <li>• Any unique qualifications relating to this project.</li> <li>• Design-build team professional capacity (Section 3.3.15)</li> </ul>
<p><b>Responsiveness to RFQ: 5 points</b> Evaluation of Design-Build Team’s</p>	<ul style="list-style-type: none"> <li>• Extent to which RFQ instructions were followed.</li> <li>• Accuracy in reflecting the RFQ requirements.</li> </ul>

### 3.3 Submittal Contents

The qualification submittal **must contain** the following information in the following order:

- 3.3.1. Statement of Interest.
- 3.3.2. Firm(s) description.

- 3.3.3. Provide a list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the Design-Build Team proposes to use for the project's design and construction. (Statutory Requirement)**
- 3.3.4.** Basic company information of all participating companies/firms:
- Company/Firm name;
  - Physical address;
  - Mailing address & zip code;
  - Email address & name of primary contact at each company/firm;
  - Main telephone number and direct telephone number for contacts;
  - Number of years in business for each company/firm.
- 3.3.5.** Form of firm ownership, including state of residency or incorporation: Is the offerer a sole proprietorship, partnership, corporation, Limited Liability Company (LLC), joint venture, or other structure?
- 3.3.6.** Succinctly describe the history and growth of your firm(s) and any past or current experience with the Design-Build team being purposed (if any).
- 3.3.7.** Regarding litigation with owners, subcontractors, and other construction-related entities, list any active or pending litigation and explain. List, and briefly describe any and all legal actions for the past three years in which respondent has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement; a respondent in an administrative action for deficient performance, or a defendant in a criminal action. **Failure to fully comply with is item will be grounds for elimination from the competition.**
- 3.3.8.** Has the firm ever failed to complete any work awarded to it or has it been removed from any project awarded to the firm? Explain.
- 3.3.9.** Give three (3) references to which your Design-Build team has provided professional services of a nature and quality similar to those required herein. This reference information should include a short paragraph describing the service(s) provided, together with the following:
- The name of the organization to which the services were provided
  - Project location
  - Dates during which services were performed
  - Thorough description of project/Images
  - Cost description (this description, at a minimum, must include: Original project budget; Final project cost; and why there exists a difference in the original and final costs, if any).
  - A current contact name, together with organizational title, at the firm
  - The contact's current address and telephone number. **Obsolete contact information will be grounds for elimination from the competition.**
- 3.3.10.** List five (5) major trade contractor references. Include company name, contact name, and telephone number.
- 3.3.11. Office Submitting Qualifications:**  
If the firm has multiple offices, the qualification statement should include information about the parent company and branch office separately. Identify the office from which the project will be managed and that office's proximity to the project site. Parent company (or general office) financial information as totals will be acceptable IF "parent" (or "general office") means that it is financially responsible for the liabilities of the branch

office. If the parent company is not so responsible, meaning that its financial resources are not available to the office that will perform the contract, it will be misleading to the Owner to offer the financials of any office other than the one with the prospect of a contract with the Owner.

**3.3.12. Relevant Project Experience of the DESIGNER:**

Relevant project experience refers especially to buildings comparable to this project in relevant ways. The most relevant experience will be on other Design-Build projects as designer. **If the designer claims experience acquired by hiring of or participation by personnel who were/are members of another firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s).** Describe no fewer than three projects in order of most relevant to least relevant that demonstrate the firm's capabilities to provide design services on the project at hand. For each project, the following information should be provided:

- a. Project name
- b. Project location
- c. Dates during which services were performed
- d. Physical description (e.g., square footage, number of stories, site area)
- e. Cost description (this description, at a minimum, must include: Original project budget; Final project cost; and why there exists a difference in the original and final costs, if any).
- f. Brief description of project
- g. Services performed as Designer
- h. Statement of performance versus owner expectations in the areas of cost, quality, and schedule
- i. Owner reference

**3.3.13. Relevant Project Experience of the BUILDER:**

Relevant project experience includes similar building type and delivery method relevant to the type of project to be constructed using the Design-Build delivery method or performing as a general contractor on comparable types and sizes of projects. If the builder claims experience acquired by hiring of or participation by personnel who were members of another firm(s) at the time of the experience, please express that fact and disclose the name of the other firm(s). Describe no fewer than three projects in order of most relevant to least relevant that demonstrate the firm's capabilities to perform the project at hand. For each project, the following information should be provided:

- a. Project name
- b. Project location
- c. Dates during which services were performed
- d. Physical description (e.g., square footage, number of stories, site area)
- e. Thorough description of project/images
- f. Cost description (this description, at a minimum, must include: Original project budget; Final project cost; and why there exists a difference in the original and final costs, if any).
- g. Services performed as Builder
- h. Statement of performance versus owner expectations in the areas of cost, quality, and schedule

i. Owner reference

**3.3.14. Minority Business (MB):** Indicate whether offerer is a Minority Business Enterprise and any MB firms on the Design-Build Team. Complete MB forms in Attachment D (this may be part of the appendix) **OR** Outline design-build team strategy to meet County's MB goals for construction as outlined in Section 1.2.4

**3.3.15. Statement of "why" the Proposing Firm Should Be Selected:** This section provides each firm the opportunity to provide specific information that differentiates them from others in the competition.

**Including:** Personnel Capability - Provide general information about the firm's personnel resources, including classifications and numbers of employees and the locations and staffing of relevant offices. Provide list of qualified and available personnel resources, identifying experience and ability for key personnel. The key personnel, at a minimum, are the proposed Designer(s) of Record, supporting project architects and engineers, project superintendent, Design-Builder's project manager, project director, estimator, preconstruction manager, and the executive in charge. At this stage, firms may list more than one person qualified and available for the proposed project.

**3.3.16. Minimum Criteria**

**Firms must meet the criteria in the bullet points immediately below. Firms that do not meet these criteria are automatically disqualified.** All documentation required to prove the firm meets the minimum criteria stated below should be included in the appendix of the firm's submittal.

- Firm's "Designer(s) of Record" MUST have a current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work. **A copy of the license(s) is to be included in the appendix.**
- Firm's "Builder" MUST have a current North Carolina Contractor's license with an unlimited building classification. **A copy of the license is to be included in the appendix.**
- Lead Design-Build firm MUST agree to keep and maintain for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The Contractor shall furnish the County with certificates of insurance for each type of insurance described herein, with the County listed as Certificate Holder and as an additional insured on the Contractor's general liability and auto liability policies and provide a waiver of subrogation on the Contractor's workers' compensation policy. In the event of bodily injury or property damage loss caused by Contractor's negligent acts or omissions in connection with Contractor's services performed under this Agreement, the Contractor's Liability insurance shall be primary with respect to any other insurance which may be available to the County, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, the Contractor and Contractor's insurance carrier shall give the County at least thirty (30) days prior written notice. No work shall be

performed until the Contractor has furnished to the County the above referenced certificates of insurance and associated endorsements, in a form suitable to the County. Upon request, the Contractor shall provide the County copies of their insurance policies.

Commercial General Liability:	\$1,000,000 per occurrence
Commercial Auto Liability:	\$1,000,000 combined single limit
Excess (Umbrella) Liability:	\$1,000,000
Workers' Compensation:	Statutory
Employer's Liability:	\$500,000 each accident/total disease/employee disease

- Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than \$1 million per claim. (The Owner reserves the right to negotiate different limits and coverage in the final contract.)

**In order to be deemed eligible for evaluation, the submitting lead Design-Build firm must create, officially sign, and place in its submittal a signed statement that contains the following declarations** (This document may be part of the appendix):

- *We certify that our Design-Build entity's "Designer(s) of Record" have current North Carolina Architectural and/or Engineering license(s) as appropriate for their portion of the design work.*
- *We certify that our Design-Build entity's "Builder" has a current North Carolina Contractor's unlimited license.*
- *We certify that our firm will have and maintain liability insurance coverage for a total of \$1 million/occurrence & \$2 million/general aggregate for commercial general liability, and not less than \$1 million per claim for commercial business automobile liability.*
- *We certify that we will have coverage for errors and omissions by all Designer(s) of Record of not less than \$1 million per claim.*

### **3.4. Additional Conditions**

**3.4.1.** The Review Committee will endeavor to shortlist only firms that are fully capable and qualified to perform the current project. Upon completion of the review of RFQ submittals, the Review Committee will rank the three (3) highest ranking firms. The County reserves the right to schedule interviews if necessary for final selection.

**3.4.2. Confidentiality of Documents:** Upon receipt of a proposal by the Owner, the proposal shall become the property of the Owner without compensation to the offerer. Subject to the provisions of the Freedom of Information Act, the details of the proposal documents will remain confidential until final qualification selection is complete.

**3.4.3. Costs to Prepare Responses:** The Owner assumes no responsibility or obligation to the offerers and will make no payment for any costs associated with the preparation or submission of proposals.

**3.4.4.** The Owner reserves the right to check references of proposed personnel on the project team and to request substitutions of personnel if it deems such action in the Owner's best interests. Moreover, the Owner reserves the right to check any reference that it may become aware of in addition to the references provided by the proposer.

**3.4.5. Equal Employment Opportunity:** During the performance of this Contract, the Design-Builder agrees as follows: The Design-Builder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, place of birth, or physical handicap. Design-Builder must have a history of being non-discriminating and will not discriminate on the basis of race, creed, color, sex, or national origin in any of its employment practices, or procurement practices with respect to the workforce of the firm, or procurement services in connection with this project.

**3.4.6.** The pre-submittal conference will be located at WCOB, 131 W Margaret Lane, room 004. .

**3.4.7.** It is a requirement that the selected firms must operate a drug-free workplace and that it will remain that way throughout the duration of the project.

**3.4.8.** County Policy adopted by County Commissioner, Resolution #93-139, prohibits the County from entering into contracts with persons or firms who are delinquent in the payment of ad valorem taxes owed to Orange County.

**3.4.9.** Bidders are also notified that as of September 2013, all contractors, vendors, subcontractors and/or employers bidding and/or contracting with Orange County must use E-Verify in their new hiring process. Per North Carolina Session Law 2013-418, no County may enter into a contract unless the contractor and the contractor's subcontractors comply with Article 2 of Chapter 64 of the General Statutes.

**3.4.10 E-Verify Employer Compliance:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department 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. The requirements of that policy are included in the invitation to Bid and will be included in the contract for the construction of the Project.

[END OF REQUEST FOR QUALIFICATIONS]

## **ATTACHMENT A: Building Program Information:**

### **FIELDHOUSE BUILDING**

**DESCRIPTION:** The fieldhouse will be located adjacent to the existing Orange County Sportsplex, and will consist of a pre-engineered metal field house structure with an estimated footprint dimension of a 250' x 200' (approximately 50,000 square feet). The addition of the facility will improve the functionality and program offerings of the overall Orange County Sportsplex operation. The facility will house:

- A multi-sport turf field with 190 ft. by 85 ft. dimensions surrounded by a 3 lane indoor running/walking track.
- Two regulation basketball courts (94 ft. by 50 ft. each).
- Children's center for all day and after school programs.
- Fitness area of approximately 8,500 sq. ft. to include two fitness studios (one for strength, the other for active aging and floor exercise/spin programs--2,000 sq. ft. each maximum.)
- Quality men's and women's change/restroom facilities (1,800 sq. ft. each) plus open cardiovascular machine space (treadmills, stair machines, etc.)
- Secure storage space of approximately 1,500 sq. ft.

The proposed building is to include but not limited to a public restroom building with covered entry, and storage/mechanical room. Toilet facilities shall meet all ADA, NCBC and ANSI requirements to be configured for men's women's and a family restroom area. Pre-engineered steel post/beam/truss construction with conventional trapezoidal standing seam metal roof system and a pre-engineered, insulated steel wall panel with potential masonry block accents. Interior partitions will be standard steel stud and gypsum board construction.

The owner may also consider an approximate 10,000 square foot interior steel post/beam/truss mezzanine structure for space efficiency and space utilization.

Conventional site work to support a pre-engineered steel structure is required. Grading and drainage as required to site the building; the site should not require retaining walls. The County will be responsible for removing two residential units that are currently on the property. Tree removal will be required according to a designed tree removal plan and the base tree survey prepared by the County. The facility will be adjacent and detached from the existing Sportsplex facility and will require adequate parking and pedestrian sidewalk access and site landscaping considerations consistent with the Town of Hillsborough unified development ordinance.

The County will provide adequate geotechnical environmental assessment, utility, and survey data for the design.

**NON-COLLUSION AFFIDAVIT**

State of North Carolina  
County of Orange

Proposal Request No. 5218

\_\_\_\_\_, being first duly sworn, deposes and says that:

- 1. He/She is the \_\_\_\_\_ of \_\_\_\_\_, the proposer that has submitted the attached proposal;
- 2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
- 3. Such proposal is genuine and is not a collusive or sham proposal;
- 4. Neither the said proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer firm or Person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other proposer, firm or person to fix the price or prices in the attached proposal or of any other proposers, or to fix any overhead, profit or cost element of the proposal price of the proposal of any other proposer or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Orange or any person interested in the proposed contract; and
- 5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Subscribed and Sworn to Before Me,

This \_\_\_\_\_ day of \_\_\_\_\_, 20

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

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
E-VERIFY AFFIDAVIT  
ORANGE COUNTY  
\*\*\*\*\*

I, \_\_\_\_\_(the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department 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 in accordance with NCGS §64-25(5).

2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)

a. YES \_\_\_\_\_, or

b. NO \_\_\_\_\_

4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_

State of North Carolina \_\_\_\_\_ County

Signed and sworn to (or affirmed) before me, this the \_\_\_\_\_

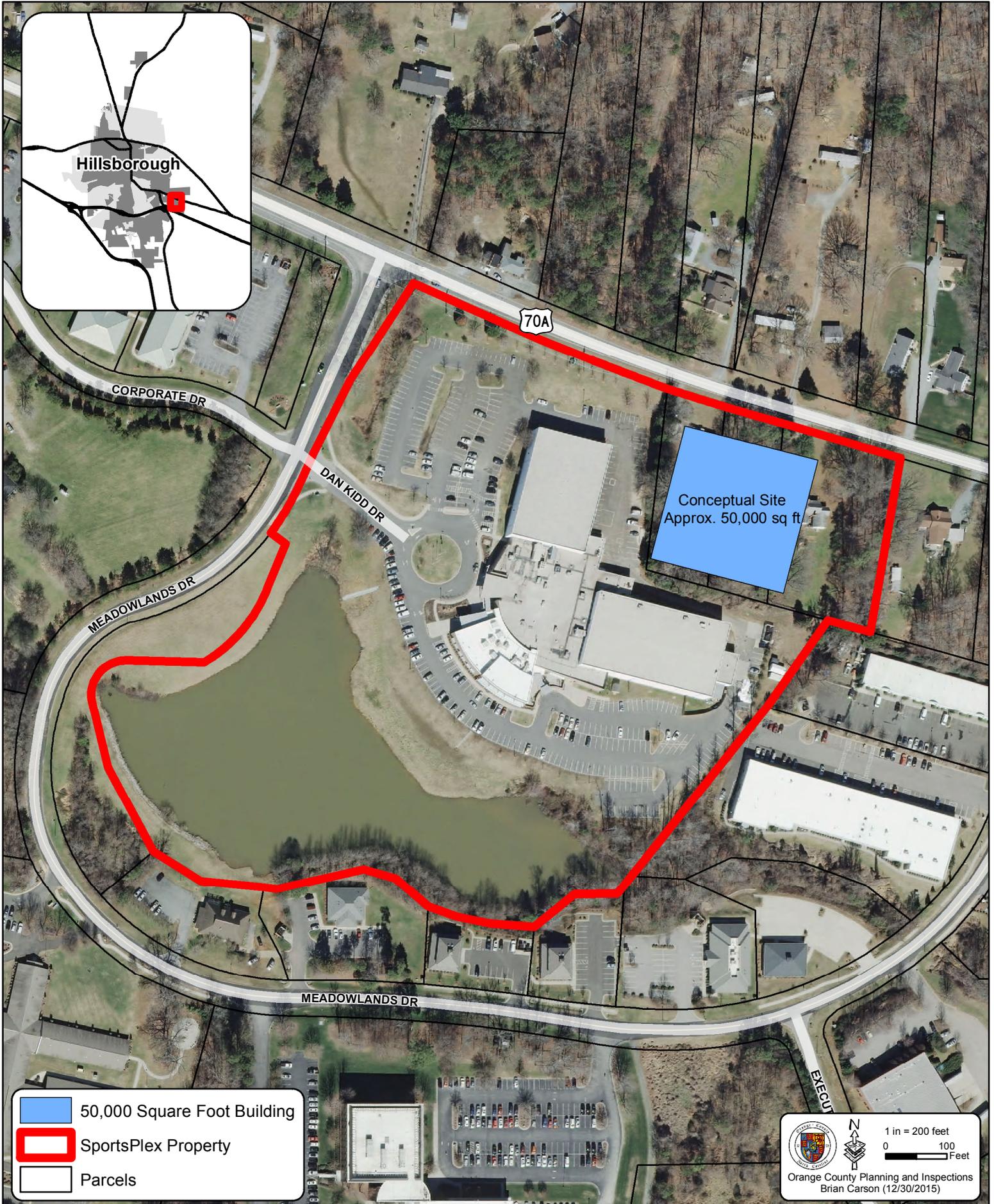
day of \_\_\_\_\_, 2014.

My Commission Expires:

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

(Affix Official/Notarial Seal)

# SportsPlex Conceptual Field House



## GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES

These guidelines were adapted for use on this project by the County of Orange from the “Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Office Projects”, developed by the State Construction Office.

In accordance with G.S. 143-128.2 (SB 914 ratified December 6, 2001), the County of Orange has enacted a verifiable ten percent (10%) minority business participation goal for the total monetary value of this project. These guidelines are published to accomplish that end.

### SECTION 1: INTENT

It is the intent of these guidelines that the County of Orange, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper and reasonable to achieve the statutory goal of ten percent for participation by minority businesses in each construction project permitted by SB 914. Nothing contained in these guidelines shall be considered to require awarding authorities to award contracts or to make purchase of materials or equipment from minority-business contractors who do not submit the lowest responsible bid or bids.

### SECTION 2: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
  - a. Black, that is, a person having origins in any of the black racial groups in Africa;
  - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  - d. American Indian or Alaskan Native, that is , a person having origins in any of the original peoples of North America;
  - e. Female.
  - f. “Socially disadvantaged individual”, as defined in 15 U.S.C. 637. These are individuals who have “been subjected to racial or ethnic prejudice or cultural bias because of their identify as a member of a group without regard to their individual qualities”; or
  - g. “Economically disadvantaged individual” as defined in 15 U.S.C. 637. This is an individual “whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business who are not socially disadvantaged.”
2. Minority Business - means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and

- b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.
- 3. Owner - The County of Orange.
- 4. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- 5. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, material or services, including construction, and obligating the buyer to pay for them.
- 6. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the County of Orange to perform construction work or repair.
- 7. Subcontractor - A firm under contract with the Prime Contractor for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract. Work subcontracted in an emergency and which could not have been anticipated is excluded as a part of this program.
- 8. Verifiable goal means that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

**SECTION 3: RESPONSIBILITIES**

- 1. Minority Business Program of the County of Orange (hereafter referred to a Minority Business Program).

The Minority Business Program will establish a program pursuant to which it shall certify to interested persons, businesses qualifying as Minority Business Enterprises (MBE). The information solicited from the applicant will be used by the Minority Business Program to:

- a. Determine MBE certification, i.e., that those certified are MBEs under GS 143-128 as a contractor and/or subcontractor.
- b. Identify those areas of work for which there are certified MBEs, as requested.
- c. Provide interested parties with a list of prospective certified MBE contractors and subcontractors.
- d. Assist in the determination of technical assistance in the certification program that needs to be provided.

In addition to being responsible for the certification of those small and emerging businesses that want to participate, the Minority Business Program will:

- 1. Maintain a current list of certified MBEs of those certified. The list furnished shall include the areas of work in which each MBE is interested.
- 2. Work with the North Carolina Association of Minority Businesses, the Carolinas Branch AGC, the Carolina Electrical Contractors Association and the North Carolina Association of Plumbing-Heating-Cooling Contractors in developing and implementing a certification program intended to improve the ability of MBE's to compete in this program.

- 2. Owner

The owner will:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas of a contract where MBEs may have an interest in performing contract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, the Owner will notify certified MBEs of potential contracting opportunities listed in the proposal. The notification will include the following:
  1. A description of the work for which the bid is being solicited.
  2. The date, time and location where bids are to be submitted.
  3. The name of the individual within the agency/institution who will be available to answer questions about the project.
  4. Where bid documents may be reviewed.
  5. Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) certified MBEs in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the Owner shall notify three (3) , but may contact more, if the Owner so desires.

- d. Maintain documentation of any contacts, correspondence, or conversations with MBE firms made in an attempt to meet the goals.

2. Prime Contractor

Under the single prime contract system, the prime contractor will:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas of a contract where MBEs may have an interest in performing contract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, notify certified MBEs of potential contracting opportunities listed in the proposal. The notification will include the following:
  1. A description of the work for which the bid is being solicited.
  2. The date, time and location where bids are to be submitted.
  3. The name of the individual within the agency/institution who will be available to answer questions about the project.
  4. Where bid documents may be reviewed.
  5. Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) certified MBEs in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the Contractor shall notify three (3) , but may contact more, if the Contractor so desires.

- d. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
- e. Submit with the bid a description of that portion of the work to be executed by MBEs expressed as a percentage of the total price.
- f. Identify the MBEs the bidder intends to use on the contract, along with the dollar amount of the work to be performed by each minority business.
- g. Submit an affidavit that details the good faith efforts taken to procure minority business participation.
- h. Upon being named the apparent low bidder, the bidder shall provide the necessary

documentation as listed in the contract documents. Failure to comply with procedural requirements as defined in contract documents may render that bid as non-responsive and may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

- i. Upon being named apparent low bidder, the bidder shall provide an affidavit that lists the proportion of the work to be performed by MBEs. If the MBEs do not account for ten percent (10%) of the contract price, the bidder must submit an affidavit that verifies the bidder's good faith efforts by certifying that it has undertaken at least five of the following ten (10) steps:
    1. Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contract or available on these State or local government-maintained lists at least ten (10) days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
    2. Made the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least ten (10) days before the bid proposals are due.
    3. Broke down or combined elements of work into economically feasible units to facilitate minority participation.
    4. Worked with minority trade, community, or contractor organizations identified by the Office of Historical Underutilized Businesses and included in the bid documents that provided assistance in recruitment of minority businesses.
    5. Attended any prebid meetings scheduled by the public owner.
    6. Provided assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
    7. 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 qualifications should have the reasons documented in writing.
    8. 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 the minority businesses in establishing credit.
    9. 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. Provide quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
  - j. During the construction of the project, if it becomes necessary to replace an MBE subcontractor, advise the owner of the circumstances involved.
  - k. If, during the construction of a project, additional subcontracting opportunities become available, make a good faith effort to solicit subbids from MBEs.
3. MBE Responsibilities

While MBEs are not required to become certified in order to participate in this program, it is recommended that they become certified and should take advantage of the appropriate technical assistance that is made available. In addition, MBEs who are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

**SECTION 4: DISPUTE PROCEDURES**

It is the policy of this County that disputes between an agency and another person that involve a person's rights, duties, or privileges should be settled through informal procedures. To that end, MBE disputes arising under these guidelines should be resolved, if possible, by informal proceedings arranged by the Owner.



# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

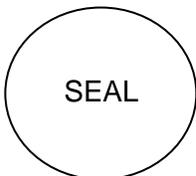
**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts)** 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 pts)** 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 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** 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 pts)** Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** 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 pts)** 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 pts)** 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 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) 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 business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_  
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 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 agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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: \_\_\_\_\_

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 HUB Certified/Minority Businesses

County of \_\_\_\_\_

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% 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 low bidder.

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

\_\_\_\_\_ (Project Name)  
 Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses 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 Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

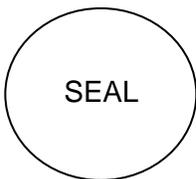
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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: \_\_\_\_\_

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

County of \_\_\_\_\_

**(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the goal of 10% participation by HUB Certified/ minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

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

Project ID# \_\_\_\_\_ (Project Name) Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses 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 Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

**Examples** of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). 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. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. 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.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority 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 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: \_\_\_\_\_

Signature: \_\_\_\_\_

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



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

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

## Contractor's Safety Record Information

The Contractor's safety record shall be reviewed and evaluated in addition to other quality and performance criteria as part of bid evaluation process. Failure to provide the requested information and documentation may result in rejection of your bid as non-responsive.

Accordingly, all bidders must submit the following information regarding their safety record.

The following definitions shall apply to this section:

"DART incident rate" – Acronym for "Days Away, Restrictions and Transfers". The DART incident rate may be used to show the relative level of injuries and illnesses within a firm compared to the industry. It is based only on those injuries and illnesses severe enough to warrant "Days Away, Restrictions and Transfers". The DART incident rate is calculated using OSHA's Form 300 and the following formula:

$$\frac{((\text{Number of entries in column H (days away from work)} + \text{column I (job transfer or restriction)}) \times 200,000) / (\text{Number of hours worked by all employees})}{= \text{DART Incident rate.}}$$

"EMR" – Acronym for "Experience Modification Rate," is an indicator of a contractor's past safety performance, widely used by the insurance industry as an equitable means of determining premiums for workers' compensation insurance. The rating system considers the average workers' compensation losses for a given firm's type of work and amount of payroll and predicts the dollar amount of expected losses to be paid by that employer in a designated rating period, usually three years. The rating is based on comparison of firms doing similar types of work, and the employer is rated against the average expected performance in each work classification. Losses incurred by the employer for the rating period are then compared to the expected losses to develop an experience rating.

"OSHA" – Acronym for the Federal Occupational Health and Safety Administration. The term "OSHA" as used in this Policy also refers to any state or local agency having jurisdictional authorization to enforce worker safety requirements and assess fines or warnings for violation of worker safety standards.

1. OSHA DART Incident Rate. Provide the bidder's DART Incident Rate calculated from OSHA's Form 300 for the last three years and the other required information shown in the example table below. *The bidder must attach all supporting documentation and calculations including certified OSHA forms.*

YEAR	CONTRACTOR DART INCIDENT RATE	INDUSTRY DART INCIDENT RATE	INDUSTRY FIELD AND CODE

2. Experience Modification Rate (EMR). Provide the bidder's most recent Experience Modification Rate (EMR) based on insurance claims history. *The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR.*

YEAR	CONTRACTOR EMR	INDUSTRY FIELD AND CODE	NAME AND CONTACT INFO FOR EMR INFORMATION

3. Answer the following OSHA Specific Questions:

(a) Within the last 2 years, has the bidder received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, attach a copy of each such citation and violation.

(b) Has the bidder experienced any work-related fatalities within the last five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Has the bidder had any citations issued by OSHA as a result of work related fatalities within the past 5 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) Is the bidder under investigation for any work-related fatalities?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) If your answer is “yes” to 3(b), (c) or (d), provide a copy of the citation(s), list of number(s) of fatalities and documented explanation of the fatality.

4. Safety Plan:

(a) Does the company have a written safety program that includes responsibility for all aspects of safety management?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing employees?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Does the company have documented evidence of safety training that they have conducted?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30 hour OSHA construction safety training)?

Yes \_\_\_\_\_ No \_\_\_\_\_

(f) Do employees have documented basic OSHA 10 hour construction safety training?

Yes \_\_\_\_\_ No \_\_\_\_\_

(g) Does the company have a documented Hazard Communication Program?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. Required Written Explanation of Safety Record. If the bidder has any of the following: (a) DART incident rate greater than its industry average, (b) an EMR greater than 1.0, (c) answered “yes” to any of the OSHA Specific Question above, or (d) answered “no” to any of the Safety Plan questions, the bidder shall provide the County, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may be deemed as non-responsive by the County.

**NORTH CAROLINA**

**DESIGN BUILD CONTRACT**

**ORANGE COUNTY**

THIS DESIGN BUILD CONTRACT (hereinafter called "Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter called the "Design-Builder" or "Contractor"), and Orange County, a body politic and a political subdivision of the State of North Carolina, (hereinafter called the "County," "Orange County," or "Owner").

For the Project: \_\_\_\_\_

**WITNESSETH:**

Whereas the Owner published a Request for Qualifications ("RFQ"), the \_\_\_\_ day of \_\_\_\_\_ seeking the submission of Statements of Qualifications to act as a design builder to furnish professional design and construction services during the design and construction of the Project identified and described in that Request for Qualifications; and

Whereas the undersigned Design-Builder submitted a responsive Statement of Qualifications dated \_\_\_\_\_, \_\_\_\_\_; and

Whereas the Owner has evaluated the Statement of Qualifications and approved, on \_\_\_\_\_, the selection of the undersigned Design-Builder to furnish professional design and construction services during the design and construction of the Project; and

Whereas the Design-Builder and the Owner now wish to form and memorialize their agreement for design build services.

Now therefore, for the consideration hereinafter set forth, the Design-Builder and the Owner agree as follows:

**1. CONTRACT DOCUMENTS; PRIORITY**

The design-build documents (hereinafter called "Contract Documents") consist of this Agreement, the Supplementary Conditions which are fully incorporated into this Agreement and any subsequent Modifications to this Agreement, the RFQ and addenda thereto, and the Statement of Qualifications. The Contract Documents form the Contract. In the event of any inconsistency between or among the Contract Documents the Contract Documents shall be interpreted in the following order of priority:

- (i) This Agreement and incorporated Supplementary Conditions attached as Exhibit 1 and any subsequent modifications to this Agreement.
- (ii) Change Orders.
- (iii) Change Directives.
- (iv) Field Orders.

- b. RFQ and addenda thereto.
- c. Statement of Qualifications.

## 2. SCOPE OF WORK

The Design-Builder shall furnish and deliver all of the materials, and perform, and be fully responsible for all of the Work required by this Agreement within the time period stipulated in a written Notice-to-Proceed to be executed by the Design-Builder and Owner and in accordance with the following enumerated documents, which are made a part hereof as if fully contained herein:

- a. Design Drawings prepared by \_\_\_\_\_ (Sheet \_\_\_\_\_ dated \_\_\_\_\_ )
- b. Construction Drawings prepared by \_\_\_\_ (Sheet \_\_\_\_ dated \_\_\_\_)
- c. Written specifications.
- d. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_ which fully describes the work to be performed, such work (hereinafter called the "Work").

## 3. TERM AND SCHEDULING

- a. The Design-Builder agrees to commence work pursuant to the written Notice-to Proceed.
- b. The Design-Builder agrees to complete substantially all Work included by \_\_\_\_\_, 20\_\_\_\_\_.
- c. Time is of the essence with respect to all dates specified in the Contract Documents as Completion Dates.
- d. The Design-Builder shall perform the Work in the time, manner and form required by the Contract Documents and as stipulated in a written Notice-to-Proceed to be executed by the Design-Builder and Owner.

## 4. STANDARD OF CARE AND DUTIES OF DESIGN-BUILDER

- a. The Design-Builder shall exercise reasonable care and diligence in performing the Work in accordance with the generally accepted standards of this type of Design-Builder practice throughout the United States and in accordance with applicable federal, state, and local laws and regulations applicable to the performance of these services. Design-Builder is solely responsible for the professional quality, accuracy, and timely completion and/or submission of all work.
- b. The Design-Builder shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended design, intended performance, or configuration.
- c. Design-Builder shall be responsible for all Design-Builder, subcontractor, and sub-subcontractor errors or omissions, in the performance of the Agreement together with the errors and omissions of any agent or employee of the Design-Builder or any subcontractor or sub-subcontractor. Design-Builder shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Owner.
- d. Design-Builder is an independent contractor of Owner. Any and all employees of the Design-

Builder engaged by the Design-Builder in the performance of any work or services required of the Design-Builder under this Agreement, shall be considered employees or agents of the Design-Builder only and not of the Owner, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Design-Builder.

- e. Design-Builder agrees that Design-Builder, its employees, agents and its subcontractors, if any, shall be required to comply with all federal, state and local anti-discrimination laws, regulations, and policies that relate to the performance of Design-Builder's services under this Agreement. The Design-Builder shall not discriminate against any employee, applicant for employment, contractor, or subcontractor with regard to race, ethnicity, biometric information, gender, gender identity, color, religion, sex, national origin, or veteran status. The Design-Builder agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap or disability in regard to any position for which the employee or applicant is qualified. The Design-Builder agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices.
- f. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Design-Builder represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.
- g. The Design-Builder shall supervise and direct the Work efficiently and with the Design-Builder's best skill and attention. Except as specifically set forth in the Contract Documents the Design-Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, and for safety precautions and programs in connection with the Work. The Design-Builder shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- h. The Design-Builder shall appoint a competent Project Manager with general authority to manage the Project for the Design-Builder. The Design-Builder shall also keep on the Project at all times during the Work of the Design-Builder a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Owner.
- i. The Design-Builder shall attend all progress conferences and all other meetings or conferences. The Design-Builder shall be represented at these progress conferences by a representative having the authority of the Project Manager.
- j. Costs and expenses of providing samples for and assistance in any testing shall be borne by the Design-Builder. Any Work in which untested materials are used without approval or written permission of the Owner and/or Designer shall be removed and replaced at Design-Builder's expense.

## **5. PAYMENT & TAXES**

- a. The Owner hereby agrees to pay to the Design-Builder for the faithful performance of this Agreement, and the Design-Builder hereby agrees to perform all of the Work for a sum not-to-

exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Not later than the fifth (5th) day of each calendar month the Design-Builder shall submit to the Owner's Representative a Request for Payment for work done during the previous calendar month.

- (i) The Request for Payment shall be in form of a standardized invoice or AIA Document G702-703 appropriately addressed to Owner's Representative at \_\_\_\_\_ and shall show substantially the value of work done during the previous calendar month.
  - (ii) The amount due for payment shall be ninety-five percent (95%) of the value of work completed since the last Request for Payment and this amount shall be paid by the Owner on or before the last business day of the month. Owner shall retain five percent (5%) (the "Retainage").
    - (1) Upon Owner's Representative's certification that fifty percent (50%) of the Work has been satisfactorily completed Retainage shall be reduced to two and one half percent (2½%).
    - (2) Upon Owner's Representative's certification that ninety percent (90%) of the Work has been satisfactorily completed Retainage may be discontinued. Retainage may be discontinued, at Owner's sole discretion, so long as work continues to be completed satisfactorily and on schedule and the Design-Builder has sufficient funds remaining on the Contract to complete the Work and complete the Project.
  - (iii) Final payment shall not be due to the Design-Builder until thirty (30) days after Final Completion of the Work, including any and all punch list work, has been satisfactorily completed and an appropriate Affidavit, Indemnification, and Release as required in the Supplementary Conditions has been received by Owner.
- b. Should Owner reasonably determine that Design-Builder has failed to perform the Work related to a Request for Payment, Owner, at its discretion may provide the Design-Builder ten (10) days to cure the breach. Owner may withhold the accompanying payment without penalty until such time as Design-Builder cures the noticed breach.
- (i) Should Design-Builder or its representatives fail to cure the breach within ten (10) days, or fail to reasonably agree to such modified schedule, Owner may immediately terminate this Agreement in writing, without penalty or incurring further obligation to Design-Builder.
  - (ii) This section shall not be interpreted to limit the definition of breach to the failure to perform the Work related to a Request for Payment.
- c. The Design-Builder has included in the Contract Price and shall pay all taxes assessed by any authority on the Work or the labor and materials used therein. It shall be the Design-Builder's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Design-Builder and each of its subcontractor.
- d. Should the Owner receive notice that the Design-Builder has failed to pay a subcontractor/supplier for the Work performed related to a Request for Payment, Owner shall

have the authority to withhold payment of the disputed amount until the parties resolve the payment dispute to the satisfaction of the Owner. Failure to pay the Design-Builder pursuant to this section of the Agreement shall not be deemed to be a breach of the Agreement.

**6. NON-APPROPRIATION**

- a. Design-Builder acknowledges that Owner is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate.
- b. In the event that public funds are unavailable and not appropriated for the performance of Owner's obligations under this Agreement, then this Agreement shall automatically expire without penalty to Owner immediately upon written notice to Design-Builder of the unavailability and non-appropriation of public funds. It is expressly agreed that Owner shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis.
- c. In the event of a change in the Owner's statutory authority, mandate and/or mandated functions, by state and/or federal legislative or regulatory action, which adversely affects Owner's authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to Owner upon written notice to Design-Builder of such limitation or change in Owner's legal authority.

**7. NOTICES**

Any notice required by this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

Owner:  
Orange County  
Attn:  
P.O. Box 8181  
Hillsborough, NC 27278

Design-Builder:

**8. MISCELLANEOUS**

- a. Duties and Obligations imposed by the Contract Documents shall be in addition to any Duties and Obligations imposed by state, federal, or local law, rules, regulations and ordinances.
- b. No act or failure to act by the Owner or Design-Builder shall constitute a waiver of any right or duty granted them under the Contract Documents, nor shall any act or failure to act constitute any approval except as specifically agreed in writing.
- c. The Work shall be tested and inspected as required by the Contract Documents and as required by law. Unless prohibited by law the costs of all such tests and inspections related to state and federal codes such as ADA, Administrative, Electrical, Plumbing, Mechanical and Building Codes shall be borne by the Design-Builder. The costs for material and structural testing shall be conducted by an independent third party at the expense of the Owner. Delays related to any

of the aforementioned tests and inspections shall not be grounds for delaying the completion of the work. If any such tests and inspections reveal deficiencies in the Work such that the Work does not comply with terms or requirements of the Contract Documents and/or the requirements of any code or law the Design-Builder is solely responsible for the cost of bringing such deficiencies into compliance with the terms of the Contract Documents and/or any code or law.

- d. Should the Designer, if a Designer is retained for the project involving the Work, or Owner reject any portion of the Work for failing to comply with the Contract Documents Design-Builder shall immediately, at Design-Builder's expense, correct the Work. Any such rejection may be made before or after substantial completion. If applicable, any additional expense borne by the Designer under this section shall be paid at Design-Builder's expense.
- e. The Design-Builder shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner.
- f. The Design-Builder and Owner shall list any and all architects, consultants, designers, engineers, and other professionals, together with all related license information, employed, engaged, contracted, or subcontracted to perform any part or portion of the Work. Such list shall be provided as Exhibit 2 hereto. Exhibit 2 shall be updated regularly as such architects, consultants, designers, engineers, and other professionals are retained and/or hired.

## **9. CONSEQUENTIAL AND LIQUIDATED DAMAGES**

- a. Owner and Design-Builder accept the following liquidated damages provisions:
  - (i) It is mutually recognized that time is an essential element of the Agreement, and that delay in completing the work will result in damages due to public inconvenience, interference with business, and the increasing of engineering, inspection, and administrative costs to the Owner. It is therefore agreed that in view of the difficulty of making a precise determination of such damages, a sum of money in the amount stipulated in the contract will be charged against the Design-Builder for each calendar day that the work remains uncompleted after the expiration of the completion date, not as a penalty but as liquidated damages. Should the Design-Builder or, in case of default, the Surety fail to complete the Work by the completion date, a deduction of the amount stipulated in the Contract Documents as liquidated damages will be made for each and every calendar day that such Work remains uncompleted. This amount will be deducted from any money due the Design Builder or its Surety under the Contract Documents, and the Design-Builder and its Surety will be liable for any liquidated damages in excess of the amount due. In case of default of the Agreement and the completion of the work by the Owner, the Design Builder and its Surety will be liable for the liquidated damages under the Contract Documents, but no liquidated damages will be chargeable for any delay in the final completion of the work by the Owner due to any action, negligence, omission, or delay of the Owner. In any suit for the collection of or involving the assessment of liquidated damages, the reasonableness of the amount stipulated in the Contract Documents will be presumed. The liquidated damages referred to herein are intended to be and are cumulative, and will be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the contract. Permitting the Design-Builder to continue and finish the

work or any part thereof after the expiration of the completion date shall in no way operate as a waiver on the part of the Owner of any of its rights under this Agreement.

- (ii) Design-Builder acknowledges any contract between a political subdivision of the state and another party includes by implication the existing law of the State of North Carolina. The waiver of sovereign immunity therefore is limited to the waiver of immunity for contracts that include the law of North Carolina. To preserve its sovereign immunity Owner may not agree to waive provisions of North Carolina law. A clause requiring liquidated damages or cancellation fees to be paid by the Owner changes the law under which sovereign immunity for breach of contract was waived. Therefore, the Owner, as a political subdivision of North Carolina, cannot agree to a clause providing for liquidated damages or cancellation fees to be paid by Owner.
- b. Owner and Design-Builder mutually waive any claim against each other for consequential damages. Consequential Damages include:
- (i) Damages incurred by Owner for loss of use, income, financing, or business.
  - (ii) Damages incurred by Design-Builder for office expenses, including personnel, loss of financing, profit, income, business, damage to reputation, or any other non-direct damages.

## **10. ENTIRE AGREEMENT**

All of the documents listed, referenced or described in this Agreement, the written Notice-to-Proceed, together with Modifications made or issued in accordance herewith are the Contract Documents, and the work, labor, materials, and completed construction required by the Contract Documents and all parts thereof is the Work. The Contract Documents constitute the entire agreement between Owner and Design-Builder. This Agreement may be amended only by written instrument signed by both parties. Modifications may be evidenced by facsimile signatures. If any provision of the Agreement or Supplementary Conditions shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and date first above written in a number of counterparts, each of which shall, without proof or accounting for other counterparts, be deemed an original contract.

**ORANGE COUNTY:**

**DESIGN-BUILDER:**

By: \_\_\_\_\_  
          , Chair  
Orange County Board of Commissioners

By: \_\_\_\_\_  
*Printed Name and Title*

## EXHIBIT 2 PROFESSIONALS AND LICENSES

### Retained/Hired by Design-Builder

1. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

2. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

3. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

4. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

5. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

Retained/Hired by Owner

1. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

2. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

3. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

4. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship

5. Name  
Address  
License #  
Licensed Jurisdiction  
Responsibilities  
Relationship



## EXHIBIT 1----SUPPLEMENTARY CONDITIONS

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## ARTICLE 1. DEFINITIONS

1.1 Agreement - The Design Build Contract and these Supplementary Conditions.

1.2 AIA - The American Institute of Architects.

1.3 ASTM - The American Society for Testing and Materials.

1.4 Beneficial Occupancy – Use of the Project by the Owner after Substantial Completion, but prior to Final Completion.

1.5 Change Order - A written order to the Design-Builder signed by the Owner authorizing an addition, deletion, or revision in the Work and/or an adjustment in the Contract Price and/or the Contract Time issued after execution of the Design Build Contract. See paragraph 13.1.

1.6 Completion Date - Those dates identified as Completion Dates in the Contract Documents.

1.7 Design Build Contract – The document executed by the Design-Builder and the Owner to formally memorialize their consent to the terms of the Project and referred to as the Agreement.

1.8 Change Directive – A written order to the Design-Builder signed by the Owner directing an addition, deletion, or revision in the Work after execution of the Design Build Contract, in circumstances when the parties have been unable to agree on an adjustment to the Contract Price or the Contract Time, but the Owner requests that the Design-Builder proceed with said addition, deletion, or revision in the Work subject to adjustment of the Contract Price and/or Contract Time under the procedures described herein.

1.9 Design Build Schedule - That schedule prepared by the Design-Builder and submitted for the Owner detailing the schedule for the Work. The Design Build Schedule shall not exceed time limits imposed by the Contract Documents.

1.10 Contract Documents - All of the documents that make up the Agreement, plus the Drawings and Specifications that describe the scope of the Work, plus allowable Modifications to the Contract Documents.

1.11 Contract Price - The total monies payable to the Design-Builder pursuant to the Contract Documents.

1.12 Contract Time - The number of calendar days stated in, or computed from, the Contract Documents for the completion of the Work, or any portion thereof. See, particularly, Article 12 hereof and the Contract Construction Schedule. Time of completion as specified therein is of the essence. The time used and referred to on the Project will be that time which is observed in Raleigh, North Carolina, being Eastern Daylight Savings Time (EDT), Eastern Standard Time (EST), or other as designated by the Designer.

1.13 Contractor(s) - The Contractor(s) shall be any entity performing construction work for the Design-Builder. Any Contractor(s) used or retained by Design-Builder shall be licensed by and in North Carolina to perform such work for which it is used or retained.

1.14 Days - Unless otherwise indicated, the term "days" shall mean consecutive calendar days.

1.15 Daylight Hours - The hours or portions of hours between sunrise and sunset local time.

1.16 Drawings - The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams. A list of the Drawings is contained in the Contract Documents.

1.17 Field Order - A written order issued by the Owner's Representative which clarifies or interprets the Contract Documents or orders minor changes in the Work in accordance with the Contract Documents. See paragraph 13.2.

1.18 Final Completion - The point at which the Design-Builder has completed the Work, with the exception of guaranty and warranty obligations and as determined by the Designer and becomes entitled to final payment upon the recommendation of the Designer and determination by the Owner.

1.19 The words "furnish," "furnish and install," "install," and "provide" or words with similar meanings shall be interpreted, unless otherwise stated, to mean furnish and install complete, in place and ready for service.

1.20 Liquidated Damages – See paragraph 12.18 of these Supplementary Conditions.

1.21 Modification - (A) a written amendment to the Contract Documents signed by the Owner and the Design-Builder and identified therein as such, (B) a Change Order, (C) Change Directive, or (D) a Field Order. A Modification may only be issued after execution of the Agreement.

1.22 Notice of Award - The written notice by the Owner to the Design-Builder that the Design-Builder is the candidate chosen pursuant to the RFQ process and that upon compliance with the conditions precedent to be fulfilled by the Design-Builder within the time specified, the Owner will execute and deliver the Agreement to the Design-Builder.

1.23 Notice - The term "notice" or "written notice" as used herein shall mean and include all written notices, demands, instructions, and claims approvals and disapprovals furnished by the Owner to obtain compliance with the requirements of the Contract Documents, as well as all written notices, demands, instructions and claims furnished by the Design-Builder as required by the Contract Documents. Where notice is required under the terms of the Contract Documents written notice shall always be required, and oral or "constructive" notice shall be insufficient and ineffective as notice. Email or other electronic delivery shall be insufficient and ineffective as notice unless specifically allowed by the Supplementary Conditions or a Modification to the Agreement. Written notice shall be deemed to have been duly served on the date that it is delivered in person to the individual or to a member of the firm, to an officer of the corporation for whom it is intended, to an authorized representative of such individual, firm, or corporation, or on the date that it is mailed by registered or certified mail, return receipt requested, addressed to the last business address of such individual, firm, or corporation known to the person giving the notice. Written notice may also be given by facsimile transmission,

provided that proof of delivery is obtained. In the case of delivery in person, such delivery shall not be effective unless and until a written and signed receipt showing the date and time of delivery is obtained.

1.24 Notice to Proceed - See paragraph 12.3.

1.25 Owner - The Owner is the person or entity designated as such in the Agreement. However, when any notice or request is required by the Contract Documents to be made to Owner and Owner's Authorized Representative Owner refers to the Orange County Manager or authorized designee.

1.26 Owner's Authorized Representative (or "Owner's Representative")- A person, or persons, employed by the Owner and designated from time to time by written notice to the Design-Builder to administer the Contract Documents, and to observe and monitor the Work on behalf of the Owner with authority and responsibility as herein specified.

1.27 Payment Bond – A bond given by a surety to cover any amounts that, because of Design-Builder's default, are not paid to a subcontractor or materialman. The Payment Bond required herein shall be in an amount equal to one hundred percent (100%) of the contract value and shall comply with Article 3 of Chapter 44A of the North Carolina General Statutes.

1.28 Performance Bond – A bond given by a surety to ensure timely performance of a contract and all Work associated therewith. The Performance Bond required herein shall be in an amount equal to one hundred percent (100%) of the contract value and shall comply with Article 3 of Chapter 44A of the North Carolina General Statutes.

1.29 Project - The total design and construction of which the Work performed under the Contract Documents may be the whole or a part.

1.30 Project Manager - That person designated by the Design-Builder in accordance with paragraph 7.2 who shall be in general charge of the Work and its performance and who shall have the authority set forth in the last sentence of paragraph 7.2.

1.31 Request for Information - A written communication from the Design-Builder to the Owner for any interpretation of, or information needed, required, or desired under the Contract Documents. The Owner reserves the right to determine the reasonable format and contents required for a Request for Information. In any Request for Information, the Design-Builder shall state a reasonable date by which a response is necessary in order to avoid delay in progress on the Work and shall make such request sufficiently in advance of such date as to avoid any such delay. The Designer shall respond in writing to the Request for Information by the date stated by the Design-Builder unless he cannot reasonably do so, in which case he shall prior to that date notify the Design-Builder of the date by which he can reasonably respond. The Design-Builder shall not be entitled to any additional time for the completion of the Work or any portion thereof by reason of the Designer's failure to respond if he has not submitted its Request for Information sufficiently in advance to allow the Designer a reasonable time within which to respond.

1.32 Request for Payment - The form, in the form of AIA Document G702 (latest ed.) or other published document approved by Owner, which is to be used by the Design-Builder in requesting progress payments and which is to include a Schedule of Values as required by the

Contract Documents and an affidavit of the Design-Builder that progress payments theretofore received from the Owner on account of the Work have been applied by the Design-Builder to discharge in full all the Design-Builder's obligations incurred in connection with Work covered by all prior applications for payment. See paragraph 19.2.

1.33 Resident Superintendent - That person designated by the Design-Builder in accordance with paragraph 7.2 who has day-to-day responsibility for the prosecution of the Work and the obtaining of proper materials and equipment, and adequate labor and who shall have the authority set forth in the last sentence of paragraph 7.2.

1.34 Schedule of Values – The agreed upon breakdown of the Contract Price which may be required by the Contract Documents, and designated as such. See paragraph 19.1.

1.35 Service Instruments or Instruments of Service refer to representations of the creative work of the Design-Builder and may include drawings, sketches, specifications, or similar items.

1.36 Specifications - That portion of the Contract Documents consisting generally of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.37 Subcontractor - A person, firm, or corporation who has entered into a direct contract with the Design-Builder or Contractor to perform any of the Work at the Project or a person or entity supplying materials to be used or consumed in the completion of the Work.

1.38 Submittal - Shop drawings, product data, samples, and other documents required by the Contract Documents to be submitted by the Design-Builder to the Owner.

1.39 Submittal Register - See paragraph 12.2 of these Supplementary Conditions.

1.40 Substantial Completion - The point at which the Work, and Work by other Contractors on or in connection with the Project, is sufficiently complete, as determined by the Owner's Authorized Representative, in accordance with the Contract Documents that it can be beneficially occupied by the Owner, and the Work can be utilized by the Owner for its intended use, and all necessary permits and permissions for Beneficial Occupancy and utilization having been obtained by the Design-Builder. All operations and maintenance manuals, Owner training, and as-built drawings must be submitted prior to Substantial Completion being achieved.

1.41 Sub-subcontractor - A person or entity that has a direct or indirect contract with a Subcontractor to perform any of the Work at the Project or a person or entity supplying materials to be used or consumed in the completion of the Work.

1.42 Work - The construction and services required by the Contract Documents, including all labor, materials, equipment, and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations.

1.43 All references in the Contract Documents to the masculine shall be interpreted as including the feminine or neuter and all references in the Contract Documents to the singular or the plural shall be interpreted as including the other, as may be appropriate in the reasonable interpretation of the Contract Documents.

## **ARTICLE 2. CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS**

2.1 It is the intent of the Specifications and Drawings and other Contract Documents to describe a complete Project in accordance with the Contract Documents.

2.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Design-Builder finds a conflict, error, or discrepancy in the Contract Documents, the Design-Builder shall notify the Owner's Authorized Representative in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given preference in the following order: Design Build Contract, Modifications, Addenda, Supplementary Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which, so applied, have a well-known technical trade meaning shall be deemed to refer to such meaning and to incorporate any recognized standards which are a part of such meaning if not otherwise defined within the Contract Documents.

2.2.1 The Design-Build Documents shall not be construed to create a contractual relationship of any kind: (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria.

2.3 Miscellaneous items, accessories and work which are not specifically mentioned, but which are essential to produce a complete and properly operating installation, or useable structure or plant providing the indicated function shall be furnished and installed without change in the Contract Price. Such miscellaneous items and accessories shall be of the same quality standards, including material, style, finish, strength, class, weight and other applicable characteristics, as specified for the major component of which the miscellaneous item or accessory is an essential part, and shall be approved by the Owner's Authorized Representative before installation. This requirement is not intended to include major components not covered by or inferable from the Contract Documents.

2.4 The Work of all trades under the Contract Documents shall be coordinated by the Design-Builder in such a manner as to obtain the best workmanship possible for the entire Project and all components of the Work shall be installed or erected in accordance with the best practices of the particular trade.

2.5 The Design-Builder shall fully complete the Work and shall be responsible for all of the Work under the Contract Documents to which the Design Build Contract applies. If the Design-Builder is prevented from doing so by any limitation of the Contract Documents, the Design-Builder shall immediately give notice thereof to the Owner's Authorized Representative in writing.

2.6 Standard specifications or manufacturers' literature, when referenced, shall be of the latest revision or printing unless otherwise stated and is intended to establish the minimum requirements acceptable.

2.7 For those materials specified without the use of brand names, the Design-Builder shall submit within thirty (30) days after its receiving the Design Build Contract for signatures, any product that meets the express requirements of the Specifications. Such Submittal shall include manufacturer's data, test reports, performance data and certifications, samples, erection details, and other applicable information as required to permit determination by the Owner's Authorized Representative whether such proposed products are suitable. The Owner's Authorized Representative shall be the sole judge as to the suitability of any proposed product. The burden of proof of quality rests with the Design-Builder.

2.8 The Design-Builder is required to examine and read the complete set of Contract Documents for information concerning the Work. No allowance will be made for the Design-Builder's failure to become familiar with the complete set of project documents.

2.9 Design-Builder's requests for clarification or information shall clearly define the cause(s) of Design-Builder's request and, as appropriate, shall include Design-Builder's interpretation and Design-Builder's proposed solution.

### **ARTICLE 3. FAMILIARITY WITH WORK, CONDITIONS AND LAWS**

3.1 The Design-Builder has investigated prior to responding and is satisfied with all conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, or similar physical conditions at the Project site, and the character of equipment and facilities needed prior to and during prosecution of the Work. The Design-Builder is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from inspection of the Project site, including all exploratory work done by the Owner, as well as from information presented by the Contract Documents, or any other information made available to the Design-Builder prior to its response. Any failure by the Design-Builder to become acquainted with the available information shall not relieve the Design-Builder from the responsibility for estimating properly the difficulty or cost of successfully performing the Work.

3.2 The Design-Builder shall be entitled to make all inferences from the Contract Documents that would reasonably be made by a Design-Builder having knowledge and experience with similar work; however, the Design-Builder shall not be entitled to infer from the Contract Documents any fact or condition which would not be inferred by a Design-Builder having knowledge and experience with similar work and the Design-Builder shall be required to obtain independently such other information as a knowledgeable and experienced Design-Builder would prudently obtain in order to evaluate any such condition.

3.3 The Design-Builder specifically acknowledges familiarity with all Federal, State, and local laws, ordinances, rules, and regulations which may in any manner affect those engaged or employed in the Work, or the materials or equipment in or about the Work, or in any way affect the conduct of the Work and agrees that the Design-Builder and the Design-Builder's employees, subcontractors, and suppliers will, at all times, have knowledge of and comply with

same. If the Design-Builder shall discover any provisions in the Contract Documents which are contrary to or inconsistent with any such law, ordinance, rule, or regulation, the Design-Builder shall immediately give notice thereof to the Owner's Authorized Representative in writing, identifying any items of Work affected, and the Design-Builder shall not proceed until the Design-Builder has received written direction from the Owner's Authorized Representative with respect to these items. If the Design-Builder performs contrary to or inconsistently with any such law, ordinance, rule, or regulation without such written direction, the Design-Builder shall bear all costs which are a consequence of such performance.

3.4 At times selected by the Owner's Authorized Representative after execution by the Design-Builder of the Construction Agreement, a pre-construction conference shall be scheduled and conducted for the benefit of the Project.

#### **ARTICLE 4. BONDS**

4.1 A Performance Bond in the full amount of the Contract Price shall be required of the Design-Builder to guarantee the faithful performance of the Work in compliance with the Contract Documents, in such form as may be required by applicable state and local law and approved by the Owner. The Performance Bond shall be dated the same date as the Design Build Contract and must be accompanied by a current copy of the power of attorney for the attorney-in-fact executing such bond on behalf of a surety company licensed to do business in the State of North Carolina. In the event the bond is found to be void or that the surety has insufficient funds to insure faithful completion of the Project Owner may require Design-Builder to obtain new or additional bonds.

4.2 A Payment Bond in the full amount of the Contract Price shall be required of the Design-Builder to guarantee the payment of all labor and material costs or claims in connection with compliance with the Contract. The Payment Bond shall be in such form as may be required by law and approved by the Owner. Said bond shall be dated and executed in the same manner as the Performance Bond in paragraph 4.1. In the event the bond is found to be void or that the surety has insufficient funds to insure faithful completion of the Project and related payment Owner may require Design-Builder to obtain new or additional bonds.

#### **ARTICLE 5. INSURANCE AND INDEMNITY**

##### **5.1 DESIGN-BUILDER PROVIDED INSURANCE**

The Design-Builder shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by the Agreement to protect the Design-Builder and the Owner from claims for damages for bodily injury, including death, and from claims for property damage which may arise from the Design-Builder's or its representatives', consultants', Subcontractors', agents', or employees' operations related to the Project and Work. Such insurance shall be of the kinds and have limits of liability and coverages not less than the minimum limits hereinafter specified or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverages.

The following requirements shall in no way be construed to limit or eliminate the liability of the Design-Builder, which arises from performance of Work under the Agreement. The Design-Builder is strictly responsible for any losses, claims, and costs of any kind which exceed the Design-Builder's limits of liability, or which may be outside the coverage scope of the policies.

The insurance specified shall be provided by an insurer approved by the Owner, authorized to do such business in the State of North Carolina, and on terms approved by the Owner. Insurance companies utilized shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. If the insurer has a Best Rating less than A- and Class VII, the Design-Builder must receive specific written approval from the Owner prior to proceeding with any Work under the Agreement.

All agents and brokers shall hold valid licenses from the State of North Carolina. Before commencing mobilization to the Project site and not later than seven (7) days after the receipt of the Design Build Contract by the Design-Builder for signatures, the Design-Builder shall furnish to the Owner a certificate or certificates of insurance in a form satisfactory to the Owner. Upon request of the Owner, the Design-Builder shall provide the Owner with certified copies of the insurance policies required by this Article, including without limitation declaration pages, conditions, exclusions and endorsements, and confirmation that each policy premium has been paid for the required term of the Agreement. A copy of the umbrella policy shall be provided to the Orange County Risk Manager. Certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance policies shall provide, as evidenced by Certificates of Insurance, that the insurance shall not be canceled, reduced, restricted, or changed in any way without at least thirty (30) days prior written notice to the Owner.

With regard to expiration, cancellation, reduction, restriction, or any other change, certificates shall state: "Should any of the following described policies be canceled before expiration date or be due to expire within thirty (30) days, the insurer shall mail thirty (30) days prior written notice to named certificate holder." In the event of any such cancellation, non-renewal, reduction, restriction, or change in any insurance, the Design-Builder is obligated to replace such insurance within seven (7) days without a gap in coverage and file accordingly such notice with the Owner, and other interested parties. Failing immediate receipt of evidence of such replacement of insurance the Owner reserves the right to procure such insurance as the Owner considers desirable and the Design-Builder shall pay or reimburse the cost of the premium in respect thereof. It is expressly provided, however, that any action or inaction on the part of the Owner in this respect shall in no way change or reduce the Design-Builder's responsibilities and liabilities under the Agreement. Self-funded, policy fronting, or other non-risk transfer insurance mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of the Agreement, justifying termination for default.

The Design-Builder shall name the Owner as additional insureds under all its insurance contracts (except workers' compensation) with respect to and including without limitation liability arising out of activities performed by or on behalf of the Design-Builder, products and completed operations of the Design-Builder, and automobiles owned, hired, leased, or borrowed by the Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

For any claims related to this Project, the Design-Builder's insurance or self-insurance shall be primary and noncontributory with respect to the Owner's insurance. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the Design-Builder's insurance. All policies of insurance shall contain a clause waiving rights of subrogation against the Owner, unless the Owner approves otherwise in writing. Limits of

coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner.

The Design-Builder shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under the Agreement. In addition, the Design-Builder shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required herein, or not covered as a result of a normal policy exclusion or that falls within the self-insured retention if Design-Builder is self-insured. The Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The claim provisions in the Design-Builder's insurance policies must specifically state the insurance company or Design-Builder's Third Party Administrator, if self-insured, has both the right and duty to adjust a claim and provide defense. The policies shall not contain any provision or definition which would serve to exclude or eliminate from coverage third party claims, including exclusions of claims for bodily or other injury to shareholders, partners, officers, directors, or employees of the insured, the premises owner, real estate manager, or the insured's Subcontractor, or any family relative of such persons.

If the policies contain any warranty stating that coverage is null and void (or words to that effect) if the Design-Builder does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the Design-Builder's willful or intentional noncompliance with applicable government regulations. Any failure by any person to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees. The insolvency or bankruptcy of the Insured or of the Insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken. Failure to comply with these requirements shall be a material breach of the Agreement justifying immediate termination for default.

#### 5.1.1 Worker's Compensation and Employers' Liability Insurance

The Design-Builder and its Subcontractors shall procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under the Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under the Agreement whether performed by the Design-Builder or by its Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the Design-Builder and its Subcontractors shall maintain employers' liability insurance in an amount, form, company, and agency satisfactory to the State of North Carolina and the Owner for the benefit of all employees not protected by Workers' Compensation Laws and covering all operations under the Agreement whether performed by the Design-Builder or by its Subcontractors.

The Design-Builder shall pay such assessments as will protect the Design-Builder and the Owner from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the Certificate of Insurance. Coverage under this section shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

Coverage A: Statutory, State of North Carolina  
Employers' Liability: Each Accident \$1,000,000

Disease - Policy Limit \$1,000,000  
 Disease - Each Employee \$1,000,000

Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the Owner as well as other endorsements that may be required by applicable jurisdictions.

#### 5.1.2 Automobile Liability Insurance

The Design-Builder shall procure and maintain automobile insurance against liability for bodily injury and property damage as described below, that may arise with respect to the Work being performed under the Agreement, and as will provide protection from claims which may arise out of or result from the Design-Builder's performance of the Work and the Design-Builder's other obligations under the Agreement, whether such performance of the Work is by the Design-Builder, by any representative or Subcontractor, by anyone, both officially and personally, directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

This policy of insurance shall carry the following minimum Limit of Liability: Combined Single Limit \$1,000,000.

The policy of insurance shall contain or be endorsed to include the following:

- a) owned, hired, and non-owned automobile liability.
- b) If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional noncompliance with applicable government regulations.

Any failure by any party to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees. No subcontracting of waste hauling shall be permitted without prior, written approval of the Owner.

#### 5.1.3 General Liability

This policy must be written on an Occurrence basis, with the following minimum Limits of Liability:

General Aggregate per project \$2,000,000.00  
 Products/Completed Operations Aggregate \$2,000,000.00  
 Bodily Injury and Property Damage csl/each occurrence \$1,000,000.00  
 Personal Injury and Advertising Injury \$2,000,000.00

The policy of insurance shall contain or be endorsed to include the following:

- a) Blanket Contractual Liability covering Design-Builder's indemnification obligations under the Agreement, in accordance with ISO policy form CG 00 01. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.
- b) Premises/Operations Liability.

- c) Explosion, collapse, and underground fault.
- d) Independent Design-Builders and Independent Subcontractors coverage.
- e) Broad Form Property Damage.
- f) Personal Injury
- g) Cross Liability/Severability of Interest clause.
- h) Employer's Stop-Gap Liability endorsement, if applicable.
- i) Amendment of the Pollution Exclusion Endorsement to allow coverage for bodily injury or property damage caused by heat, smoke, or fumes from a hostile fire.
- j) Designated General Aggregate Limit Endorsement if required by the Contract Documents.

Coverage shall remain continuously in effect and without interruption for at least 6 years from the date of the Notice of Award and shall include coverage for exposures arising from operations that have been completed. The Design-Builder shall furnish the Owner and each other additional insured listed in the Agreement to whom the Certificates have been issued, evidence satisfactory to the Owner of continuation of such insurance at the date of Preliminary Acceptance and each year thereafter.

#### 5.1.4 Pollution Legal Liability (PLL)

Pollution Legal Liability coverage will be provided if required by the Supplementary Conditions.

#### 5.1.5 Umbrella Liability

The Design-Builder shall maintain an occurrence basis (as distinguished from a "claims made" basis) Umbrella Liability policy (true follow form) over the underlying General Liability, Automobile Liability, and Employer's Liability, with the following limits of liability: Each Occurrence \$3,000,000, Aggregate \$3,000,000.

On a fully insured basis such coverage will be subject to a deductible no greater than \$10,000 per occurrence where coverage is not provided by the underlying insurance, but is provided by the Umbrella Liability policy.

The Design-Builder may use any combination of primary and umbrella insurance policies to comply with the insurance requirements, provided the resulting insurance is equivalent to the insurance stated herein.

All Occupational Disease exclusions must be deleted. Any Pollution Exclusion must be amended to allow coverage for bodily injury or property damage caused by spill, upset, overturn, heat, smoke, or fumes from a hostile fire.

#### 5.1.6 Property Insurance

The Design-Builder shall purchase All Risk Property Insurance on a Completed Value Form in the names of the Owner, Design-Builder, Subcontractors, and sub-subcontractors as their interests may appear with limits as follows:

- a) Full insurance value of the Work, or
- b) Amount equal to the Contract Price for the Work, whichever is higher.

The Design-Builder is responsible for all physical damage to owned or rented machinery, tools, equipment, forms, and other items owned, rented or used by the Design-Builder and/or Subcontractor(s) in the performance of the Work. The insurance coverage evidencing such shall include a waiver of subrogation in favor of the Owner.

#### 5.1.7 Valuable Papers and Records

The Design-Builder shall provide valuable papers and records insurance with coverage in an amount commensurate with project scope and set forth in the Supplementary Conditions.

#### 5.1.8 Claims

The Design-Builder shall notify the Owner within twenty-four (24) hours of any claims or alleged claims received by the Design-Builder covered by any of the policies of insurance required in the Agreement. The Design-Builder shall provide a written copy of the claim or alleged claim to the Owner within three (3) days of the Design-Builder's receipt of the claim or alleged claim. If a claim is settled to the satisfaction of the claimant, the Design-Builder shall submit a copy of the claimant's release to the Owner. If a claim or alleged claim is rejected by the Design-Builder and/or its insurance company, the Design-Builder shall immediately report this fact to the Owner.

Should thirty (30) days elapse after the claim or alleged claim has been received by the Design-Builder, and the Design-Builder is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim. Without limiting the foregoing, the Design-Builder shall notify in writing the county risk manager of any paid or incurred claims which may impair annual aggregate or general liability.

#### 5.1.9 Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: a) the insurer shall reduce to a maximum of \$250,000 or eliminate such deductibles or self-insured retentions with respect to the Owner, or (b) the Design-Builder shall provide evidence of collateral provided to insurers or procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the deductible or self-insured retention amount. Any self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits or liability.

#### 5.1.10 Subcontractors

The Design-Builder shall include all Subcontractors as Insureds under its policies, or shall furnish separate certificates, policies, and endorsements for each Subcontractor the Design-Builder intends to use. If a Subcontractor does not take out insurance in its own name and the Design-Builder wishes to provide insurance protection for such Subcontractor and such Subcontractor's employees, the Design-Builder shall either (a) procure appropriate policies in the name of the Subcontractor, or (b) cause a rider or riders to be attached to the Design-Builder's policies which shall identify the Subcontractor thereby covered; provided, however, in the case of the latter option, such a rider need not be attached to the Design-Builder's workers' compensation policy if such policy by its terms is sufficiently broad to cover the employees of all

Subcontractors performing Work under the Contract Documents. Except as otherwise approved by the Owner in writing, Limits of Liability and coverage scope must be at a minimum as stringent as required of the Design-Builder by the Contract Documents. All Work performed for the Design-Builder by any Subcontractor shall be pursuant to an appropriate agreement between the Design-Builder and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance as provided herein and which shall waive any and all potential claims by any Subcontractor or Sub-Subcontractor against Owner. Insurance monies received from any loss shall be divided as the respective interest of the parties affected shall appear.

## 5.2 OWNER CONTROLLED PROJECT SPECIFIC INSURANCE

In the event the Owner elects to purchase project-specific insurance affording coverage to the Design-Builder and Subcontractors, the terms and conditions of such coverage shall be set forth in the Supplementary Conditions.

## 5.3 INDEMNIFICATION

The Design-Builder, to the fullest extent not expressly prohibited by law, shall defend, indemnify, and save harmless the Owner and its respective officials, officers, employees, and agents from and against any and all liabilities (foreseeable or unforeseeable), penalties, fines, liens, forfeitures, demands, claims, causes of actions, suits, judgments, and costs and expenses incidental thereto, (including, without limitation, amounts paid pursuant to investigations, defense or settlements, and reasonable attorneys' fees), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of but not limited to:

- a) bodily injury (including sickness, disease, or death) to any person including but not limited to, the Design-Builder's employees or its representatives while on the site of the Project; or
- b) actual or alleged damage (including loss of use) to any property (public or private, including the Project or other property on the Project site); or
- c) contamination of or adverse effects on the environment arising directly or indirectly out of or in connection with the performance of the Work, including but not limited to any hazardous or toxic waste, substance, or constituent of any substance subject to regulation under CERCLA, RCRA, TSCA, and other Federal and state authorities that is spilled, released, threatening to release, or disposed of or destroyed by the Design-Builder or its Subcontractors on or off the site of the Project or while in transport to or from the site; or
- d) any violation or alleged violation of laws and regulations, arising out of or in any way connected with the Work, caused in whole or in part by the Design-Builder, any Subcontractor or supplier or any representatives of the Design-Builder. The Design-Builder shall not be required to indemnify the Owner against losses resulting from a breach of the Agreement by the Owner or its agents, or resulting from negligence, misconduct or violation of laws on the part of the Owner or its agents.
- e) upon completion of the Work the Design-Builder shall execute an affidavit, indemnification, and release stating there are no unpaid debts for any work that has been done or materials that have been furnished to the Project prior to and as of the date of substantial completion and further stating that Design-Builder shall indemnify, save and protect Owner and Owner's lender,

if any, harmless from and against any and all claims, liabilities, liens, losses, damages, causes of action, and expenses (including court costs and reasonable attorney's fees related thereto) arising out of, in connection with, or resulting from any such claims, liabilities, liens, losses, damages, causes of action, or expenses. Such affidavit, indemnification, and release shall be in a form and substance acceptable to Owner. By executing the Agreement Design-Builder acknowledges the receipt of adequate consideration in return for said release.

f) The Design-Builder further agrees to obtain, maintain, and pay for such liability insurance coverages and endorsements as will insure the provisions of this paragraph 5.3. Furthermore, the Design-Builder agrees to be liable for and to indemnify and reimburse the Owner for all legal fees and disbursements paid or incurred to enforce the provisions of this paragraph. The indemnification obligations under this paragraph shall not be limited in any way by the amount or type of damages, compensation or benefits payable under worker's compensation acts, disability benefit acts, other employment benefit acts, or the amount of insurance carried or recovered.

g) The Owner acknowledges that hazardous or toxic waste, material, chemicals, compounds or substances, or other environmental hazards, contamination or pollution, (referred to hereinafter as "environmental hazards") may be present at the Project site that were not created, generated, or released at the Project site by the Design-Builder or its Subcontractors, agents or employees, acting alone or in concert with others. Unless the remediation, abatement or handling of such environmental hazards is part of the scope of the Work under the Agreement, then upon the discovery of such environmental hazards, the Design-Builder shall immediately, and in no event more than three (3) days later, give notice to the Owner of the environmental hazards before they are disturbed. The Owner and the Owner's Authorized Representative shall thereupon promptly investigate the environmental hazards, and make such changes in the Drawings and/or Specifications as they may find necessary to abate, remediate, isolate or handle the environmental hazards. Any increase or decrease in the Contract Price or the Contract Time resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. It is agreed that the Design-Builder shall have no liability under the Agreement for any environmental hazards existing prior to the date that Work commences under the Agreement unless the Design-Builder or its Subcontractors, agents or employees, acting alone or in concert with others, by their own negligence or misconduct, release or expose the Owner or third parties to the environmental hazards. The provisions of this paragraph shall survive the termination or cancellation or completion of the Agreement.

#### 5.5 NON-LIMITATION

The indemnification provisions of this Article 5 shall be supplemented by and in no way limited by any additional indemnification requirements of the Contract Documents. In the event of a conflict among the terms of any indemnification provision among the Contract Documents the provision requiring the greater indemnification of Owner shall control.

### **ARTICLE 6. OTHER RECORD DOCUMENTS AND SUBMITTALS**

6.1 The Design-Builder shall submit to the Owner's Authorized Representative all Submittals required by the Contract Documents. The Design-Builder shall submit at least three (3) reproducible prints of all design drawings, specifications,<sup>1</sup> and shop drawings. The Design-

Builder shall submit samples in quantities required by the Contract Documents. The Design-Builder shall submit product data in at least five (5) copies. All shop drawings shall be reviewed by the Design-Builder and shall bear the Design-Builder's stamp of approval before being forwarded to the Owner's Authorized Representative. Submittals shall be submitted in such time as to cause no delay to the Work or any part thereof and in accordance with the Contract Construction Schedule and Submittal Register. The Owner's Authorized Representative shall review the submittal with reasonable promptness, noting desired corrections, if any. The Owner's Authorized Representative shall retain two (2) copies of the submittal and shall return the balance of the reviewed submittal to the Design-Builder for action. The Design-Builder shall furnish any corrected submittal to the Owner's Authorized Representative. The Owner's Authorized Representative shall retain two (2) copies of the corrected submittal and will return the balance of the reviewed submittal to the Design-Builder. All substitutions shall be in accordance with the Contract Documents.

The Design-Builder acknowledges that the processing of drawings and other submittals is directly impacted by the clarity, completeness, and accuracy of said documents and that it is the Design-Builder's responsibility to (i) review and coordinate each submittal with all other related or affected Work and (ii) approve each submittal before submitting same to the Owner's Authorized Representative for approval.

6.2 No substitutions and no deviations from any requirement of the Contract Documents shall be deemed allowed unless the Design-Builder has specifically informed the Owner in writing of such deviations at the time of submittal and the Owner has given written and specific approval to the substitutions or deviations. In proposing a deviation or substitution the Design-Builder warrants to the Owner, notwithstanding any review, allowance or approval by the Owner's Authorized Representative or the Owner that the deviation or substitution is at least equal to or better in quality and for the purpose intended, and that Design-Builder shall not by reason of any such review, allowance or approval be relieved from any obligation or responsibility contained in the Contract Documents.

6.3 Review of submittal by the Owner's Authorized Representative shall not be construed as relieving the Design-Builder from responsibility for compliance with terms or designs of the Contract Documents nor from responsibility for errors of any sort in the submittal.

6.4 The Design-Builder shall keep one record copy marked "As-Built" of all Specifications, Drawings, Addenda, Modifications, and Submittals at the Project in good order and annotated at least monthly to show all changes made during the construction process. Such monthly annotations and their approval by the Owner's Authorized Representative shall be a condition precedent to approval by the Owner's Authorized Representative of each monthly Request for Payment. Said record copy shall be stored at the Project and fully protected from damage by fire or other hazard. This record copy shall be available to the Owner's Authorized Representative for inspection at all times and shall be delivered to the Owner's Authorized Representative for the Owner's purposes prior to the Owner's Authorized Representative's certifying Substantial Completion of the Work.

6.5 At completion of the Project and before Final Payment, the Design-Builder shall assemble and deliver to the Owner one complete set of all as-built drawings and one complete set of all approved submittals, product data, and samples which were reviewed by the Owner's Authorized Representative. These drawings and submittals shall be on paper, or in electronic or

other media if required by the Supplementary Conditions. These drawings and submittals shall be categorized and packaged as directed by the Owner's Authorized Representative.

## **ARTICLE 7. DESIGN-BUILDER**

7.1 The Design-Builder shall supervise and direct the Work efficiently and with the Design-Builder's best skill and attention. Except as may be set forth specifically in the Contract Documents, the Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs in connection with the Work. The Design-Builder shall be responsible to see that the finished Work complies accurately with the Contract Documents.

7.2 The Design-Builder shall appoint a Project Manager and shall keep on the Project at all times during its progress a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Owner except under extraordinary circumstances, in which event immediate written notice shall be given to the Owner's Authorized Representative. The Project Manager and the Resident Superintendent may be the same person or different persons. At any time, the Owner, in its sole and absolute discretion, may require the Design-Builder to replace the Project Manager or Resident Superintendent with an experienced and competent person or persons upon seven (7) days written notice from the Owner to the Design-Builder. Such replacement shall be at the Design-Builder's expense and at no cost to the Owner. Both the Project Manager and the Resident Superintendent shall have authority to act on behalf of the Design-Builder, and instructions, directions or notices given to either of them shall be as binding as if given to the Design-Builder.

7.3 The Design-Builder shall provide sufficient competent and suitably qualified personnel, equipment, and supplies to lay out the Work and perform construction as required by the Contract Documents. The Design-Builder will at all times maintain good discipline and order at the site, and will comply with all applicable OSHA standards.

(a) Any person employed by the Design-Builder, any Subcontractor, or any sub-subcontractor who, in the sole opinion of the Owner or Owner's Authorized Representative, does not perform its Work in a proper and skillful manner, commits unlawful acts on the Project or is intemperate or disorderly shall, at the written request of the Owner or Owner's Authorized Representative, be removed forthwith by the Design-Builder, Subcontractor, or sub-subcontractor employing such person without cost to the Owner, and shall not be employed again in any portion of the Work without the written approval of the Owner's Authorized Representative.

(b) Should the Design-Builder fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work within three (3) days after written order, the Owner may withhold further payment by written notice until compliance with such order.

7.4 If, in the opinion of the Owner's Authorized Representative, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, he shall be replaced by the Design-Builder with no increase in the Contract Price if and when directed by the Owner's Authorized Representative in writing.

7.5 The Design-Builder shall furnish and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, light, heat, and all other facilities and incidentals necessary for the execution, maintenance, initial operation, and completion of the Work, other than those specifically excluded by the Contract Documents and to be furnished by the Owner or others. When use or storage of hazardous materials or equipment or methods of more than ordinary risk are necessary in accomplishing the Work, the Design-Builder shall give the Owner's Authorized Representative reasonable advance notice. Design-Builder shall not pay in advance for any material, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, light, heat or other facilities and incidentals without the prior written consent of Owner. Unless otherwise provided herein Design-Builder shall store all supplies, materials, tools, and equipment on the Project site.

(a) If any materials are to be furnished or installed by the Owner or others under the terms of the Contract Documents, said materials shall be made available to the Design-Builder at the location(s) specified in the Contract Documents. All costs of handling, transportation from the specified location to the Project, storage, and installing of Owner-furnished materials shall be included in the Contract Price. The Design-Builder shall be responsible for any demurrage, damage, loss, or other deficiencies which may occur during the Design-Builder's handling, storage, or use of such Owner-furnished material. The Owner shall deduct from any monies due or to become due the Design-Builder any cost incurred by the Owner in making good any such damage, loss, or efficiency.

(i) Design-Builder shall be responsible for unloading any Owner-provided materials and for coordinating delivery of same.

(ii) In the event Owner fails to timely supply needed materials and said failure directly results in a delay in the Work's critical path the sole remedy for Design-Builder shall be a day for day extension of time.

(b) All equipment which is proposed to be used in the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed Work, adjacent property, or existing facilities shall result from its use.

(c) When the methods and equipment to be used by the Design-Builder accomplishing the Work are not prescribed in the Contract Documents, the Design-Builder shall be free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the Contract Documents and the prevailing local standard.

(d) When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Owner's Authorized Representative. If the Design-Builder desires to use a method or type of equipment other than specified in the Contract Documents, the Design-Builder may request authority from the Owner's Authorized Representative to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it shall be on the condition that the Design-Builder shall be fully responsible for producing Work in conformity with the requirements of the Contract Documents. If, after trial use of the substituted methods or equipment, the Owner's Authorized Representative determines that the Work produced does not meet the requirements of the Contract Documents, the Design-Builder shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and equipment at

no additional cost to the Owner. The Design-Builder shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the Owner's Authorized Representative may direct. No change in the Contract Price or in Contract Time shall be made as a result of authorizing a change in methods or equipment under this paragraph.

7.6 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the Project site in their original packages or containers with seals unbroken and labels intact.

Materials shall be so stored as to assure the preservation of their quantity, quality, and fitness for the Work. Stored materials, even though approved before storage, may again be inspected by the Owner's Authorized Representative prior to their use in the Work and shall meet the requirements of the Contract Documents at the time they are incorporated into the Work. Stored materials shall be located so as to facilitate their prompt inspection. The Design-Builder shall coordinate the storage of all materials with the Owner's Authorized Representative. Materials to be stored at the Project or on the Owner's property shall not create an obstruction to the Owner's reasonable activities. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. The Design-Builder shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Design-Builder shall furnish the Owner a copy of the property owner's permission. All storage sites on private or the Owner's property shall be restored to their original condition by the Design-Builder at its entire expense, except as otherwise agreed to (in writing) by the owner or lessee of the property.

7.7 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processor, except as otherwise provided in the Contract Documents.

7.8 The Design-Builder will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that the Design-Builder is responsible for the acts and omissions of the Design-Builder's own employees. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and the Owner, or any obligation on the part of the Owner to pay or see to the payment of any money due any such Subcontractor or material furnisher except as may otherwise be required by law. The Owner's Authorized Representative may furnish to any Subcontractor or supplier, to the extent practicable, evidence of amounts paid to the Design-Builder on account of specific Work done.

7.9 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Design-Builder in dividing the Work among Subcontractors.

7.10 The Design-Builder agrees to bind specifically every Subcontractor to the terms and conditions of the Contract Documents for the benefit of the Owner and to furnish written evidence thereof to the Owner's Authorized Representative within seven (7) days after written request by the Owner.

7.11 The Design-Builder shall attend job progress conferences and all other meetings or conferences as directed by the Owner's Authorized Representative. The Design-Builder shall be

represented at these job progress conferences by a representative having the authority of the Project Manager and by such other representatives as the Owner's Authorized Representative may direct. Job progress conferences shall be open to Subcontractors, suppliers and any others who may contribute beneficially toward maintaining required job progress, and such personnel shall be encouraged by the Design-Builder to attend. It shall be the principal purpose of job progress conferences to effect coordination, cooperation, and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Work and the Project by the specified Completion Dates. The Design-Builder shall be prepared to assess progress of the Work as required in the Contract Documents and to recommend remedial measures for correction of progress as may be appropriate. The Owner's Authorized Representative shall preside as chair and arrange for minutes to be taken and circulated.

(a) In the event that the prosecution of the Work is discontinued for any reason, the Design-Builder shall notify the Owner's Authorized Representative at least forty-eight (48) hours in advance of resuming operations.

(b) Should the terms of the Contract Documents require completion of one or more portions of the Work for the Beneficial Occupancy of the Owner prior to completion of the entire Work, the Design-Builder shall complete such portion(s) of the Work on or before the date specified. Such completion shall include the obtaining of all government or other permits, permission, and/or approvals necessary to occupancy. The Design-Builder shall independently estimate the difficulties involved in arranging the Work to permit such Beneficial Occupancy and shall not claim any additional compensation or time extension by reason of any delay or increased cost due to completing such portion(s) of the Work. The Owner's possession and use of such portion(s) of the Work shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. The Owner shall be responsible for the security, maintenance, utilities, and insurance of all portions of the Work completed and beneficially occupied by the Owner.

7.12 The Design-Builder shall pay all license fees and royalties, and assume all costs incident to the use of any invention, design process, or device which is the subject of patent rights or copyrights held by others, except for inventions, design processes, or devices specified by the Owner's Authorized Representative in the Contract Documents. The Design-Builder shall indemnify and hold harmless the Owner, its agents, officers, and employees, from and against all claims, damages, losses and expenses, including attorney's fees and costs of defense, arising out of any infringement or alleged infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any actual or alleged infringement of such rights.

7.13 The Design-Builder shall secure and pay for all permits, including without limitation construction permits and licenses, and will pay all governmental charges and inspection fees necessary for the prosecution of the Work.

7.14 The Design-Builder shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work and shall protect and indemnify the Owner and the Owner's officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Design-Builder or by the Design-Builder's employees, Subcontractors, sub-subcontractors, or their employees.

7.15 The Design-Builder shall be responsible for the entire site of the Project (except those under the Beneficial Occupancy of the Owner) and for its reasonable and necessary protection and security, as required by laws or ordinances governing such conditions, or by custom or sound construction practices, and shall share such responsibilities as may be agreed upon among them, or in the absence of such agreement, as may be directed by the Contract Documents or Owner's Authorized Representative. The Design-Builder shall be responsible for any damage to the Owner's property, or that of others, by the Design-Builder or the Design-Builder's employees, Subcontractors, sub-subcontractors, or their employees or agents, and shall make good such damages. The Design-Builder shall be responsible for and pay for any such claims against the Owner.

7.16 The Design-Builder shall protect all landscaping designated to remain in the vicinity of the operations and barricade all walks, roads, and areas as necessary to keep the public away from the construction.

7.17 The Design-Builder shall provide cover and/or protect all portions of the Work and provide all materials necessary to protect the Work whether performed by the Design-Builder or any of the Subcontractors or sub-subcontractors. Any Work damaged through the lack of proper protection, or from any other cause, shall be repaired or replaced without extra cost to the Owner or extension to the Contract Time.

(a) The Design-Builder shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective effort prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. All costs of maintenance shall be included in the Contract Price and the Design-Builder will not be paid an additional amount for such effort. Should the Owner's Authorized Representative observe that the Design-Builder at any time has failed to maintain the Work as provided herein, the Owner's Authorized Representative may immediately notify the Design-Builder of such non-compliance. Such notification shall specify a reasonable time within which the Design-Builder shall be required to remedy such unsatisfactory maintenance condition. Should the Design-Builder fail to properly respond to the Owner's Authorized Representative's notification, the Owner may, at the Design-Builder's expense, take such action as it may deem appropriate to remedy the defective maintenance, including suspension of the Design-Builder's Work or any part thereof. Any such expense incurred by the Owner shall be deducted from monies due or to become due the Design-Builder.

(b) Parking lots, streets, and walks connecting to the Project area shall be protected by the Design-Builder from deposits of mud, sand, stone, litter, or debris in any form. Pedestrian traffic areas around the construction limits must be maintained in a clean and safe condition at all times with required barricades and covered walkways. When excavation or other operations outside the Project limits is required, the Design-Builder shall, immediately following that work, return the area to its original condition.

(c) All catch basins and storm drain lines in the vicinity of the Project site shall be protected at all times from entry of dirt, rubble, debris and/or environmental contaminants. The residue from the cleaning of trucks, wheelbarrows, concrete buggies, etc. must be prevented from entering the drainage system, and if cleaning is done, the residue must be contained and removed from the Project site with other refuse.

7.18 No burning of refuse or debris shall be allowed inside, adjacent to, or around the Project during the course of construction without written authority from authorities having jurisdiction and the Owner.

7.19 The Design-Builder shall provide for and maintain necessary safety measures and safety programs for the protection of all persons involved with the Work. Such measures and programs shall include the requirements of the most current edition of the CAGC Safety and Health Manual [or the AGC Accident Prevention Manual in Construction], or equivalent requirements, and shall fully comply with all Federal, State, and local laws, rules, regulations, and building code requirements relating to the prevention of accidents or injuries to persons on or about the location of the Work.

All trenches, excavations, or other hazards in the vicinity of the Work shall be well barricaded, and properly lighted at night. When Work requires closing of an area normally used by the Owner or the public, the Design-Builder shall furnish, erect, and maintain temporary barricades, and properly light the area. The Design-Builder shall comply with any directions and public authorities in this respect.

7.20 The Design-Builder shall designate a responsible officer or employee as safety inspector, whose duties shall include accident prevention on the Project as well as implementation of the Design-Builder's safety measures and safety programs on the Project. The name of the safety inspector shall be made known to the Owner's Authorized Representative at the preconstruction conference.

7.21 In emergencies affecting the safety of persons, the Work, or property at the Project site or adjacent thereto, the Design-Builder is obligated to act in the Design-Builder's discretion to prevent threatened damage, injury, or loss. As soon as practicable, the Design-Builder shall notify the Owner's Authorized Representative of such emergency. The Design-Builder shall give the Owner's Authorized Representative prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergency. If the Design-Builder believes that additional work done in an emergency entitles the Design-Builder to an increase in the Contract Price or an extension of the Contract Time, the Design-Builder may make a claim therefore as provided in Articles 13 and/or 14.

7.22 The Design-Builder shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Work. At least weekly and at the completion of the Work, the Design-Builder shall remove all waste materials and rubbish from and about the Project. At the completion of the Work, the Design-Builder shall remove all tools, construction equipment, machinery, and surplus materials. The Design-Builder shall leave the Work in condition for occupancy by the Owner such that no cleaning or other operations are required. Material cleared from the Project and deposited on adjacent property shall not be considered as having been disposed of satisfactorily. If the Design-Builder fails to keep the Project clean of waste materials or rubbish, fails to satisfactorily clean-up weekly or at the completion of the Work, the Owner may do so and the costs thereof may be deducted from any amounts due the Design-Builder.

7.23 Utilities, temporary facilities, and signs shall be provided as described in the Contract Documents. Absent a contrary direction in the Supplementary Conditions, the Design-Builder shall pay all bills for water, electricity, or other public utility service to the Project site.

7.24 The Design-Builder shall indemnify and hold the Owner, the Owner's 's consultants, and its officers, agents, and employees harmless against all costs, damages, and expenses, including attorney's fees and costs of defense, arising out of claims by any Subcontractor, sub-subcontractor, or supplier engaged by or employed by the Design-Builder or employed by any of the Subcontractors claiming through it, including without limitation damages, losses, and expenses arising out of or relating to any inconvenience, delay, interference, or other action or non-action of the Design-Builder or the Design-Builder's Subcontractors on the Project.

7.25 Prior to completion of the Work and Final Payment of the Contract Price, excepting only those portions of the Work deemed accepted in accordance with the Contract Documents, the Design-Builder shall have charge and care of the Work, and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Design-Builder shall as required by the Owner replace, rebuild, repair, restore, and make good all injury or damage to any portion of the Work occasioned by any of the above causes before Final Completion and shall bear the expenses thereof.

7.26 In the event that the Work, or any portion thereof, is suspended at any time pursuant to an order of the Owner, the Design-Builder shall obey all instructions of the Owner regarding storage of materials, drainage, protection of the Work, and erection of temporary structures during the suspension period.

7.27 The Design-Builder shall be required to notify the Owner's Authorized Representative promptly of any event or condition which could affect the conduct or progress of the Work and shall cooperate fully with all other Owner's Authorized Representative on the Project site.

7.28 All Work performed pursuant to the Contract Documents shall conform in all respects to the North Carolina State Building Code and all other state, local, and national codes in effect at the time of and applicable to this Work.

7.29 The Design-Builder shall provide for and maintain necessary safety measures and safety programs for the protection of all persons at the Project site, and shall comply at all times with the requirements of the most current edition of the CAGC Safety and Health Manual [or the AGC Accident Prevention Manual in Construction], or the equivalent requirements of the Design-Builder's safety program, and shall fully comply with all Federal, State, and local laws, rules, regulations, and building code requirements so as to prevent accidents or injuries to persons on or about the Project site. The Design-Builder shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairways, and similar hazards. The Design-Builder shall protect against damage or injury resulting from falling materials, and shall maintain all protective devices and signs throughout the progress of the Work.

7.30 The Design-Builder shall adhere to the rules, regulations, and interpretations of the North Carolina Department of Labor's Occupational Safety and Health Standards for the Construction Industry (29 CFR Part 1926 as adopted in 13 NCAC 07F.0201, including 29 CFR Part 1910 General Industry Safety and Health Standards applicable to construction) and N.C. Gen. Stat. §95-126 through 155 (Occupational Safety and Health) as well as all revisions and amendments to such standards or statutes as may occur throughout the performance of the Work.

7.31 Any land disturbing activity performed by the Design-Builder in connection with the Project shall comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the Project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15 North Carolina administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 NCAC 4A, 4B, and 4C), and as may be revised or amended in the future and the applicable portion of the Orange County Code of Ordinances. Upon receipt of notice that a land-disturbing activity is in violation of said Act and/or ordinance, the Design-Builder shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said Act and/or ordinance are promptly taken. The Design-Builder shall be responsible for all penalties assessed pursuant to N.C. Gen. Stat. 113A-64 with respect to its Work, and shall indemnify and hold harmless the Owner from all costs and expenses, including attorney's fees and costs of defense arising out of or related to the enforcement of the Act against any party or person described in this Article.

7.32 Any mechanical or electrical work such as sleeves, inserts, chases, etc. located in the Work of the Design-Builder for general work shall be built in by that Design-Builder. On multiple prime projects, the mechanical and electrical Design-Builders shall set all sleeves, inserts, and other devices built into the structure in cooperation and under the supervision of the Design-Builder for general work. The responsibility for exact location of such items shall be that of the mechanical, plumbing, or electrical prime Design-Builder.

7.33 The Design-Builder shall be responsible for permanently fixed service facilities and systems in use during progress of the Work and shall strictly adhere to the following procedures:

- a) Prior to acceptance of the Work by the Owner, the Design-Builder shall remove and replace any part of the permanent building systems damaged through use during construction.
- b) Temporary filters shall be installed in each of the heating and air conditioning units, return air grilles, and other locations to prevent intrusion of dust, dirt, and debris during construction. Temporary filters shall be removed and replaced with new filters immediately prior to Substantial Completion.
- c) Extra effort shall be maintained to keep the building clean and under no circumstances shall air systems be operated if finishing operations are creating dust in excess of what would be considered normal if the building were occupied.
- d) When the permanent lighting system is used during construction, lamps shall be replaced and shall be new on the date of Substantial Completion.

7.34 Upon execution of the Agreement Design-Builder grants to Owner an irrevocable license to use any and all Service Instruments for any purpose. Should Owner alter any such licensed Service Instruments without consent of Design-Builder Owner will release Design-Builder from any claim related to such alteration.

7.35 Design-Builder shall keep and maintain on site accounting records and all other records relating to the Project. Within fifteen (15) days of Owner's written request Design-Builder shall

provide said accounting records, and any and all other records requested, to Owner for purposes of performing an audit or any other purpose.

#### **ARTICLE 8. OWNER**

8.1 The Owner shall issue communications and notices to the Design-Builder through the Owner's Authorized Representative to the extent contemplated by the Contract Documents.

8.2 In case of termination of the employment of the Owner's Authorized Representative, the Owner shall appoint as Owner's Authorized Representative a qualified person who shall have and assume all rights and duties held by the original Owner's Authorized Representative.

8.3 The Owner shall have the right to take possession of and use any portion of the Work notwithstanding the fact that the time for completion of such portion of the Work may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

8.4 A waiver on the part of the Owner of any breach of any part of the Design-Builder shall not be held to be a waiver of any other or subsequent breach.

8.5 The Owner shall pay all permanent acreage fees, governmental impact fees, and meter deposits for permanent utilities.

8.6 Owner reserves the right to engage in or contract for construction activities related to the Project with Owner's employees or contractors. The Design-Builder shall maintain responsibility for coordinating these Owner performed activities with the Work.

8.7 Owner shall have access to the Work and Project at all times and locations. Owner shall comply with Project safety criteria during any such access.

#### **ARTICLE 9. AUTHORIZED REPRESENTATIVE**

9.1 The Owner's Authorized Representative is charged with the responsibility of interpretation of the Contract Documents. The Owner's Authorized Representative's decisions relating to aesthetic matters shall be final.

9.2 All Work completed under the Contract Documents shall be subject to review by the Owner's Authorized Representative. No Work is to be covered without the Owner's Authorized Representative's review or prior authorization.

Any Work so covered without the Owner's Authorized Representative's review or prior authorization shall be uncovered to the extent required by the Owner to perform an adequate and proper inspection at the Design-Builder's expense. The Design-Builder shall notify the Owner's Authorized Representative in writing at least twenty-four (24) hours in advance of covering any Work.

9.3 The Owner's Authorized Representative shall not be responsible for the construction means, methods, techniques, sequences, procedures, or the safety precautions and programs incident thereto, and shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the Contract Documents, but shall be entitled to enforce any requirements in

the Contract Documents specifying particular means, methods, techniques, sequences, or procedures.

9.4 The Owner's Authorized Representative shall be an Owner's representative during the construction period. The duties, responsibilities and authority of the Owner's Authorized Representative as the Owner's representative during construction are as set forth in the Contract Documents.

## **ARTICLE 10. TESTING AND SURVEYING**

10.1 Laboratory and field tests to determine compliance of construction with the Contract Documents shall be made by the Owner or testing consultants employed by the Owner except those required elsewhere in the Contract Documents to be paid for by the Design-Builder. The costs and expenses of providing samples for and assistance in any testing shall be borne by the Design-Builder and are included in the Contract Price. Any Work in which untested materials are used without approval or written permission of the Owner's Authorized Representative shall be removed and replaced at the Design-Builder's expense. Work found to be unacceptable or unauthorized will not be paid for and, if directed by the Owner's Authorized Representative shall be removed and replaced at the Design-Builder's expense. Unless otherwise designated, tests in accordance with the cited standard methods of ASTM or other generally recognized or specifically authorized methods which are current on the date of RFQ shall be made at the expense of the Owner; provided, however, in the event that after such testing any Work is found to be defective or does not meet the requirements of the Contract Documents, the costs of retesting such Work and the costs of inspection services shall be paid by the Design-Builder. Samples shall be taken by a testing laboratory employed by the Owner. All materials being used are subject to inspection, tests, or rejection at any time prior to or during incorporation into the Work. Copies of all Owner test reports will be furnished to the Design-Builder at its written request. Copies of Design-Builder test reports shall be furnished to the Owner's Authorized Representative upon written request.

10.2 The Owner shall have the right to deduct the costs of additional testing as described in paragraph 11.1 from any money due the Design-Builder; or if no money is due the Design-Builder, the Owner shall have the right to recover these costs from the Design-Builder, from its sureties, or from both.

10.3 All layouts and surveying shall be accomplished by properly qualified personnel duly licensed in the State of North Carolina.

## **ARTICLE 11. SEPARATE CONTRACTS**

11.1 Pursuant to Article 8 it is expressly understood that the Owner may deploy the Owner's own employees or engage other contractors to perform Work as a part of the Project whose work will be performed simultaneously and sequentially with the performance of the Work by the Design-Builder. In such event the Design-Builder shall coordinate construction activities with such other contractors and the Owner's Authorized Representative, particularly with respect to access to work areas, storage of materials, and use of elevators and other common facilities. The Design-Builder shall diligently and in good faith cooperate with the Owner, the Owner's Authorized Representative, and all other contractors with respect to such matters and shall regularly and faithfully attend any and all meetings called by the Owner or the Owner's

Authorized Representative with respect to such matters. Any disputes between the Design-Builder and any other contractor with respect to such matters shall be resolved in accordance with the claim and dispute resolution procedures in the Agreement.

## ARTICLE 12. CONTRACT TIME

12.1 Within fourteen (14) days after receipt of the Design Build Contract by the Design-Builder for signatures, the Design-Builder shall prepare and submit to the Owner's Authorized Representative for review and approval a preliminary progress schedule for the Work pursuant to the requirements stated in the Contract Documents.

12.2 Within fourteen (14) days after initial receipt of the Design Build Contract for signatures the Design-Builder shall submit to the Owner's Authorized Representative a Submittal Register listing all Submittals the Design-Builder is required to make or proposes to make under the Contract Documents, the dates on which the Design-Builder proposes to make such Submittals and the dates by which the Design-Builder reasonably requires a response from the Owner's Authorized Representative with respect to each Submittal. The dates submitted shall be incorporated into the Contract Construction Schedule as Completion Dates when they have been approved or modified by the Owner. The Owner's Authorized Representative shall not be required to review any Submittal from the Design-Builder until a Submittal Register acceptable to and approved by the Owner has been submitted by the Design-Builder.

12.3 Not later than thirty (30) days following execution and delivery of the Construction Agreement by Owner to Design-Builder, the Owner shall deliver to the Design-Builder a Notice to Proceed. The Notice to Proceed shall state a commencement date on which it is expected that the Design-Builder will begin the Work to be performed under the Agreement. The Contract Time shall be measured from said specified commencement date. The commencement date stated in the Notice to Proceed shall not be earlier than three (3) days after the Notice to Proceed is served on the Design-Builder.

If, other than by mutual agreement, said specified commencement date is more than thirty (30) days after the date of execution and delivery of the Agreement from Owner to Design-Builder and the Design-Builder believes said delay justifies an increase in Contract Price and/or an extension of Contract Time, the Design-Builder may make a claim therefore as provided in Article 13 and/or Article 14. No Work shall be done prior to the date specified in the Notice to Proceed. A final Contract Construction Schedule shall be submitted for approval by the Design-Builder, Owner's Authorized Representative, and Owner no later than fourteen (14) days after Notice to Proceed. No payments shall be due the Design-Builder until this schedule is approved by all parties.

12.4 The Contract Construction Schedule is a Contract Document. The Design-Builder represents that the Contract Construction Schedule has been reviewed in detail, that the Design-Builder participated in its preparation, that all of the activities which impact, limit, or otherwise affect the time of completion of the Work are shown in the Contract Construction Schedule and that all of the activities of others which impact, limit, or otherwise affect the start, duration, or completion of the Design-Builder's activities are also shown. The Design-Builder further represents that the Design-Builder can and will complete each activity within the time shown for that activity. **Time is of the essence with respect to each such activity and Completion Date.**

12.5 If the Design-Builder submits a construction schedule, progress report, or any other document that indicates or otherwise expresses an intention to achieve completion of the Work prior to any Completion Date required by the Contract Documents or prior to expiration of the Contract Time, no liability of the Owner to the Design-Builder for any failure of the Design-Builder to so complete the Work shall be created or implied.

12.6 If the Design-Builder, for reasons beyond the Design-Builder's control, is delayed in beginning any activity, the Design-Builder shall, nevertheless, have the same number of days as is shown in the Contract Construction Schedule for the activity, and the affected activity and any succeeding activity that is dependent upon that activity shall be adjusted accordingly; provided that at any time the Owner, by means of a Change Order, may require the Design-Builder to work overtime, to increase labor forces or to take any necessary or appropriate action to decrease the time required for any activity, and the Design-Builder shall be entitled to an adjustment in the Contract Price computed in accordance with Article 14 of these Supplementary Conditions.

12.7 At any time, the Owner may order the Design-Builder, on seven (7) days written notice, to begin any activity earlier than the starting date shown on the Contract Construction Schedule.

12.8 Should the Design-Builder fail to start any activity on the start date shown in the Contract Construction Schedule or as it may have been adjusted in accordance with paragraphs 12.5 or 12.6 above, or become delayed, the Design-Builder shall, without being entitled to any increase in the Contract Price or other compensation, work overtime, increase labor forces or take such other action as may be necessary or appropriate to complete the activity by the Completion Date shown on the Contract Construction Schedule, or as such Completion Date may have been adjusted.

12.9 The Owner's Authorized Representative or its Construction Consultant shall monitor progress of the work at all times and the Design-Builder shall cooperate with such monitoring and provide any and all information with respect to the progress of the Work and scheduling as the Owner may reasonably require.

12.10 On a monthly basis, the Design-Builder shall revise the Contract Construction Schedule, showing any adjustments made in accordance with paragraphs 12.5 or 12.6, above, by any Change Order, the progress of the Work, and any days gained or days lost with respect to any activity, and shall furnish copies, both paper and electronic, thereof to the Owner's Authorized Representative.

12.11 Should any monthly revision of any Contract Construction Schedule show that the Design-Builder is behind on any activity, the late completion of which could delay Substantial Completion of the Work, the Owner shall be entitled to withhold from the next Progress Payment due the Design-Builder an amount not exceeding the amount the Owner would be entitled to in Liquidated Damages, should Substantial Completion be delayed by the same number of days that the Design-Builder is currently behind schedule. If, subsequently, the Design-Builder's progress, as shown by any succeeding monthly revision to the Contract Construction Schedule, is such that the anticipated delay no longer exists, the Owner shall pay with the Progress Payment next due to the Design-Builder such amounts as have been withheld in accordance with this paragraph.

12.12 The Owner shall have the right to perform Work, hire and employ labor and craftsmen, rent equipment, subcontract with other parties, or do anything that the Owner deems necessary or appropriate to remedy or cure any delay by the Design-Builder in the progress of the Work. Such action by the Owner shall not, in any way, affect, void, or limit any warranty, guaranty or other responsibility of the Design-Builder under the Contract Documents. Such action may be taken by the Owner only after three (3) days written notice to the Design-Builder. All costs incurred by the Owner in taking any such action shall be charged to the Design-Builder and deducted from any amounts remaining due under the Agreement.

12.13 The Design-Builder may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseen causes beyond the control and without the fault or negligence of the Owner, the Design-Builder or the Design-Builder's Subcontractors as follows:

- a) Labor disputes and strikes that directly impact the critical path activities of the Contract Construction Schedule;
- b) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed Work or stored materials.
- c) Acts of the public enemy; acts of the State, Federal, or local government in their sovereign capacities.
- d) Abnormal inclement weather as defined in Article 12.14.

12.14 On any day that the Design-Builder considers that the Project is delayed by adverse weather conditions, the Design-Builder shall identify in writing to the Owner's Authorized Representative the adverse weather conditions affecting each activity, the specific nature of the activity affected, the number of hours lost, and the number of and identity (by responsibility or trade) of workers affected and shall obtain from the Owner's Authorized Representative written recognition of the delay. The time for performance of this Contract includes an allowance for a number of calendar days which may not be suitable for construction Work by reason of adverse weather. The Contract Time will be extended only if the number of calendar days of adverse weather recognized by the Owner's Authorized Representative exceeds the number of inclement weather days set forth below, and the Design-Builder clearly and convincingly demonstrates how this adverse weather impacts activities on the critical path of the Contract Construction Schedule. Month Number of Inclement Weather Days:

January	10
February	10
March	10
April	9
May	10
June	9
July	11
August	10
September	8
October	7

November 8  
December 9

12.15 If the Design-Builder believes that the progress of the Work has been adversely affected by adverse weather recognized by the Owner's Authorized Representative during a particular month, the Design-Builder shall submit a written request for extension of time to the Owner's Authorized Representative. Such a request for time extension of the Contract Time shall be submitted by the tenth (10th) day of the month following that month in which the adverse weather is encountered. The request shall include, but is not limited to, the following information: a) Detailed description of weather's effect on scheduled activities and its net effect on the critical path of the Project, and b) Weather records from the official weather station nearest the Project site and records of actual observation as contained in daily reports, correspondence, or other documentation. Failure of the Design-Builder to submit a timely claim for extension of time shall constitute a waiver of said claim in its entirety.

12.16 The Design-Builder specifically recognizes that a delay by the Design-Builder in achieving any Completion Date can have the effect of delaying the Substantial Completion of the Project, that such delay in Substantial Completion of the Project will necessarily cause damages, losses, and expenses to the Owner, including, but not limited to and by way of illustration only, increased capitalized costs and interests for the Project, increased and extended Project overhead, increased Consultant's fees, increased costs of construction, increased and extended operation costs of other facilities, and inefficiency and loss of productivity, and that such damages, losses, and expenses may not be readily identifiable or ascertainable at the time they are incurred or at any time. Therefore, and in recognition of these factors and the likelihood that actual damages from his delay will not be readily ascertainable, the Design-Builder agrees to pay to the Owner, as Liquidated Damages and not as a penalty, the sum identified in the Contract Documents hereto as the Liquidated Damages per Day, for each day by which the failure to meet any Completion Date shown in the Contract Construction Schedule, adjusted in accordance with this Article, delays the Substantial Completion of the Project.

12.17 The Design-Builder shall not be entitled to any adjustment in the Contract Price or other compensation from the Owner for any delay in the completion of or progress on the Work that is caused by a force majeure condition or is otherwise not caused by the sole and direct act or omission of the Owner and the Owner's employees or agents.

12.18 The sum for Liquidated Damages is the amount stated in the Contract Documents as Liquidated Damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said Design-Builder(s) to complete the Work within the time specified, such time being in the essence of this contract and a material consideration thereof.

### **ARTICLE 13. CHANGES IN THE WORK**

13.1 Without invalidating the Contract Documents, the Owner may, at any time, or from time to time order additions, deletions, or revisions in the Work. Said additions, deletions, or revisions shall be authorized only by written Change Orders, Construction Change Directives or Field Orders. Upon receipt of a Change Order, Construction Change Directive, or Field Order, the Design-Builder shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any change causes an increase or decrease in the Contract Price and/or an extension or shortening of the Contract Time, adjustments shall

be made as provided in Article 13 and/or Article 14. In order to expedite the Work and avoid or minimize delay in the Work that might affect the Contract Price or Contract Time, the Owner's Authorized Representative may issue a Change Order in the form of a Construction Change Directive which when signed by the Owner and Owner's Authorized Representative, directs the Design-Builder to proceed promptly with the Work involved. Any claim for an adjustment in Contract Price or Time, if not defined in the Construction Change Directive, shall be promptly made in writing in accordance with the procedures defined in Article 14.2.

13.2 The Owner's Authorized Representative may authorize minor changes or alterations in the Work not involving change in the Contract Price or in the Contract Time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. Such alterations shall not invalidate the Contract Documents nor release the surety. If the Design-Builder believes that any minor change or alteration authorized by the Owner's Authorized Representative entitles it to an increase in the Contract Price and/or an extension of Contract Time, he may make a claim therefore as provided in Article 15 and/or Article 16.

13.3 Except in an emergency endangering life or property, no change shall be made by the Design-Builder except upon prior written Change Order, Directive, or Field Order authorizing such Change.

13.4 Increases in the Contract Price and/or extensions of the Contract Time for additional Work performed by the Design-Builder shall only be in accordance with a written Change Order signed by the Owner and Owner's Authorized Representative. The Design-Builder shall not be entitled to additional time or to additional compensation for any Work performed or material supplied which is claimed to have been authorized or settled by an "oral" change, or by a "constructive" or "implied" change, or by a course of conduct, or by any action or non-action by the Owner, Owner's Authorized Representative, or any other persons, or by any means whatsoever other than by a written Change Order for such Work or material signed by the Owner and the Owner's Authorized Representative.

13.5 Changes in the Work resulting from emergency shall not invalidate the Contract Documents nor release the surety.

13.6 The Owner shall not be responsible for verbal instructions which have not been confirmed in writing, and in no case shall such instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a proper Change Order, Construction Change Directive, or Field Order, whether or not the cost is affected.

13.7 The Owner, in its sole discretion, may require that the Design-Builder notify the Design-Builder's sureties of any changes affecting the general scope of the Work or change in the Contract Price, and that the amount of applicable bonds shall be adjusted accordingly. If this requirement is exercised, the Design-Builder shall furnish proof of such adjustment to the Owner's Authorized Representative.

If this requirement is exercised, the Change Orders shall require written consent of the Design-Builder's surety. At the time of signing a Change Order, the Design-Builder shall be required to certify as follows: "I certify that all sureties have been notified that my contract has been altered by the amount of this Change Order, and that a copy of the approved Change Order will be

mailed to all sureties upon its receipt by me." If this requirement is exercised, no payment to the Design-Builder on account of any Change Order shall become due or payable until written evidence of the surety's consent to the Change Order has been furnished to the Owner's Authorized Representative, and the furnishing of such written consent is a condition precedent to such payment.

13.8 The Design-Builder shall support all requests for Change Orders with a detailed cost breakdown showing cost of materials, labor, equipment, transportation, other items, Design-Builder's overhead and profit, and total cost, in accordance with methods defined in this Article, and, if the request seeks an extension of the Contract Time, with a time-related diagram which demonstrates specifically why an increase in construction time is needed.

13.9 When a request for a Change Order involves a Subcontractor, the Design-Builder shall provide quotation from same on Subcontractor's letterhead. The Subcontractor's quote shall list materials, equipment, and labor separately, and show overhead and profit in the manner provided in paragraph 13.8.

#### **ARTICLE 14. CHANGE OF THE CONTRACT PRICE**

14.1 The Contract Price constitutes the total compensation payable to the Design-Builder for performing all Work under the Contract Documents. All duties, responsibilities, and obligations assigned to or undertaken by the Design-Builder shall be at its expense without change in the Contract Price. The Contract Price may only be changed by a Change Order.

14.2 Any claim for an adjustment in the Contract Price shall be in writing and written notice of any event, action, or non-action which may become the basis of a claim shall be delivered to the Owner's Authorized Representative within three (3) days of the occurrence of any such event, action or non-action giving rise to the claim. Such written notice is a condition precedent to the making of a claim, and such notice shall describe the basis of the potential claim with reasonable detail and clarity.

(a) A claim shall be made in writing and shall be delivered to the Owner's Authorized Representative no later than fourteen (14) days after such notice. The claim shall describe in detail the basis for the claim, with specific reference to any provisions of the Contract Documents, by paragraph, drawing number, or other specific identification, and shall state the amount claimed and how it is calculated. If the Design-Builder, at the time the claim is made, is unable to state the amount claimed with accuracy, the Design-Builder shall so state and provide the estimated amount and the basis on which the amount is to be calculated. At the earliest date practicable, but in no event more than thirty (30) days after Design-Builder's notice of claim, the Design-Builder shall supplement the claim with an accurate statement of the amount claimed and how it has been calculated. The Design-Builder shall provide, in writing, in support of the claim all such explanations, arguments, data, receipts, expert opinions, or other documents or information as the Design-Builder deems appropriate to be considered in support of the claim.

(b) A claim may properly be rejected by the Owner by reason of the Design-Builder's failure to submit adequate or accurate documentation or information, except that within seven (7) days after being given notice that the claim has been rejected on this basis, the Design-Builder may submit additional documentation or information. No claim for a change of the Contract Price shall be considered or granted (except solely at the discretion of the Owner) unless a claim is so

made, nor shall the Design-Builder be entitled to any increase in the Contract Price unless the Design-Builder has given notice and made such a written claim within the times required. The Owner shall decide, after obtaining the advice of the Owner's Authorized Representative, whether an increase in Contract Price is warranted, and the amount of such increase shall be determined as provided in paragraph 15.4 through 15.5, below. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

(c) The Owner shall advise the Design-Builder of its decision with respect to the claim within fourteen (14) days of its receipt, or of the receipt of additional documentation or information if the absence of such has previously been the basis of rejection of the claim; provided, however, that if, in its sole discretion, the Owner deems that review or consideration of any part of the claim or any matter related thereto by its governing Board is necessary or appropriate, it shall so advise the Design-Builder and shall provide its decision to the Design-Builder within seven (7) days after such Board consideration, review or action. Any claim on which the Owner has not provided its decision to the Design-Builder within the applicable time period shall be deemed denied. If the Design-Builder is not satisfied with the decision of the Owner, the Design-Builder may within seven (7) days of receipt of the Owner's decision initiate the mediation process as described in Appendix A to the Supplementary Conditions of the Design Build Contract.

14.3 In determining the amount of a Contract Price adjustment, the parties shall apply the following methods, as appropriate:

(a) Change in Work: The Owner and Design-Builder shall negotiate in good faith and attempt to agree upon the value of any change (extra or decrease) in Work prior to the issuance of a Change Order covering said Work. Such Change Order shall set forth the corresponding adjustment to the Contract Price. In the event the Owner and the Design-Builder are unable to agree, the Owner may grant an equitable adjustment in the Contract Price.

(b) Emergency Work: In the event of emergency endangering life or property, the Design-Builder may be directed by the Owner's Authorized Representative to proceed on a time and material basis, whereupon the Design-Builder shall so proceed and keep accurately, in such form as may be required by the Owner's Authorized Representative, a correct account of costs together with all proper invoices, payrolls, and supporting data therefore.

14.4 Where the Contract Price is to be adjusted, the following limitations shall apply in determining the amount of adjustment:

(a) In the case of extra or emergency work, the Contract Price shall not be increased by more than the reasonable, actual, and documented net cost of the extra or emergency work plus ten percent (10%) of such net cost on Work performed by the Design-Builder and five percent (5%) thereof on any subcontracted Work for overhead and profit combined.

(b) In the case of a decrease in Work, the Contract Price shall not be decreased by less than the net cost of the deleted Work plus five percent (5%) of such direct net cost for profit and overhead.

(c) The term 'net cost' as used herein shall include, as applicable, and shall be limited to, all direct labor, direct material, direct equipment, labor burden, sales taxes, shipping and handling

charges, permits and fees, and insurance and bond premium adjustments, if any, attributable to the change. All other items of cost shall be considered as overhead and covered by the percentages allowed in sections A and B of this paragraph.

(d) The Design-Builder shall provide worksheets or tabulations describing the method by which the direct net cost was calculated, and shall provide all data needed to support the calculation of the direct net cost, all in a form acceptable to the Owner.

14.5 Where the Contract Price is to be adjusted by negotiation, the Owner may authorize and designate the Owner's Authorized Representative to negotiate with the Design-Builder on behalf of the Owner; provided, however, any agreement reached between the Design-Builder and Owner's Authorized Representative shall be subject to approval by the Owner.

## **ARTICLE 15. UNFORESEEN CONDITIONS**

15.1 Should the Design-Builder encounter unforeseen conditions at the Project 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 the Agreement, the Design-Builder shall immediately, and in no event more than three (3) days later, give notice to the Owner of such conditions before they are disturbed. The Owner's Authorized Representative 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 in the Contract Price resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. However, the Owner shall not be liable or responsible for additional work, costs, or changes to the Work that could have been reasonably determined from any reports, surveys, and analyses made available for the Design-Builder's review or that could have been discovered by the Design-Builder through the performance of its obligations pursuant to the Contract Documents.

## **ARTICLE 16. CORRECTION OF WORK BEFORE FINAL PAYMENT**

16.1 The Owner has the authority to stop or suspend work, and the Owner's Authorized Representative has the authority to order Work removed or to order corrections of defective Work or Work not in compliance with the Contract Documents where such action may be necessary to ensure successful completion of the Work.

(a) Any work, materials, fabricated items, or other parts of the Work which have been found by the Owner's Authorized Representative to be defective or not in accordance with the Contract Documents shall be condemned and shall be removed from the Project by the Design-Builder, and immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner or others damaged or destroyed by virtue of such condemned Work shall be made good at the expense of the Design-Builder. Correction of condemned Work described above shall be commenced by the Design-Builder within twenty-four (24) hours after notice from the Owner's Authorized Representative and shall be pursued to completion. Should the Design-Builder fail to proceed reasonably with the abovementioned corrections, the Owner may, three (3) days after the notice specified in the

preceding sentence, proceed with correction, paying the cost, including costs of uncovering such condemned Work, of such corrections from amounts due or to become due to the Design-Builder.

(b) Condemned Work removed shall be the property of the Design-Builder and shall be removed from the Project by it within ten (10) days after notice to remove it, and if not then removed, thereafter may be disposed of by the Owner without compensation to the Design-Builder and the cost of such disposal shall be deducted from amounts due or to become due to the Design-Builder. Should the cost of correction of the Work and, if applicable, disposal of the condemned Work by the Owner exceed amounts due or to become due the Design-Builder, then the Design-Builder and the Design-Builder's sureties shall be liable for and shall pay to the Owner the amount of such excess.

## **ARTICLE 17. CORRECTION OF WORK AFTER SUBSTANTIAL COMPLETION; WARRANTIES AND GUARANTIES**

17.1 Neither the final certificate, Final Payment, occupation of the premises by the Owner, nor any provision of the Contract Documents, nor any other act or instrument of the Owner or the Owner's Authorized Representative shall relieve the Design-Builder from responsibility for negligence, defective material or workmanship, or failure to comply with the Contract Documents.

17.2 The Design-Builder shall, at the Design-Builder's sole cost and expense, make all necessary repairs, replacements, and corrections of any nature or description, interior or exterior, structural or non-structural, that shall become necessary by reason of defective workmanship or materials which appear within a period of one (1) year from the date of Substantial Completion; provided, however that notwithstanding the preceding, if any longer guarantee period is specified for any particular materials or workmanship under the Contract Documents, or under any subcontract, or in connection with any manufactured unit which is installed in the Project, or under the laws of the State of North Carolina, the longer guarantee period shall govern.

17.3 If, within any guarantee period, repairs or changes are required in connection with the Work, which are rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents, the Design-Builder shall, promptly upon receipt of notice from the Owner's Authorized Representative and without expense to the Owner:

- a) Completely repair or replace the Work so that it conforms to the Contract Documents;
- b) Correct all defects therein;
- c) Make good all damage which, in the opinion of the Owner's Authorized Representative, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents; and
- d) Make good any Work or material, or any equipment or contents disturbed in fulfilling any such guarantee.

17.4 If, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Design-Builder disturbs any work, facility, premises, or construction belonging to the Owner, the Design-Builder shall restore such disturbed work to a condition satisfactory to the Owner, and shall guarantee such restored work to the same extent as if it were Work under the Contract Documents.

17.5 If the Design-Builder, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected, and the Design-Builder and the Design-Builder's sureties shall be liable for all expenses incurred. "Promptly" is defined as within twenty-four (24) hours for systems necessary to normal operation of the building and within seventy-two (72) hours for all other items. All special guarantees applicable to definite parts of the Work that may be shown in or required by Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee. Manufacturer's standard guarantees or warranties which do not comply with the time limit specified herein shall be extended by the Design-Builder automatically without further action on the part of the Owner.

17.6 In the eleventh calendar month after the date of Substantial Completion the Owner's Authorized Representative, and at the request of the Owner the Design-Builder, shall make an inspection of the Work for the purpose of identifying defective workmanship and/or materials. If the Design-Builder, having been requested to do so by the Owner, fails to participate in such inspection, the Design-Builder shall be conclusively bound by any decision or ruling by the Owner's Authorized Representative as to any defective workmanship or material and as to the Design-Builder's responsibility for its repair or replacement.

#### **ARTICLE 18. OWNER'S RIGHT TO DO WORK**

18.1 If, during the progress of the Work or during any period of guarantee, the Design-Builder fails to prosecute the Work properly or to perform any provision of the Contract Documents, the Owner, after three (3) days written notice to the Design-Builder from the Owner's Authorized Representative may perform or have performed that portion of the Work and may deduct the cost thereof from any amounts due or to become due the Design-Builder. Notwithstanding any action by the Owner under this paragraph, all warranties and bonds given or to be given by the Design-Builder shall remain in effect or shall be given by the Design-Builder.

18.2 Should the cost of such action by the Owner exceed the amount due or to become due the Design-Builder, the Design-Builder and his sureties shall be liable for and shall pay to the Owner the amount of such excess.

#### **ARTICLE 19. PARTIAL PAYMENTS**

19.1 Within thirty (30) days after its initial receipt of the Design-Build Contract for signatures, the Design-Builder shall submit to the Owner's Authorized Representative a Schedule of Values. The Schedule of Values shall indicate the value of the Work, including applicable overhead and profit, for each division and section of the Project Specifications. The Owner shall be provided with the Design-Builder's estimate papers, Subcontractor agreements, supplier quotes, or other documents substantiating these values if so requested in writing by the Owner's Authorized Representative. The Design-Builder shall provide the requested documentation within seven (7) days after receipt of the Owner's Authorized Representative's written request. The Schedule of Values shall be subject to approval by the Owner, and if the Owner and the Design-Builder

cannot agree upon the Schedule of Values, the Owner's Authorized Representative shall prepare it, and the Schedule of Values as prepared by the Owner's Authorized Representative shall be binding on the Owner and the Design-Builder. No Request for Payment shall be certified by the Owner's Authorized Representative until the Owner's Authorized Representative has issued approval of said Schedule of Values.

19.2 Not later than the fifth (5th) day of each calendar month the Design-Builder shall submit to the Owner's Authorized Representative a Request for Payment for Work done during the previous calendar month. The Request for Payment shall be in form of AIA Document G702 (latest edition) and shall show substantially the value of Work done (including the value of material delivered to the Project or stored by the Design-Builder at another site, subject to the conditions hereinafter set forth) during the previous calendar month, and shall sum up the financial status of the Work with the following information:

- a) Total Contract Price, including any adjustment thereto made pursuant to the Contract Documents.
- b) Value of Work completed and materials properly stored to date.
- c) Less amount retained.
- d) Less previous payments.
- e) Current amount due.
- f) Balance remaining.

The Design-Builder, upon request of the Owner's Authorized Representative, shall substantiate the request with invoices, vouchers, payrolls, or other evidence.

19.3 When payment is requested or made on an account of stored materials, such materials must be stored on the Owner's property at such places and in such a manner as may be designated by the Owner's Authorized Representative. However, in the sole discretion of the Owner, with permission in writing from the Owner's Authorized Representative and under such circumstances as may be determined by the Owner, such materials may be stored in a bonded warehouse. The location and conditions for storage of such materials away from the Owner's property in a bonded warehouse shall be within the sole discretion of the Owner. Requests for Payment on account of stored materials shall be accompanied by paid invoices, bills of sale, warehouse receipts, or other documentary evidence establishing Owner's title to such materials, evidence that the stored materials are insured against loss and damage, and such other documentation as required by the Owner's Authorized Representative. Responsibility for the quantity, quality, and condition of such stored materials, whether stored on the Owner's property or away from the Owner's property, shall remain with the Design-Builder regardless of ownership or title. No payment shall be made on account of materials stored in a bonded warehouse unless the Design-Builder has acquired written permission from the Owner for such storage of materials and has complied with all conditions set forth in such permission regarding such storage of materials in a bonded warehouse.

19.4 Any Request for Payment received by the Owner's Authorized Representative on or before the fifth (5th) of the calendar month shall be certified for payment or returned for re-submission to the Design-Builder on or before the fifteenth (15th) of the calendar month. The Owner's Authorized Representative's certification shall be for the amount which was requested or that which the Owner's Authorized Representative has decided was justly due, and shall state in writing to the Design-Builder and Owner the reasons for withholding payment of any or all of the amount requested.

19.5 The Owner's Authorized Representative may fail to certify all or part of any payment requested for any of the following reasons:

- a) Defective Work not corrected.
- b) Suits, actions, or claims of any character filed against the Design-Builder, or due to the operations of the Design-Builder, or information or notice that a suit, action, or claim will be filed or has been made.
- c) Information or notice that a Subcontractor or a supplier has not received payment.
- d) The balance unpaid of the Contract Price is insufficient to complete the Work in the judgment of the Owner's Authorized Representative.
- e) Damage to the Owner or to a consultant or contractor of Owner.
- f) Inability of the Design-Builder to meet a Completion Date, including an anticipated failure to meet a Completion Date entitling the Owner to withhold anticipated Liquidated Damages in accordance with paragraphs 12.16 and 12.18 hereof.
- g) Failure to furnish Submittal as required by the Contract Documents on a timely basis in accordance with the Submittal Register.
- h) Such other reason as to the Owner's Authorized Representative may appear prudent, proper, or equitable. When grounds for withholding certification have been corrected, the Owner's Authorized Representative shall so certify to the Owner and the Owner shall make any payment due with respect to such certification as a part of its next payment after such certification.

19.6 No certificate issued or progress payment made shall constitute an acceptance of the Work or any part thereof.

19.7 The amount certified by the Owner's Authorized Representative for payment shall be ninety-five percent (95%) of the value of Work completed and materials stored since the Owner's Authorized Representative's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraph 19.4, and this amount shall be paid by the Owner on or before the last business day of the month, but payment shall not be past due until not paid within fifteen (15) days thereafter.

19.8 After certification by the Owner's Authorized Representative that the Work is fifty percent (50%) complete, based on a determination that the Design-Builder's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value

of the Contract, (except the value of materials stored on-site shall not exceed twenty percent (20%) of the Design-Builder's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete) and the Design-Builder has provided to the Owner the written consent of its sureties to the cessation of further percentage retention, the amount certified for payment with respect to subsequent Requests for Payment shall be one hundred percent (100%) of the value of Work completed and materials stored since the Owner's Authorized Representative's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraphs 19.4 and 19.5; provided, however, that the aggregate of periodic payments shall not exceed ninety-seven and one half percent (97.5%) of the Contract Price. If the Owner's Authorized Representative determines that the Design-Builder's performance under the Contract is unsatisfactory, the Owner may resume withholding percentage retention from each subsequent periodic payment application up to the maximum amount of five percent (5%) of the Contract Price.

## **ARTICLE 20. FINAL PAYMENT**

20.1 If the Work of the Design-Builder is limited to demolition, pilings, caissons and/or structural steel, the remaining unpaid balance of the Design-Builder's Contract Price, less a sum equal to five-tenths percent (0.5%) of the Contract Price, shall be paid within sixty (60) days following receipt of the following documents, all of which must be received before payment shall become due: (i) request for payment from the Design-Builder; (ii) receipt of consent from the Design-Builder's surety to the payment; and (iii) approval or certification from the Owner's Authorized Representative that the work performed by the Design-Builder is acceptable and in accordance with the Contract Documents.

20.2 Except as set forth in paragraph 20.1, within forty-five (45) days after Substantial Completion of the Project, the remaining unpaid balance of the Contract Price shall be paid to the Design-Builder, less an amount equal to two and one-half times the value of punch list work or other work remaining to be completed or corrected, as reasonably estimated by the Owner's Authorized Representative.

20.3 Upon Substantial Completion, the Owner's Authorized Representative shall prepare and submit to the Design-Builder a deficiency list identifying all portions of the Work which are known by the Owner's Authorized Representative at that time to be incomplete or defective. Within thirty (30) days of receipt of this deficiency list, the Design-Builder shall complete and correct all items on that list along with all other Work required to achieve Final Completion of the Work. At any time prior to completion of the period of warranty, the Owner's Authorized Representative may submit to the Design-Builder a supplemental deficiency list, in which case the Design-Builder shall complete or correct any and all new items identified on the supplemental deficiency list as items are required to be completed, repaired, and corrected in paragraph 17.3.

20.4 Final Payment of any remaining balance of the Contract Price shall not be due to the Design-Builder until the Design-Builder achieves Final Completion of the Project.

20.5 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Owner except:

a) Claims arising from unsettled liens or claims against the Design-Builder.

- b) Defective Work or materials appearing after Final Payment.
- c) Failure of the Design-Builder to perform the Work in accordance with the Contract Documents.
- d) As conditioned in the Performance Bond.
- e) Claims made prior to Final Payment which remain unsettled.
- f) Amounts due arising under Articles 17 and 28.
- g) Claims for recovery of overpayment based upon incorrect measurement, estimate, or certificate.

20.6 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Design-Builder except those claims previously made in writing pursuant to paragraph 14.2 and not finally resolved.

20.7 The Owner's Authorized Representative shall not authorize Final Payment until all of the Work under the Contract Documents has been certified by the Owner's Authorized Representative as completed, proper and suitable for occupancy and use, and has been approved by all federal, state, and local agencies having jurisdiction.

20.8 The final Request for Payment shall be identified on its face as such and shall be presented by the Design-Builder to the Owner's Authorized Representative within thirty (30) days of completion of the Work. Final payment of the retained amount due the Design-Builder shall be made by the Owner within thirty (30) days after the later of (i) full and Final Completion of all Work required by the Contract Documents, and certification of such Work in accordance with paragraph 19.4; (ii) submission of the affidavits of other documentation required by Article 21; (iii) submission by the Design-Builder of a Request for Payment identified on its face as final and including the Owner's Authorized Representative's certification.

## **ARTICLE 21. DESIGN-BUILDER, SUBCONTRACTOR AND SUPPLIER AFFIDAVIT**

21.1 The Final Payment due the Design-Builder on account of the Contract Documents shall not become due until the Design-Builder has furnished to the Owner through the Owner's Authorized Representative:

- (a) an affidavit by the Design-Builder signed, sworn, and notarized to the effect that all payments for materials, services, or for any other reason in connection with the Work or performance of the Contract Documents have been satisfied and that no claims or liens exist against the Design-Builder in connection with the same;
- (b) affidavits from each Subcontractor and supplier signed, sworn, and notarized to the effect that (i) each such Subcontractor or supplier has been paid in full by the Design-Builder for all Work performed and/or materials supplied by it in connection with the Project, and (ii) that all payments for materials, services, and for any other reason in connection with the subcontract or supply contract have been satisfied and that no claims or liens exist against the Subcontractor or supplier in connection therewith; and

(c) the written consent of the Design-Builder's sureties to Final Payment. In the event that the Design-Builder cannot obtain an affidavit, as required above, from any Subcontractor or supplier, the Design-Builder shall state in the Design-Builder's affidavit that no claims or liens exist against such Subcontractor or supplier to the best of the Design-Builder's knowledge, and that if any appear afterwards, the Design-Builder shall defend, indemnify, and save the Owner harmless for all costs and expenses, including attorneys' fees, on account thereof.

## **ARTICLE 22. ASSIGNMENTS AND SUBCONTRACTS**

22.1 The Design-Builder shall not assign any portion of the Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner. Except as may be required under terms of the bonds required by the Contract Documents, no funds or sums of money due or to become due to the Design-Builder under the Contract Documents may be assigned.

## **ARTICLE 23. MEASUREMENTS**

23.1 Before ordering material or doing Work which is dependent for proper size or installation upon coordination with building conditions, the Design-Builder shall verify all dimensions and shall be responsible for the correctness of same. No consideration will be given for any claim based on differences between the actual dimensions and those indicated in the Contract Documents. Any discrepancies between the Contract Documents and the existing conditions shall be referred to the Owner's Authorized Representative for adjustment before any Work affected thereby is begun.

## **ARTICLE 24. DESIGN-BUILDER AND SUBCONTRACTOR RELATIONSHIPS**

24.1 Within thirty (30) days after initial receipt of the Design Build Contract for signatures the Design-Builder shall submit to the Owner's Authorized Representative for acceptance a current list of the names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for any and all portions of the Work. The Design-Builder shall provide this list at this time even if the Design-Builder was required to submit a list of proposed Subcontractors with the Design-Builder's RFQ response. The Owner's Authorized Representative shall promptly reply to the Design-Builder in writing stating whether or not the Owner, after due investigation, has objection to any such proposed person or entity or if it needs additional information to evaluate the persons on the list. Failure of the Owner's Authorized Representative to reply within ten (10) days after the Design-Builder has furnished all required information shall constitute notice of no objection.

The Design-Builder shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection. If the Owner has reasonable objection to any such proposed person or entity, the Design-Builder shall submit a substitute to whom the Owner has no reasonable objection. The Design-Builder shall make no substitution for any Subcontractor, person, or entity previously allowed without first notifying the Owner's Authorized Representative in writing and no substitution may be made if the Owner makes a reasonable objection to such substitution.

24.2 The Design-Builder agrees that the terms of the Contract Documents, including all portions thereof, shall apply to all Subcontractors of the Design-Builder as if they were the Design-Builder, and that the Subcontractors of the Design-Builder shall, by means of their subcontracts,

be bound by all the terms of the Contract Documents including these Supplementary Conditions.

24.3 Payments to Subcontractors shall be made in accordance with the provisions of N.C. Gen. Stat. §143-134.1.

## **ARTICLE 25. USE OF PREMISES**

25.1 The Design-Builder shall confine apparatus, the storage of materials, the operations of workers, and the disposal of material to limits indicated by law, ordinances, permits, and directions of the Owner's Authorized Representative, if any.

25.2 The Design-Builder shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended performance, or configuration.

25.3 The Design-Builder shall enforce all of the Owner's Authorized Representative's instructions, including, but not limited to, those regarding signs, advertisements, fires, and smoking.

## **ARTICLE 26. CUTTING, PATCHING AND FITTING**

26.1 The Design-Builder shall do all cutting, fitting, and/or patching of the Work that may be required to make its several parts come together properly and fit it to receive or to be received by Work shown in or which can be reasonably implied from the Contract Documents.

## **ARTICLE 27. DISPUTE RESOLUTION**

27.1 The laws of the State of North Carolina shall apply to the interpretation and enforcement of the Agreement. Any and all suits or actions to enforce, interpret, or seek damages with respect to any provision of, or the performance or nonperformance of, the Agreement shall be brought in the General Court of Justice of North Carolina sitting in Orange County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. Prior to initiating an action under this Article, any Party to the Agreement shall notify the other Party of its intent to initiate a mediation process.

27.2 Any person or firm that expressly or impliedly agrees to perform labor or services or to provide material, supplies, equipment, work, performance, or payment bonds, insurance or indemnification for the construction of the Project or the Work shall be deemed a party to the Agreement solely for the purpose of this Article 27. The Design-Builder, by means of its subcontracts, shall specifically require its Subcontractors to be bound by this Article and this Article shall specifically be incorporated into Design-Builder's subcontracts or contracts for the purchase/supply of materials used in the completion of the Work.

27.3 Any and all disputes arising from the Project and/or the Contract Documents shall be governed and shall proceed according to the "Dispute Resolution Rules and Procedures for Orange County Design, Building Construction, Renovation, and Repair Projects" attached hereto and incorporated herein.

## **ARTICLE 28. TAXES**

28.1 The Design-Builder has included in the Contract Price and shall pay all taxes assessed by any authority on the Work or the labor and materials used therein. The Design-Builder shall maintain all tax records during the life of the Project and furnish the Owner with a complete listing of all taxes paid by taxing authority, invoice number, date, amount, etc. in a form acceptable to the Owner. The Design-Builder is required to maintain a file showing taxes paid on the Project for three (3) years after Final Payment or turn said documents over to the Owner for its files.

28.2 The following is a list of requirements to be followed by the Design-Builder in maintaining proper records and reporting the North Carolina Sales and Use Tax and Local Sales and Use Tax. The Design-Builder shall comply fully with the requirements outlined below, in order that the Owner may recover the amount of the tax permitted under the law.

- a) It shall be the Design-Builder's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Design-Builder and each of its Subcontractors. Such evidence shall be transmitted to the Owner with each pay request regardless of whether taxes were paid in that period.
- b) The documentary evidence shall consist of a certified statement by the Design-Builder and each of the Design-Builder's Subcontractors individually, showing total purchases of materials from each separate vendor and total sales and use taxes paid to each vendor. Certified statements must show the invoice number, or numbers, covered, and inclusive dates of such invoices.
- c) Materials used from Design-Builder's or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
- d) The Design-Builder shall not be required to certify the Subcontractor's statements.

## **ARTICLE 29. OPERATION OF OWNER'S FACILITIES**

29.1 The Design-Builder agrees that all Work done under the Contract Documents shall be carried on in such a manner so as to ensure the regular and continuous operation of the adjoining or adjacent facilities. The Design-Builder further agrees that the sequence of operations under the Contract Documents shall be scheduled and carried out so as to ensure said regular and continuous operation. The Design-Builder shall not close any areas of construction until so authorized by the Owner's Authorized Representative. The Design-Builder shall control operations to assure the least inconvenience to the public. Under all circumstances, safety shall be the most important consideration.

## **ARTICLE 30. THIRD PARTY BENEFICIARY CLAUSE**

30.1 It is specifically agreed between the parties executing the Agreement that the Contract Documents and the provisions therein are not intended to make the public, or any member thereof, a third-party beneficiary of the Agreement, or to authorize anyone not a party to the Contract Documents to maintain a suit for personal injuries or property damage pursuant to the terms of provisions of the Contract Documents.

## **ARTICLE 31. MEASUREMENT OF QUANTITIES**

31.1 All Work completed under the Contract Documents shall be measured by the Design-Builder using United States customary units of measurement. The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract Documents shall be those methods set forth in the Contract Documents or, if not specifically set forth therein, the method generally recognized as conforming to good engineering practice.

## **ARTICLE 32. TERMINATION BY THE OWNER FOR CAUSE**

32.1 If the Design-Builder fails to begin or complete the Work under the Contract Documents within the time specified, or fails to perform the Work with sufficient labor and equipment or with sufficient materials to insure the prompt completion of said Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work for three (3) days, or if the Design-Builder shall become insolvent, be declared bankrupt, commit any act of bankruptcy or insolvency, allow any final judgment to stand against the Design-Builder or its affiliated companies unsatisfied for a period of forty-eight (48) hours, make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, the Owner may give notice in writing to the Design-Builder and the Design-Builder's sureties of such delay, neglect, or default, specifying the same, and if the Design-Builder within a period of three (3) days after such notice shall not proceed in good faith and with reasonable speed to correct such delay, neglect, or default in accordance with such notice, the Owner shall have full power and authority, to the extent permitted by law, without violating the Contract Documents, to take the prosecution of the Work out of the hands of the Design-Builder, to appropriate or use any or all materials and equipment at the Project as may be suitable and acceptable, and may enter into an agreement for the completion of the Work or pursue such other methods as in the Owner's opinion shall be necessary or appropriate for the completion of the Work in an acceptable manner. All costs and charges incurred by the Owner in proceeding in accordance with the preceding sentence, including attorney's fees, and all costs incurred by the Owner in completing the Work shall be deducted from any money due or which becomes due the Design-Builder. If such costs and expenses incurred by the Owner shall be less than the sum which would have been payable under Contract Documents if it had been completed by the Design-Builder, then the Design-Builder shall be entitled to receive the difference, but if such costs and expenses shall exceed the sum which would have been payable under the Contract Documents, the Design-Builder and the Design-Builder's surety shall be liable to the Owner for and shall pay to the Owner the amount of such excess.

## **ARTICLE 33. TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE**

33.1 The Owner may, without cause, order the Design-Builder to terminate, suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

33.2 If the Design-Builder is subsequently ordered by the Owner to resume the Work, any cost or expenses to which the Design-Builder may be entitled by reason of the suspension, delay, or interruption shall be recovered by means of a Change Order in accordance with Articles 12 and 13 hereof and the Contract Construction Schedule shall be adjusted in accordance with Article 12 hereof.

33.3 In the event of termination by the Owner under this Article, the Design-Builder shall be entitled to receive the reasonable and documented direct costs incurred prior to termination, including the cost of materials purchased for the Work which purchases cannot be canceled or which material cannot reasonably be used by the Design-Builder on other work, and the cost of closing down the Project in a safe and efficient manner, plus ten percent (10%) thereof for overhead and profit, subject to the following conditions:

a) When the Contract is terminated before completion of all items of Work, payment shall be made for the actual number of units or items of Work completed at the applicable contract prices, or as mutually agreed for items of Work partially complete. If a mutual agreement cannot be reached, the Owner shall have the authority to make such equitable adjustment as it deems warranted and the Final Payment shall be made accordingly.

b) Reimbursement for organization of any Work and moving equipment to and from the job shall be considered when not otherwise provided for in the Contract Documents where the volume of completed Work is too small to compensate the Design-Builder for those expenses under unit prices. If a mutual agreement cannot be reached, the Owner will have the authority to make such equitable adjustments as it deems warranted and the Final Payment will be made accordingly.

c) Materials obtained by the Design-Builder for the Work that have been inspected and accepted by the Owner's Authorized Representative and that are not incorporated in the Work shall, at the request of the Design-Builder, be purchased from the Design-Builder at the Design-Builder's actual cost as shown by receipted bills and actual costs records at such points of delivery as may be determined by the Owner.

d) No payment shall be made by Owner to Design-Builder except as herein above provided. No claim for loss of anticipated profits shall be considered or allowed.

e) Termination of the Contract shall not relieve the Design-Builder of its responsibilities for any completed portion of the Work nor shall it relieve its sureties of their obligation for and concerning any just claims arising out of the Work performed. The Design-Builder shall not be entitled to any other compensation, including compensation for lost profit, lost opportunity, or any other direct or consequential cost, loss, or damage.

#### **ARTICLE 34 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE PROGRAM**

34.1 The Design-Builder shall at all times comply with the Orange County Minority and Women Owned Business Enterprise Policy. All documentation substantiating compliance with the requirements of this program shall be delivered to the Owner as stipulated in the Contract Documents. A copy of the Orange County Minority and Women Owned Business Enterprise Policy is included in the Project Manual.

#### **ARTICLE 35 E-VERIFY AND DIGITAL SIGNATURES**

35.1 Pursuant to the terms of North Carolina General Statutes no county may enter into a contract unless the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Where applicable, failure to maintain compliance with the requirements of Article 2 of Chapter 64 of the General Statutes constitutes

Design-Builder's breach of the Agreement. By executing the Agreement Design-Builder affirms Design-Builder is in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

35.2 The Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

#### **ARTICLE 36 GENERAL**

36.1 If any provision of the Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

36.2 The titles to Articles herein are for convenience only, are not substantive parts of the Supplementary Conditions, and are not to be considered in interpreting the Contract Documents.

**END OF SUPPLEMENTARY CONDITIONS OF THE DESIGN BUILD  
CONTRACT—EXHIBIT 1**