Attachment #1

**Sportsplex Lobby Renovation Construction Document Sheet Index**

**Drawings Dated November 20, 2013**

GO.1, GO.2, GO.3, GO.4, GO.5

A1.0, A1.1, A1.2, A1.3, A1.4, A1.5

A2.1, A2.2, A3.1, A3.2

Phasing

SI.01, SI.02

P-1, P-2, P-3

M-1, M-2, M-3

E-1, E-2, E-3, E-4, E-5, E-6

FA-1, FA-2, FA-3

Attachment #1

# Triangle Sportsplex
## Renovation & Addition
### Hillsborough, NC

## ORANGE COUNTY, N.C.
## Bid #367-294

## Construction Document Bid Set
## March 24, 2014

## Project Manual

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***to be included in bid submittal**

Attachment #1
Triangle Sportpex
Notice to Bidders
**FOR ORANGE COUNTY, N.C.**

Sealed proposals (bid #367-294) will be received by the Orange County Finance Department, c/o David Cannell, WCOB, 131 W. Margaret Lane, Room 004, Hillsborough, North Carolina 27278, until 2:00 P.M. on Thursday, the 24th day of April 2014 for the renovation and proposed addition to the Triangle Sportsplex. Bids will be opened in public following the close of Bidding and read in the presence of those interested in the basement conference room (Room 004), 131 W. Margaret Lane, Hillsborough, North Carolina 27278.

Plans and specifications can be downloaded in electronic format at the Orange County Purchasing website http://orangecountync.gov/purchasing/bids.asp or contacting via email at dcannell@orangecountync.gov or calling 919-245-2651

The **Contract Documents may be examined** during normal business hours at the following locations:

McGraw-Hill Dodge Online: http://construction.com/ProjectCenter/
Associated General Contractors of America Plan Rooms: Raleigh, Charlotte, NC
Orange County Asset Management at 131 W. Margaret Lane, Suite 301, Hillsborough, North Carolina 27278

A Pre-Bid Conference will be held at the WCOB, 131 W. Margaret Lane, Room 004, Hillsborough, North Carolina 27278 April 3, 2014 at 2:00 pm.. Attendance at this Pre-Bid Conference is not mandatory, but all potential Bidders are encouraged to attend.

Consideration will be given only to Bids from Contractors who submit evidence showing that they are licensed under "An Act to Regulate the Practice of General Contracting", ratified by the General Assembly of North Carolina on March 23, 1937, when such Act is adhered to during the Bidding and Construction Phases of this Project. Each Proposal will be plainly marked on the outside of the envelope "Proposal for Renovations and Addition to the Triangle Sportsplex". In the upper left hand corner of the envelope that name of the Bidder, mailing address, and his North Carolina State License Number will be shown. Bids may be mailed to the Finance Department, c/o David Cannell, P.O. Box 8181, Hillsborough, NC 27278 but Orange County does not guarantee the receipt of a Proposal sent via mail.

Each Bid will be accompanied with a deposit of cash, cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent of the Bid, said check to be made payable to Orange County, North Carolina.

In lieu of the above cashier's or certified check, the Bidder may execute a Bid Bond for the same amount and in the form hereinafter provided, attaching Bonding Company's Agent of Power of Attorney to the page provided thereof.

Bids will be opened in public and read in the presence of those interested, but the right is reserved to waive minor variances or irregularities. After Bids are opened, they will be evaluated in accordance with the methods and criteria set forth in the Bidding Documents. No Bidder may withdraw a Bid within 60 days after the opening.

Orange County reserves the right to reject any and all Bids.

David E. Cannell
Purchasing Agent, Financial Services Department

Attachment #1

**INSTRUCTIONS TO BIDDERS**

For a Proposal to be considered, it must be made in accordance with the following instructions:

1. **PROPOSALS**
   Proposals must be made in strict accordance with the "Form of Proposals" provided therefore, and all blank spaces for Bids, Alternates and Unit Prices shall be properly filled in. When requested Alternates are not bid, the Proposals may be considered incomplete. The Bidders agree that Bids on Forms of Proposals detached from specifications will be considered and will have the same force and effect as if attached hereto. Numbers shall be stated both in writing and in figures for Base Bids and any Alternates.

   Any Modification to the Form of Proposal (including Alternates and/or Unit Prices) may disqualify the Bid and may cause the Bid to be rejected.

   The Contractor shall fill in the Form of Proposal as follows:

   a. If the documents are executed by a sole Owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person.
   b. If the documents are executed by a Partnership, that fact shall be evidenced by the work "Co-Partner" appearing after the name of the partner executing them.
   c. If the documents are executed on the part of a Corporation, they shall be executed by either the President or the Vice-President and attested by the Secretary or Assistant Secretary in either case, and the title of the office of such person shall appear after their signatures. The seal of the Corporation shall be impressed on each signature page of the documents.
   d. If the Proposal is made by a Joint Venture, it shall be executed by each member of the Joint Venture in the above form for sole Owner, Partnership, or Corporation, whichever form is applicable.
   e. All signatures shall be properly witnessed.
   f. Proposal shall be addressed as indicated and shall be delivered enclosed in an opaque sealed envelope, marked "Proposal" and bearing the name of Project (Bid #289), name and address of the Bidder, the Bidders's license number and, if applicable, the designated portion of the Work for which Bid is submitted.
   g. It shall be the specific responsibility of the Bidder to deliver this Bid to the proper official at the appointed place and prior to the announced time for the opening of Bids. Late delivery of a Bid for any reason, including delivery by the United States Mail, shall disqualify the Bid.
   h. Modifications of previously deposited Bids will be acceptable only if delivered in writing to the place of the Bid opening prior to the time for opening Bids.
   i. Unit prices quoted in the Proposal shall include overhead and profit and shall be the full compensation for the Contractor's cost involved in the work.

2. **EXAMINATION OF CONDITIONS**
   It is understood and mutually agreed that by submitting a Bid the contractor acknowledges that it has carefully examined the Bidding Documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site; and has satisfied itself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the materials to be encountered; the character of the equipment, machinery, plant and any other facilities needed preliminary to and during execution of the work; the general and local conditions; the construction hazards; and all other matters, including but not limited to, the labor situation which can in any way affect the work under the Contract; and including all safety measures required by the Occupational Safety Health Act of 1970 and all rules and regulations issued pursuant thereto. It is further mutually agreed that by submitting a proposal, the Contractor understands the feasibility and meaning of the plans, drawings, specifications, and other Contract Documents for the construction of the Work and that it accepts all the terms, conditions and stipulations contained therein; and that it is prepared to work in cooperation with the other Contractors performing work on the site.

3. **ADDENDA**

Any addenda to specifications issued during the time of Bidding will be sent to each Bidder who is on the official bidders list maintained by Orange County Purchasing , as well as posted on the County's website www.orangecountync.gov/purchasing and are to be considered covered in the Proposal and in closing a Contract they will become part thereof. It shall be the Contractor's responsibility to ascertain prior to Bid time the issuance of any Addenda and see that its Bid includes any changes thereby required. Should the Bidder find discrepancies in, or omissions from, these drawings or documents or should it be in doubt as to their meaning, it shall at once notify the Designer, who may send written instruction in the form of Addenda to all Bidders. Notification shall not be later than seven (7) days from the date set for receipt of Bids. Neither the Owner nor the Designer shall be responsible for any

oral instructions. All Addenda shall be acknowledged by the Bidders (s) on the Proposal form. Failure to do so may disqualify the Bid and may cause the Bid to be rejected.

**4. BID SECURITY**

Each proposal shall be accompanied by a cash deposit, or a certified check drawn on some bank or a trust company insured by the Federal Deposit Insurance Corporation, or a Bid Bond in an amount equal to not less than five percent (5%) of the Proposal, said deposit to be retained by the Owner as liquidated damages in event of failure of the successful Bidder to execute the Contract within ten (10) days after the award or to give satisfactory Surety as required by law.

**5. RECEIPT OF BIDS**

All copies of the Bid, the Bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and should be identified with the Project name; Bid Number; time and date of Bid Opening; the Bidder's name and address; Bidder's license number and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation 'SEALED BID ENCLOSED" on the face thereof.

**6. OPENING OF BIDS**

Bids shall be opened in public. Once any bid is opened, there shall not be any withdrawal of any Bidder and no Bids may be returned by the Owner to any Bidder.

A Bidder may withdraw its formal Bid after the bids are opened without forfeiting its Bid deposit in certain limited circumstances. Withdrawal after opening is permitted only if all of the following conditions are met:

a. The Bid was submitted in good faith.
b. The price Bid "was based upon a mistake, which constituted a substantial error".
c. Credible evidence is submitted showing that the error (a) was clerical in nature as opposed to a judgment error, and (b) was actually due to an unintentional and substantial arithmetic omission of a substantial quality of work, labor, material or services made directly in the compilation of the Bid.
d. The error can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the Bid.
e. The request to withdraw (a) is made in writing to the Owner and (b) is made prior to the award of the Contract, but not later than seventy-two (72) hours after the opening of Bids.

The Owner reserves the right to reject any and all Bids, to waive all technicalities and irregularities, and to make the award as considered in the best interest of the Owner. Reasons for rejection may include, but shall not be limited to, the following:

a. If the form of Proposal furnished to the Bidder is not used or is altered.
b. If the Bidder fails to insert a price for all Bid Items, Alternatives and Unit Prices requested.
c. If the Bidder adds any provisions reserving the right to accept or reject any award.
d. If there are unauthorized additions or conditional Bids, or irregularities of any kind which tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
e. If the Bidder fails to complete the Proposal forms where information is requested so the Bidmay be properly evaluated by the Owner.
f. If the Unit Prices contained in the Bid Schedule are unacceptable to the Owner.
g. If the Bidder fails to comply with other instructions stated herein.

**7. PERFORMANCE BOND**

The successful Bidder, upon award of Contract, shall furnish a Performance Bond in an amount equal to one hundred percent (100 %) of the Contract price.

**8. PAYMENT BOND**

The successful Bidder, upon award of Contract, shall furnish a Payment Bond in an amount equal to one hundred percent (100 %) of the Contract price.

**9. PRE-BID CONFERENCE**

A Pre-Bid Conference will be held at the Orange County West Campus Office Building in room 004, 131 W Margaret Lane, Hillsborough, NC on April 3, 2014 at 2:00 pm.. Attendance at this Pre-Bid Conference is not mandatory, but all potential Bidders are encouraged to attend.

Attachment #1

**10. INFORMATION TO BIDDERS**

All questions concerning the plans and specifications should be directed to the Designer.

Ben Burke
President, Burke Design Group, PA
Phone Work : 919-771-1916
Phone Mobile : 919-618-0717
Email Work : benburke@nc.rr.com
Address Work : 3305-109 Durham Drive, Raleigh, NC 27603
Email benburke@nc.rr.com (preferred)

All questions concerning bidding procedure should be directed to:.

David Cannell, Purchasing Agent, CLGPO
Orange County Financial Services
dcannell@orangecountync.gov (preferred)
919-245-2651 (v)

**11. Proposed timeline**

| | |
|---|---|
| **Bid advertised and available to bidders** | **March 24, 2014** |
| **Pre-Bid Conference** | **April 3, 2014 @ 2:00 pm** |
| **Deadline for RFI and alternate products** | **April 14, 2014** |
| **Final Addendum issued** | **April 17, 2014** |
| **Bid opening** | **April 24, 2014 @ 2:00 pm** |
| **Bid Award and NTP** | **May 2014** |

12. **Alternate Products**

Any mention of brand names is used to denote the minimum quality standard and function of the products desired and they do not restrict vendors to the specified brand, make, manufacturer, or specifications named. They are used only to set forth and convey the prospective vendors the general style, type, character, and quality of products desired; and substantially equivalent products will be acceptable. All items must be submitted to the designer at Patric.LeBeau@perkinswill.com on or March 3, 2014. Identification of acceptable alternates will be conveyed via addendum. please use the form titled "REQUEST FOR SUBSTITUTION"

13. **Donated/discounted Products**

Due to the importance of this project to the community that surrounds it, several suppliers have agreed to either donate certain items, or offer additional discounts. The contact information for these products is provided in the bid specification. Please note, this in no way limits the bidders ability to submit alternate products as detailed in item 12 above.

**14. Minority Contractor resources**

The North Carolina Office of Historically Underutilized Businesses provides a great resource for identifying potential HUB certified contractors. Their searchable website can be accessed at
http://www.doa.nc.gov/hub/searchhub.aspx

**15. Permitting fees**

All permit fees will be waived for this project and shall not be included in the bid amount. Contractor responsible for obtaining all permits

**16. Misc**

Successful contractor will receive 5 sets of printed plans and specifications. Electronic copies of the bid documents are available at the county's website www.orangecountync.gov/purchasing under "current bids". Please send an email from the space provided on the website to notify us that you have downloaded the bid and to be added to th

**17. E-Verify**

Attachment #1

HB786 imposes E-Verify requirements on contractors who enter into certain contracts with state agencies and local governments. The legislation specifically prohibits governmental units from entering into certain contracts "unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes." (Article 2 of Chapter 64 establishes North Carolina's E-Verify requirements for private employers). It is important to note that the verification requirement applies to subcontractors as well as contractors. The new laws specifically prohibit governmental units from entering into contracts with contractors who have not (or their subs have not) complied with E-Verify requirements. Complete the attached affidavit, and include it with your submittal.

**18. Contract Period and Liquidated Damages**

This project has a 120 day contract period (notice to proceed through certificate of occupancy) and a $150 per day in liquidated damages. Also, $150 per day in liquidated damages shall be assessed should the final completion (signed final punchlist) not be executed by the Owner no later than 30 days from C/O.

# GENERAL CONDITIONS

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**ARTICLE 1. DEFINITIONS**

1.1 Agreement - The Construction Contract, these General Conditions, and any 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 Contractor signed by the Owner and the Designer 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 Construction Contract. See paragraph 14.1.

1.6 Completion Date - Those dates identified as Completion Dates in the Contract Construction Schedule or elsewhere in the Contract Documents.

1.7 Construction Contract – The document executed by the Contractor and the Owner to formally memorialize their consent to the terms of the Agreement.

1.8 Construction Change Directive – A written order to the Contractor signed by the Owner and the Designer directing an addition, deletion, or revision in the Work after execution of the Construction 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 Contractor proceed with said addition, deletion, or revision in the Work subject to adjustment of the Contract Price and/orContract Time under the procedures described herein.

1.9 Construction Manager(s) - The person(s) or firm designated as the Construction Manager in the Contract Documents, or their authorized representatives. The Construction Manager(s), as referred to herein, will be referred to hereinafter as if each were of the singular number and masculine gender.

1.10 Contract Construction Schedule - That schedule described in Article 13 hereof and identified as the Contract Construction Schedule.

1.11 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.

1.12 Contract Price - The total monies payable to the Contractor under the Contract Documents pursuant to paragraph 15.1 of the Agreement.

1.13 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 13 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.

1.14 Contractor - The Contractor shall be that party identified as such in the Contract Documents.

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

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

1.17 Designer(s) – The person or firm designated as the Designer in the Contract Documents, or their authorized representatives. The Designer(s), as referred to herein, shall mean architect, landscape architect, and/or engineer. They will be referred to hereinafter as if each were of the singular number and masculine gender. On projects for which there is no Designer designated references to approvals or authorizations of or by the Designer shall be interpreted to refer to approvals or authorizations of Owner or Owner's designee.

1.18 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.

1.19 Field Order - A written order issued by the Designer which clarifies or interprets the Contract Documents or orders minor changes in the Work in accordance with the Contract Documents. See paragraph 14.2.

1.20 Final Completion - The point at which the Contractor 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.

1.21 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.

1.22 Liquidated Damages – See paragraph 13.18 of these General Conditions.

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

1.24 Notice of Award - The written notice by the Owner to the Contractor that the Contractor is the successful Bidder and that upon compliance with the conditions precedent to be fulfilled by

the Contractor within the time specified, the Owner will execute and deliver the Agreement to him.

1.25 Notice to Proceed - See paragraph 13.3.

1.26 Owner - The Owner is the person designated as such in the Agreement.

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

1.28 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 or the Designer to obtain compliance with the requirements of the Contract Documents, as well as all written notices, demands, instructions and claims furnished by the Contractor 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.

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

1.30 Project Expediter – As used herein, is an entity stated in the Contract Documents, designated to effectively facilitate scheduling and coordination of Work activities. For the purpose of a single prime contract, the single prime contractor is designated as the Project Expediter. For the purpose of a project involving separate prime contracts, the Contractor for general work shall be designated as the Project Expediter unless otherwise indicated in the Supplementary General Conditions. See paragraph 7.27.

1.31 Project Manager - That person designated by the Contractor 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.

1.32 Request for Information - A written communication from the Contractor to the Designer 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 Contractor 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 Contractor unless he cannot reasonably do so, in which case he shall prior to that date notify the Contractor of the date by which he can reasonably respond. The Contractor 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 his Request for Information sufficiently in advance to allow the Designer a reasonable time within which to respond.

1.33 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 Contractor in requesting progress payments and which is to include a Schedule of Values as required by the Contract Documents and an affidavit of the Contractor that progress payments theretofore received from the Owner on account of the Work have been applied by the Contractor to discharge in full all the Contractor's obligations incurred in connection with Work covered by all prior applications for payment. See paragraph 20.2.

1.34 Resident Superintendent - That person designated by the Contractor 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.

1.35 Schedule of Values - Any breakdown of the Contract Price which may be required by the Contract Documents, and designated as such. See paragraph 20.1.

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 Contractor to perform any of the Work at the Project.

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

1.39 Submittal Register - See paragraph 13.2 of these General Conditions.

1.40 Substantial Completion - The point at which the Work, and Work by other Contractors on or in connection with the Project, as determined by the Designer, is sufficiently complete 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 Contractor. 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.

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 Contractor to fulfill the Contractor'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 Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall notify the Designer 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: Construction Contract, Modifications, Addenda, General 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.

2.3 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 Designer 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 Contractor 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 Contractor shall fully complete the Work and shall be responsible for all of the Work under the Contract Documents to which the Construction Contract applies. If the Contractor is prevented from doing so by any limitation of the Contract Documents, the Contractor shall immediately give notice thereof to the Designer and the Owner 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 Contractor shall submit within thirty (30) days after his receiving the Construction 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 Designer whether such proposed products are suitable. The Designer shall be the sole judge as to the suitability of any proposed product. The burden of proof of quality rests with the Contractor.

2.8 The Contractor is required to examine and read the complete set of Contract Documents for information concerning the Work, because some of the Work for which the Contractor will be responsible may be indicated on or in documentation applying primarily to the Work of one or more other separate prime contractors. No allowance will be made for the Contractor's failure to become familiar with the complete set of project documents.

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

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

3.1 The Contractor has investigated prior to bidding 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 Contractor 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 Contractor prior to receipt of bids. Any failure by the Contractor to become acquainted with the available information shall not relieve the Contractor from the responsibility for estimating properly the difficulty or cost of successfully performing the Work.

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

3.3 The Contractor 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 Contractor and the Contractor's employees, subcontractors,

and suppliers will, at all times, comply with same. If the Contractor shall discover any provisions in the Contract Documents which are contrary to or inconsistent with any such law, ordinance, rule, or regulation, the Contractor shall immediately give notice thereof to the Designer and the Owner in writing, identifying any items of Work affected, and the Contractor shall not proceed until the Contractor has received written direction from the Designer with respect to these items. If the Contractor performs contrary to or inconsistently with any such law, ordinance, rule, or regulation without such written direction, the Contractor shall bear all costs which are a consequence of such performance.

3.4 At times selected by the Designer after execution by the Contractor 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 Contractor to guarantee the faithful performance of the Work in compliance with the Contract Documents, in such form as may be required by law and approved by the Owner. The bond shall be dated the same date as the Construction 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.

4.2 A payment bond in the full amount of the Contract Price shall be required of the Contractor 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.

## ARTICLE 5. INSURANCE AND INDEMNITY

5.1 CONTRACTOR PROVIDED INSURANCE
The Contractor shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by this Agreement to protect the Contractor and the Owner from claims for damages for bodily injury, including death, and from claims for property damage which may arise from the Contractor's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Agreement. 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 Contractor, which arises from performance of Work under the Agreement. The Contractor is strictly responsible for any losses, claims, and costs of any kind which exceed the Contractor'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

Contractor 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 7 days after the receipt of the Construction Contract by the Contractor for signatures, the Contractor shall furnish to the Owner a certificate or certificates of insurance in a form satisfactory to the Owner. Upon request of the Owner, the Contractor 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 this 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 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 30 days, the insurer shall mail 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 Contractor is obligated to replace such insurance within 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 Contractor 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 Contractor's responsibilities and liabilities under this 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 Contractor shall name the Owner, the Designer, the Designer’s consultants, and the Construction Manager 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 Contractor, products and completed operations of the Contractor, and automobiles owned, hired, leased, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

For any claims related to this Project, the Contractor'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 Contractor'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 Contractor shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Agreement. In addition, the Contractor 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 Contractor self-insured. The Contractor'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 Contractor's insurance policies must specifically state the insurance company or Contractor'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 Contractor 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 Contractor'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 this Agreement justifying termination for default.

5.1.1 Worker's Compensation and Employers' Liability Insurance

The Contractor 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 Contractor or by his Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the Contractor and his 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 Contractor or by his Subcontractors.

The Contractor shall pay such assessments as will protect the Contractor 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 Contractor 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 Contractor's performance of the Work and the Contractor's other obligations under the Agreement, whether such performance of the Work is by the Contractor, 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 Contractor’s indemnification obligations under this 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 Contractors 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 Contractor 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 General Conditions.

5.1.5 Umbrella Liability
The Contractor 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 Contractor 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 Contractor shall purchase All Risk Property Insurance on a Completed Value Form in the names of the Owner, Contractor, 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 Contractor is responsible for all physical damage to owned or rented machinery, tools, equipment, forms, and other items owned, rented or used by the Contractor 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 Contractor shall provide valuable papers and records insurance with coverage in an amount commensurate with project scope and set forth in the Supplementary General Conditions.

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

Should 30 days elapse after the claim or alleged claim has been received by the Contractor, and the Contractor 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 Contractor 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 Contractor 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 Contractor shall include all Subcontractors as Insureds under its policies, or shall furnish separate certificates, policies, and endorsements for each Subcontractor the Contractor intends to use. If a Subcontractor does not take out insurance in his own name and the Contractor wishes to provide insurance protection for such Subcontractor and such Subcontractor's employees, the Contractor shall either (a) procure appropriate policies in the name of the Subcontractor, or (b) cause a rider or riders to be attached to the Contractor'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 Contractor'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 Contractor by the Contract Documents. All Work performed for the Contractor by any Subcontractor shall be pursuant to an appropriate agreement between the Contractor 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. 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 Contractor and Subcontractors, the terms and conditions of such coverage shall be set forth in the Supplementary Conditions.

5.3 CONTRACTOR AS JOINT VENTURE
If the Contractor is completing this Project on a joint venture basis, both joint venture partners retain all liabilities assumed by this Agreement, individually and collectively. This may include, but is not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder.

Evidence of a Blanket Joint Venture Endorsement must be obtained from the General Liability and Contractor's Pollution Legal Liability carriers of each joint venture partner for a period of 6 years after completion of the Project, substantially as follows: **With respect to "your work", and the "products-completed operations hazard", you are an insured for your liability arising out of the conduct of any partnership or joint venture of which you were a partner or member, even though this partnership or joint venture is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you."**

5.4 INDEMNIFICATION
The Contractor, to the fullest extent not expressly prohibited by law, shall defend, indemnify, and save harmless the Owner, the Designer, the Construction Manager and their 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 Contractor'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 Contractor 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 Contractor, any Subcontractor or supplier or any representatives of the Contractor. The Contractor shall not be required to indemnify the Owner against losses resulting from a breach of this Agreement by the Owner or its other agents and contractors, or resulting from negligence, misconduct or violation of laws on the part of the Owner or its other agents and contractors.

e) upon completion of the Work the Contractor 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 Contractor 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 this Agreement Contractor acknowledges the receipt of adequate consideration in return for said release.

The Contractor further agrees to obtain, maintain, and pay for such liability insurance coverages and endorsements as will insure the provisions of this paragraph 5.4. Furthermore, the Contractor 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.

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 Contractor 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 this Agreement, then upon the discovery of such environmental hazards, the Contractor shall immediately, and in no event more than three days later, give notice to the Owner of the environmental hazards before they are disturbed. The Owner and the Designer 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 Contractor shall have no liability under this Agreement for any environmental hazards existing prior to the date that Work commences under this Agreement unless the Contractor 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 this Agreement.

5.5 RISK MANAGEMENT POLICY

The Orange County Risk Management Policy shall not apply to construction contracts for amounts over $250,000. The terms of these General Conditions related to insurance shall be the sole authority governing insurance requirements for such contracts.

## ARTICLE 6. OTHER RECORD DOCUMENTS AND SUBMITTALS

6.1 The Designer shall furnish to the Contractor the number of copies of Drawings and Specifications stated in the Contract Documents. Additional copies of Drawings and Specifications may be obtained at the cost of reproduction and handling.

6.2 The Contractor shall submit to the Designer all Submittals required by the Contract Documents. The Contractor shall submit at least three (3) reproducible prints of all shop drawings. The Contractor shall submit samples in quantities required by the Contract Documents. The Contractor shall submit product data in at least five (5) copies. All shop drawings shall be reviewed by the Contractor and shall bear the Contractor's stamp of approval before being forwarded to the Designer. 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 Designer shall review the submittal with reasonable promptness, noting desired corrections, if any. The Designer shall retain two (2) copies of the submittal and shall return the balance of the reviewed submittal to the Contractor for action. The Contractor shall furnish any corrected submittal to the Designer. The Designer shall retain two (2) copies of the corrected submittal and will return the balance of the reviewed submittal to the Contractor. All substitutions prior to the receipt of bids shall be in accordance with the Contract Documents. Refer to Instructions to Bidders, Substitutions.

The Contractor acknowledges that the processing of shop drawings and other submittals is directly impacted by the clarity, completeness, and accuracy of said documents and that it is the Contractor’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 Designer for approval.

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

6.4 Review of submittal by the Designer shall not be construed as relieving the Contractor from responsibility for compliance with terms or designs of the Contract Documents nor from responsibility for errors of any sort in the submittal.

6.5 The Contractor 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 Designer shall be a condition precedent to approval by the Designer 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 Designer and Owner for inspection at all times and shall be delivered to the Designer for the Owner's purposes prior to the Designer's certifying Substantial Completion of the Work.

6.6 At completion of the Project and before Final Payment, the Contractor 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 Designer. 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 Designer.

**ARTICLE 7. CONTRACTOR**

7.1 The Contractor shall supervise and direct the Work efficiently and with the Contractor’s best skill and attention. Except as may be set forth specifically in the Contract Documents, the Contractor 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 Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

7.2 The Contractor 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 Designer and the Owner. 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 Contractor 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 Contractor. Such replacement shall be at the Contractor'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 Contractor, and instructions, directions or notices given to either of them shall be as binding as if given to the Contractor.

7.3 The Contractor 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 Contractor will at all times maintain good discipline and order at the site, and will comply with all applicable OSHA standards.

Any person employed by the Contractor, any Subcontractor, or any sub-subcontractor who, in the opinion of the Designer or the Owner, does not perform his Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner or Designer, be removed forthwith by the Contractor, 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 or Designer.

Should the Contractor 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 Designer or the Owner, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, he shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the Designer or the Owner in writing.

7.5 The Contractor shall furnish 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 Contractor shall give the Owner and Designer reasonable advance notice.

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 Contractor 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 Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies which may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner shall deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good any such damage, loss, or efficiency.

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.

When the methods and equipment to be used by the Contractor accomplishing the Work are not prescribed in the Contract Documents, the Contractor shall be free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the Contract Documents.

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 Designer. If the Contractor desires to use a method or type of equipment other than specified in the Contract Documents, the Contractor may request authority from the Designer 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 Contractor 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 Designer determines that the Work produced does not meet the requirements of the Contract Documents, the Contractor 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 Contractor shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the Designer 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 Designer or Owner 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 Contractor shall coordinate the storage of all materials with the Designer and the Owner. Materials to be stored at the Project or on the Owner's property shall not create an obstruction to the Owner's or other contractor's reasonable activities. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor 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 Contractor at his 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 Contractor will be fully responsible for all acts and omissions of his 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 Contractor is responsible for the acts and omissions of the Contractor’s own employees. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and the Owner or the Designer, or any obligation on the part of the Owner or the Designer 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 or the Designer may furnish to any Subcontractor or supplier, to the extent practicable, evidence of amounts paid to the Contractor 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 Contractor in dividing the Work among Subcontractors.

7.10 The Contractor 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 Designer and the Owner within seven (7) days after written request by the Owner.

7.11 The Contractor shall attend job progress conferences and all other meetings or conferences as directed by the Designer. The Contractor 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 Designer 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 Contractor 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 Contractor 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 Designer shall preside as chairman and arrange for minutes to be taken and circulated.

In the event that the prosecution of the Work is discontinued for any reason, the Contractor shall notify the Designer and the Owner at least forty-eight (48) hours in advance of resuming operations.

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 Contractor 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 Contractor 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 Contractor 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 Designer in the Contract Documents. The Contractor shall indemnify and hold harmless the Owner, the Designer, and anyone directly employed by either of them, 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 Contractor 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 Contractor 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 Contractor or by the Contractor’s employees, Subcontractors, sub-subcontractors, or their employees.

7.15 The Contractor 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, Owner, or Designer. The Contractor shall be responsible for any damage to the Owner's property, or that of others, by the Contractor or the Contractor’s employees, Subcontractors,

sub-subcontractors, or their employees or agents, and shall make good such damages. The Contractor shall be responsible for and pay for any such claims against the Owner.

7.16 The Contractor 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 Contractor shall provide cover and/or protect all portions of the Work and provide all materials necessary to protect the Work whether performed by the Contractor 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.

The Contractor 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 Contractor will not be paid an additional amount for such effort. Should the Owner or Designer observe that the Contractor at any time has failed to maintain the Work as provided herein, the Designer may immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. Should the Contractor fail to properly respond to the Designer's notification, the Owner may, at the Contractor's expense, take such action as it may deem appropriate to remedy the defective maintenance, including suspension of the Contractor's Work or any part thereof. Any such expense incurred by the Owner shall be deducted from monies due or to become due the Contractor.

Parking lots, streets, and walks connecting to the Project area shall be protected by the Contractor 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 Contractor shall, immediately following that work, return the area to its original condition.

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 and other debris. 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 or around the Project during the course of construction without written authority from authorities having jurisdiction and the Owner.

7.19 The Contractor 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 Contractor shall furnish, erect, and maintain temporary barricades, and properly light the area. The Contractor shall comply with any directions and public authorities in this respect.

7.20 The Contractor 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 Contractor's safety measures and safety programs on the Project. The name of the safety inspector shall be made known to the Designer and the Owner 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 Contractor is obligated to act in the Contractor's discretion to prevent threatened damage, injury, or loss. As soon as practicable, the Contractor shall notify the Designer and Owner of such emergency. The Contractor shall give the Designer and the Owner prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergency. If the Contractor believes that additional work done in an emergency entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided in Articles 14 and/or 15.

7.22 The Contractor 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 Contractor shall remove all waste materials and rubbish from and about the Project. At the completion of the Work, the Contractor shall remove all tools, construction equipment, machinery, and surplus materials. The Contractor 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 Contractor 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 Contractor.

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 Contractor shall pay all bills for water, electricity, or other public utility service to the Project site.

7.24 The Contractor shall indemnify and hold the Owner, the Designer, the Designer's consultants, and their 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 separate contractor or by any Subcontractor, sub-subcontractor, or supplier engaged by or employed by the Contractor or employed by any of the Subcontractors claiming through him, 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 Contractor or the Contractor's Subcontractors on the Project.

The Contractor acknowledges that should the Contractor or any of the Contractor's Subcontractors be damaged by any breach of contract by any other separate prime contractor on the Project, the Contractor may invoke applicable dispute resolution procedures with said other separate prime contractor or bring a direct civil action against said other separate prime contractor. The Contractor hereby expressly agrees that neither the Owner nor its officers, agents, or employees shall have any liability of any kind or nature whatsoever to the Contractor, its Subcontractors, sub-subcontractors, or suppliers arising out of or relating to any breach, inconvenience, delay, interference, or other action or non-action by any other separate prime contractor. The Contractor covenants not to sue the Owner for any loss or damage caused by any breach, inconvenience, delay, interference, or other action or non-action by any other separate prime contractor, notwithstanding whatever rights at law the Contractor might have to bring a civil action against the Owner for any breach, inconvenience, delay, interference, or other action or non-action of any other separate prime contractor. The Contractor agrees to look exclusively to the other prime contractor for relief or remedy.

Nothing contained herein or appearing anywhere in the Contract Documents shall obligate or require the Owner to exercise any right or privilege, or to take any action or to refrain from taking any action under any contract it may have with any other prime contractor or party to the Project for the benefit of the Contractor or any Subcontractor, subSubcontractor, or supplier claiming through the Contractor.

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 Contractor 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 Contractor 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 Contractor 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 Project Expediter for the Project shall be responsible for the coordination of the Work of itself and any other separate contractors, both as to space and time. The Project Expediter shall coordinate the implementation of the Contract Construction Schedule, all construction activities and close-out of the Project, including but not limited to all testing, inspection, certifications, and approvals required by public agencies.

The Contractor and the Project Expediter shall each be required to notify the Designer and the Owner promptly of any event or condition which could affect the conduct or progress of the Work and shall cooperate fully with all other contractors on the Project site.

7.28 The Owner hereby delegates to the Project Expediter all of its duties to coordinate and to expedite the Work not expressly reserved to the Owner by other provisions of the Contract Documents.

7.29 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.

7.30 The Contractor 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 Contractor'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 Contractor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairways, and similar hazards. The Contractor shall protect against damage or injury resulting from falling materials, and shall maintain all protective devices and signs throughout the progress of the Work.

7.31 The Contractor 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.

7.32 Any land disturbing activity performed by the Contractor 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. Upon receipt of notice that a land-disturbing activity is in violation of said Act, the Contractor shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said Act are promptly taken. The Contractor 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.

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

7.34 The Contractor 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 Contractor 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.

**ARTICLE 8. OWNER**

8.1 The Owner shall issue communications and notices to the Contractor through the Designer to the extent contemplated by the Contract Documents.

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

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 Contractor 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.

**ARTICLE 9. CONSTRUCTION MANAGER**

9.1 The Owner may employ one or more Construction Managers for the purpose of assisting the Owner, Designer, and Contractor in developing and administering budgets and cost controls, in evaluating constructability and value engineering proposals, in establishing and maintaining a critical path method (CPM) schedule, in coordinating and/or expediting the Work with other projects being constructed by the Owner or others adjacent or near the Work, or for such other purposes as the Owner may deem appropriate. From time to time the Owner may identify such Construction Managers(s) to the Contractor in writing identifying any tasks assigned to such Construction Managers(s).

**ARTICLE 10. DESIGNER**

10.1 The Designer is charged with the responsibility of interpretation of the Contract Documents. The Designer’s decisions relating to aesthetic matters shall be final.

10.2 All Work completed under the Contract Documents shall be subject to review by the Designer. No Work is to be covered without the Designer's review or prior authorization. Any Work so covered without the Designer's review or prior authorization shall be uncovered at the Contractor's expense. The Contractor shall notify the Designer in writing at least twenty-four (24) hours in advance of covering any Work.

10.3 The Designer 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 Contractor'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.

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

**ARTICLE 11. TESTING AND SURVEYING**

11.1 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 Contractor. The costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor and are included in the Contract Price. Any Work in which untested materials are used without approval or written permission of the Designer shall be removed and replaced at the Contractor's expense. Work found to be unacceptable or unauthorized will not be paid for and, if directed by the Designer shall be removed and replaced at the Contractor'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 advertisement for bids 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 Contractor. 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 Contractor at his written request. Copies of Contractor test reports shall be furnished to the Designer upon written request.

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

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

**ARTICLE 12. SEPARATE CONTRACTS**

12.1 It is expressly understood that the Owner may deploy the Owner’s own employees or engage other separate prime 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 Contractor. It shall be necessary for the Contractor to coordinate construction activities with such other contractors, particularly with respect to access to work areas, storage of materials, and use of elevators and other common facilities. The Contractor shall diligently and in good faith cooperate with the Owner, the Designer, 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 Designer with respect to such matters. Any disputes between the Contractor and any other separate prime contractor with respect to such matters shall be resolved in accordance with the claim and dispute resolution procedures in the Agreement.

**ARTICLE 13. CONTRACT TIME**

13.1 Within fourteen (14) days after receipt of the Construction Contract by the Contractor for signatures, the Project Expediter shall prepare and submit to the Designer and Owner for review and approval a preliminary progress schedule for the Work pursuant to the requirements stated in the Contract Documents.

13.2 Within fourteen (14) days after initial receipt of the Construction Contract for signatures the Contractor shall submit to the Designer a Submittal Register listing all Submittals the Contractor is required to make or proposes to make under the Contract Documents, the dates on which the Contractor proposes to make such Submittals and the dates by which the Contractor reasonably requires a response from the Designer 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 Designer shall not be required to review any Submittal from the Contractor until a Submittal Register acceptable to and approved by the Owner has been submitted by the Contractor.

13.3 Not later than thirty (30) days following execution and delivery of the Construction Agreement by Owner to Contractor, the Owner shall deliver to the Contractor a Notice to Proceed. The Notice to Proceed shall state a commencement date on which it is expected that the Contractor 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 Contractor.

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 Contractor and the Contractor believes said delay justifies an increase in Contract Price and/or an extension of Contract Time, the Contractor may make a claim therefore as provided in Article 14 and/or Article 15. 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 Contractor, Designer, and Owner no later than fourteen (14) days after Notice to Proceed. No payments shall be due the Contractor until this schedule is approved by all parties.

13.4 The Contract Construction Schedule is a Contract Document. The Contractor represents that the Contract Construction Schedule has been reviewed in detail, that the Contractor 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 Contractor's activities are also shown. The Contractor further represents that the Contractor 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.**

13.5 If the Contractor 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 Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

13.6 If the Contractor, for reasons beyond the Contractor's control, is delayed in beginning any activity, the Contractor 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 Contractor 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 Contractor shall be entitled to an adjustment in the Contract Price computed in accordance with Article 15 of these General Conditions.

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

13.8 Should the Contractor 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 13.5 or 13.6 above, or become delayed, the Contractor 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.

13.9 The Designer and Owner or his Construction Consultant shall monitor progress of the work at all times and the Contractor 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.

13.10 On a monthly basis, the Contractor shall revise the Contract Construction Schedule, showing any adjustments made in accordance with paragraphs 13.5 or 13.6, 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 thereof to the Owner and Designer.

13.11 Should any monthly revision of any Contract Construction Schedule show that the Contractor 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 Contractor 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 Contractor is currently behind schedule. If, subsequently, the Contractor'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 Contractor such amounts as have been withheld in accordance with this paragraph.

13.12 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 Contractor 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 Contractor under the Contract Documents. Such action may be taken by the Owner only after three (3) days written notice to the Contractor. All costs incurred by the Owner in taking any such action shall be charged to the Contractor and deducted from any amounts remaining due under the Agreement.

13.13 The Contractor 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 Contractor or the Contractor'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 13.14.

13.14 On any day that the Contractor considers that the Project is delayed by adverse weather conditions, the Contractor shall identify in writing to the Designer and the Owner 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 Designer 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 Designer exceeds the number of inclement weather days set forth below, and the Contractor 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 |

13.15 If the Contractor believes that the progress of the Work has been adversely affected by adverse weather recognized by the Designer during a particular month, the Contractor shall submit a written request for extension of time to the Designer. 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.

13.16 The Contractor specifically recognizes that a delay by the Contractor 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, Designer's and 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 Contractor 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.

13.17 The Contractor 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.

13.18 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 Contractor(s) to complete the Work within the time specified, such time being in the essence of this contract and a material consideration thereof.

**ARTICLE 14. CHANGES IN THE WORK**

14.1 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 Contractor 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 14 and/or Article 15. In order to expedite the Work and avoid or minimize delay in the Work that might affect the Contract Price or Contract Time, the Designer may issue a Change Order in the form of a Construction Change Directive which when signed by the Owner and Designer, directs the Contractor 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 15.2.

14.2 The Designer 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 Contractor believes that any minor change or alteration authorized by the Designer entitles him to an increase in the Contract Price and/or an extension of Contract Time, he may make a claim therefore as provided in Article 14 and/or Article 15.

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

14.4 Increases in the Contract Price and/or extensions of the Contract Time for additional Work performed by the Contractor shall only be in accordance with a written Change Order signed by the Owner and Designer. The Contractor 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, Designer, 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 Designer.

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

14.6 Neither the Owner nor the Designer shall 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.

14.7 The Owner, in its sole discretion, may require that the Contractor notify the Contractor’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 Contractor shall furnish proof of such adjustment to the Designer and the Owner.

If this requirement is exercised, the Change Orders shall require written consent of the Contractor's surety. At the time of signing a Change Order, the Contractor 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 Contractor 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 Designer and to the Owner, and the furnishing of such written consent is a condition precedent to such payment.

14.8 The Contractor shall support all requests for Change Orders with a detailed cost breakdown showing cost of materials, labor, equipment, transportation, other items, Contractor'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.

14.9 When a request for a Change Order involves a Subcontractor, the Contractor 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 14.8.

**ARTICLE 15. CHANGE OF THE CONTRACT PRICE**

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

15.2 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 and the Designer 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 claim shall be made in writing and shall be delivered to the Designer and the Owner 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 Contractor, at the time the claim is made, is unable to state the amount claimed with accuracy, the Contractor 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 Contractor's notice of claim, the Contractor shall supplement the claim with an accurate statement of the amount claimed and how it has been calculated. The Contractor shall provide, in writing, in support of the claim all such explanations, arguments, data, receipts, expert opinions, or other documents or information as the Contractor deems appropriate to be considered in support of the claim.

A claim may properly be rejected by the Owner by reason of the Contractor'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 Contractor 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 Contractor be entitled to any increase in the Contract Price unless the Contractor has given notice and made such a written claim within the times required. The Owner shall decide, after obtaining the advice of the
Designer, 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.

The Owner shall advise the Contractor 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 Contractor and shall provide its decision to the Contractor within seven (7) days after such Board consideration, review or action. Any claim on which the Owner has not provided its decision to the Contractor within the applicable time period shall be deemed denied. If the Contractor is not satisfied with the decision of the Owner, the Contractor may within seven (7) days of receipt of the Owner's decision initiate the mediation process as described in Appendix A to the General Conditions of the Contract for Construction.

15.3 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 Contractor 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 Contractor are unable to agree, the Owner shall grant an equitable adjustment in the Contract Price.

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

15.4 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 Contractor 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.

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.

The Contractor 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.

15.5 Where the Contract Price is to be adjusted by negotiation, the Owner may authorize and designate the Designer to negotiate with the Contractor on behalf of the Owner; provided, however, any agreement reached between the Contractor and Designer shall be subject to approval by the Owner.

## ARTICLE 16. UNFORESEEN CONDITIONS

16.1 Should the Contractor 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 this Agreement, the Contractor shall immediately, and in no event more than three days later, give notice to the Owner of such conditions before they are disturbed. The Owner and the Designer 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, neither the Owner nor the Designer shall 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 Contractor's review or that could have been discovered by the Contractor through the performance of its obligations pursuant to the Contract Documents.

## ARTICLE 17. CORRECTION OF WORK BEFORE FINAL PAYMENT

17.1 The Owner has the authority to stop or suspend work, and the Designer 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.

Any work, materials, fabricated items, or other parts of the Work which have been found by the Designer to be defective or not in accordance with the Contract Documents shall be condemned and shall be removed from the Project by the Contractor, 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 Contractor. Correction of condemned Work described above shall be commenced by the Contractor within twenty-four (24) hours after notice from the Designer or the Owner and shall be pursued to completion. Should the Contractor 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 Contractor.

Condemned Work removed shall be the property of the Contractor and shall be removed from the Project by him 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 Contractor and the

cost of such disposal shall be deducted from amounts due or to become due to the Contractor. 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 Contractor, then the Contractor and the Contractor's sureties shall be liable for and shall pay to the Owner the amount of such excess.

## ARTICLE 18. CORRECTION OF WORK AFTER SUBSTANTIAL COMPLETION; WARRANTIES AND GUARANTIES

18.1 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 Designer shall relieve the Contractor from responsibility for negligence, defective material or workmanship, or failure to comply with the Contract Documents.

18.2 The Contractor shall, at the Contractor'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.

18.3 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 Contractor shall, promptly upon receipt of notice from the Designer 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 Designer, 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.

If, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Contractor disturbs any work, facility, premises, or construction belonging to the Owner, the Contractor 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.

If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected, and the Contractor and the Contractor's

ureties 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 Contractor automatically without further action on the part of the Owner or the Designer.

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

**ARTICLE 19. OWNER'S RIGHT TO DO WORK**

19.1 If, during the progress of the Work or during any period of guarantee, the Contractor 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 Contractor from the Designer, or from the Owner after Final Payment, 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 Contractor. Notwithstanding any action by the Owner under this paragraph, all warranties and bonds given or to be given by the Contractor shall remain in effect or shall be given by the Contractor.

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

**ARTICLE 20. PARTIAL PAYMENTS**

20.1 Within thirty (30) days after his initial receipt of the Construction Contract for signatures, the Contractor shall submit to the Designer 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 Designer and Owner shall be provided with the Contractor's estimate papers, Subcontractor agreements, supplier quotes, or other documents substantiating these values if so requested in writing by the Designer. The Contractor shall provide the requested documentation within seven (7) days after receipt of the Designer's written request. The Schedule of Values shall be subject to approval by the Owner, and if the Owner and the Contractor cannot agree upon the Schedule of Values, the Designer shall prepare it, and the Schedule of Values as prepared by the Designer shall be binding on the Owner and the Contractor. No Request for Payment shall be certified by the Designer until the Designer has issued approval of said Schedule of Values.

20.2 Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Designer 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 Contractor 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 Contractor, upon request of the Designer, shall substantiate the request with invoices, vouchers, payrolls, or other evidence.

20.3 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 Designer. However, in the sole discretion of the Owner, with permission in writing from the Designer and Owner 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 Designer. 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 Contractor regardless of ownership or title. No payment shall be made on account of materials stored in a bonded warehouse unless the Contractor has acquired written permission from the Designer 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.

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

20.5 The Designer 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 Contractor, or due to the operations of the Contractor, 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 Designer or Owner.

e) Damage to the Owner or another contractor.

f) Inability of the Contractor 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 13.15 and 13.17 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 Designer may appear prudent, proper, or equitable. When grounds for withholding certification have been corrected, the Designer shall so certify to the Owner and the Owner shall make any payment due with respect to such certification as a part of his next payment after such certification.

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

20.7 The amount certified by the Designer for payment shall be ninety-five percent (95%) of the value of Work completed and materials stored since the Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraph 20.4, 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.

20.8 After certification by the Designer that the Work is fifty percent (50%) complete, based on a determination that the Contractor'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 Contractor's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete) and the Contractor 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 Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraphs 20.4 and 20.5; 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 determines that the Contractor'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 21. FINAL PAYMENT**

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

21.2 Except as set forth in paragraph 21.1, within forty five days after Substantial Completion of the Project, the remaining unpaid balance of the Contract Price shall be paid to the Contractor, 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.

21.3 Upon Substantial Completion, the Designer shall prepare and submit to the Contractor a deficiency list identifying all portions of the Work which are known by the Designer at that time to be incomplete or defective. Within thirty (30) days of receipt of this deficiency list, the Contractor 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 Designer may submit to the Contractor a supplemental deficiency list, in which case the Contractor shall complete or correct any and all new items identified on the supplemental deficiency list within the time period stipulated in paragraph 18.3.

21.4 Final Payment of any remaining balance of the Contract Price shall not be due to the Contractor until the Contractor achieves Final Completion of the Project.

21.5 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 Contractor.

b) Defective Work or materials appearing after Final Payment.

c) Failure of the Contractor 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 18 and 28.

g) Claims for recovery of overpayment based upon incorrect measurement, estimate, or certificate.

21.6 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those claims previously made in writing pursuant to paragraph 15.2 and not finally resolved.

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

21.8 The final Request for Payment shall be identified on its face as such and shall be presented by the Contractor to the Designer within thirty (30) days of completion of the Work. Final payment of the retained amount due the Contractor 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 20.4; (ii) submission of the affidavits of other documentation required by Article 22; (iii) submission by the Contractor of a Request for Payment identified on its face as final and including the Designer's certification.

## ARTICLE 22. CONTRACTOR, SUBCONTRACTOR AND SUPPLIER AFFIDAVIT

22.1 The Final Payment due the Contractor on account of the Contract Documents shall not become due until the Contractor has furnished to the Owner through the Designer: (A) an affidavit by the Contractor 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 Contractor 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 Contractor for all Work performed and/or materials supplied by him 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 Contractor’s sureties to Final Payment. In the event that the Contractor cannot obtain an affidavit, as required above, from any Subcontractor or supplier, the Contractor shall state in the Contractor’s affidavit that no claims or liens exist against such Subcontractor or supplier to the best of the Contractor's knowledge, and that if any appear afterwards, the Contractor shall save the Owner harmless for all costs and expenses, including attorneys’ fees, on account thereof.

## ARTICLE 23. ASSIGNMENTS AND SUBCONTRACTS

23.1 The Contractor shall not assign any portion of this 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 Contractor under the Contract Documents may be assigned.

## ARTICLE 24. MEASUREMENTS

24.1 Before ordering material or doing Work which is dependent for proper size or installation upon coordination with building conditions, the Contractor 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 Designer for adjustment before any Work affected thereby is begun.

## ARTICLE 25. CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

25.1 Within thirty (30) days after initial receipt of the Construction Contract for signatures the Contractor shall submit to the Designer and Owner 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 Contractor shall provide this list at this time even if the Contractor was required to submit a list of proposed Subcontractors with the Contractor's bid. The Designer shall promptly reply to the Contractor in writing stating whether or not the Owner or the Designer, 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 Designer to reply within ten (10) days after the Contractor has furnished all required information shall constitute notice of no objection.

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

25.2 The Contractor agrees that the terms of the Contract Documents, including all portions thereof, shall apply to all Subcontractors of the Contractor as if they were the Contractor, and that the Subcontractors of the Contractor shall, by means of their subcontracts, be bound by all the terms of the Contract Documents including, but not limited to, Article 26 of these General Conditions.

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

**ARTICLE 26. USE OF PREMISES**

26.1 The Contractor 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 Designer, if any.

26.2 The Contractor 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.

26.3 The Contractor shall enforce all of the Designer's instructions, including, but not limited to, those regarding signs, advertisements, fires, and smoking.

**ARTICLE 27. CUTTING, PATCHING AND FITTING**

27.1 The Contractor shall do all cutting, fitting, and 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 28. DISPUTE RESOLUTION**

28.1 The laws of the State of North Carolina shall apply to the interpretation and enforcement of this 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, this 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 this Agreement shall notify the other Party of its intent to initiate a mediation process. In any such mediation process the Parties should agree upon a North Carolina certified mediator. Should the Parties be unable to agree upon a mediator within fifteen (15) days of the notice of intent to initiate a mediation process Orange County may select such mediator. The Parties shall be jointly responsible for the costs of any such mediation. In the event the Parties are unable to resolve any dispute resulting in mediation pursuant to this Article then either Party to the mediation may initiate action in the General Court of Justice. Regardless of the outcome of any dispute each Party shall be responsible for its own legal costs including reasonable attorneys' fees.

28.2 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 this Agreement solely for the purpose of this Article 28. The Contractor, by means of its subcontracts, shall specifically require its Subcontractors to be bound by this Article.

**ARTICLE 29. TAXES**

29.1 The Contractor 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 Contractor 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 Contractor 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 his files.

29.2 The following is a list of requirements to be followed by the Contractor in maintaining proper records and reporting the North Carolina Sales and Use Tax and Local Sales and Use Tax. The Contractor 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 Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of his 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 Contractor and each of the Contractor'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 Contractor's or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.

d) The Contractor shall not be required to certify the Subcontractor's statements.

## ARTICLE 30. OPERATION OF OWNER'S FACILITIES

30.1 The Contractor 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 Contractor 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 Contractor shall not close any areas of construction until so authorized by the Designer. The Contractor shall control operations to assure the least inconvenience to the public. Under all circumstances, safety shall be the most important consideration.

## ARTICLE 31. THIRD PARTY BENEFICIARY CLAUSE

31.1 It is specifically agreed between the parties executing the Agreement that, with the specific exception set forth paragraph 7.24 hereof, and that exception only, 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 32. MEASUREMENT OF QUANTITIES

32.1 All Work completed under the Contract Documents shall be measured by the Contractor 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 33. TERMINATION BY THE OWNER FOR CAUSE

33.1 If the Contractor 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 Contractor shall become insolvent, be declared bankrupt, commit any act of bankruptcy or insolvency, allow any final judgment to stand against the Contractor 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 Contractor and the Contractor’s sureties of such delay, neglect, or default, specifying the same, and if the Contractor 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 Contractor, 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 Contractor. 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 Contractor, then the Contractor 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 Contractor and the Contractor’s surety shall be liable to the Owner for and shall pay to the Owner the amount of such excess.

**ARTICLE 34. TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

34.2 If the Contractor is subsequently ordered by the Owner to resume the Work, any cost or expenses to which the Contractor may be entitled by reason of the suspension, delay, or interruption shall be recovered by means of a Change Order in accordance with Articles 13 and 14 hereof and the Contract Construction Schedule shall be adjusted in accordance with Article 13 hereof.

34.3 In the event of termination by the Owner under this Article, the Contractor 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 Contractor 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 Contractor 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 Contractor for the Work that have been inspected and accepted by the Designer and that are not incorporated in the Work shall, at the request of the Contractor, be purchased from the Contractor at the Contractor'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 Contractor 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 Contractor of his responsibilities for any completed portion of the Work nor shall it relieve his sureties of their obligation for and concerning any just claims arising out of the Work performed. The Contractor 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 35 MINORITY BUSINESS ENTERPRISE PROGRAM**

35.1 The Contractor shall at all times comply with the Orange County Minority 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 Business Enterprise Policy is included in the Project Manual.

**ARTICLE 36 E-VERIFY**

36.1 Pursuant to the terms of North Carolina General Statute 153A-449(b) no county may enter into a contract with a contractor unless the contractor and the contractor's 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 Contractor's breach of this Agreement. Contractor affirms Contractor is in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

**ARTICLE 37 GENERAL**

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

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

END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

**[Departmental Use Only]**
**TITLE**
**FY**

**NORTH CAROLINA**

**CONSTRUCTION AGREEMENT OVER $250,000.00**

**ORANGE COUNTY**

THIS CONSTRUCTION AGREEMENT (hereinafter called "Agreement"), made as of the day of , 20 , by and between , (hereinafter called the "Contractor"), and Orange County, a body politic and a political subdivision of the State of North Carolina, (hereinafter called the "Owner").

**W I T N E S S E T H:**

That the Contractor and the Owner, for the consideration herein named, agree as follows:

**1. CONTRACT DOCUMENTS; PRIORITY**

The Contract Documents consist of this Agreement, the General Conditions which are fully incorporated in this Agreement, the Request for Proposals, designer approved communications and/or field orders, the Proposal, Construction Documents and Drawings and Written Specifications. 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:

a. This Agreement with incorporated General Conditions.

b. Designer approved and stamped construction documents and drawings and written specifications.

c. Designer approved communications and/or field orders.

d. Request for Proposals and addenda thereto.

e. Proposal.

**2. SCOPE OF WORK**

The Contractor 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 Contractor and Owner and in accordance with the following enumerated documents, which are made a part hereof as if fully contained herein:

a. Construction Drawings prepared by (Sheet dated )

b. Written specifications prepared by the Designer.

c. proposal dated , 20 which fully describes the work to be performed, such work (hereinafter called the "Work").

d. Related documents listed under Section 2 above.

**3. TERM AND SCHEDULING**

a. The Contractor agrees to commence work pursuant to the written Notice-to Proceed.

b. The Contractor 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 Contractor 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 Contractor and Owner.

**4. STANDARD OF CARE AND DUTIES OF CONTRACTOR**

a. The Contractor shall exercise reasonable care and diligence in performing the Work in accordance with the generally accepted standards of this type of Contractor practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Contractor is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work.

b. The Contractor 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.

c. Contractor shall be responsible for all Contractor, 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 Contractor or any Subcontractor or Sub-subcontractor. Contractor shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Owner.

d. Contractor is an independent contractor of Owner. Any and all employees of the Contractor engaged by the Contractor in the performance of any work or services required of the Contractor under this Agreement, shall be considered employees or agents of the Contractor 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 Contractor.

e. Contractor agrees that Contractor, its employees, agents and its subcontractors, if any, shall be required to comply with all federal, state and local antidiscrimination laws, regulations and policies that relate to the performance of Contractor's services under this Agreement.

f. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Contractor 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 Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. Except as specifically set forth in the Contract Documents the Contractor 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 Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

h. The Contractor shall appoint a competent Project Manager with general authority to manage

the Project for the Contractor. The Contractor shall also keep on the Project at all times during the Work of the Contractor a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Designer or by the Owner if a Designer is not retained for the Project.

i. If, in the opinion of the Designer, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, such Subcontractor shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the Designer.

j. The Contractor shall attend all progress conferences and all other meetings or conferences. The Contractor shall be represented at these progress conferences by a representative having the authority of the Project Manager and by such other representatives as the Designer may direct.

k. Costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor. 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 Contractor's expense.

**5. PAYMENT & TAXES**

a. The Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, and the Contractor hereby agrees to perform all of the Work for a sum not-to-exceed Dollars ($ ). Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Owner's Representative, generally the Designer if a Designer is retained on the Work, 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 Discretion, so long as work continues to be completed satisfactorily and on schedule.

(iii) Final payment shall not be due to the Contractor until thirty (30) days after Final Completion of the Work, including punch list work, has been satisfactorily completed and an appropriate Affidavit, Indemnification, and Release as required in Section 8(d) below has been received by Owner.

b. Should Owner reasonably determine that Contractor has failed to perform the Work related to a Request for Payment, Owner, at its discretion may provide the Contractor ten (10) days to cure the breach. Owner may withhold the accompanying payment without penalty until such time as Contractor cures the breach.

(i) Should Contractor 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 Contractor.

(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 Contractor 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 Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of its subcontractors.

d. Should the Owner receive notice that the Contractor has failed to pay a Subcontractor for the Work performed related to a Request for Payment, Owner shall have the authority to withhold payment of the disputed amount until parties resolve their dispute. Failure to pay the Contractor pursuant to this section of the Agreement shall not be deemed to be a breach of the Agreement.

**6. NON–APPROPRIATION**

a. Contractor 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 Contractor 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 Contractor 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: | Contractor: |
|---|---|
| Orange County | |
| Attn: | |
| P.O. Box 8181 | |

Hillsborough, NC 27278

**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 Contractor 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 Contractor. 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 Contractor 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 Contractor shall immediately, at Contractor'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 Contractor's expense.

e. The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner.

**9. CONSEQUENTIAL DAMAGES**

a. Owner and Contractor 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 Contractor 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 Contractor. 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 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**

_____
Signature

Attest:

_____
Donna Baker, Clerk to the Board

**CONTRACTOR**

_____
Signature

_____
Printed Name and Title

This instrument has been approved as to technical content.

_____
, Department Director

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

_____
Office of the Chief Financial Officer

This instrument has been approved as to legal form and sufficiency.

_____
Office of the County Attorney

Attachment #1

# PERFORMANCE BOND

Date of Contract:_____

Date of Execution:_____

Name/Address of Principal: _____
(Contractor) _____

Name/Address of Surety: _____
_____

Name/Address of Contracting Body: _____
_____

Amount of Bond (Printed): _____

Project: _____

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

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

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

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

Attachment #1

Executed in _____ counterparts.

Witness:

_____
(Contractor: Trade or Corporate Name)

_____
(Proprietorship or Partnership)

By:_____

Attest: (Corporation)

Title:_____
(Owner, Partner, or Corp. Pres.
or Vice Pres. Only)

By:_____

Title:_____
(Corp Sec or Ass't Sec Only)

(Corporate Seal)

_____
(Surety Company)

Witness:

By:_____

_____

Title:_____
(Attorney in Fact)

Countersigned:

_____
_____
(N.C. Licensed Resident Agent)

(Surety Corporate Seal)

_____
_____
_____
(Name and Address - Surety Agency)

_____
_____
_____
(Surety Company Name and NC Regional
or Branch Office Address)

Attachment #1

# PAYMENT BOND

Date of Contract:_____

Date of Execution:_____

Name/Address of Principal: _____
(Contractor) _____

Name/Address of Surety: _____
_____

Name/Address of Contracting Body: _____
_____

Amount of Bond (Printed): _____

Project: _____

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

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

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

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

Executed in _____ counterparts.

Attachment #1

Witness:

_____
(Contractor: Trade or Corporate Name)

_____
(Proprietorship or Partnership)

By:_____

Attest: (Corporation)

Title:_____
(Owner, Partner, or Corp. Pres. or Vice Pres. Only)

By:_____

Title:_____
(Corp Sec or Ass't Sec Only)

(Corporate Seal)

_____
(Surety Company)

Witness:

By:_____

_____

Title:_____
(Attorney in Fact)

Countersigned:

_____
_____
(N.C. Licensed Resident Agent)

(Surety Corporate Seal)

_____
_____
_____
(Name and Address - Surety Agency)

_____
_____
_____
(Surety Company Name and NC Regional or Branch Office Address)

Attachment #1

REQUEST FOR SUBSTITUTION

TO: Ben Burke
President, Burke Design Group, PA
Email Work : benburke@nc.rr.com

FROM: _____
Name of manufacturer

_____
Street address

_____
City and state

_____
Phone number and name of person to contact

PROJECT: Name: Sportsplex Renovations
City, State: Hillsborough, North Carolina

1. Specification Section and Paragraph numbers of product specified _____.

2. Proposed Substitute

   A. Name and Model No.:
   B. Description:
   C. Attach applicable Submittals as required by the referenced Specification Section, i.e. Product Data, Materials List, Shop Drawings, Samples, Design Data, Test Reports, and Certificates. Attach Shop Drawings to the effect of the proposed substitution on adjacent components of the Work.
   D. Insert Numbers of applicable reference standards:
   E. Attach a color chart, if applicable.
   F. Attach installation instructions.

3. Manufacturer's Reputation: Attach the following:

   A. Evidence of reputation for prompt delivery.
   B. Evidence of reputation for efficiency in servicing products.

4. Comparison: Attach an itemized comparison of the proposed substitution with product specified. Significant qualities may include elements such as size, weight, durability, performance, and visual effects. _____

5. Changes in Work: Attach data relating to changes required in other work to permit use of proposed substitution and changes required in construction schedule and overall contract time. Coordinate changes or modifications needed to other parts of the Work and to construction performed by the Owner and separate Contractors that will be necessary to accommodate the proposed substitution. _____

6. Cost Data: Attach accurate cost data on proposed substitution in comparison with product specified. _____

7. Previous Installation: Provide the following information on similar projects on which proposed substitution was used, list projects in the locale of the project primarily and then in other areas that best represent its application on this project:

| Name and Address of Project | Date of Installation | Name, Address, and Phone # of Architect |
|---|---|---|
| A. | | |
| B. | | |
| C. | | |
| D. | | |

8. In making a request for substitution, the Manufacturer represents that:

   A. He has examined the Drawings and Specifications and has determined that, to the best of his knowledge, the proposed substitution is appropriate for the use intended in the Drawings and Specifications.
   B. He will provide the same or better warranty for substitution as for product or method specified.
   C. The product is equal or better in quality and serviceability to the specified item.

_____

Name of Manufacturer and signature of Manufacturer's Rep. Date

_____

Name of Contractor and signature Date

END OF SECTION

Attachment #1

**FORM OF BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT _____ _____ as principal, and _____, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto Orange County as obligee, in the penal sum of _____ DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this ____ day of _____ 20__

WHEREAS, the said principal is herewith submitting proposal for and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

Attachment #1

# FORM OF PROPOSAL

Sportsplex Renovation & Addition

*Orange County*

Contract:_____

Bidder: _____

Date:_____

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the Owner in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete all construction of the subject project in accordance with the Drawings, Specifications, and Contract Documents, to the full and entire satisfaction of the Owner and the Architect, with a definite understanding that no money will be allowed for extra work, except as set forth in the General Conditions and Contract Documents for the sum of:

**SINGLE PRIME CONTRACT**:_____

Base Bid:

_____Dollars($)_____

General Subcontractor:

_____Lic_____

Plumbing Subcontractor:

_____Lic_____

Mechanical Subcontractor:

_____Lic_____

Electrical Subcontractor:

_____Lic_____

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the General Conditions Article 13. Applicable liquidated damages amount is also stated in the General Conditions Article 13.

Attachment #1

## Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of _____

_____
(Name of firm or corporation making bid)

WITNESS:

_____
(Proprietorship or Partnership)

By:_____
Signature

Name: _____
Print or type

Title_____
(Owner/Partner/Pres./V.Pres)

Address_____

_____

License No._____

Federal I.D. No. _____

Email Address: _____

ATTEST:

By:_____

Title:_____
(Corp. Sec. or Asst. Sec. only)

(CORPORATE SEAL)

Addendum received and used in computing bid:

Addendum No. 1 _____ Addendum No. 3 _____ Addendum No. 5_____ Addendum No. 6_____

Addendum No. 2 _____ Addendum No. 4 _____ Addendum No. 6 _____ Addendum No. 7 _____

# 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. <u>Prime Contractor</u>

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. <u>MBE Responsibilities</u>

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.

Attachment #1

# Identification of HUB Certified/ Minority Business Participation

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

| Firm Name, Address and Phone # | Work Type | *Minority Category | **HUB Certified (Y/N) |
|---|---|---|---|
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*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.**

**The total value of minority business contracting will be ($)_____.**

Attachment #1

# 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:_____

SEAL

State of_____, County of_____

Subscribed and sworn to before me this _____day of _____20____

Notary Public_____

My commission expires _____

Attachment #1

# 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:_____

SEAL

State of _____, County of_____

Subscribed and sworn to before me this _____day of _____20___

Notary Public _____

My commission expires_____

Attachment #1

# 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 |
|---|---|---|---|---|
| | | | | |
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*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:_____

SEAL

Signature:_____

Title:_____

State of _____, County of _____
Subscribed and sworn to before me this _____day of _____20_____
Notary Public_____
My commission expires_____

Attachment #1

# 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 Name)

Project ID#_____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.

Attachment #1

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:_____

SEAL

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:

((Number of entries in column H (days away from work) + column I (job transfer or restriction) x 200,000) / (Number of hours worked by all employees) = 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.

Attachment #1

STATE OF NORTH CAROLINA

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 _____, 2013.

_____

Signature of Affiant
Print or Type Name: _____

State of North Carolina Orange County

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

day of _____, 2013.

My Commission Expires:

_____ _____

Notary Public

(Affix Official/Notarial Seal)

Attachment #1

Orange County
Financial Services Department
**ADDENDUM #1**
**April 7, 2014**

| Bid 367-294 |
| --- |
| **Sportsplex Renovations - FOR ORANGE COUNTY, N.C.** |

To all Vendors:

Modifications to bid documents for the above named Request for Bids are made as follows and shall be included in the proposed amount.

1. Successful bidder shall be responsible for all permits.
2. Plans and project manual are available online at no cost at http://www.co.orange.nc.us/purchasing/bids.asp
3. A copy of the plan holders is available at http://www.co.orange.nc.us/purchasing/bids.asp and will be updated until bid opening. If you wish to be listed on that list please email dcannell@orangecountync.gov with your company's information. A copy of the sign in sheet from the prebid is attached as is the most current version of plan holders list
4. Doug Scott is the onsite contact for site visits, his cell number is 203-581-3694, front desk number is 919-644-0339
5. All Sprinkler work will be the owner's responsibility
6. See attached addendum items from Ron Cox Architecture.

All other terms and conditions shall remain the same

By: David E. Cannell, Purchasing Agent; dcannell@co.orange.nc.us ~ (919) 245-2651

**You must acknowledge receipt of this (and all) addendum in the space provided on the form of proposal**

Company Name: _____

By: _____

Date Received: _____

P.O. Box 8181 200 South Cameron Street Hillsborough, North Carolina 27278
Telephones: Area Code 919 245-2651 Fax: 919 644-3324

Attachment #1

date: April 3 2014
from: Ron Cox
subject: Addendum items Sportsplex

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1.Moveable partitions to have an STC rating of 50 or higher

2. Roof drain discharge to be just above sidewalk through the low brick wall beside the sidewalk

3. Add alternate on sheet A1.1 for obscure glass is for lower lites of window wall only.

4. There should be an additional add alternate to apply translucent film to these lower lites in lieu of obscure glass.

5. Wall section detail 3/ A3.2 calls for 5/8” densglas. This should be DensDeck instead

6. Owner to verify that there is enough stored matching brick for foundation wall.

7. Demo plan: Contractor to remove flooring in room 101and 105. And where required for room 110. Owner will remove flooring in other areas that receive rubber flooring.

8. Finish Schedule: Flooring in room 110 to be Vinyl tile not rubber as shown on the finish schedule. This flooring to be installed by the Contractor.

9. Existing doors and frames may be reused if they are not damaged.

Ron Cox

Cc:file

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Attachment #1

# Bid 367-294 SPORTPLEX RENOVATIONS

## Plan Holders

As of 4-7-2014

Firms that have downloaded the plans

| | |
|---|---|
| | Jeff DiOrio<br>Project Coordinator<br>Riggs-Harrod Builders, Inc.<br>P-919-687-0111<br>F-919-687-0888 |
| W. C. Construction Company, LLC<br>P.O. Box 25051<br>Winston-Salem, NC 27114<br>Ph. 336-721-3420<br>Fx. 336-721-3421 | DAVID HILL BUILDERS, INC.<br>P.O. Box 6050<br>135 Red Laurel Lane<br>Mount Airy, NC 27030<br>Phone (336) 789-5517 x204<br>Toll Free (866) 230-5517<br>Fax (336) 789-6806 |
| The RESOLUTE Building Company<br>Post Office Box 3656<br>Chapel Hill, North Carolina 27515<br>P:919.933.1000<br>F:919.493.3333 | Dave's Construction Services, Inc.<br>1416 Washington Street<br>PO Box 2215<br>Eden, NC 27289-2215<br>Phone : 336.623.9906<br>Fax : 336.623.4216<br>Cell : 336.613.7951 |
| Rival Construction<br>2618-A Battleground Ave #340<br>Greensboro, NC 27408<br>Office# 336-235-2444 EXT 314<br>Fax# 336-235-2441<br>Cell# 336-669-2630 | Progressive Contracting Co., Inc.<br>143 Charlotte Ave., Suite 201,<br>Sanford, NC 27330.<br>Fax number 919-718-5455,<br>phone number 919-718-5454 x 202. |
| Marand Builder, Inc.<br>4215-B Stuart Andrew Blvd<br>Charlotte, NC 28217<br>Phone/Fax Number: 704-525-1824 / 704-544-8819<br>Contact Person: Richard Renner<br>Rrenner@marandbuilders.com | Arlyn Smith<br>Burney & Burney Construction Co., Inc.<br>Office 252 752-8000<br>Cell 252 414-9433<br>Fax 252 752-9100<br>Email arlynsmith75@yahoo.com |
| Bordeaux Construction Company, Inc.<br>100 E Britania Ave,<br>Durham, NC 27704<br>Phone 919-220-1141<br>fax number 919-220-1147 | Joe Poole<br>J. Wayne Poole, Inc.<br>3410 Holts Chapel Rd.<br>Greensboro, NC 27401<br>PH: 336-275-1611<br>Fax: 336-370-4976<br>email jwpoffice@jwaynepoole.com |
| **New Atlantic Contracting, Inc.**<br>2635 Reynolda Road | Central Builders Inc. of Mebane<br>Steve Carroll<br>PO Box 400 |

Attachment #1

| | |
|---|---|
| Winston-Salem, North Carolina 27106<br>Phone: (336) 759-7440 ext. 30<br>Fax: (336) 759-7445 | Haw River, NC 27258<br>Phone: 336-227-4551<br>Fax: 336-227-0610<br>Email bids to: bids@centralbuildersinc.com |
| Michael Little<br>Vice President<br>Poythress Commercial Contractors<br>224 Towerview Court<br>Cary, NC 27513<br>Phone (919) 388-3884<br>Fax (919) 388-3889<br>www.poythress.com | |

PRE-BID
Sportsplex Renovations
BID NO. 367-294
4-3-2014; 2:00 pm

| NAME | COMPANY | MAILING ADDRESS | PHONE/FAX | EMAIL |
|---|---|---|---|---|
| Mark Barbour | David Hill Bld. | Mt. Airy NC. 27030 135 Redbaorel Lane | 336 786-4691 | info@dhbinc.com |
| Tom Mullen | Progressive Contracting Co. | 143 Charlotte Ave Suite 201 Sanford, NC | 919-718-5454 | Tmullen@progressivecci.com |
| AARON WALKER | BAKER ROOFING | 517 Mercury St. Raleigh NC 27602 | 919-828-2975 | awalker@bakerroofing.com |
| STEVE CARROLL | Central Builders, Inc. of NC | P.O. Box 460 Hope Mills, NC 28348 | 336-227-4551 336-227-0610(F) | steve@centralbuildersinc.com |
| Thomas Seymour | Metcon, Inc. | 3100 Smoketree Ct Raleigh, NC. 27604 | 919-322-2220 919-322-2222 | estimating@metconus.com tseymour@metconus.com |
| Tim Cothran | Riggs Harrod Builders | Po Box 11100 Durham NC. 27703 | 919-687-0111 919 687-0888 | tcothran@riggsharrod.com |
| Jim LONG | STATE BUILDING GROUP, INC | P.O. Box 1459 MONROE, NC 28111 | 704-289-4523 704-289-6849 | jlong@statebuildinggroupinc.com |
| McKeether Williams | Burney + Burney Construction | P.O. Box 340 Greenville, NC 28384 | 252-752-8008 252-752-9100 | mckeether@embarqmail.com |
| Brock Myers | HM Kern Corp | 160 Thatcher Rd Greensboro NC 27409 | 336-668-3213 336-668-2142 | jhyler@hmkern.com |
| KYLE RAMSEY | C.T. WILSON CONSTR. | PO BOX 2011 DURHAM, NC 27702 | 919-354-3422 919-382-0044(F) | KYLE.RAMSEY@CTWILSON.COM |
| Amber DeZiel | Vistabution | 8315 Six Forks Rd Raleigh, NC 27615 Suite 205 | 919-861-0849 | amber@vistabution.com |
| Tom Bordeaux | Bordeaux Construction | 100 E. Brittania Ave Durham, NC 27704 | 919-220-1147 | estimating@bordeauxconstruction.com |
| Joe Poole | J. Wayne Poole Inc | 3410 Holts Chapel Rd Greensboro 27401 | 336 275-1611 | jwpoffice@jwaynepoole.com |
| ISADORE Sullivan | Corley Controls | 4506 Lazy River Dr Durham NC. | 919 884-0901 | isadore-sullivan@yahoo.com |
| | | | | |
| | | | | |

Attachment #1

PRE-BID
Sportsplex Renovations
BID NO. 367-294
4-3-2014; 2:00 pm

| NAME | COMPANY | MAILING ADDRESS | PHONE/FAX | EMAIL |
|---|---|---|---|---|
| Richard Renner | Marand Builders | 9215-B Stewart Andrew Blvd Charlotte, NC | 704-525-1824 | rrenner@marandbuilders.com |
| Bruce Guarini | BAR Constr. Co | 601 Industrial Ave GSO NC 27406 | 336 274-2477 | LSMITH@BARCONSTRUCTION.com |
| Kevin Randy | Rial Construction | 1023 Huffman St Greensboro NC 27214 | 336 235-2400 | Krandy@rialconstruction.net |
| Grant Caldwell | Summit | Hillsborough, NC | 919-644-3115 | grant.caldwell@summitde.net |
| Woody Stephenson | Poythress Commercial | 224 Towerview Ct, Cary, NC | 919-388-3884 919-388-3889 | Mike@Poythress.com |
| Jeff Thompson | Orange County | PO Box 8181 Hillsborough, NC 27278 | 919 245-2628 | JEthompson@orangecountyNC.gov |
| Roland Botchway | Divine Construction | 4310 S. Miami Blvd Ste 204 Durham | 919 452 1183 | Construction.divine@gmail.com |
| Wilson Paschall | Dave's Const Svc | 1416 Washington St Oxford, NC. 27565 | 336 623 9906 | WPaschall@DesDave.com |
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Attachment #1

Attachment #1

Orange County
Financial Services Department
**ADDENDUM #2**
**April 14, 2014**

| Bid 367-294 |
| --- |
| **Sportsplex Renovations - FOR ORANGE COUNTY, N.C.** |

To all Vendors:

Modifications to bid documents for the above named Request for Bids are made as follows and shall be included in the proposed amount.

1. The attached Form of Proposal replaces the one in the project manual, and must be used with your submittal
2. Add Alternate 1a & 1b: obscure glass is called "satin" ¼" glass and the film is also called obscure "satin"
3. The County has no surplus brick from the original construction

All other terms and conditions shall remain the same

By: David E. Cannell, Purchasing Agent; dcannell@co.orange.nc.us ~ (919) 245-2651

**You must acknowledge receipt of this (and all) addendum in the space provided on the form of proposal**

Company Name: _____

By: _____

Date Received: _____

P.O. Box 8181 200 South Cameron Street Hillsborough, North Carolina 27278
Telephones: Area Code 919 245-2651 Fax: 919 644-3324

Attachment #1

# F O R M  OF  P R O P O S A L (Revised)

Sportsplex Renovation & Addition

*Orange County*

Contract:_____

Bidder: _____

Date:_____

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the Owner in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete all construction of the subject project in accordance with the Drawings, Specifications, and Contract Documents, to the full and entire satisfaction of the Owner and the Architect, with a definite understanding that no money will be allowed for extra work, except as set forth in the General Conditions and Contract Documents for the sum of:

**SINGLE PRIME CONTRACT**:

Base Bid:

_____Dollars($)_____

General Subcontractor:

_____Lic_____

Plumbing Subcontractor:

_____Lic_____

Mechanical Subcontractor:

_____Lic_____

Electrical Subcontractor:

_____Lic_____

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

**ALTERNATES:**

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be "deducted from" or "added to" the base bid.

**GENERAL CONTRACT:**

Alternate No. 1a Replace existing glass in lower lites with opaque or obscure glass, use existing frames

*Add* _____ Dollars($)_____

Alternate No. 1b Price to apply satin film to existing glass in lower lites

*Add* _____ Dollars($)_____

Alternate No. 2 Alternate Price for RTAHU-3 Roof top unit

*Add* _____ Dollars($)_____

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the General Conditions Article 13. Applicable liquidated damages amount is also stated in the General Conditions Article 13.

Attachment #1

## Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of _____

_____
(Name of firm or corporation making bid)

WITNESS:

_____
(Proprietorship or Partnership)

By:_____
Signature

Name: _____
Print or type

Title_____
(Owner/Partner/Pres./V.Pres)

Address_____

_____

License No._____

Federal I.D. No. _____

Email Address: _____

ATTEST:

By:_____

Title:_____
(Corp. Sec. or Asst. Sec. only)

(CORPORATE SEAL)

Addendum received and used in computing bid:

Addendum No. 1 _____ Addendum No. 3 _____ Addendum No. 5_____ Addendum No. 6_____

Addendum No. 2 _____ Addendum No. 4 _____ Addendum No. 6 _____ Addendum No. 7 _____

Attachment #1

Orange County
Financial Services Department
**ADDENDUM #3**
**April 17, 2014**

| Bid 367-294 |
| --- |
| **Sportsplex Renovations - FOR ORANGE COUNTY, N.C.** |

To all Vendors:

Modifications to bid documents for the above named Request for Bids are made as follows and shall be included in the proposed amount.

1. the project duration has been increased from 90 to 135 days
2. Remove all the ceilings per the new reflective ceiling plan shown on plan A 1.2 with the exception of the small corridor leading into locker area and the pool area as noted. The area of removal and replacement is approximately 7400 square feet The ceiling in the corridor to the existing locker rooms and pool and the ceilings in the toilet rooms off this corridor are not included in this contract.
3. Q: Could you check with the architect to find out the slope he wants for the tapered ISO roof insulation. It is 4" minimum BUT I don't see the slope required.Also, are there any roofing specs other than those shown on the plans?
   A: The slope should be 3/16" per foot min.. No other specs are given. Successful Contractor to provide roof submittal information for approval.

All other terms and conditions shall remain the same

By: David E. Cannell, Purchasing Agent; dcannell@co.orange.nc.us ~ (919) 245-2651

**You must acknowledge receipt of this (and all) addendum in the space provided on the form of proposal**

Company Name: _____

By: _____

Date Received: _____

P.O. Box 8181 200 South Cameron Street Hillsborough, North Carolina 27278
Telephones: Area Code 919 245-2651 Fax: 919 644-3324

Attachment #2

# FORM OF PROPOSAL (Revised)

Sportsplex Renovation & Addition

*Orange County*

Contract: Single Prime

Bidder: Riggs-Harrod Builders, Inc.

Date: April 24, 2014

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the Owner in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete all construction of the subject project in accordance with the Drawings, Specifications, and Contract Documents, to the full and entire satisfaction of the Owner and the Architect, with a definite understanding that no money will be allowed for extra work, except as set forth in the General Conditions and Contract Documents for the sum of:

## SINGLE PRIME CONTRACT:

Base Bid:
Four Hundred Twenty Six Thousand Nine Hundred Fifty Dollars($) 426,950.00

General Subcontractor:

Riggs-Harrod Builders, Inc. Lic 18667

Plumbing Subcontractor:

Hillsborough Plumbing Lic 8461

Mechanical Subcontractor:

Bagby Equipment Co. Lic 2701-028 363A

Electrical Subcontractor:

JC Electric Lic 17202-6

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

## ALTERNATES:

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be "deducted from" or "added to" the base bid.

## GENERAL CONTRACT:

Alternate No. 1a Replace existing glass in lower lites with opaque or obscure glass, use existing frames

(Add) Two Thousand Six Hundred Dollars($) 2,600.00

Alternate No. 1b Price to apply satin film to existing glass in lower lites

(Add) Three Thousand Dollars($) 3,000.00

Alternate No. 2 Alternate Price for RTAHU-3 Roof top unit

(Add) Fifty Eight Thousand Three Hundred Dollars($) 58,300.00

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the General Conditions Article 13. Applicable liquidated damages amount is also stated in the General Conditions Article 13.

Attachment #2

## Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of April 24, 2014

Riggs-Harrod Builders, Inc.
(Name of firm or corporation making bid)

WITNESS:

(Proprietorship or Partnership)

By: _____
Signature

Name: Alan Kozar
Print or type

Title Vice President
(Owner/Partner/Pres./V.Pres)

Address 1117 E. Geer Street

Durham, NC 27704

ATTEST:

By: _____
LaTonya Tilson

Title: Assistant Secretary
(Corp. Sec. or Asst. Sec. only)

License No. 18667

Federal I.D. No. 56-1470287

Email Address: tcothran@riggsharrod.com

(CORPORATE SEAL)

Addendum received and used in computing bid:

| | | | |
|---|---|---|---|
| Addendum No. 1 Rec'd dated 4/7/14 | Addendum No. 3 Rec'd dated 4/17/14 | Addendum No. 5 _____ | Addendum No. 6 _____ |
| Addendum No. 2 Rec'd dated 4/14/14 | Addendum No. 4 Rec'd dated 4/17/14 | Addendum No. 6 _____ | Addendum No. 7 _____ |