

GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM FOR SINGLE PRIME CONSTRUCTION PROJECTS

**NORTH CAROLINA
COUNTY OF BUNCOMBE
BUNCOMBE COUNTY SOLAR PROJECTS**

GENERAL CONDITIONS OF THE CONTRACT

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EXHIBITS/APPENDICES

EXHIBIT/APPENDIX TITLE	EXHIBIT/EXHIBIT LETTER/NUMBER
Contractor Base Bid.....	Exhibit A
Negotiated Contract Amount	Exhibit B
MBE Documents	Exhibit C

ARTICLE 1 - DEFINITIONS

- a. The **contract documents** consist of the Request for Proposal (RFP); General Contractor's formal response to the RFP; General Conditions of the Contract; special conditions if applicable; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates. All of these items together form the contract.
- b. The **Owner** is Buncombe County Government.
- c. The **designer** or **project designer** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the project pursuant to a contract with the Owner, (hereinafter, the "design contract").
- d. Intentionally left blank for sequential numbering purposes.
- e. A **subcontractor**, as the term is used herein, shall be a trade contractor, a general, mechanical, electrical, plumbing, specialty contractor, or a trade contractor, who has entered into a direct contract with a GC, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor as supervised by the GC.
- h. The **project** is the total construction work to be performed under the contract documents.
- i. Intentionally left blank for sequential numbering purposes.
- j. **Change order**, as used herein, shall mean a written order to the GC subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the GC, designer and the Owner, in that order (Article 19).
- k. **Field Order**, as used herein, shall mean a written approval for the GC to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the GC, designer, and Owner.

- l. **Field Change**, as used herein shall mean a written approval from the Owner for the GC to proceed with work requested by the Owner.
- m. **Time of Completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).
- n. **Liquidated damages**, as stated in the contract documents, is an amount (\$500 for each consecutive calendar day) to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the GC to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the GC, or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the GC (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
- o. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the GC, and which engages to be responsible for the GC and his acceptable performance of the work.
- p. **Routine written communications between the Designer and the General Contractor** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".
- q. **Clarification or Request for information (RFI)** is a request from the GC seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the GC's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- r. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- s. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
- t. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents. Acceptance of equal is subject to approval of the designer and owner.

- u. **“Substitution” or “substitute”** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation. Acceptance of substitution is subject to the approval of the designer and owner.
- v. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
- w. **Indicated and shown** shall mean provide as detailed, or called for, and reasonably implied in the contract documents.
- x. **Special inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with the approved construction documents and referenced standards.
- y. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance to the owner’s project requirements and the project design documents.
- z. **Designer Final Inspection** is the inspection performed by the design team to determine the completeness of the project in accordance with approved plans and specifications. This inspection occurs prior to final inspection.
- aa. left blank for numbering purposes
- bb. **Beneficial Occupancy** is requested by the owner and is occupancy or partial occupancy of the building after all life safety items have been completed as determined by the local Authority Having Jurisdiction (AHJ). Life safety items include but not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.
- cc. **Final Acceptance** is the date in which the Owner accepts the construction as totally complete. This includes the local AHJ and certification by the designer that all punch lists are completed.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small- scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

- c. The GC shall execute each copy of the response to bid, contract, performance bond and payment bond as follows:
- 1 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 executing them.
 - 2 If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
 - 3 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 persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
 - 4 If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole Owner, partnership or corporation, whichever form is applicable to each particular member.
 - 5 All signatures shall be properly witnessed.
 - 6 If the General Contractor's license is held by a person other than an Owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.
 - 7 The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.
 - 8 Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear after the signature.
 - 9 The seal of the bonding company shall be impressed on each signature page of the bonds.
 - 10 The GC's signature on the performance bond and the payment bond shall correspond with that on the contract.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The GC and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition

or change in accordance with progress of the work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The GC shall not proceed with the work without such detail drawings and/or written clarifications.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

The Designer or owner shall furnish free of charge to the GC electronic copies of plans and specifications. If requested by the GC, up to 3 paper copies of plans and specifications will be provided free of charge, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the GC shall clearly and legibly record all work-in-place that is at variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the GC at the request of the GC.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

- a. Within fifteen (15) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the GC and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.
- b. The GC shall review, approve and submit to the Designer all Shop Drawings, Coordination Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the GC's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the GC. Submittals shall be presented to the Designer in accordance with the schedule submitted in paragraph (a) so as to cause no delay in the activities of the Owner.
- c. The Designer shall review required submittals promptly, noting desired corrections if any, and retaining three (3) copies (1 for the Designer, 1 for the owner) for his use. The remaining copies of each submittal shall be returned to the GC not later than twenty (20) days from the date of receipt by the Designer, for the GC's use or for corrections and resubmittal as noted by the Designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- d. Approval of shop drawings by the designer shall not be construed as relieving the GC from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the designer in writing by the GC.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- a. The GC shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and

specifications shall be available for use by the Designer or his authorized representative, and the owner.

- b. The GC shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the GC and submitted to the designer upon project completion and no later than thirty (30) days after acceptance of the project.
- c. The contractor shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the Owner. The use of these instruments on work other than this contract without permission of the Owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the Owner upon request after completion of the work.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The GC shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The GC shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the GC shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the GC may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the GC has the option of using any product and manufacturer combination listed. However, the GC shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The GC shall be responsible for reviewing all substitution requests from their subcontractors prior to submission to the Project Designer and Owner and shall track &

monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval. Alternate materials may be requested after award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and the owner approves.

- e. The GC shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any workman be considered detrimental to the work, the GC shall order such parties removed immediately from grounds.

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The GC shall protect and save harmless the Owner against suit on account of alleged or actual infringement. The GC shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The GC shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the GC observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the GC performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the GC unless otherwise specified.
- c. Projects constructed by Buncombe County or a subdivision thereof are subject to inspection by appropriate county or municipal authorities and building codes. The GC shall cooperate with the county and/or municipal authorities by obtaining building permits. Permits shall be obtained at GC's cost.

- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The GC shall pay the cost of these permits and inspections unless otherwise specified.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The GC shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or designer, and by laws or ordinances governing such conditions. The GC shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The GC shall be responsible for and pay for any damages caused to the Owner. The GC shall have access to the project at all times.
- b. The GC shall be responsible to cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. 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.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.
- d. The GC shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The GC shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. The GC shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The GC shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f. The GC shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.
- g. The GC shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the

project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.

- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the GC is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the GC on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the GC 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 N.C.A.C. 4A, 4B and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the GC shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The GC shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the GC shall indemnify and hold harmless the Owner, the designer and the agents, consultants and employees of the Owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 - INSPECTION OF THE WORK

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designer, designated official representatives of the Owner and those persons required by state law to test special work for official approval. The GC shall therefore provide safe access to the work at all times for such inspections.

- b. All instructions to the GC will be made only by or through the designer or his designated project representative. Observations made by official representatives of the Owner shall be conveyed to the designer for review and coordination prior to issuance to the GC.
- c. The GC shall perform quality control inspections on the work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designer. The GC shall advise the Project Designer of any apparent variation and/or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. All work shall be inspected by designer, special inspector prior to being covered by the contractor. The GC shall give a minimum of two week notice unless otherwise agreed to by all parties. If inspection fails, after the first re-inspection all costs associated with additional re-inspections shall be borne by the GC.
- e. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the GC shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the GC's responsibility to serve ample notice of such tests.
- f. All laboratory tests shall be paid by the Owner unless provided otherwise in the contract documents except the GC shall pay for laboratory tests to establish design mix for concrete and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- g. Should any work be covered up or concealed prior to inspection and approval by the Project Designer such work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the work will be made promptly upon notice from the GC. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the GC.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

- a. On-site representatives of the GC shall manage the work and coordinate the work with the activities of the Owner and Project Designer to complete the project with the Owner's objectives of cost, time and quality. Throughout the progress of the work, the GC shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the GC will remain on the job and in responsible charge as long as those persons remain employed by the GC unless otherwise requested or agreed to by the Owner. The GC shall establish an on-site organization with appropriate lines of authority to act on behalf of the GC. Instructions, directions or notices given to the designated on-site authority shall be as

binding as if given to the GC. However, directions, instructions, and notices shall be confirmed in writing.

- b. The GC shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. The GC shall call and preside over monthly job site progress conferences. The GC shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or 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 project within the specified contract time. The GC shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate. The GC with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman. The GC shall turn over a copy of his daily reports to the Designer and Owner at the job site progress conference. Owner will determine daily report format.
- d. The GC, if necessary, shall employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- e. Intentionally left blank for sequential numbering purposes.
- f. The CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- g. Intentionally left blank for sequential numbering purposes.
- h. The GC shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the project within the time allotted by the contract. In doing so, the GC shall keep the designer fully informed as to all changes and updates to the schedule. The GC shall submit to the Project Designer a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the GC must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the GC shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the GC to abide by the directives

in this paragraph will give the Owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

ARTICLE 15 – {NOT USED}

ARTICLE 16 – {NOT USED}

ARTICLE 17 – {NOT USED}

ARTICLE 18 - DESIGNER'S STATUS

- a. The Project Designer shall provide liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the Owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.
- b. The Project Designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the GC, taking sides with neither.
- c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The GC shall provide facilities for such access so the Designer may perform his functions under the contract documents.
- f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the GC in the administration of the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The GC's decisions, however, relating to means and methods, and administration of the contracts the GC holds are final.

ARTICLE 19 - CHANGES IN THE WORK

- a. The Owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the GC from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.

- b. Except in an emergency endangering life or property, no change shall be made by the contractor except upon receipt of approved change order or written field order from the designer, countersigned by the owner authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A field order, transmitted by email, fax, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of emergency endangering life or property, the County may direct the GC to proceed on a time and material basis whereupon the GC shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, the GC is restricted to the use of the following methods:

- 1 Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
- 2 The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of **net cost** of the work. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.

- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:

- 1 The actual costs of materials and supplies incorporated or consumed as part of the project;
- 2 The actual costs of labor expended on the project site;
- 3 The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions;

worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts;

- 4 The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;
 - 5 The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project. Overtime and extra pay for holidays and weekends shall not be incurred by the Owner as a cost item or otherwise.
- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a breakdown showing method of arriving at net cost as defined above.
- g. In all change orders, the procedure will be for the Project Designer to request proposals for the change order work in writing. The Project Designer shall verify correctness. Within fourteen (14) days after receipt of the GC's proposal, the Project Designer shall prepare the change order and forward to the GC for his signature or otherwise respond, in writing, to the GC's proposal. Within seven (7) days after receipt of the change order executed by the GC, the Project Designer shall, certify the change order by his signature, and forward the change order and all supporting data to the Owner for the Owner's signature. The Owner shall execute the change order for final approval, within seven (7) days of receipt. Copies will be sent to the Project Designer for distribution to the GC and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the GC shall be required to certify as follows:
- "I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- j. If, during the progress of the work, the Owner requests a change order and the GC's terms are unacceptable, the Owner, may require the GC to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

ARTICLE 20 - CLAIMS FOR EXTRA COST AND DISPUTE RESOLUTION

- a. Should the GC consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The GC shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.
- b. The GC shall not act on instructions received by him from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer will not be responsible for misunderstandings claimed by the GC of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.
- c. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- d. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- e. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.
- f. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically

waives all of its rights provided hereunder, including its rights and remedies under State law.

ARTICLE 21 - MINOR CHANGES IN THE WORK

The Project Designer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order, and shall be binding on the Owner and the GC.

ARTICLE 22 - UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be reimbursed by the GC. A change order will be issued to reflect a reduction in the contract sum.

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

- a. The final completion date will be as determined by the Owner, Designer and GC during the pre-construction phase of the project and will be incorporated into the contract for construction services between the Owner and the GC.
- b. The GC shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall fully complete all work hereunder within the time of completion specified. For each day in excess of the above number of days, the GC shall pay the Owner the sum stated as liquidated damages (\$500.00 for each consecutive calendar day) to cover the losses to be incurred by the Owner by reason of failure of the GC to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. If the GC is delayed at any time in the progress of his work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and Owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and Owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the GC reflecting the effect of the weather on progress of the work and initialed by the designer's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved

updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle the Contractor to compensable damages for delays. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- d. Request for extension of time shall be made in writing to the designer, copies to the owner, within twenty (20) days following cause of delay. In case of continuing cause for delay, the GC shall notify the designer, copies to the owner, of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- e. The GC shall notify his surety in writing of extension of time granted.
- f. No claim shall be allowed on account of failure of the Project Designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c. Demand must be in written form clearly stating the potential for delay unless the drawings or instructions are provided. Any delay granted will begin after the twenty (20) day demand period is concluded.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Should the owner request a utilization of a building or portion thereof, the designer shall perform a designer final inspection of area after being notified by the contractor that the area is ready for such. After the contractor has completed designer final inspection punch list and the designer has verified, then the designer shall schedule a beneficial occupancy inspection at a time and date acceptable to the owner and contractor(s). If beneficial occupancy is granted, in such areas the following will be established:
 - 1. The beginning of guarantees and warranties period for the equipment necessary to support in the area.
 - 2. The owner assumes all responsibilities for utility costs for entire building.
 - 3. Contractor will obtain consent of surety.
 - 4. Contractor will obtain endorsement from insurance company permitting beneficial occupancy.
 - 5. The Owner shall have the right to exclude the GC from any part of the project which the Project Designer has so certified to be substantially complete, but the Owner will allow the GC reasonable access to complete or correct work to bring it into compliance with the contract.

6. Occupancy by the Owner under this article will in no way relieve the GC from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. Upon notification from the GC that the project is complete and ready for inspection, the Project Designer shall make a designer final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the GC shall ensure that all items requiring corrective measures noted at the designer final inspection are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner and the GC.
- b. At the final inspection, the designer and his consultants shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the designer and Owners' representative shall make the following determinations:
 1. That the project is completed and accepted.
 2. That the project is accepted subject to the correction of the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of final inspection or the Owner may invoke Article 28, Owner's Right to Do Work.
 3. That the project is not complete and another date for a final inspection will be established.
- c. Within fourteen (14) days of acceptance per Paragraph b1 or within fourteen (14) days after completion of punch list per Paragraph b2 above, the Project Designer shall certify the work and issue applicable certificate(s) of compliance.
- d. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs b1 or b2 above shall be handled in accordance with Article 42.
- e. The date of acceptance will establish the following:
 1. The beginning of guarantees and warranties period.
 2. The date on which the GC's insurance coverage for public liability, property damage and builder's risk may be terminated.
 3. That no liquidated damages (if applicable) shall be assessed after this date.
 4. The termination date of utility cost to the GC (if applicable).

- f. **Prior to issuance of final acceptance date, the contractor shall have his authorized representatives visit the project and give full instructions to the designated personnel regarding operating, maintenance, care, and adjustment of all equipment and special construction elements. In addition, the contractor shall provide to the owner a complete instructional video (media format acceptable to the owner) on the operation, maintenance, care and adjustment of all equipment and special construction elements.**

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer shall be promptly removed from the work site by the GC, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the GC.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and shall make satisfactory progress until completed.
- c. Should the GC fail to proceed with the required corrections, then the Owner may complete the work in accordance with the provisions of Article 28.

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, nor the Project Designer, shall relieve the GC from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The GC shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the GC and establish a time limit for completion of corrections by the GC. The Owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

If, during the progress of the work or during the period of guarantee, the GC fails to prosecute the work properly or to perform any provision of the contract, the Owner, after seven (7) days written notice sent by certified mail, return receipt requested, to the GC from the designer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the GC, such action and cost of same having been first approved by the Project Designer. Should the cost of such action of the Owner exceed the amount due or to become due the GC, then the GC or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 29 - ANNULMENT OF CONTRACT

If the GC fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the GC shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall 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, sent by certified mail, return receipt requested, to the GC and his surety of such delay, neglect or default, specifying the same, and if the GC within a period of seven(7) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within seven(7) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said GC, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said GC and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said GC, then the said GC and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the GC and the surety shall be liable and shall pay to the Owner the amount of said excess.

ARTICLE 30 – GENERAL CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the GC, or if the Owner should fail or refuse to make payment on account of a certificate issued by the designer within forty-five (45) days after receipt of same, then the GC, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner and the designer, may suspend operations on the work or terminate the contract.
- b. The Owner shall be liable to the GC for the cost of all materials delivered and work performed on this contract plus ten (10) percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT

- a. Not later than the fifth day of the month, the GC shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the GC and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 1. Total of contract including change orders.
 2. Value of work completed to date.
 3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the GC's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.
 4. Less previous payments.
 5. Current amount due.
- b. Prior to submitting the first payment request, the GC shall prepare a schedule showing a breakdown of the contract price. This schedule of values will be submitted to & approved by the designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the designer and Owner may require.
- c. Applications for payment shall be in a form agreed upon by the GC, designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the designer may require.
- d. Intentionally left blank for sequential numbering purposes.
- e. Intentionally left blank for sequential numbering purposes.
- f. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the GC regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the GC, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the GC desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in an independent, licensed, bonded warehouse approved by the designer and owner and located as close to the site as possible. The warehouse selected must be approved by the GC's bonding and

insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer and owner of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the GC. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the County absolute right to possession of the materials at any time. Bond, security and insurance protection shall continue to be the responsibility of the GC.

- g. In the event of beneficial occupancy, retainage of funds due the GC may be reduced with the approval of the Owner to an equitable amount to cover the list of items to be completed or corrected. Retainage may not be reduced to less than two and one-half (2 1/2) times the estimated value of the work to be completed or corrected. Reduction of retainage must be with the consent and approval of the GC's bonding company.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the GC, the designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the GC and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
 - 1. Claims arising from unsettled liens or claims against the GC.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the GC except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer for approval, the GC shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but not limited to the following:
 - 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or

Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the Owner).

2. Transfer of required attic stock material and all keys in an organized manner.
 3. Record of Owner's training.
 4. Resolution of any final inspection discrepancies.
 5. Granting access to Contractor's records, if Owner's internal auditors have made a request for such access pursuant to Article 52.
- e. The GC shall forward to the designer, the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of contracts amounts and total actual payments to subcontractors and material suppliers.
 2. Affidavit of Release of Liens.
 3. Affidavit from GC of payment to material suppliers and subcontractors. (See Article 36).
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.
- f. The designer will not authorize final payment until the work under contract has been certified by Project Designer, certificates of compliance issued, and the GC has complied with the closeout requirements. The designer shall forward the GC's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD

- a. The designer may withhold payment for the following reasons:
1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the GC.
- b. The Owner may authorize the withholding of payment for the following reasons:
1. Claims filed against the GC or evidence that a claim will be filed.

2. Evidence that subcontractors have not been paid.
- c. Intentionally left blank for sequential numbering purposes.
- d. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the GC without cause will make owner liable for payment of interest to the GC in accordance with G.S. 143-134.1. As provided in G.S.143-134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

GC agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on GC's duty to carry adequate insurance. All policies of insurance shall be on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the County. The minimum insurance coverage which the GC shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. GC shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the GC with a minimum limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe County shall be named as an additional insured under the policy.

Commercial general liability coverage shall not restrict coverage under such policy with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to County. This policy shall not limit the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or damage to the work.

Professional Liability. Insurance covering GC for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. Policy is to be on a primary basis if other professional liability is carried. This policy shall remain in effect three (3) years after project completion.

Contractor's Pollution Liability. If GC's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, GC will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. GC shall keep this policy in effect 3 years after completion of the project. Buncombe

County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of GC, including completed operations.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, GC may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying general liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Contractor's Pollution Liability. If the Contractor's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, Contractor will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. Contractor shall keep this policy in effect 3 years after completion of the project. Buncombe County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations.

Installation Floater insuring the amount of the contract. Coverage is to be written on a Special Covered Cause of Loss Form and is to include theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, soft costs (expediting expenses); deletion of any coinsurance provision is also required; any exclusions for underground exposures to be deleted. Flood and Earthquake coverages are also to be provided. Coverage shall end when the work is accepted by each Agency regarding each property owner's respective work locations.

Builder's Risk. GC shall purchase and maintain property insurance (Builder's Risk) in the amount of the initial contract plus values of subsequent modification, change orders, and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis (subject to such deductible amounts as may be required by laws and regulations). Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Buncombe County has insurable interest in the property to be covered, whichever is earlier. This insurance shall include the interests of the Owner, Contractor (**financing company**), Subcontractors, Owner's Representatives and Owner's Representative's Consultants in the Work.

The Builders' Risk Coverage shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal including demolition, increased cost of construction, architect's fees and expenses, soft costs, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of

removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.

Contractors engaged in modifications of existing structures are required to secure a Beneficial Occupancy Endorsement to enable the County to occupy the facility during construction.

Additional Insurance Provisions.

If GC maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by GC. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agencies.

GC shall provide the County with certificates of insurance listing County as the certificate holder and evidencing the above amounts. Buncombe County shall be named as additional insured under the commercial general liability policy and if applicable, GC's Pollution Liability policy. Before commencing work and for any subsequent renewals, GC shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- or better as determined by A. M. Best Company and shall be in a form acceptable to the County.

GC shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and GC shall ensure that Buncombe County is an additional insured on insurance required from subcontractors.

Waiver of Subrogation: GC hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of payment of any loss under such insurance. GC agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Providing and maintaining adequate insurance coverage is a material obligation of GC and is of the essence of this contract. GC may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. GC shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by GC shall not be interpreted as limiting the contractor's liability and obligations under the contract.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. The GC shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount, for the entire project. Bonds shall be executed in the form bound with the specifications.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the GC on account of the contract shall not become due until the GC has furnished to the Owner through the designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the GC in connection with this contract.

ARTICLE 37 - ASSIGNMENTS

The GC shall not assign any portion of this contract nor subcontract in its entirety. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the GC under the contract may be assigned.

ARTICLE 38 - USE OF PREMISES

- a. The GC shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the designer and shall not exceed those established limits in his operations.
- b. The GC shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The GC shall enforce the designer's and owner's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

- a. The GC shall ensure that all cutting, fitting or patching that may be required to make the work come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.

- c. No subcontractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

- a. The GC shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the GC is to pay all utilities, any permanent meters installed shall be listed in the GC's name until his work is fully accepted by the Owner. The Owner may: (1) pay utilities cost directly, (2) require the GC to pay all utilities cost, (3) or reimburse the GC for the actual cost of utilities. The Owner or GC, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in project completion. Coordination of the work of the utility companies during construction is the sole responsibility of the GC.
- b. If applicable Meters shall be relisted in the Owner's name on the day following completion and acceptance of the GC's work, and the Owner shall pay for services used after that date.
- c. Prior to the operation of permanent systems, the GC will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- d. The GC shall ensure that the permanent building systems are in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the GC and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the GC.
- e. The GC shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- f. The GC shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- g. The GC shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of work by the Designer and Owner, the GC shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.

2. Temporary filters as recommended by the equipment manufacturer in order to keep the equipment and ductwork clean and free of dust and debris shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.
 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.
 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 5. The GC shall ensure that all lamps are in proper working condition at the time of final project acceptance.
-
- h. The GC shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
 - i. The GC shall, if required by Owner and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
 - j. On multi-story construction projects, the GC shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the GC bid.
 - k. The GC will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the GC's name, and the name of the designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

- a. The GC shall ensure that the building and surrounding area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when

directed to do so by the designer. The GC shall provide an on-site refuse container(s) for the use of all subcontractors. The GC shall ensure that each subcontractor removes their rubbish and debris from the building on a daily basis. The GC shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.

- b. The GC shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the GC shall ensure that all portions of the work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

- a. The GC shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material.
- c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the GC, which is hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS

Wherever reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina State Building Codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the contract documents.

ARTICLE 44 – INDEMNIFICATION

The General Contractor shall indemnify and hold harmless the Owner and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the sole negligence of the General Contractor, its agents or employees, as determined by a court of law or as agreed to by the parties through any alternative dispute resolution. A determination of such sole negligence of

the General Contractor may include, but is not limited to, (1) the General Contractor's performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the General Contractor, and anyone directly or indirectly employed by the General Contractor.

Except as otherwise set forth in this Agreement, the General Contractor and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the General Contractor for acts or failures to act by the General Contractor.

Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

ARTICLE 45 - TAXES

- a. Federal excise taxes do not apply to materials entering into local government work.
- b. Federal transportation taxes do not apply to materials entering into local government work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into local government work and such costs shall be included in the bid proposal and contract sum.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into local government work as applicable and such costs shall be included in the bid proposal and contract sum.
- e. Accounting Procedures for Refund of County Sales & Use Tax Amount of county sales and use tax paid per GC's statements:

GC's performing contracts for local government agencies shall ensure that they and all subcontractors will provide information to give the local government agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C.G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement from the contractors setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the

amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

In the event the contractors make several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use.

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the GC.

Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

ARTICLE 47 - EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

The GC agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The GC agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. General Contractors are reminded of the requirements of instructions under General Conditions of the Contract, titled

Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina.

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

N.C.G.S. 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project and requires documentation of good faith efforts for meeting that goal. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix F are hereby incorporated into and made a part of this contract.

ARTICLE 50 – CONTRACTOR EVALUATION

The GC's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to compete for future capital improvement projects for institutions and agencies of the State of North Carolina. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, General Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The Owner may request the GC's comments to evaluate the designer.

ARTICLE 51 – GIFTS

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, General Contractor, design professional, engineer, subcontractor, supplier, vendor, etc.), to make gifts or to give favors to any County employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, the Contractor is prohibited from making gifts to any of the Owner's employees, Owner's project representatives (architect, engineers, General Contractor and their employees), employees of the County that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

ARTICLE 52 – AUDITING-ACCESS TO PERSONS AND RECORDS

In accordance with N.C. General Statute 147-64.7, the State Auditor shall have access to Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contracts for purposes of conducting audits under the referenced statute. The Owner's internal auditors shall also have the right to access and copy the Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions, and related claims for delay/extended general conditions costs, claims for lost

productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from Owner and/or its project representatives.

ARTICLE 53 – LEFT BLANK FOR NUMBERING PURPOSES

ARTICLE 54 – TERMINATION FOR CONVENIENCE

- a. Owner may at any time and for any reason terminate GC's services and work at Owner's convenience. Upon receipt of such notice, GC shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.
- b. Upon such termination, GC shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by GC as are permitted by the prime contract and approved by Owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to GC prior to the date of the termination of this Agreement. GC shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

{Signature Pages Follow}

NOW THEREFORE, the parties hereby make, agree, and execute this Contract by the below signatures of duly authorized officials or agents.

CONTRACTOR – MB Haynes Corporation

By: _____
(Signature)

(Printed Name)

(Title)

(Date)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the county and State aforesaid, do hereby certify that _____ personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

My commission expires: _____

Notary Public

BUNCOMBE COUNTY

By: _____
(Signature)

(Printed Name)

(Title)

(Date)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the county and State aforesaid, do hereby certify that _____ personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

My commission expires: _____

Notary Public

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

Buncombe County Finance Director.

Buncombe County Public Sector
Solar Initiative
FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____

Haynes Solar, A Division of M.B. Haynes Corporation as
principal, and Fidelity and Deposit Company of Maryland, as surety, who is
duly licensed to act as surety in North Carolina, are held and firmly bound unto the State of
North Carolina* through Buncombe County as
obligee, in the penal sum of Five Percent of Amount Bid 5% 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 19th day of JUNE 2020

WHEREAS, the said principal is herewith submitting proposal for Buncombe County
Public Sector Solar Initiative
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

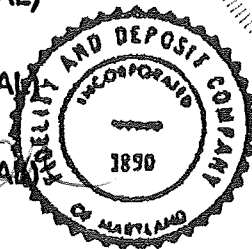
Haynes Solar, A Division
of M.B. Haynes Corporation _____ (SEAL)

By: Kirk Houser (SEAL)
KIRK HOUSER, SVP

_____, (SEAL)

Fidelity and
Deposit Company of Maryland _____ (SEAL)

By: Catherine Thompson (SEAL)
Catherine Thompson
, Attorney-in-Fact



*(Community college projects: Delete State of North Carolina as owner and replace with
community college name.)

Bond Number Bid Bond

Obligee Buncombe County

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Catherine Thompson, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

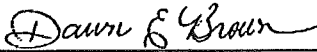
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 19th day of June, A.D. 2019.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By: Robert D. Murray
Vice President



By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 19th day of June, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 19th day of JUNE, 2020.



Brian M. Hodges, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

Non-Collusion and Non-Suspension Statement

The undersigned certifies that Haynes Solar- A division of MB Haynes ., Asheville, North Carolina Electrical Contractor License Number 3-U, has not in connection with this proposal or in any instance engaged in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provision of N.C.G.S. 75-1 and 75-2 where the combination, conspiracy or other unlawful act in restraint of trade involves a contract for construction, renovation or repair, let or to be let by a governmental agency or a subcontract for construction renovation or repair with a prime contractor or proposed prime contractor for a governmental agency. N.C.G.S. 133-24.

Furthermore, the undersigned certifies that it is familiar with the response to the RFP for Buncombe County Public Sector Solar Initiative and that said response, is fair and proper and it not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the undersigned or any of its agents, representatives, owners, employees or parties in interest. N.C.G.S. 133-30.

Finally, the undersigned certifies that it has not been suspended from bidding by the North Carolina State Building Commission or any other State building authority and that it is not an affiliate or subsidiary of any company suspended by the North Carolina State Building Commission or any other State building authority.



By: Kirk Houser
Kirk Houser

Title: Senior Vice President

Date: June 19th, 2020

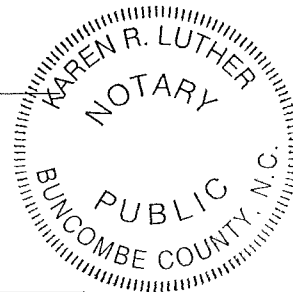
IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 19th day of June, 2020

Karen R. Luther
Official Signature of Notary

Karen R. Luther
Notary's Printed or Typed Name

May 22, 2025

My Commission Expires:





187 Deaverview Rd
Asheville, NC 28806
Post Office Box 16589
Asheville, NC 28816
Phone 828.254.6141
mbhaynes.com

June 18, 2020

Buncombe County Office of Sustainability
Attn: Jeremy LeRoy
200 College St., Fourth floor
Asheville NC, 28801

Re: Buncombe County Public Sector Solar Initiative

Ladies & Gentlemen:

In response to the Buncombe County invitation to bid for the Installation of solar renewable Power Generating Systems throughout Buncombe County, we hereby submit the requested information for your consideration.

As evidenced by the attached information packets Haynes Solar is a solid choice to bring your project to completion with the highest degree of professionalism and quality. The financial backing of Haynes Solar can also provide your organization with the peace of mind that we will be viable and well-equipped to complete this project.

Haynes Solar- A division of MB Haynes, has completed similar projects in regard to County projects (renovations, new structures, additions). During construction of your project as in prior similar experiences, Haynes Solar will work with yourself and staff members in addressing any potential conflicts, and together will find solutions that will most benefit the project/Owner.

The close proximity of our corporate offices and shops to the project site ensures that any questions/concerns that you might have during the project will be promptly considered and answered. Upon completion of your project Haynes Solar will be accessible in the event of any warranty or maintenance issues.

We appreciate your consideration of our qualifications and anticipate working with you in the completion of your project.

Sincerely,

Kirk Houser
Senior Vice-President
Haynes Solar

Acknowledgement of Addendum:

Addendum no. 1 RECEIVED May 29, 2020

Addendum no. 2 RECEIVED June 12, 2020

Quality Commitment Character
Proudly Employee-Owned



Buncombe County Solar RFP Bidder Info.



Legal Name of Applicant Unit:	Haynes Solar- a division of M.B. Haynes Corporation
Name and Title of Manager or CEO:	Kirk Houser, Senior Vice President
Street Address:	187 Deaverview Road Asheville NC 28806
Mailing Address:	P.O. Box 16589 Asheville NC, 28816
Phone:	828-254-6141
Email:	khouser@mbhaynes.com

Name and Title of Project Contact:	Ian Rich, Estimator
<i>(This project contact should be the person who can best answer project questions)</i>	
Telephone:	828-225-5404
Email:	irich@mbhaynes.com
Address:	187 Deaverview Road Asheville NC 28806

Fiscal Year-End Date:	3/31/2021
Federal Tax ID Number:	56-0506077

Instructions for Completing this Workbook:

This workbook is designed to require responding bidders to provide the county and its partner agencies project costs for each individual solar installation requested in the RFP. Each tab represents an individual project and should be completed. The summary tab at the end of the project will be automatically populated and should not be altered by respondents.

Because the County is requesting multiple forms of financing for these projects, each tab has multiple budget entry options: One for direct ownership, installer financing, and solar leasing. If you are not proposing all of these options, you **DO NOT** need to complete the others. For example, if you are not proposing solar leasing as an option in your proposal, you may leave that section blank.

Buncombe County Government and City of Asheville Projects are the Group A Projects and you must provide a bid for each of the projects for these two entities. A-B Tech, Asheville City Schools, and Buncombe County Schools are the Group B Projects and bids are optional for these entities.

Bidders are to estimate the Group A Projects as a stand-alone portfolio of projects separate from the Group B Projects. Pricing for the Group A Projects should not include additional discounting or economies of scale that would be realized for an all-inclusive bid which would include the Group B Projects.

Bidders are to estimate the Group B Projects assuming both Group A & B Projects will be awarded. Bidders should provide a pricing deduction to the total cost of the Group A Projects for Buncombe County Government and the City of Asheville for the additional discounting provided from the Group B Projects. Show the deduction from the total cost and show the new total cost after deduction.

Also please be aware that the total project costs for the Debt Financing and Leasing scenarios are based on the values that you input for the annual payments and the length in years of the loan / lease. The Leasing scenario also includes the fair market value purchase price as a component of the total project cost. For these two scenarios the line item project costs are only for reference and do not factor into the total project cost.

Please be sure to print, sign, and include the Summary worksheet in your bid submission.

Description of Scenarios

Direct Purchase - Respondent will provide the full construction costs for the system assuming the agencies will pay in full for the entire construction process upon completion of the project.

Debt Financing (if applicable) - Respondent will provide the full construction costs for the system. If proposing financing through the EPC or a third party, respondents will also provide the terms and additional costs associated with that financing such as interest rate, and debt payments; as well as the effect that the financing has on the overall cost of the projects.

Solar Leasing - If the respondent is proposing solar leasing, they should provide all of the necessary costs, including lease terms and costs for purchase at the end of the lease terms so as to provide a clear comparison between the leasing and purchase options for the system

Buncombe County/City of Asheville Preliminary PV Installation Plan

HAYNES Solar, a division of MB Haynes Corporation, proposes the following preliminary plan to provide quality and timely PV installations for our community, the estimated duration of which is 12-18 months excluding permitting durations and depending on the groups/sites awarded. However, our goal would be to work with the permitting agencies and Duke Energy to obtain permits early on for the sites awarded.

We plan to perform the installations in phases beginning with the sites that involve the metal-seam and asphalt shingle racking. We would then move to the ballasted systems, followed by the Ground mount systems and finally the parking garages. This is based primarily on our current expected lead times for the various materials and the system designs.

Performing the installation in this order, while working at 1-4 sites at any given time, would allow us to utilize part of the time during the metal-seam and asphalt shingle roof installations to procure and receive the materials, permits, etc. for the ballasted systems and so on as we move through sites with the expectation that the parking decks would require the longest material lead times and most engineering.

Throughout the installations we would work with the appropriate county and city personnel to coordinate access to the various sites, place dumpsters, temporary facilities, stage materials, etc. We would ask that these sites and personnel partner with us by helping to make these installations as efficient and timely as possible to minimize the extent and length of disruption both to the facilities and the community. This will be especially important for the parking decks which would likely be most affected.

If awarded our major second tier subcontractor would be Energy Link, who would, under Haynes Solar's direction, perform all scope on the DC side of the installation with exception of the pull tests and pier installation which would be performed by RBI. Energy Link would also be facilitating the lease and financing options through their capital partners should one of those options be desired.

HAYNES Solar, a division of MB Haynes Corporation and its employee shareowners look forward to the opportunity to help our community and local municipalities contribute to the effort in revitalizing our community and our environment. We believe that together we can achieve these goals and better our community and the beautiful mountains we call home for our future generations to enjoy.



Project Cost Summary



Entity	Total Cost		
	Direct Purchase	Debt Financing	Solar Leasing
Group A			
Buncombe County Government	\$ 2,440,230	\$ 3,132,298	\$ 3,358,479
City of Asheville	\$ 782,939	\$ 1,005,133	\$ 1,077,714
Group B			
AB Tech	\$ 1,114,689	\$ 1,430,755	\$ 1,534,070
AVL City Schools	\$ 2,199,876	\$ 2,823,123	\$ 3,026,976
Buncombe Co. Schools	\$ 4,528,341	\$ 5,812,648	\$ 6,232,361
Total RFP Cost	\$ 11,066,075	\$ 14,203,957	\$ 15,229,600

Buncombe County Government	Total Cost		
Facility Name	Direct Purchase	Debt Financing	Solar Leasing
West Asheville Library	\$ 52,569	\$ 67,481	\$ 72,355
South Buncombe Library	\$ 55,407	\$ 71,123	\$ 76,259
Tax Office	\$ 61,214	\$ 78,573	\$ 84,247
HHS Building & Parking Deck	\$ 683,445	\$ 877,334	\$ 940,683
College St. Parking Deck - House Loads & 35 Woodfin Loads	\$ 753,450	\$ 967,146	\$ 1,036,980
Fairview Library	\$ 55,335	\$ 71,030	\$ 76,159
Leicester Library	\$ 59,102	\$ 75,863	\$ 81,342
North Asheville Library	\$ 60,990	\$ 78,286	\$ 83,939
Transfer Station	\$ 147,300	\$ 189,074	\$ 202,727
Animal Shelter	\$ 197,785	\$ 253,842	\$ 272,172
Old Fireman's Training Facility	\$ 54,948	\$ 70,533	\$ 75,627
Buncombe PSTC - Training Center	\$ 164,373	\$ 210,977	\$ 226,212
Buncombe PSTC - Apparatus Center	\$ 94,312	\$ 121,036	\$ 129,776
Total Cost	\$ 2,440,230	\$ 3,132,298	\$ 3,358,479

Deduction Amt. for Additional Discounting from Non-Base Projects	\$ -	\$ -	\$ -
--	------	------	------

Net Total Cost After Deduction	\$ 2,440,230	\$ 3,132,298	\$ 3,358,479
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City of Asheville	Total Cost		
Facility Name	Direct Purchase	Debt Financing	Solar Leasing
Burton Street Community Center	\$ 63,914	\$ 82,036	\$ 87,961
Linwood Crump Shiloh Center	\$ 64,862	\$ 83,253	\$ 89,265
Wall St. Parking Deck - House Loads, Parking Services, & Sell-All Systems	\$ 549,403	\$ 705,365	\$ 756,297
Fire Station #10	\$ 55,497	\$ 71,238	\$ 76,383
Fire Station #11	\$ 49,264	\$ 63,241	\$ 67,808
Total Cost	\$ 782,939	\$ 1,005,133	\$ 1,077,714

Deduction Amt. for Additional Discounting from Non-Base Projects	\$ -	\$ -	\$ -
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Net Deduct Cost if Bidding on Non-Base Projects	\$ 782,939	\$ 1,005,133	\$ 1,077,714
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AB Tech	Total Cost		
Facility Name	Direct Purchase	Debt Financing	Solar Leasing
Asheville Campus - Allied Health	\$ 128,297	\$ 164,694	\$ 176,587
Asheville Campus - Bailey	\$ 170,208	\$ 218,463	\$ 234,238
Asheville Campus - Birch	\$ 196,610	\$ 252,335	\$ 270,556
Asheville Campus - Conference Center	\$ 166,050	\$ 213,128	\$ 228,518
Asheville Campus - Coman / Locke Library	\$ 195,419	\$ 250,807	\$ 268,918
Asheville Campus - Ferguson	\$ 138,123	\$ 177,300	\$ 190,103
Asheville Campus - Hemlock	\$ 119,983	\$ 154,028	\$ 165,150
Total Cost	\$ 1,114,689	\$ 1,430,755	\$ 1,534,070



Project Cost Summary



AVL City Schools		Total Cost		
Facility Name	Direct Purchase	Debt Financing	Solar Leasing	
Hall Fletcher Elementary School	\$ 312,356	\$ 400,831	\$ 429,774	
Ira B Jones Elementary School - Large Account	\$ 241,053	\$ 309,353	\$ 331,691	
Ira B Jones Elementary School - Small Account	\$ 86,783	\$ 111,376	\$ 119,419	
Montford Northstar Academy	\$ 248,574	\$ 319,003	\$ 342,037	
Asheville High School - Vocational	\$ 248,889	\$ 319,406	\$ 342,470	
Asheville High School - Cafeteria	\$ 131,612	\$ 168,947	\$ 181,147	
Asheville High School - Cultural Arts Building	\$ 155,390	\$ 199,452	\$ 213,855	
Vance Elementary School	\$ 327,068	\$ 419,706	\$ 450,012	
Asheville Middle School	\$ 448,150	\$ 575,047	\$ 616,570	
Total Cost	\$ 2,199,876	\$ 2,823,123	\$ 3,026,976	

Buncombe Co. Schools		Total Cost		
Facility Name	Direct Purchase	Debt Financing	Solar Leasing	
Hominy Valley Elementary School	\$ 739,230	\$ 948,903	\$ 1,017,419	
Enka Intermediate	\$ 579,442	\$ 743,905	\$ 797,619	
Glen Arden Elementary School	\$ 356,682	\$ 457,698	\$ 490,747	
Community High School	\$ 348,381	\$ 447,049	\$ 479,329	
Cane Creek Middle School	\$ 533,022	\$ 684,350	\$ 733,764	
North Windy Ridge Intermediate School	\$ 483,713	\$ 621,089	\$ 665,936	
Buncombe Aquatic Center	\$ 352,244	\$ 452,005	\$ 484,643	
Erwin High - Kitchen Account	\$ 551,617	\$ 708,206	\$ 759,343	
Erwin High - Main Account	\$ 280,174	\$ 359,544	\$ 385,506	
Owen Middle School	\$ 303,836	\$ 389,901	\$ 418,055	
Total Cost	\$ 4,528,341	\$ 5,812,648	\$ 6,232,361	

Haynes Solar- A Division of MB Haynes Corp.

Bidder Name:

Bidder Signature:

Kirk Houser

6/19/20

Date Signed:



Project Cost Summary (modified)



Buncombe County Government	Direct Purchase	Debt Financing	Solar Leasing
Total Cost			
Deduction Amt. for Additional Discounting from Non-Base Projects	\$ 89,680	\$ 114,052	\$ 122,078
Net Total Cost After Deduction	\$ (89,680)	\$ (114,052)	\$ (122,078)

City of Asheville	Direct Purchase	Debt Financing	Solar Leasing
Total Cost	\$ -		
Deduction Amt. for Additional Discounting from Non-Base Projects	\$ 28,320	\$ 36,016	\$ 38,551
Net Total Cost After Deduction	\$ (28,320)	\$ (36,016)	\$ (38,551)

Please Print and Sign This Worksheet and Return with Your Response

Kirk House
SR. VP 6/19/20

Bidder Name:

Bidder Signature:

Date Signed:

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid
Attach to Bid

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

County of Buncombe

(Name of Bidder)

Affidavit of Haynes Electric; A Division of M.B. Haynes Corporation

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 1.0101)

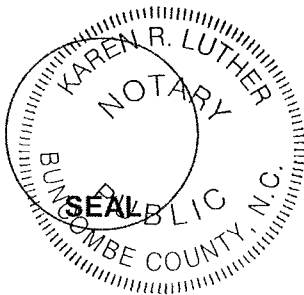
- ☒ **1 - (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to 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: June 19th, 2020 Name of Authorized Officer: Kirk Houser



Signature: Kirk Houser

Title: Senior Vice President

State of North Carolina, County of Buncombe

Subscribed and sworn to before me this 19th day of June 2020

Notary Public Karen R. Luther
Karen R. Luther

My commission expires May 22, 2025

FORM 1

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid
Attach to Bid

Identification of Minority Business Participation

I, Haynes Electric; A Division of M.B. Haynes Corporation
(Name of Bidder)

do hereby certify that on this project, we will use the following minority business enterprises
as construction subcontractors, vendors, suppliers or providers of professional services.

**Firm Name, Address and Phone #
Category**

Work type

***Minority**

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

The total value of minority business contracting will be (\$) 0.00



HAYNES SOLAR

A Division of MB

828-254-6141

Mbhaynes.com

Russell Blevins, Project Manager

rblevins@mbhaynes.com

FREE SITE ASSESSMENTS

FREE SYSTEM DESIGN

**PRODUCT & INSTALLATION
PACKAGE**

**GET INVESTMENT \$ BACK WITH
TAX CREDITS , INCENTIVES &
ENERGY PRODUCTION**

**TOTAL SYSTEM PAYBACK IS
QUICK**

**REDUCE OR ELIMINATE HIGH
UTILITY BILLS**

FINANCING AVAILABLE!

HAYNES Solar offers solar power systems and many other renewable energy products. Save money by significantly reducing your power bills, and get quick paybacks through generous tax credits!

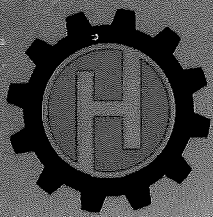
We are experienced in state-of-the-art solar installations of all sizes for utility scale commercial and residential projects. We are committed to providing the best quality service, so ask for a **FREE ENERGY ASSESSMENT** to see if solar or other renewable energy solutions are right for you!

Call **828.254.6141** or request a quote at mbhaynes.com/request-quote-form.

QUALITY

COMMITMENT

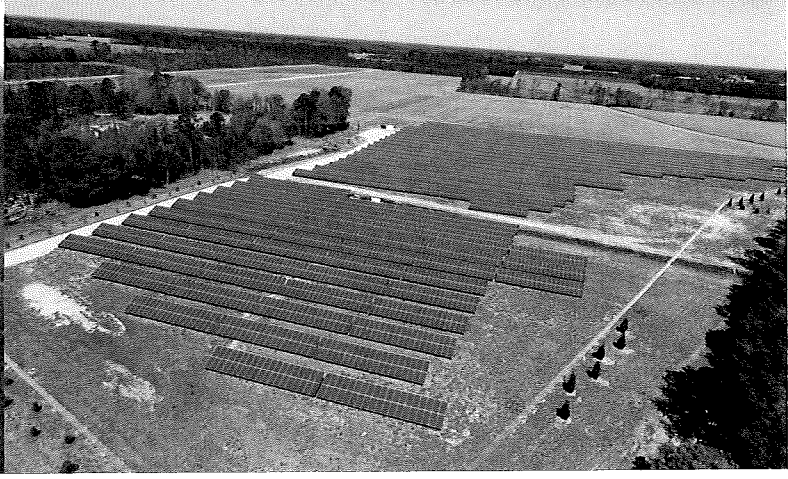
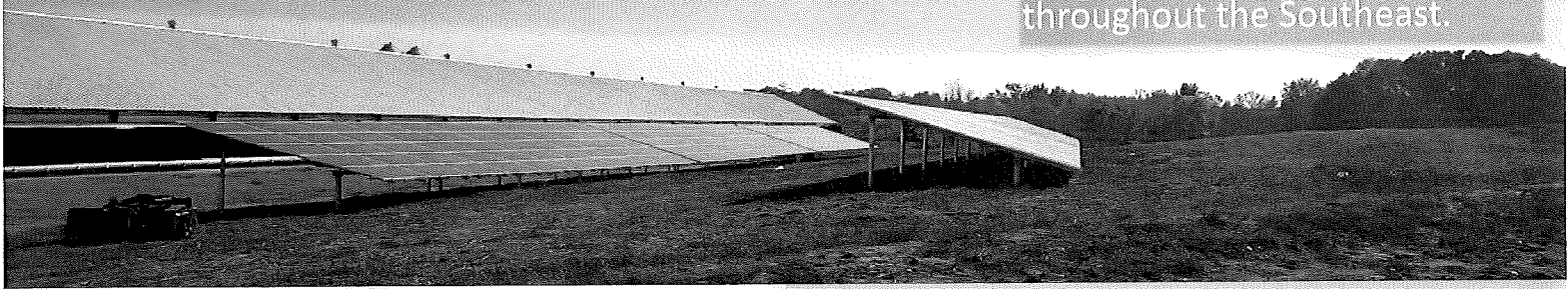
CHARACTER



HAYNES SOLAR

A Division of MB HAYNES Corporation

HAYNES Solar is the leading solar contractor, responding to the market for community & commercial solar projects throughout the Southeast.



HAYNES Solar can design a renewable energy system around your needs.

Whether you're a homeowner wanting a more efficient household, a commercial business looking to recoup energy costs or a large manufacturer or utility seeking clean power for your operations and customers. As a leading solar contractor, we are responding to the market for community & commercial solar projects throughout the Southeast. We are committed to offering top-notch expertise in our service.

mbhaynes.com

828-254-6141



June 12, 2020

Phone: 704-376-9161
Fax: 704-342-0343
www.willis.com

It is a pleasure to share with you our association and surety credit relationship with Haynes Electric, A Division of M.B. Haynes Corporation

We consider the firm and the management team true professionals in the field of Electric Contracting. Operations are conducted with fiscal responsibility, proficient technical and managerial skills, and ethics of the highest caliber. The Haynes Electric, A Division of M.B. Haynes Corporation team consists of dedicated professionals committed to a quality construction product.

Fidelity and Deposit Company of Maryland, rated A+ XV on the Treasury List, has conducted a careful underwriting review to establish surety credit parameters for Haynes Electric, A Division of M.B. Haynes Corporation. Performance and Payment Bonds have been approved on projects exceeding \$20,000,000 and total work program has exceeded \$100,000,000.

We value our surety credit relationship and association with Haynes Electric, A Division of M.B. Haynes Corporation and we certainly recommend their construction services to you.

Sincerely,



Catherine Thompson
Senior Surety Client Manager

License Year

2020

License No.

23775

North Carolina

Licensing Board for General Contractors

This is to Certify That:

M.B. Haynes Corporation
Asheville, NC

is duly registered and entitled to practice

General Contracting

Limitation: Unlimited

Classification: PU(Electrical-Ahead of P.O.D.)

until

December 31, 2020

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

January 1, 2020

This certificate may not be altered.



J. T. F. H.

Chairman

C. Frank Wimmer

Secretary-Treasurer

LICENSE NUMBER

U.00003

STATE OF NORTH CAROLINA

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

EXPIRATION DATE

02/28/2021

THIS IS TO CERTIFY THAT:

Haynes Electric A Division of M.B. Haynes Corp

Fred Wayne Lewis, Adam Nathaniel Greene, Brian Edward Shuford,
Clifton Lewis Henderson Jr., Danny Scott Hensley, Donald Shane Massey,
Jacob Ian Rich, John Michael Curry II, Michael Paul Crain, Michael Travis
Rice William Kirk Houser

is duly registered and entitled to practice Electrical Contracting in the

Unlimited Classification License

Limitation: Any project regardless of value

Witness our hands and seal of the Board

Gerald Howell

Chairman

Jim Lotman

Secretary-Treasurer

Haynes Electric A Division of M.B. Haynes Corp

187 Dearview Road
Asheville, NC 28806

Haynes Solar has participated in many renewable energy projects, both residential and commercial, in the past 5 years. The below list provides a brief overview of the experience and history of Haynes Solar:

2020

Rowan-Cabarrus Community College- North Campus- 1333 Jake Alexander Blvd Salisbury, NC 28147

Procure and construct a 500kW solar electric/photovoltaic energy system on the Colleges North Campus

\$850,000.00

Asheville Radiology- 513 McDowell St. Asheville, NC, 28803

Provide and install 80kW Kohler Generator with 400Amp transfer switch

\$83,700.00

2019

Museum of the Cherokee Indian- 589 Tsali Blvd, Cherokee, NC 28719

Installment of 227- 375 w modules on the roof at the museum. 85,125kW DC and an inverter size of 65,830kW AC system that produces an estimated 115,000kWH per year

\$213,800.00

Clean Energy Nexus, LLC- 2700 Post Oak Blvd Suite 2100 Houston, TX 77056

1500kVA 3-Ph Pad mount Transformer

\$81,750.00

2018

Summerville Walmart 6174 – 10636 Dorchester Road Summerville, SC 29483

219kW Roof Mount PV System

\$236,372.20

Miller Poultry Farm-3626 Fairview Road Leesville, SC 29070

Four separate sites on this farm- for each: 23.4kW DC system, 20kW AC system

\$211,000.00

2017

Macon State Prison- 2728 Hwy 49 South Oglethorpe, GA 31068

Solar system

\$315,000.00

Nixon Farms- 2800 Nixon's Farm Lane, West Friendship, MD 21792

1.95mW Solar Farm

\$717,474.38

2016

Hancock State Prison- 701 Prison Blvd. Sparta, GA 31087

999.24 MW ground mount solar system

\$284,800.00

Johnson State Prison- 290 Donovan Harrison Rd, Wrightsville, GA

1000kVA three-phase, pad mount transformer, 1600amp switchboard

\$39,500.00

Wilcox State Prison- 470 Broad Street S, Abbeville, GA 31001

999.24 MW ground mount solar system

\$284,800.00

Tony Lee Clinton
Superintendent/Project Manager

Tony's role as Project Superintendent/Manager requires direct supervision/control of the project, from coordinating/scheduling HS field employees and contract negotiations with the owner and with subcontractors, scheduling, and contract administration throughout the duration of the project, through project close-out.

Experience

- Cypress Creek Renewables- Gibbons Solar
- C2Energy- Summerville Walmart Solar
- Core Development Group LLC- Banks Solar
- Cypress Creek- Apple 1 Solar
- Rowan Cabarrus Community College – Solar

Qualifications

- Employed with MB Haynes since 5/9/2003
- Completed Electrical apprenticeship program
- Worked directly on Solar projects since 2013
- Installed residential solar for 2 years
- Been involved in over 75 MW of Solar installations

Location

- Asheville, NC

Russell Blevins
Project Manager

Russell's role as an Project Manager entails direct control of the project, from take-offs and estimating for lump-sum bid projects, contract negotiations with the owner and with subcontractors, scheduling, and contract administration throughout the duration of the project, through project close-out.

Experience

- Unitarian Universalist Fellowship of Hendersonville- Solar
- Franklin Health and Fitness - Solar
- Black Mountain Presbyterian Church- Solar
- Saint Eugene Catholic Church- Solar
- Southeastern Native Plant Nursery -Solar

Qualifications

- Graduated University of Tennessee with a BS in Forestry
- Certified Conservation Planner certification
- 26 years in Natural Resource Management on Private land USDA-NRCS
- 5 years Executive Director for Mountain Valleys RC&D
- NABCEP certification entry level

Location

- Asheville, NC



HAYNES SOLAR

A Division of MB HAYNES Corporation

187 Deaverview Rd
Asheville, NC 28806
Post Office Box 16589
Asheville, NC 28816
Phone 828.254.6141
Fax 828.254.8136

Zach Newman ***Safety Manager***

Zach's role as Safety Manager is to provide safety compliance reviews and provide employee orientation and training. Conduct weekly safety meetings, and provide activity plan reviews, safety inspections reporting and adherence to the required safety regulations.

Experience

- Corporate Safety Manager for MB HAYNES Corporation/Haynes Solar
- HAYNES Electric Construction prefabrication shop manager and retrofitting lights for HAYNES Energy Solutions
- Served as the onsite material manager and purchasing agent for Horse Head industrial project with HAYNES Electric Construction
- Completed the HAYNES Electric Construction apprenticeship program to earn a Journeyman Card
- Worked as field apprentice for HAYNES Electric Construction

Qualifications

- Zach has over 12 years' experience in the construction industry. He has been employed with M.B. HAYNES Corporation since 2008.
- Western Carolina University – Construction Management
- OSHA 10 Certification
- OSHA 30 Certification
- Flagger Trainer
- First Aid/CPR Trainer
- Certified DOT specimen collector and trainer

Location

- Asheville, NC

Quality Commitment Character

Proudly Employee-Owned

Greg Worley

Foreman

Greg's role as a foreman entail overseeing job site solar installations, assisting in the installation of project systems, providing job instruction to each Solar Technician, and communicating the installation process to customers. As a foreman he must ensure that all installation team members adhere to safety requirements and regulations and will give good feedback to the engineers, Construction, Project, and Operations Managers.

Experience

- M.B Haynes Electrician 2005- present
- Jobsite foreman 17 solar installations for Sol America Energy
- Jobsite foreman 4 solar installations for Ba Wa.re Energy
- Jobsite Foreman 5 solar installations for FLS Energy
- Crew foreman Horsehead Zinc (Forest city, NC) 2012- 2013
- Crew Foreman Unimin Quartz (Spruce Pine, NC) 2011-2012

Training

- OSHA 10
- First- Aid/ CPR
- Competent Digging
- All- Terrain Fork Lift
- Medium Voltage Terminations
- MSHA 48

Location

- Asheville, NC

Quality Commitment Character

Proudly Employee-Owned

Colby Stamey
Foreman

Colby's role as a foreman entail overseeing job site solar installations, assisting in the installation of project systems, providing job instruction to each Solar Technician, and communicating the installation process to customers. As a foreman he must ensure that all installation team members adhere to safety requirements and regulations and will give good feedback to the engineers, Construction, Project, and Operations Managers.

Experience

- M.B Haynes Electrician 2011- present
- Crew Foreman-Museum of the Cherokee Indian 2020
- Crew Foreman- Duncan residential solar 2020
- Crew Foreman- FENCE residential solar 2019
- Crew Foreman-St. James Episcopal Church 2019

Training

- Completed Electrical apprenticeship program
- OSHA 10
- Medium Voltage Terminations
- All terrain& industrial fork lift
- Competent Digger

Location

- Asheville, NC

Quality Commitment Character

Proudly Employee-Owned



187 Deaverview Rd
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References

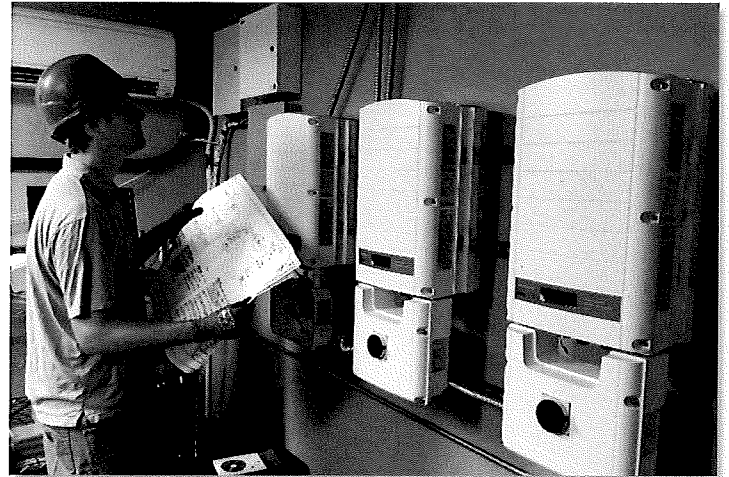
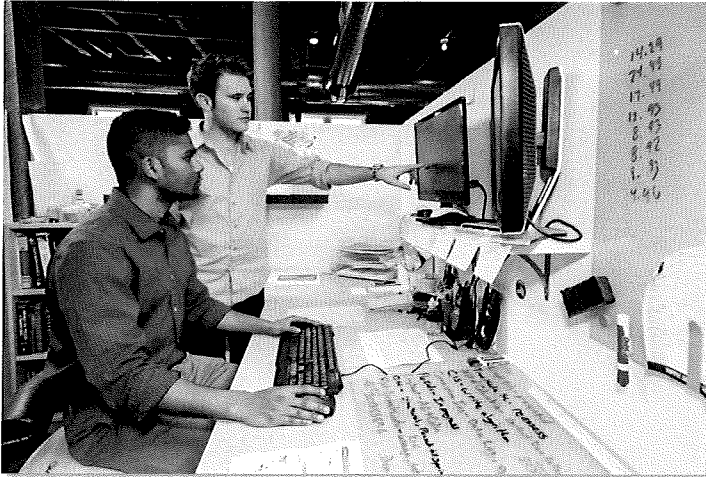
Company	Contact	Phone Number	Email	Job Description	Job Location
SolAmerica Energy Services, LLC 1819 Peachtree Rd. NW, Suite 100 Atlanta, GA 30309	Frank Bucceri	(404) 351-8175	frank.bucceri@comcast.net	1500Kva 3-PH Pad Mount	2700 Post Oak Blvd Houston, TX 77056
Cypress Creek Renewables 5310 S Alston Ave. Durham, NC 27713	David Wagner	(515) 672-4102	wagner@ccrenew.com	PGC-21 SOLAR	10806 Croom Road Upper Marlboro, MD 20772
Cherokee Museum 589 Tsail Blvd Cherokee NC 28719	Bo Taylor	(828) 497-3481	botaylor@cherokeemuseum.org	227 PV on Museum Roof	589 Tsail Blvd. Cherokee NC 28719

Quality Commitment Character

Proudly Employee-Owned

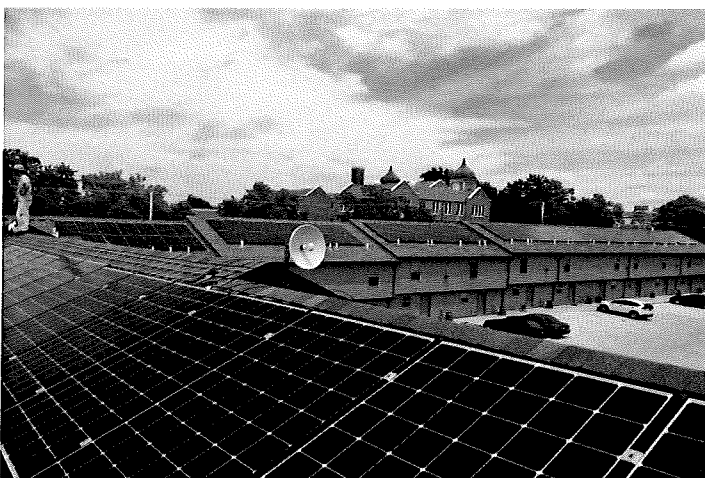
ENERGYLINK OVERVIEW

Founded in 2010, EnergyLink LLC started as a residential energy systems and weatherization contractor in Columbia, Missouri. Years of expanding both the market segments we service as well as the energy solutions and products we offer has grown us into the organization that we are today: a nationwide renewable energy and energy efficiency developer that offers a full suite of energy services to commercial clients across all industries, including engineering & design services, financial & economic analysis, and contracting & construction management. We apply these services across a wide variety of product categories including solar energy, building automation, energy storage, HVAC systems, thermal boundaries, LED lighting, and more.



EnergyLink is committed to performing services that increase the cash flows of our clients, the sustainability of our national ecosystem, and the quality of life of those in the communities we serve. In accordance with that commitment to efficiency, we have extensively vertically-integrated and are capable of designing and managing our own projects without subcontracting key operations to third-parties, thus reducing costs and increasing economic benefits. In addition, our firm prides itself on providing the highest and most sophisticated solutions available to our clients, and we relentlessly search for the cutting edge in energy technology to that end.

Thank you for your time and your consideration of our firm as your energy service provider.



PROJECT DEVELOPMENT TEAM

Chris Ihler
CEO/Co-Founder

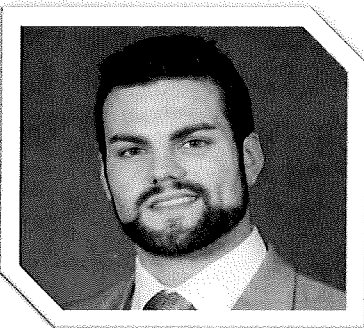


Chris started EnergyLink in 2010 with a company-wide vision to provide cost-effective energy solutions to underserved markets. Chris executes EnergyLink's mission of adding value to the "Triple Bottom Line" of each of our clients by providing leadership and knowledge that benefit our clients' profitability, their communities, and the environment.

His background in real estate development and experience designing and implementing residential and commercial energy solutions ensures that our projects will yield high returns while minimizing construction and performance risk.

Chris holds a BSBA in Finance and Real Estate from the University of Missouri.

Christian Gander
Vice President -
Finance



Christian's role as Vice President of Finance is building and maintaining relations with our commercial clients as well as providing economic analysis and financial solutions to ensure the projects we design & construct match their energy goals and capital investment strategy.

Christian holds a BSBA in Finance and Real Estate and an MBA in Finance and Investments, both from the University of Missouri.

Jeremy Nolen
Vice President -
Project Management



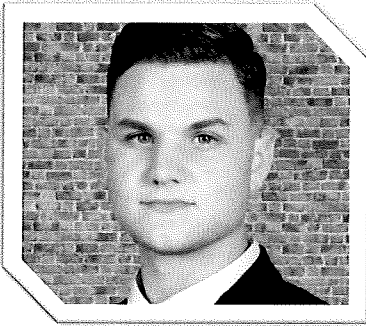
Jeremy coordinates permitting, supply chain, sub-contractors, and construction logistics for our projects. Jeremy has been a PM for EnergyLink for 3 years with 9 projects under his belt and is skilled managing a diverse range of sub-contractors and logistical solutions.

Jeremy played collegiate basketball and received his undergraduate degree from Columbia College before going on to receive his MBA from UMKC.



PROJECT DEVELOPMENT TEAM

Caelan Gander
Business
Development
Manager



Caelan interfaces with EnergyLink clients on a day-to-day basis and provides communication and support for all project and public relations needs between EnergyLink team members, our customers, and any other counterparties to our projects.

He earned a Bachelor of Science in Business Administration – Marketing and a Bachelor of Arts and Science in International Studies – East Asian Studies from the University of Missouri in 2019.

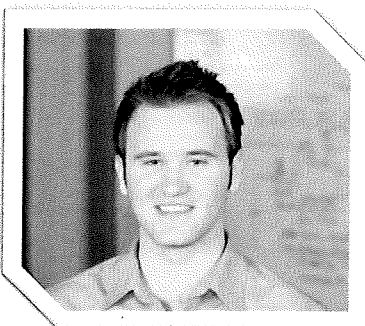
Cully Meier
VP of Project
Engineering



Cully is the primary designer, integrator, and commissioning agent for our solar installations and electrical work. Cully works with PEs to create formal engineering documents, works onsite to provide QA and QC for every EnergyLink installation, and personally installs our inverter packages. Cully also provides system support after installation is complete. He has worked at EnergyLink for 4 years and has designed over 10MW of commercial/industrial projects.

Cully holds an electronics engineering degree and is NABCEP-Certified.

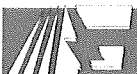
Colin McCarthy
Systems Engineer/
Commercial Energy
Auditor



As our Systems Engineer, Colin leads our audit and analysis process for our large commercial and industrial clients. He has performed commercial energy audit and analysis services on over 100 properties and organizations and provides detailed recommendations regarding energy efficiency product implementation as well as precise and accurate energy usage and demand forecasting.

Colin previously conducted audits for the Department of Energy through their Industrial Assessment Center at the University of Missouri and aided in implementing a CHP and tri-generation study at the University Power Plant relating to ISO 50001.

Colin holds a BS in Industrial Manufacturing Systems Engineering from the University of Missouri.



COMPANY INFORMATION

Contact Information:

Legal Business Entity Name: EnergyLink LLC

Any Doing Business As ("DBA") Name: N/A

Address of Principal Place of Business: 501 Fay St. Suite #106 Columbia, MO 65201

Primary Point of Contact: Chris Ihler, CEO; 573.424.3734; cihler@goEnergyLink.com

Company Telephone Number: 573.777.4811

Company Background

Founded: May 18, 2010

Contractor License: 19 00023813

License Expiration Date: 6/30/2019

Tax ID: 27-2563588

Entity Type: Limited Liability Company

Ownership Structure: No parents, affiliates, or subsidiaries

Shareholders and Percentages: Christopher Ihler – 66.67%; Scott Schnelle – 33.33%

Business Entity Home State of Registration: Missouri

Primary Utility Markets Served: Midwest and Mountain Regions

In-House or Subcontracted Installation: In-house for solar and lighting, subcontracted for HVAC

Primary Equipment Suppliers/Distributors: Allied Building Products, Trane, Honeywell, Daikin

Company Scale and Resources

EnergyLink employs 16 full time staff. Personnel assigned to this project hold the following energy-related engineering qualifications: NABCEP Certified Energy Practitioner, EPA Certified Renovator, DOE Industrial Assessment Center Student Auditor, Building Performance Institute (BPI) Certified Energy Auditor, National General Building Contractor A (F11), and the Certified Energy Manager (CEM) Certificate. EnergyLink is earning its DOE ESCO certification and its NAESCO accreditation as an energy service performance contractor this fall.

In addition to our core employee base, we have contracted with Tradesmen International to scale up on demand and accommodate more and larger projects.

Company Experience:

Commercial Projects Sold LTM: 4/645 kW

Residential Project Sold LTM: 2/6.6 kW

Commercial Projects Sold To Date: 17/1,606 kW

Residential Projects Sold To Date: 6/40 kW

Largest System Size Installed To Date: 170 kW



RECENT PROJECT REFERENCES

ULC – AmeriCorps Mountain West Campus

- First project of ULC portfolio
- Solar farm, VRV Daikin water source geothermal heat pump system, recommissioning of HVAC assets, gas conversion of RTUs, high efficiency condensing injection loop boiler package, LED lights, retro commissioning of DOAS system, HVAC controls with building automation system, EnergyStar windows, white TPO-insulated roof, net-zero electric

Aurora, CO

Eric Parker, Sustainability and Facilities Manager

720.301.3176

Doctors Park Medical Plaza

- Two facility installation
- Rooftop and carport solar, battery energy storage, LED lights, HVAC controls with building automation system, rate category change, net-zero electric

Columbia, MO

John Riddick, Owner

877.879.9038

Affordable Family Storage – Self Storage

- Repeat customer – three locations plus future projects slated
- Solar, USDA Grants

Jefferson City, MO; Springfield, MO; Slated for future projects in IA, KS, and NE

Trent Overhue, Owner

402.659.3540

Wilson's Sports and Fitness Centers

- Repeat customer - two locations plus future projects slated
- Rooftop and carport solar, insulation, high-efficiency scroll chiller, ice and battery storage, LED lights, building automation system, Time-Of-Use rate category change

Columbia, MO

JD Abrams, President

573.881.9696

Moberly Cardio Surgical Center and Lyon Crest Student Housing Facility

- Repeat customer – alternate asset classes
- Rooftop and carport solar, battery storage, HVAC controls with building automation system, EV charging station

Moberly, MO and Columbia, MO

Sanjeev Ravipudi, MD, Owner

660.616.0022



RECENT PROJECT REFERENCES

EDC Business & Community Partners

- Nonprofit business incubator
- Rooftop solar, HVAC controls with BAS, LED lights

*St. Charles, MO
Craig Frahm, CFO
636.229.5277*

CIS – Columbia Independent Schools

- Rooftop solar, LED lights, high efficiency RTU upgrades, recommissioning of old RTU's and DOAS, destratification, HVAC controls with demand management BAS, PACE energy bond

*Columbia, MO
Adam Dube, Head of School
573.777.9250*

IKE Skelton – Jefferson City National Guard Facility

- MO State RFP
- Rooftop Solar

*Jefferson City, MO
Jeremy Newton, Design Project Manager
573.638.9500*

Faber & Brand – Law Offices

- Rooftop and carport solar, LED lights, mini split HVAC installation with zoning, HVAC controls with demand management, rate category change, first PURPA interconnection for a co-op in MO

*Boone County, MO
Stuart Mullen, Owner
573.449.3141*

True Media, True Properties – Offices

- Repeat customer – three locations in MO
- Rooftop solar, HVAC controls with building automation system, LED lights, destratification, duct reconfiguration with zoning

*St. Louis County and Columbia, MO
Jack Miller, Owner
314.219.0946*

GME – North American Safety Equipment Supplier

- Repeat customer – future project slated
- Rooftop solar, OCC sensor light package for shipping warehouse, lighting retrofit, daylight harvesting, Suntracker skylights, thermostat package

*Boone County, MO
Beau Aero, Owner
718.210.3913*

