



New Restroom Bldg & Waterline Extension

Buncombe County Sports Park
58 Apac Drive
Asheville, NC.

**Issued for Bid
November 17, 2023**

**Associate:
Domokur Architects**

SECTION 000010

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REQUEST FOR BID
Buncombe County Sports Park
NEW RESTROOM AND WATERLINE EXTENSION

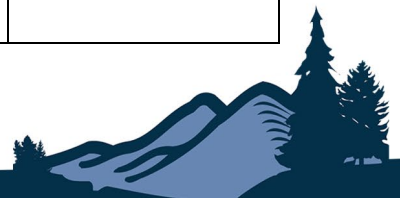
CHECKLIST OF REQUIRED ITEMS

Company _____

Signature _____

Date _____

#	ITEM	INCLUDED?
1	This checklist is signed and included in the submitted bid	
2	Signed Bid Form	
3	MBE Forms	
4	Sub Contractor List	
5	Bid Bond in separate envelope	
6		
7		
8		
9		
10		



00 10 01 - INSTRUCTIONS TO BIDDERS

Buncombe County Sports Park New Restroom & Waterline Extension

INSTRUCTIONS TO BIDDERS

All Bids shall be prepared in accordance with the following requirements:

IB-00 PROJECT CONTACTS:

For all correspondence during the bidding process, use the following contact list provided:

CONTACTS DURING BIDDING:

Bidding Procedural Questions:	Ronnie Lunsford (828)775-0853 generalservices@buncombecounty.org
Project Design Questions:	Michael Tabeling Project Manager mtabeling@domokur.com

IB-01 PREPARATION OF BIDS:

1. The Bid form furnished by Buncombe County shall be used and shall not be altered.
2. All entries including signatures shall be written in ink.
3. The Bid form may contain items requiring either unit price, lump sum price, or both. The Bidder shall submit a price for every item in the Bid form unless specific directions in the Invitation for Bids allow for partial Bids.
4. The Total Contract Bid Price shall be written in figures in the proper place in the Bid form. The Total Contract Bid Price shall be determined by adding the Total Bid for each item.
5. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. The individual signing the Bid shall initial the change in ink.
6. The Bid shall be properly executed. In order to constitute proper execution; the Bid shall be executed in strict compliance with the following. No other forms of execution will be accepted.
 - a. If a Bid is by an individual, it shall show the name and address of the individual and shall be signed by the individual.
 - b. If the Bid is by a Corporation, the President or Vice-president of the Corporation shall execute it in the name of the Corporation. The Secretary or Assistant Secretary shall attest the signature(s). The seal of the Corporation shall be affixed. The Bid shall show the address of the principal office of the Corporation.
 - c. If the Bid is made by a Partnership, one of the general partners shall execute it in the name of the Partnership, by the address shown for the Partnership.
 - d. If the Bid is a joint venture, it shall be executed by each of the joint ventures in the appropriate manner set out above. The address for the joint venture shall be shown.
7. The Bid shall not contain any unauthorized additions, deletions or conditional bids.
8. The Bidder shall not add any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award.

- 9. The Bid shall not contain irregularities of any kind, which make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- 10. Alternative Bids will not be considered unless specifically called for. Where numbered Alternate Bid Items are provided under any Contract, each Bidder must submit a bid price for each numbered Alternate Item.
- 11. All attachments, certifications or acknowledgments attached to the Bid shall be executed in the same manner as the Bid.

12. Due at Bid Date:

The documents in the following list shall constitute a complete bid submittal. All documents shall be submitted according to the instructions provided in the Invitation for Bids:

- 00 2000 Checklist for Bid Form
- 00 3000 Bid Form
- 00 3001 MBE Forms
- 00 3002 Subcontractors List
- 00 4005 Certification for Execution of Bid, and Debarment Certification
- 00 4400 Non-Collusion Affidavit
- 00 4450 Drug-Free Workplace Certification
- Bid Bond **(in separate envelope)**

13. Other items due after bid:

- Performance Bond
- Payment Bond
- Certificate of Insurance
- Schedule of Values

IB-02 RECEIPT AND OPENING OF BIDS:

Bids must be hand delivered. All bids must be submitted in person at the bid due date and time.

Each Bid must be submitted in a sealed envelope, plainly marked on the outside, addressed and delivered as shown below. The envelope-containing Bid shall be marked as follows:

Upper left hand corner - **Bidder's Name**
Bidder's Address

Bid For: **Buncombe Co Sports Park
New Restroom Bldg & Waterline Extension**
To: **Rebecca Brown
General Services Department**

Physical Address	
Buncombe County General Services Department Board Room 30 Valley Street, Asheville NC 28801	<u>All bids must be submitted in person at the bid due date and time</u>

THERE WILL BE A FORMAL BID OPENING.

It shall be the specific responsibility of the bidder to deliver his bid to the proper official at the selected place and prior to the announced time for the receipt of bids. Late delivery of a bid for any reason, including delivery by any delivery service, shall disqualify the bid.

Bids received subsequent to the advertised hour of opening will be returned to the Bidder unopened.

IB-03 WITHDRAWAL OR REVISION OF BIDS:

A Bidder may, without prejudice to himself, withdraw a Bid after it has been delivered to the Owner provided the request for such withdrawal is made either in writing to the Project Manager, presiding over the opening of Bids before the date and time set for the opening of Bids. The bidder may then submit a revised Bid provided it is received prior to the time set for opening of Bids. Any withdrawal of a bid after the opening of Bids shall be in accordance with N.C. General Statute Section 143-129.1.

Only those persons authorized to sign Bids shall be recognized as being qualified to withdraw a Bid.

IB-04 ADDENDA AND INTERPRETATIONS:

No interpretations of the meaning of the Plans, Specifications or other portions of the Contract Documents will be made orally. Submit all questions in writing to the Project Manager.

Every request for such interpretation must be addressed to the Project Manager for the project. To be given consideration, such requests must be received at the above address at least seven (7) days prior to the date fixed for the opening of Bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda. -This will be posted to the County website not later than four (4) days prior to the day fixed for the opening of bids. Failure of any Bidder to receive any such Addenda shall not relieve said Bidder from any obligation under his Bid as submitted. All Addenda so issued shall become part of the Contract Documents.

IB-05 DISCREPANCY IN BIDS:

In the event there is a discrepancy in any Bid between the unit prices and the extended totals, the unit prices shall govern. Bids, which do not contain a price for every numbered item contained in the applicable Bid form, will not be accepted, unless otherwise specified.

Buncombe County reserves the right to reject any Bid in which the prices appear, in the judgment of the County, to constitute an unbalanced Bid. Unbalanced prices shall be interpreted to mean that the unit price for any item is such that it is unreasonable for that particular item when considered in connection with the Bid submitted, or any other item or items.

IB-06 VERIFICATION OF RESPONSIBLE BIDDER:

It is the intention of the Owner to award the Contract(s) to a Bidder competent to perform and complete the work described therein in a satisfactory manner. Accordingly, a Successful Bidder may be required to **submit to the Owner a form, satisfactory to the Owner and within five (5) days following the County contact that a Contractor is the apparent low bidder:**

- (1) Evidence of Bidder's required Certificate of Insurance and license to perform the work and services.

- (2) Evidence of Bidder's experience to perform the work and financial statements reasonably available for 3 years immediately preceding the date of the Bid Opening.
- (3) Bidder's Experience Modification Rating (EMR) and/or Evidence of Safety record of the Bidder to include OSHA 200 Logs for the Bidder's firm for the 5 years prior to the Bid Opening and the most recent Worker's Compensation Rating (or if the Bidder is self-insured, a complete listing shall be submitted of lost time on-the-job accidents for the past 5 years;
- (4) A Preliminary Progress Schedule. The Preliminary Progress Schedule shall consist of a time scaled bar chart and narrative in accordance with appropriate formats and as specified by the Owner.
- (5) Evidence of Bidder's financial resources, adequacy of plant and equipment, organization and prior experience with projects of similar scope and size completed in the last five years.(including the name, address and telephone number of the owner of each such project). Financial information shall be certified by a Certified Public Accountant, and will be submitted on the Associated General Contractors of America Form "Standard Questionnaires and Financial Statement for Bidders" available from AGC, 1975 "E", NW, Washington, DC 20006; "Questionnaire" form Section 00430 (Included in Contract Document Specifications). Contractor may mark financial information as "Confidential"

The Owner may make such other investigation as it deems necessary to determine the qualifications of the Bidder to perform the work and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may reasonably request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder (1) Fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract, and to complete the work contemplated therein in a reasonable manner and time; or (2) Fails to satisfy the Owner that such Bidder has maintained a satisfactory safety record over the past 5 years. Conditional Bids will not be accepted.

IB-08 EXAMINATION OF CONDITIONS:

Each bidder shall, by careful examination, satisfy himself as to the nature and location of the work, the conformation of the building, ground, the character, quality and quantity of the facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work or the cost thereof under the Contract.

The Contractor shall make his own determination as to the nature and extent of the utility facilities, including proposed adjustments, new facilities, or temporary work to be performed by the utility owner or his representative; and as to whether or not any utility work is planned by the Owner in conjunction with the project construction. The Contractor shall consider in his Bid all the permanent and temporary utility facilities in their present or relocation positions, whether or not specifically shown on the plans. It will be the Contractor's responsibility to anticipate any additional costs to him resulting from such utility work and to reflect these costs in his Bid for the various items in the Contract.

The failure or omission of any Bidder to thoroughly examine and familiarize himself with the Contract Documents or to receive or examine any form, instrument or document or visit the site and acquaint himself with the conditions there existing shall in no way relieve any Bidder from any obligation in respect to his bid.

No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations therein.

IB-09 COLLUSIVE AGREEMENTS:

Each Bidder submitting a Bid to the Owner for any portion of the work contemplated by the documents on which bidding is based, shall execute and attach thereto an affidavit substantially in the form herein provided, to the effect that he has not entered into a collusive agreement with any person, firm or corporation in regard to any Bid submitted.

IB-10 TAXES

The Contractor shall include in his Bid the cost of all sales and use taxes and furnish to the Owner at the end of each month and upon completion of his Contract, a statement setting forth all such taxes paid. This statement shall indicate the amount paid to each firm and be adequate for audit by the State Department of Revenue.

IB-11 COMPARISON OF BIDS:

Bids will be compared on the basis of the totals of the approximated quantities comprising all items, at the unit and lump sum prices bid for these items. The resulting total Contract Bid Price will be compared which will include and cover the furnishing of all materials, and the performance of all labor requisite or proper, and completing of all the work called for under the accompanying Contract, and in the manner set forth and described in the Contract Documents.

The lowest Bidder under each Contract will be that Bidder whose Bid totals the lowest number of dollars as determined above.

When numbered Alternate bid items or contingent items are required, the lowest Bidder is the Bidder whose bid for the Alternate or combination of Alternates or contingent items, selected by the Owner is the lowest. The Owner reserves the right to select any Alternate or combinations of Alternates and contingent items.

An increase or decrease in the quantity of any item will not be regarded as sufficient ground for an increase or decrease in the unit prices, nor in the time allowed for the completion of the work, except as provided for in the contract.

IB-12 AWARD OF CONTRACT:

The award of the Contract will be made to the lowest responsive, and responsible bidder, who, in the opinion of the Owner, is qualified to perform the work required. Responsible bidders have the ability, skill, judgment, and integrity necessary to faithfully perform the contract, and have sufficient financial resources to complete the contract.

When Alternate Bid items are required in the Bid, the Contract will be awarded to that responsible Bidder whose Bid for the Alternate or combination of Alternates, selected by the Owner, is the lowest.

These Bids are asked for in good faith, and awards will be made as soon as practicable, provided satisfactory Bids are received.

The Owner may consider unresponsive and reject any Bid not prepared and submitted in accordance with the provisions hereof.

The Owner reserves the right to waive informalities in bidding, to reject any or all Bids, or to accept a Bid other than the lowest submitted if such action is deemed to be in the best interest of the Owner.

IB-13 COMMENCEMENT OF WORK:

Upon execution and delivery of the Contract and insurance certificates and policies, the Contractor will be issued a Notice to Proceed with the work of the Contract. The work of the Contract shall be commenced within ten (10) days following such notification or as otherwise specified in the Notice to Proceed.

IB-14 DAMAGES FOR FAILURE TO EXECUTE CONTRACT:

If an accepted Bidder shall fail or refuse to sign and deliver this Contract and insurance documentation within ten (10 days) after he has received Notice of Award of his Bid, the Owner reserves whatever rights and remedies it may have against such defaulting Bidder.

IB-15 EQUAL EMPLOYMENT OPPORTUNITY

Attention of Bidders is particularly called to the requirements for ensuring that employees and applicants for employment are not discriminated against because of their race, color, creed, religion, national origin, age, disability, sexual orientation, gender (including pregnancy), gender identity or expression, or familial status except when being a member of a particular group is deemed to be a bona fide occupational qualification.

IB-16 PROGRESS SCHEDULE/TIME OF COMPLETION

Progress of the Work shall begin as specified in these documents and be continuous, regardless of completion date.

A final completion date exceeding 30 calendar days after the substantial completion date may be considered unreasonable.

IB-17 RESERVED

IB-18 SUBSTITUTIONS

Material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the Designer with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order. Submittals for proposed substitutions shall include the following information:

- a) Name, address, and telephone number of manufacturer and supplier as appropriate.
- b) Trade name, model or catalog designation.
- c) Product data including performance and test data, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.

- d) Detailed comparison with specified products including performance capabilities, warranties, and test results.
- e) Other pertinent data including data requested by the Designer to confirm product equality.
- f) If a proposed material, product, or equipment substitution is deemed equal by the Designer to those specified, all bidders of record will be notified by Addendum.

IB-19 MINORITY BUSINESS REQUIREMENTS

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 Affidavits are hereby incorporated into and made a part of this contract.

*****Failure to provide MB documentation with the bid per MB Plan instructions may result in rejection of the bid as non-responsive and award to the next lowest responsible bidder.*****

****END OF SECTION****

BUNCOMBE COUNTY SPORTS PARK

Advertisement for Bids (N.C.G.S. 143-131)

Issue Date: 11/20/2023

Project Name: ***New Restroom & Waterline Extension***

Pursuant to North Carolina General Statute 143-131, bids will be received by the Buncombe County General Services Department Board Room at 30 Valley Street, Asheville NC 28801, **until 3:00pm on December 19, 2023**, for the project described as follows:

Description of Work:

New Restroom Building and Waterline Extension at the Buncombe County Sports Park, located at 58 Apac Drive, Asheville, NC . Work includes waterline extension, grading, building foundation, flatwork, framing, masonry, plumbing, electric, and fine grading.

Bid Schedule:

Issuance of Advertisement for Bids	Monday, November 20, 2023
Pre-Bid Meeting (not mandatory) Buncombe County Sports Park Apac Drive Candler, NC Parking Lot for Fields 1 & 2	Wednesday, November 29, 2023 @ 11:00am
Deadline to Submit Questions	Tuesday, December 12, 2023
Bids Due	Tuesday, December 19 @ 3:00pm
Construction Start	February 2024 (estimated)

Pre-Bid Meeting attendance is highly encouraged but not mandatory. The project, and bidding procedures will be explained.

Bid Documents:

This Advertisement for Bids is posted on the County procurement website at www.buncombecounty.org. This is *the official source* of this solicitation. Bid documents and instructions may be obtained digitally at no cost from the County procurement website. All updates to this solicitation shall come in the form of published addenda and shall be published to the same location. **Neither the County nor the General Service Department will be responsible for full or partial sets of Contract Documents including any addendum obtained from any other source.**

Information:

All questions concerning this Advertisement for Bids should be submitted via email to:

Michael Tabeling mtabeling@domokur.com

Questions pertaining to the bid will be answered in the form of a written addenda posted to the County bid page no later than (5) days before the opening of bids.

Standard of Award:

The award of the Contract will be made to the lowest responsible, responsive bidder, who, in the opinion of the County, is qualified to perform the work required and is responsible and reliable. When Alternate Bid items are required in the Bid, the Contract will be awarded to that responsible Bidder whose Bid for the Alternate or combination of Alternates, selected by the County, is the lowest.

Minority Business Plan:

Prospective Contractors are notified that the County has adopted a Minority Business Plan to encourage participation by women and minority businesses in the awarding of contracts. Responding bidders are hereby notified that this bid and the subsequent contract are subject to the provisions of that plan.

Prospective contractors may outreach to any registered minority or woman owned business for their sub-contracting needs. There are several options which include but are not limited to:

- State of North Carolina Historically Underutilized Business (HUB Vendor Search)
<https://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h>
- NC Department of Transportation (NC Connect Directory of Firms)
<https://www.ebs.nc.gov/VendorDirectory/default.html>
- Small Business Administration (Small Business Dynamic Search)
http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

Certification of a Drug-Free Workplace:

Prospective Contractors are notified that the County has adopted a Drug-Free Workplace Policy requiring successful firms to insure that a drug-free workplace is provided in the performance of any County contract. By submitting a bid, the Prospective Contractor certifies that if awarded the Contract, they and their subcontractors shall comply with the County's Drug-Free Workplace Policy.

Payment of Taxes:

Bid proposals shall include the cost of required insurance and bonds and payment. The County has adopted a policy that the County will not enter into contracts with bidders who are delinquent in the payment of ad valorem taxes owed to the County.

License Requirements:

All bidders must have current North Carolina General Contractor licenses with the appropriate classification for all work of the project at the time of the bid.

Bid Submittals:

The County has prepared this Advertisement for Bids which identifies the services to be undertaken.

In order to be considered, all bids must be submitted in person at the bid due date and time. Contractors mailing bid packages should allow delivery time to ensure timely receipt of their proposal. The responsibility for getting their bid to the County on or before the specified time and date is solely and strictly the responsibility of the proposing contractor. The County will in no way be responsible for delays caused by any occurrence.

Bids may be delivered to:

Physical Address	
Buncombe County General Services Department Attn: Ronnie Lunsford 30 Valley Street Asheville NC 28801	<u>Bids must be submitted in person at the bid due date and time.</u>

BIDS DUE: Tuesday, December 19, 2023 @ 3:00p.m.

Miscellaneous Requirements of the Bid:

- All bids must be submitted on the form of Bid Proposal provided.
- The successful bidder will be required to furnish a performance bond and a payment bond in the amount of one hundred percent (100%) of the contract amount for contracts. Those bonds shall meet the requirements of North Carolina General Statutes Section 143-129 and of Article 3 of Chapter 44A of the North Carolina General Statutes.

The County reserves the right to reject any or all bids and to waive informalities.

End of Document



003000

Bid Form

Project: *New Restroom & Waterline Extension*

Location: *Buncombe County Sports Park*

Bidder Name: _____

Date: _____, 2023

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

The Bidder proposes and agrees if this Proposal is accepted to contract with Buncombe County in the Form of Contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to construct the New Restroom Building & Waterline Extension in full and complete accordance with the Plans, Specifications, and Contract Documents, to the full and entire satisfaction of Buncombe County and/or Engineer, with a definite understanding that no money will be allowed for extra work except as set forth in the any and all project documents, for the Sum of:

Base Bid:

(Written amount)

_____ **Dollars:** _____





General Services

Ronnie Lunsford
Facilities and Project Manager

Time of Completion: _____ **Consecutive Calendar Days**

The undersigned agrees that substitutions will not be made without written approval of the Owner and/or Engineer and then for the reason to improve the quality of the work and to furnish savings in cost to the Owner.

Addenda have been received as follows:

Addendum # _____ **Date:** _____

Addendum # _____ **Date:** _____

The undersigned further agrees to begin work promptly after a Notice to Proceed with an adequate force, provide a construction schedule of all work tasks to be performed, carry the work forward as rapidly as possible, and complete the entire project within the number of days specified herein.

It is directly understood that Buncombe County reserves the unqualified right to reject any and all bids should it be deemed in the best interest of the Owner.

Name of Bidder: _____

Signature: _____ **Date:** _____

Title: _____

Date Proposal Executed: _____, 2023.

License No.: _____



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

County of _____

(Name of Bidder)

Affidavit of _____

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

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

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

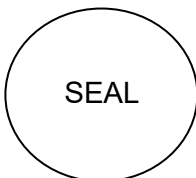
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

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

Notary Public _____

My commission expires _____

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

County of _____

Affidavit of _____

(Name of Bidder)

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

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

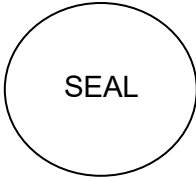
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

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

Notary Public _____

My commission expires _____

State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

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

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.
 This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

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

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

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

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

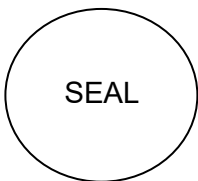
*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

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

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

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

Date: _____ Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

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

Notary Public _____

My commission expires _____

State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of _____

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

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

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

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

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

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

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

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

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

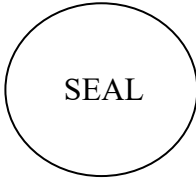
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

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

Notary Public _____

My commission expires _____

Document 00 45 13 - Bidder's Qualifications

Project Number: _____

Project Name: Buncombe County Sports Park - New RR Bldg & Waterline Extension

1. Company Name: _____

Physical Address: _____
Street, Building, Unit

City, State, Zip

Mailing Address (if different): _____
P.O. Box

City, State, Zip

Telephone Number (w/ Area Code): (_____) _____

Fax Number (w/ Area Code): (_____) _____

Email address: _____

2. **Overall Experience.** Indicate Bidder's overall experience performing the trades bid, including the years in business performing the trade under present and former business names.

3. **Financial.** The apparent low Bidder shall submit, upon request of the Contracting Authority, either:

- a) An annual financial statement prepared within the 12 months prior to the bid opening by an independent licensed accounting firm; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking; or,
- b) A financial report generated within 30 days prior to the bid opening from Standard and Poor, Dun and Bradstreet or a similar company acceptable to the Contracting Authority documenting the financial condition of the Bidder; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking;

This information is not a public record _____; and shall remain confidential, except under proper order of a court.

e) EPA/OSHA violations

f) Liquidated damages and Statutory Delay Forfeiture assessed

g) Drug-Free Safety Program and Drug Free Workplace Program violations

7. Management. Identify individuals assigned to this Project.

Principal _____ Years with firm _____ Total Exp. _____

Project Manager _____ Years with firm _____ Total Exp. _____

Field Superintendent _____ Years with firm _____ Total Exp. _____

Certification. I hereby certify that the information in this entire Bidder's Qualifications form, including all attachments and referenced information, is factual and complete.

Company Name _____

Authorized Official (please print or type) _____

Signature of Authorized Official _____ Date _____

END OF DOCUMENT



**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____

Date _____

By _____
Name and Title of Authorized Representative

Signature of Authorized Representative

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF _____
COUNTY OF _____

_____, of _____, being
(Name) (Bidder)
duly sworn, deposes and says that:

1. He is _____
(owner, partner, officer, representative, agent)
of _____, the Bidder that has submitted the attached Bid Proposal;
2. He is fully informed respecting the preparation and contents of the attached Bid Proposal and of all pertinent circumstances respecting such Bid Proposal;
3. Such Bid Proposal is genuine and is not a collusive or sham Bid Proposal;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid Proposal in connection with the Contract for which the attached Bid Proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid Proposal or of any other Bidder, or to fix the overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Buncombe County, or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owner, employees, or parties of interest including this affiant.

(Signed) _____

Title

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20__.

Notary Public
My Commission Expires: _____

00 445 - DRUG-FREE WORKPLACE CERTIFICATION

_____, Contractor with Buncombe County for
(Contractor's name)
the project known as _____, certifies that
(Project name)
the City's Drug-Free Workplace Policy, as set forth in the Bid Documents ("Policy"), has been reviewed

by or explained to the officers, agents and Employees of _____,
(Contractor's name)
and hereby agrees that the Policy is a part of the Contract and _____
(Contractor's name)
further certifies that _____ will comply with the requirements thereof.

This the _____ day of _____, 20_____.

Contractor's Name

Attest:
Title: _____
Secretary/Treasurer
(Corporate Seal)

by: _____
President / Vice President

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public
My Commission Expires: _____

CONTRACTOR/VENDOR FINAL RELEASE AND LIEN WAIVER

The undersigned represents and warrants that it has been paid and has received (or that it will be paid and will receive via proceeds from this pay application) \$ _____ as full and final settlement under the contract/agreement dated _____ (including any amendments or modifications thereto) (the "Contract") between the undersigned and _____ ("Contractor/Vendor") for the _____ Project owned by Buncombe County ("Owner")

In consideration for this final payment, and other good and valuable consideration, receipt of which is acknowledged, the undersigned makes the following representations and warranties:

1. The undersigned and Owner have fully settled all terms and conditions of the Contract (including any amendments or modifications thereto), as well as any other written or oral commitments, agreements, and/or understandings in connection with the Project.
 2. The undersigned has been paid in full (or it will be paid in full via proceeds from this pay application) for the labor, services, and materials in connection with the Contract, including all work performed or any materials provided by its subcontractors, vendors, suppliers, materialmen, laborers, or other persons or entities.
 3. The undersigned has paid in full (or it will pay in full via proceeds from this pay application) all its subcontractors, vendors, suppliers, materialmen, laborers, and other person or entity providing services, labor, or materials to the Project; there are no outstanding claims, demands, or rights to liens against the undersigned, the Project, or the Owner in connection with the Contract on the part of any person or entity; and no claims, demands, or liens have been filed against the undersigned, the Project, or the Owner relating to the Contract.
 4. The undersigned releases and discharges Owner from all claims, demands, or causes of action (including all lien claims and rights) that the undersigned has, or might have, under any present or future law, against Owner in connection with the Contract. The undersigned hereby specifically waives and releases any lien or claim or right to lien in connection with the Contract against Owner, Owner's property, and the Project, and also specifically waives, to the extent allowed by law, all liens, claims, or rights of lien in connection with the Contract by the undersigned's subcontractors, materialmen, laborers, and all other persons or entities furnishing services, labor, or materials in connection with the Contract.
 5. The undersigned shall indemnify, defend, and hold harmless Owner from any action, proceeding, arbitration, claim, demand, lien, or right to lien relating to the Contract, and shall pay any costs, expenses, and/or attorneys' fees incurred by Owner in connection therewith.
- The undersigned makes the foregoing representations and warranties with full knowledge that Owner shall be entitled to rely upon the truth and accuracy thereof.

DATED: _____

COMPANY NAME
By: _____
Title:

STATE OF _____
COUNTY OF _____

I, a Notary Public for the above County and State, certify that _____ personally came before me this day and acknowledged that he/she is _____ [title] of _____ [company name], and that he/she, as _____ [title], being authorized to do so, executed the foregoing on behalf of _____ [company name].

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

Notary Public
Printed Name: _____
My Commission Expires: _____

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM FOR SINGLE PRIME CONSTRUCTION PROJECTS

**NORTH CAROLINA
COUNTY OF BUNCOMBE**

GENERAL CONDITIONS OF THE CONTRACT

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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 reasonably estimated in advance 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 RFP, 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; such approval or disapproval shall be made by the designer prior to the opening of bids. 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; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;

- 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 reasonably estimated in advance to cover the loses 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. **Liquidated Damages are set at \$250/day.**
- 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.

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, 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 County.

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 ~~will~~ **will** 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. The GC shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.
- 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

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, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the GC, the GC's subcontractor, or the agents of either the GC or the GC's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

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.

FORM OF SINGLE PRIME CONSTRUCTION CONTRACT

THIS AGREEMENT, made the ____ day of _____ in the year of 20____ by and between _____, hereinafter called the Party of the First Part (the “Contractor”), and Buncombe County, a body politic and corporate organized under the laws of the state of North Carolina, hereinafter called the Party of the Second Part (the “Owner”).

W I T N E S S E T H :

That the Party of the First Part and the Party of the Second Part for the consideration herein named agree as follows:

1. Scope of Work: This agreement concerns _____ to be performed by The Party of the First Part. The Party of the First Part shall furnish and deliver all materials, and perform all of the work in the manner and form as provided by the approved design drawings and specifications from the preconstruction phase, and those items not on the approved design to ensure the project is functional and complete. These plans, specifications and documents to be titled “_____,” are attached hereto and made a part hereof as if fully contained herein (*such documents may include: advertisements; Instructions to Bidders; General Conditions; Supplementary General Conditions; specifications; accepted proposal; contract; performance bond; payment bond; power of attorney; workmen’s compensation; public liability; property damage and builder’s risk insurance certificates*):
 - i. **Scope of Work**
 - ii. **Buncombe County Construction Contract General Conditions of the Contract**
 - iii. **Buncombe County’s Invitation for Construction Bids**
 - iv. **Responsive Bid Bond**
 - v. **RFP Bidder Info Workbook**
 - vi. **Certificate of Insurance**
 - vii. **Performance and Payment Bonds**

Project Name: _____

2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within ____ consecutive calendar days from said date. For each day in excess thereof, liquidated damages shall be as stated in General and Supplementary General Conditions. The Party of the First Part, as one of the considerations for the awarding of this contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days as outlined in Article 14 of the General Conditions of the Contract.

3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

_____ dollars and 00/100 Dollars (\$_____)

4. In accordance with Article 31 and Article 32 of the General Conditions of the Contract, the Party of the Second Part shall review, and if approved, process the Party of the First Party's pay request within 30 days upon receipt. The Party of the Second Part, after reviewing and approving said pay request, shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.
5. The Party of the First Part shall perform the work associated with this Agreement in such a manner as not to void any warranties, including those for labor, materials, or parts, that are held by the Owner and/or schools systems, colleges, and/or their respective governing bodies, and/or that are applicable to the property on which any activities under this contract occur, and/or that remain in effect on any of the locations at which the Party of the First Part is performing work associated with this Agreement. The Owner and/or schools systems, colleges, and/or their respective governing bodies upon whose property any activities under this contract occur, may allow for the issuer of any such warranties to inspect the drawings, specifications, and/or the work performed by the Party of the First Part to ensure that any such warranties remain valid for their remaining term. The Owner of the property on which the work is being performed shall be responsible for providing notice to the issuers of any warranties, unless such property is occupied by a schools system, college, and/or its respective governing body, in which case the school system, college, or its respective governing bodies for which the work is being performed shall be responsible for providing such notice.
6. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.
7. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Second Party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount, and

with such surety or sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.

8. The Party of the First Part attests that it and all of its subcontractors have fully complied with all requirements of NCGS 64 Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

{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

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

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____
Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project

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

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

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

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

Executed in _____ counterparts.

Witness:

Contractor: (Trade or Corporate Name)

(Proprietorship or Partnership)

Attest: (Corporation)

By: _____

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

(Corporate Seal)

Witness:

Countersigned:

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

By: _____

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

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

(Surety Corporate Seal)

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project _____

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

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

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

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

Executed in _____ counterparts.

Witness:

(Proprietorship or Partnership)

Attest: (Corporation)

By: _____

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

(Corporate Seal)

Witness:

Countersigned:

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

Contractor: (Trade or Corporate Name)

By: _____

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

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

(Surety Corporate Seal)

Sheet for Attaching Power of Attorney

Sheet for Attaching Insurance Certificates

SECTION 011000 - SUMMARY

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:

1. Project information.
2. Work covered by Contract Documents.
3. Owner-furnished/Contractor-installed (OFCI) products.
4. Contractor's use of site and premises.
5. Coordination with occupants.
6. Work Restrictions.
7. Specification and Drawing conventions.

- B. Related Requirements:

1. Section 015000 "Temporary Facilities and Controls" for limitations and procedures governing temporary use of Owner's facilities.

1.3 PROJECT INFORMATION

- A. Project Identification: New Restroom Bldg & Waterline Extension

1. Project Location: Buncombe County Sports Park, 58 Apac Drive, Asheville, North Carolina 28801.

- B. Owner: Buncombe County, General Services Department , 40 McCormick Place, Asheville, NC 28801

1. Owner's Representative: Ronnie Lunsford, PEM, Facilities/Project Manager, 40 McCormick Place, Asheville, North Carolina 28801.

- C. Architect: Domokur Architects.

1. Architect's Representative:
 - a. Michael Tabeling, Project Manager
 - b. Michael Domokur, Construction Administrator
23 S. Broad Street, Ste. 201, Brevard, North Carolina 28712.

- D. Architect's Consultants: Architect has retained the following design professionals, who have prepared designated portions of the Contract Documents:

1. Civil Engineering: Davis CivilSolutions, PA
 - a. Representative: Gary Davis, 135-A Charlotte Hwy, Asheville, North Carolina 28803
2. Structural Engineering: Kloesel Engineering, PA.
 - a. Representative: D. Ben Poss, 8 Magnolia Avenue, Ste. 100, Asheville, North Carolina 28801.
3. Mechanical, Electrical, and Plumbing Engineering: Tilden White & Associates, PLLC.
 - a. Representative: Tilden White, 9 Legend Drive, Arden, North Carolina 28704.

1.4 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Work of Project is defined by the Contract Documents and includes, but is not limited to, the following:
 1. Project includes construction of 5,500 square foot new Restroom Building and Waterline Extension.
- B. Type of Contract:
 1. Project will be constructed under a single prime contract.

1.5 OWNER-FURNISHED/CONTRACTOR-INSTALLED (OFICI) PRODUCTS

- A. Owner-Provided/Contractor-installed Products include:
 1. TA-6 Toilet Tissue (Roll) Dispenser
 2. TA-7 Sanitary Napkin Disposal
 3. TA-8 Soap Dispenser
 4. TA-10 Sanitary Napkin Dispenser
- A. Owner's Responsibilities: Owner will furnish products indicated and perform the following, as applicable:
 1. Provide to Contractor Owner-reviewed Product Data, Shop Drawings, and Samples.
 2. Provide for delivery of Owner-furnished products to Project site.
 3. Upon delivery, inspect, with Contractor present, delivered items.
 - a. If Owner-furnished products are damaged, defective, or missing, arrange for replacement.
 4. Obtain manufacturer's inspections, service, and warranties.
 5. Inform Contractor of earliest available delivery date for Owner-furnished products.
- B. Contractor's Responsibilities: The Work includes the following, as applicable:

1. Designate delivery dates of Owner-furnished products in Contractor's construction schedule, utilizing Owner-furnished earliest available delivery dates.
2. Receive, unload, handle, store, protect, and install Owner-furnished products.
3. Make building services connections for Owner-furnished products.
4. Protect Owner-furnished products from damage during storage, handling, and installation and prior to Substantial Completion.
5. Repair or replace Owner-furnished products damaged following receipt.

1.2 CONTRACTOR'S USE OF SITE AND PREMISES

- A. Limits on Use of Site: Limit use of Project site to areas within the Contract limits indicated. Do not disturb portions of Project site beyond areas in which the Work is indicated.
1. Driveways, Walkways and Entrances: Keep driveways and entrances serving premises clear and available to Owner, Owner's employees, and emergency vehicles at all times. Do not use these areas for parking or for storage of materials.
 - a. Schedule deliveries to minimize use of driveways and entrances by construction operations.
 - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
- B. Condition of Existing Grounds: Maintain portions of existing grounds, landscaping, and hardscaping affected by construction operations throughout construction period. Repair damage caused by construction operations.

1.3 COORDINATION WITH OCCUPANTS

- A. Partial Owner Occupancy: Owner and park patrons will occupy the premises during entire construction period, with the exception of areas under construction. Cooperate with Owner during construction operations to minimize conflicts and facilitate Owner/patron usage. Perform the Work so as not to interfere with Owner's operations. Maintain existing exits unless otherwise indicated.
1. Maintain access to existing walkways and other adjacent occupied or used facilities. Do not close or obstruct walkways or other occupied or used facilities without written permission from Owner and authorities having jurisdiction.
 2. Maintain access for park patrons at all times.
 3. Provide not less than 72 hours' notice to Owner of activities that will affect Owner's operations.

1.4 WORK RESTRICTIONS

- A. Comply with restrictions on construction operations.
1. Comply with limitations on use of public streets, work on public streets, rights of way, and other requirements of authorities having jurisdiction.
- B. On-Site Work Hours: Limit work to between 7:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise indicated. Work hours may be modified to meet Project requirements if approved by Owner and authorities having jurisdiction.

1. Weekend Hours: Work shall not be performed during weekend hours unless granted by written permission from the Owner.
 2. Hours for Utility Shutdowns: Utility shutdowns, scheduling, and sequencing shall be coordinated with Owner.
- C. Smoking and Controlled Substance Restrictions: Use of tobacco products , alcoholic beverages, and other controlled substances on Owner's property is not permitted.
- D. Employee Screening: Comply with Owner's requirements for drug and background screening of Contractor personnel working on Project site.
1. Maintain list of approved screened personnel with Owner's representative.

1.5 SPECIFICATION AND DRAWING CONVENTIONS

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.
 2. Text Color: Text used in the Specifications, including units of measure, manufacturer and product names, and other text may appear in multiple colors or underlined as part of a hyperlink; no emphasis is implied by text with these characteristics.
 3. Specification requirements are to be performed by Contractor unless specifically stated otherwise.
- B. Division 00 Contracting Requirements: General provisions of the Contract, including General and Supplementary Conditions, apply to all Sections of the Specifications.
- C. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.
- D. Drawing Coordination: Requirements for materials and products identified on Drawings are described in detail in the Specifications. One or more of the following are used on Drawings to identify materials and products:
1. Terminology: Materials and products are identified by the typical generic terms used in the individual Specifications Sections.
 2. Abbreviations: Materials and products are identified by abbreviations scheduled on Drawings and published as part of the U.S. National CAD Standard.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 011000

SECTION 012900 – PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.
- B. Requirements to provide a Schedule of Values breakdown.**
- C. Related Sections include the following:
 - 1. Division 01 Section "Construction Progress Schedule" for administrative requirements governing preparation and submittal of Contractor's Construction Schedule.

1.3 DEFINITIONS

- A. Schedule of Values: A statement furnished by Contractor allocating portions of the Contract Sum to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

1.4 SCHEDULE OF VALUES

- A. Coordination: Coordinate preparation of the Schedule of Values with preparation of Contractor's Construction Schedule.
- B. Schedule of Value Forms:
 - 1. Submit the Schedule of Values to Architect within (10) days after receipt of the Notice to Proceed on a form acceptable to the Architect and Buncombe County, with separate amounts shown for labor and materials for each branch of Work.
- C. Format and Content:
 - 1. Provide a breakdown of the Contract Sum as outlined in Part 3. The breakdown provided is the minimum breakdown require to be included in the Schedule of Values, including requirement for breakdown of Labor and Materials.
 - 2. Round amounts to nearest whole dollar; total shall equal the Contract Sum.
 - 3. Each item in the Schedule of Values and Applications for Payment shall be complete. Include total cost and proportionate share of general overhead and profit for each item.
 - 4. Schedule Updating: Update and resubmit the Schedule of Values before the next Applications for Payment when Change Orders or Construction Change Directives result in a change in the Contract Sum.

1.5 CONTRACTOR PAYMENT REQUEST

- A. Each Contractor Payment Request shall be consistent with previous applications and payments as certified by Architect and paid for by Owner.
- B. Payment Request Times: The date for each progress payment is indicated in the Agreement between Owner and Contractor. The period of construction Work covered by each Application for Payment is the period indicated in the Agreement.
- C. Payment Request Preparation: Complete every entry on form. Notarize and execute by a person authorized to sign legal documents on behalf of Contractor. Architect will return incomplete applications without action.
 - 1. Entries shall match data on the Schedule of Values and Contractor's Construction Schedule. Use updated schedules if revisions were made.
 - 2. Include amounts of Change Orders and Construction Change Directives issued before last day of construction period covered by application.
- D. Draft Transmittal: Submit 1 copy of each Contractor Payment Request ("Pencil Copy") to Architect for preliminary review not less than (1) week prior to submitting multiple copies of its Contractor Payment Request.
- E. Final Transmittal: Upon approval of draft copy by Architect, make revisions as directed by Architect and submit 3 signed and notarized original copies of each Contractor Payment Request to Architect by a method ensuring receipt within 24 hours. One copy shall include waivers of lien and similar attachments if required.
 - 1. Transmit each copy with a transmittal form listing attachments and recording appropriate information about application.
- F. Waivers of Mechanic's Lien: With each Application for Payment, submit waivers of mechanic's liens from subcontractors, sub-subcontractors, and suppliers for construction period covered by the previous application.
 - 1. Submit partial waivers on each item for amount requested in previous application, after deduction for retainage, on each item.
 - 2. When an application shows completion of an item, submit final or full waivers.
 - 3. Owner reserves the right to designate which entities involved in the Work must submit waivers.
 - 4. Submit final Application for Payment with or preceded by final waivers from every entity involved with performance of the Work covered by the application who is lawfully entitled to a lien.
 - 5. Waiver Forms: Submit waivers of lien on forms, executed in a manner acceptable to Owner.
- G. Initial Application for Payment: Administrative actions and submittals that must precede or coincide with submittal of first Application for Payment include the following:
 - 1. Schedule of Values.
 - 2. Contractor's Construction Schedule.
 - 3. Completed Submittals Schedule with all Manufacturers listed.
 - 4. List of Contractor's staff assignments, including contact information with e-mail addresses.
 - 5. List of Sub-Contractors and Suppliers, including contact information.

Initial Application for Payment will be withheld until each of the above items are submitted to the satisfaction of the Architects and Buncombe County.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 SCHEDULE OF VALUES

A. Schedule of Value breakdown

ADMINISTRATION

Bonding and Insurance
O/H & Profit
Mobilization & Temporary Facilities
Project Management/Supervision
Punchlist
Final Cleaning
Closeout Documents

SITE AND INFRASTRUCTURE

Site Clearing Labor & Materials
Earthwork Labor
Earthwork Materials
Utilities Labor
Utilities Material
Concrete Paving Labor
Concrete Paving Material

GENERAL WORK

Concrete Labor
Concrete Materials
Foundations Labor
Foundations Materials
CMU Labor
CMU Materials
CMU Labor
Stone Veneer Materials
Stone Veneer Labor
Rough Carpentry Materials
Rough Carpentry Labor
Trusses Material
Trusses Labor
Finish Carpentry Materials
Thermal Insulation Labor
Thermal Insulation Materials
Asphalt Roofing Labor
Asphalt Roofing Materials
Metal Wall Panels Labor
Metal Wall Panels Materials
Metal Flashing, Soffit, Louvers, Trim and Roof Accessories Labor
Metal Flashing, Soffit, Louvers, Trim and Roof Accessories Materials
Joint Sealants Materials and Labor
Doors, Frames, & Hardware Labor

Doors, Frames, & Hardware Materials
Windows Labor
Windows Materials
Gypsum Board Labor
Gypsum Board Materials
Painting Labor
Painting Materials
Toilet Partitions, Toilet Accessories & Signage Labor
Toilet Partitions, Toilet Accessories & Signage Materials

PLUMBING

Plumbing Labor
Plumbing Materials

HVAC

HVAC Labor
HVAC Materials

ELECTRICAL

Electrical Power Labor
Electrical Power Materials
Panelboards Labor
Panelboards Materials
Lighting Labor
Lighting Materials

END OF SECTION 01 29 00

SECTION 013216 - CONSTRUCTION PROGRESS SCHEDULE

PART 1 - GENERAL

1.01 SUMMARY

- A. The purpose of the Construction Progress Schedule is to allow the Contractor to prepare an orderly plan to aid in the timely completion of the Project.
 - 1. For clarity, this Section includes contractual responsibility for the timely completion of the Construction Progress Schedule in accordance with applicable General Conditions.
- B. The approved Construction Progress Schedule will be used to plan and execute the work, to measure the progress of the work, to aid in evaluating time extensions, and to provide the basis for all progress payments.
- C. Contractors shall cooperate and coordinate with the A/E and the Owner, to provide all scheduling requirements in their respective schedules in accordance with the Contract Documents.
- D. Failure to maintain the Construction Progress Schedule in an approved status may result in Buncombe County withholding a monetary penalty against the responsible Contractor(s) until the schedule is approved.
- E. Related Sections:
 - 1. Division 00 Document - General Conditions

1.02 PROJECT SCHEDULING SEQUENCE REQUIREMENTS

- A. The Contractor will prepare a Construction Progress Schedule for all work included under the scope of each Contract, in accordance with the General Conditions.
 - 1. The Contractor will schedule and conduct a Schedule Kick-Off Meeting. Contractors are required to attend.
 - a. The Contractor will prepare and distribute a schedule framework of proposed construction sequence to the Contractors.
- B. The Contractor will submit the Construction Progress Schedule with signatures indicating approval by all contractors to the A/E.
 - 1. If acceptable, the A/E and Buncombe County will accept the schedule.
 - 2. If not acceptable, the schedule will be returned to the Contractor for revision. The revised schedule, with approval signatures for all Contractors, shall be resubmitted.

PART 2 – PRODUCTS (Not Used)

PART 3 - EXECUTION

1.03 CRITICAL PATH METHOD

- A. The Critical Path Method (CPM) of network calculations will be used to generate the schedule. The Contractor shall provide the schedule in either the Precedence Diagram Method (PDM) or the Arrow Diagram Method (ADM).

1.04 LEVEL OF DETAIL REQUIRED

- A. With the exception of the preliminary schedule submission, the Construction Progress Schedule shall include an appropriate level of detail. Failure of the Contractor to develop or update the schedule or provide resource information will result in the disapproval of the schedule.
- B. Activity Durations:
 - 1. Submit the following data to support the schedule calendar as it relates to durations. Failure of the Contractor to include this data will delay the review of the submittal until the A/E receives the missing data.
 - a. The proposed number of working days per week.
 - b. The holidays to be observed during the life of the contract (by day, month and year).
 - c. The planned number of shifts per day.

- d. The number of hours per shift.
- e. Break up the work into activities of a duration no longer than 20 work days each, except as to non-construction activities (e.g., procurement of materials, delivery of equipment, concrete and asphalt curing) and any other activities for which the Owner may approve a longer duration.

C. Procurement Activities:

- 1. Prepare the schedule in chronological order of submittals. Show specification section of the submittal, name of contractor and generic description of work covered. Include activities to cover the complete procurement process to include but not limited to: submittal, review, approval, resubmittal, procurement, fabrication, delivery, permits, and similar pre-construction work.

1.05 SCHEDULED PROJECT COMPLETION

A. Project Start Date:

- 1. The Construction Progress Schedule may start no earlier than the date that the Notice to Proceed (NTP) was issued. The Contractor shall include as the first activity in the Construction Progress Schedule an activity called "Notice to Proceed." The "Notice to Proceed" activity shall have: an "ES (early start) constraint, a constraint date equal to the date that the NTP was issued, and a zero day duration.

1.06 DEFINITION OF, AND CONDITIONS RELATING TO FLOAT

- A. Float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activity in the schedule. Total float is defined as the amount of time any given activity or path of activities may be delayed before it will affect the project completion time.
- B. Float is not time for the exclusive use or benefit of the Contractor and shall be used in the best interest of completing the project on time.
- C. Extensions of time for performance required under the General Conditions pertaining to equitable time adjustment will be granted only to the extent that the equitable time adjustment exceeds total float in the activity or path of activities affected at the time approval was issued for the change.
- D. Use of float suppression techniques such as preferential sequences, special lead/lag logic restraints, extended activity times, or imposed dates, other than as required by the Contract, shall be cause for rejection of the Construction Progress Schedule and any revisions or updates.

1.07 APPROVED CONSTRUCTION PROGRESS SCHEDULE

- A. The Construction Progress Schedule approved by the Contractors shall be submitted for acceptance within 21 calendar days after the Notice to Proceed is issued. It shall provide a reasonable sequence of activities which represent work through the entire project and a reasonable level of detail.
- B. The approved Construction Progress Schedule shall show the sequence and interdependence of activities required for complete performance of the work, beginning with Contractor's receipt of the Notice to Proceed and concluding with the date of Final Completion of the Contract. The Construction Progress Schedule shall show all activities in workdays, with allowance for.
- C. The Owner shall accept or reject, in writing, the Construction Progress Schedule and the associated submittals. If the Construction Progress Schedule is rejected, the Owner shall provide comments in writing to the Contractor stating the reasons why the submission was not accepted.

1.08 TWO-WEEK LOOK AHEAD SCHEDULE SUBMISSION

- A. The Contractor shall provide a two-week Look Ahead Schedule for review at the Progress Meeting that occurs closest to the 15th of each month. The Look Ahead Schedule will be based on the most recent monthly update and will show only those activities that are scheduled to begin or are in progress during the week before and for two weeks after the 15th of the current month. The two-week Look Ahead Schedule reports will contain the following information for each activity and will be required from the Contractor throughout the duration of the project unless directed otherwise by the A/E.

1.09 DATA

- A. The preliminary, approved, and update Construction Progress Schedules shall be provided in the form of electronic files.

B. File Medium:

1. Submit data on media acceptable to Buncombe County.

1.10 APPROVED CHANGES VERIFICATION

- A. Only Construction Progress Schedule changes that have been previously approved by the A/E shall be included in the schedule submission. The narrative report shall specifically reference, on an activity by activity basis, all changes made since the previous period and relate each change to documented, approved schedule changes.
- B. The Contractor shall prosecute the work in accordance with the approved Construction Progress Schedule. Out of sequence construction, defined as a change from the Construction Progress Schedule in the Contractor's actual operation requires prior approval from the A/E.
- C. Upon the approval of a change order or the issuance of a unilateral change order by Buncombe County the agreed upon change order activities, activity durations, logic and impacts shall be reflected in the next schedule submittal by the Contractor.
- D. No change to the approved activities, original activity durations, logic, interdependencies, milestones, planned sequence of operations, or resource loading of the Construction Progress Schedule shall be made without prior approval from the A/E. If the Contractor desires to make a change to the approved Construction Progress Schedule, the Contractor shall request permission from the A/E in writing, stating the reasons for the change as well as the specifics, such as the proposed changes in activities, original activity durations, logic, interdependencies, milestones, planned sequence of operations, or resource loading of the baseline Construction Progress Schedule. The A/E shall respond within 14 calendar days after the receipt of the Contractor's request.
- E. If the A/E considers the Construction Progress Schedule change requested by the Contractor to be a major change, it may require the Contractor to revise and submit for approval, without additional cost to the Owner, all of the affected portions of the network diagrams, and any schedule reports, or construction equipment reports deemed necessary to show the probable effect on the entire project. The proposed network revision and required reports shall be submitted to the A/E within seven calendar days after the A/E notifies the Contractor that the requested revision is a major change. Only upon the approval of the requested change by the A/E may it be reflected in the next Construction Progress Schedule update submitted by the Contractor.
- F. A change will be considered of a major nature if the time estimated for an activity or sequence of activities is varied from the original plan to the degree that there is reasonable doubt that the Contract Completion date or milestones will be met, or if the change impacts the work of other Contractors at the job site. Changes to activities having adequate float may be considered as minor changes, except that an accumulation of minor changes may be considered a major change when such changes affect the Contract Completion date or milestones.

END OF SECTION

SECTION 015000 - TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes requirements for temporary utilities, support facilities, and security and protection facilities.
- B. Related Requirements:
 - 1. Section 011000 "Summary" for work restrictions and limitations on utility interruptions.

PART 2 - PRODUCTS

2.1 EQUIPMENT

- A. Fire Extinguishers: Portable, UL rated; with class and extinguishing agent as required by locations and classes of fire exposures.

PART 3 - EXECUTION

3.1 TEMPORARY FACILITIES, GENERAL

- A. Conservation: Coordinate construction and use of temporary facilities with consideration given to conservation of energy, water, and materials. Coordinate use of temporary utilities to minimize waste.

3.2 INSTALLATION, GENERAL

- A. Provide each facility ready for use when needed to avoid delay. Do not remove until facilities are no longer needed or are replaced by authorized use of completed permanent facilities.

3.3 SUPPORT FACILITIES INSTALLATION

- A. Parking: Use designated areas of Owner's existing parking areas for construction personnel.

- B. Storage and Staging: Use designated areas established at a mutually agreed upon location outside of the compound.
- C. Toilets: Provide portable toilet facilities. Use of Owner toilet facilities is prohibited.
- D. Contractor is prohibited to erect signage.

3.4 SECURITY AND PROTECTION FACILITIES INSTALLATION

- A. Protection of Existing Facilities: Protect existing vegetation, equipment, structures, utilities, and other improvements at Project site and on adjacent properties, except those indicated to be removed or altered. Repair damage to existing facilities.

3.5 OPERATION, TERMINATION, AND REMOVAL

- A. Supervision: Enforce strict discipline in use of temporary facilities. To minimize waste and abuse, limit availability of temporary facilities to essential and intended uses.
- B. Maintenance: Maintain facilities in good operating condition until removal.
- C. Termination and Removal: Remove each temporary facility when need for its service has ended, when it has been replaced by authorized use of a permanent facility, or no later than Substantial Completion. Complete or, if necessary, restore permanent construction that may have been delayed because of interference with temporary facility. Repair damaged Work, clean exposed surfaces, and replace construction that cannot be satisfactorily repaired.
 - 1. At Substantial Completion, repair, renovate, and clean permanent facilities used during construction period. Comply with final cleaning requirements specified.

END OF SECTION 015000