

**A Chiller 2 Replacement for the Lee County Courthouse and Jail
Lee County Bid Number 4262-03-26**

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**LEE COUNTY GOVERNMENT
SANFORD, NORTH CAROLINA**

BOARD OF COMMISSIONERS

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GENERAL SERVICES

Ryan Faulk, Director

Ronnie Lee, Operations Superintendent

Nancy Veroni, Administrator

ADVERTISEMENT FOR BIDS

Lee County is accepting proposals for replacing the existing chiller 2 at the Lee County Courthouse and Jail located at 1400 S. Horner Blvd, Sanford, NC 27330.

The scope of work includes all labor, materials, supervision, overhead & profit, insurance, permits, inspections, taxes, and all other items necessary for successful completion of the project.

Sealed Bids will be accepted by the Lee County Finance Office until **10:00 AM, October 29, 2025**, at which time they will be publicly opened and read. Please note that two complete bid packages must be submitted. If only one bid package is submitted, the bid will be rejected. Both bid packages may be in one envelope. Please note that digital submissions are not allowed. Bids should be labeled with bid name and number and mailed or hand delivered to:

Attn: Purchasing Agent
Lee County Government of North Carolina
115 Chatham Street, Suite 301
Sanford, NC 27330

A mandatory pre-bid meeting for interested contractors will be held onsite **October 8, 2025, at 10:00 AM**. We will meet in the brick courtyard between the old and new courthouses. Attendance at the pre-bid meeting is mandatory. Any bid received by a contractor not on the attendance sheet for the pre-bid meeting will be rejected.

Printed bid documents can be obtained from Lee County General Services, 805 S. Fifth St., Sanford, NC 27330, Phone: (919) 718-4622, Email: Ryan Faulk (rfaulk@leecountync.gov), during normal operating hours of 7 AM and 4 PM, Monday through Friday, or from the County website at www.leecountync.gov.

The County reserves the right to reject any or all bids, any part of a bid, and to waive informalities and technicalities in the bidding procedure. Bids must remain subject to acceptance and valid for thirty (30) days from the date of opening.

Lee County is an equal opportunity employer and services provider. Lee County specifically encourages small, minority, and women-owned businesses to submit bids.

INSTRUCTIONS TO BIDDERS

1. A mandatory pre-bid meeting for interested contractors will be held at the Lee County Courthouse and Jail located at 1400 S. Horner Blvd., Sanford, NC 27330 on **October 8, 2025, at 10:00 AM**. Attendance at the pre-bid meeting is mandatory. Any bid received by a contractor not on the attendance sheet for the pre-bid meeting will be rejected.
2. Each bidder must submit a proposal on the Bid Form herein provided. The bidder shall sign his bid correctly and bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional bids or irregularities of any kind. The County reserves the right to waive any irregularities.
3. The names of a certain brand, make or definite specification/s denote quality standard in the article desired, but do not restrict bidders to the specific brand, make or manufacturer names. They are meant to convey to prospective bidders the general style, type, character, and quality of the article desired.
4. The contract will be awarded to the lowest responsible bidder taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.
5. Do not include sales tax in your bid.
6. The bidder must abide by all State, Local and Federal rules and regulations. Any required permits will be provided to the Owner before work on the project begins.
7. The Contractor is responsible for protecting all existing facilities and/or properties. Damage to existing facilities and/or properties will be repaired at the Contractor's expense.
8. The disposal of all waste generated by this project is the responsibility of the Contractor and must be disposed according to all Federal, State and local rules and regulations.
9. The date of "commencement of work" shall be deemed to be five (5) days after mailing of the written Notice to Commence Work to the Contractor.
10. Full payment will be made when the project is complete with specific terms to be negotiated in the contract with the chosen bidder. No Change Orders will be accepted for this project and any reference to Change Orders in the general terms and conditions are not relevant for this project.
11. The approved low bidder will execute a contract with the Owner. A sample contract is attached, but the County and the low bidder will negotiate and execute a contract prior to work beginning.
12. The bidder shall provide three (3) references equivalent to this bid. The bidder shall provide three (3) jobs equivalent to this one and provide proof thereof.
13. The County reserves the right to reject any or all bids, and any part of a bid and to waive informalities and technicalities in the bidding procedure.
14. The contractor shall hold a North Carolina General Contractor's License and/or Mechanical Contractor's License and/or Electrical Contractor's License that meets the level of requirements for this project and submit their contractor number with their bid package.

15. Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, of an amount equal to not less than five percent (5%) of the proposal or in lieu thereof a bidder may offer a bid bond of five percent (5%) of the bid executed by a surety will, upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. Said deposit shall be retained by the County of Lee as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required by law.
16. A Performance Bond and a Payment Bond will be required for one hundred percent (100%) of the contract price.
17. Submit Proposal in an opaque, sealed envelope. Identify the envelope with: (1) project name and bid number, (2) name of bidder, and (3) license number. Two (2) complete bid packages are required.
18. Bids must be valid for a period of 30 days after bid opening, except for a bid successfully withdrawn pursuant to NCGS 143-129.1.

**Chiller 2 Installation Bid Form
County of Lee, North Carolina**

The undersigned bidder has carefully examined the annexed form of contract, specifications and instructions to bidders and hereby declares that he/she will furnish the following items in a manner prescribed in the contract, specifications and instructions to bidders for the following prices:

Chiller Manufacturer	Total Installed Cost (Lump Sum)

The chiller replacement project, as indicated on the drawings, M-1, the specifications, and all associated project documents, comprise the contract for the total sum provided above. The Total Installed Cost bid is valid for a period of 30 days after bid opening.

Proposed Completion Time, in working days, after award of contract: _____ (business days)

The Bidder acknowledges that they have read and understood the Instructions to Bidder _____(initial)

Name of Bidder: _____

Authorized Representative: _____ (please print)

Signature: _____

Title: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Telephone: _____

NC GC License #: _____

NC Mechanical License #: _____

NC Electrical License #: _____

Exceptions Taken to the Specifications: _____

Bidder Provided 3 references and 3 jobs equivalent with this job with this bid package _____(initial)

Bidder Provided deposit or Bid Bond with this bid package _____(initial)

Bidder Provided Performance and Payment Bonds with this bid package _____(initial)

Bidder Provided 2 complete Bid Packages as required with this bid package _____(initial)

Contract Agreement Between _____ and Lee County Government

THIS AGREEMENT, made the _____ day of ___ month ___ 202__ by and between _____ (hereinafter referred to as the “Contractor”) and Lee County Government (hereinafter referred to as the “Owner”) agree as follows:

1. **Scope of Work:** The Contractor shall furnish and deliver all of the materials, and perform all of the work in the manner and form as provided by the enumerated plans, specifications and documents, which are attached hereto and made a part thereof as if fully contained herein: advertisement, Instructions to Bidders, General Conditions, Supplementary General Conditions, specifications, accepted proposals, contract, performance bond, payment bond, power of attorney, worker’s compensation, public liability, Exhibit A – Lee County Dispute Resolution Policy, any and all addendums, and all drawings.
2. The Contractor shall commence work to be performed under this agreement on a date to be specified in a written order of the Owner. The Contractor must purchase all chiller and related equipment and materials within fourteen (14) days of receiving the notice to proceed from Lee County. The Contractor must notify the Owner within five business days of receiving the chiller equipment and must work with the Owner to schedule an installation date of the chiller in accordance with the bid specifications incorporated herein. The installation date must be agreed upon and scheduled with the Owner within (20) twenty business days of the Contractor receiving the chiller equipment and the installation date must be no later than May 31, 2026, unless expressly agreed to by the County due to outside circumstances. For each day in excess thereof, liquidated damages shall accrue at a rate of \$1,000.00 per day. The Contractor, as one of the considerations for the awarding of this contract, shall furnish to the Owner a construction schedule setting forth the project broken down by various divisions of the work and by the calendar days, as described in the General Conditions.
3. The Owner agrees to pay to the Contractor for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money in the amount of \$_____

4. **Alternates.** Alternates, if any, included in the Contract Sum are as follows:

Item	Price
Alt. #1	
a. _____	\$ _____
b. _____	
Alt. #2	\$ _____
a. _____	
b. _____	

5. Allowances. Allowances, if any, included in the Contract Sum are as follows:

Item	Price
------	-------

6. Unit Prices. Unit prices, if any, are as follows:

Item	Units and limitations	Price per Unit
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7. Liquidated Damages. Liquidated damages will be \$1,000.00 per day, after the date specified for substantial completion.

8. Binding Dispute Resolution. For any claim subject to, but not resolved by mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

9. The Owner’s Representative is:

Lisa Minter, County Manager
 408 Summit Drive
 Sanford, NC 27330
lminter@leecountync.gov

The Contractor’s Representative is:

10. It is further mutually agreed between the Parties that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Owner 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 Contractor, at its own expense, within five (5) days after the receipt of notice from the Owner 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 Owner. In such event, no further payment to the Contractor 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 a manner and form satisfactory to the Owner.

11. The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, director and employees against all damages, liabilities or costs, including reasonable attorneys’ fees and defense costs, to the extent caused by the Contractor’s negligent performance of services under this Contract and that of its subcontractors or anyone for whom the Contractor is liable.

12. Compliance with E-Verify requirements: The Contractor and any of its subcontractors must comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, if applicable, which requires certain employers to verify the work

authorization of each newly hired employee through the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies.

13. Divestment from companies that boycott Israel: Contractor certifies that (a) it is not identified on the Israel Boycott List or any other list created by the NC State Treasurer pursuant to N.C.G.S. 147—86.80 et al and (b) it will not take any action causing it to appear on any such list during the term of the contract agreement.
14. Iran Divestment Act Certification. The Contractor certifies that the Contractor is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58 (the Final Divestment List) and the Contractor will not utilize any subcontractors performing work under this Contract which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address and should be updated every 180 days.
15. Non-Discrimination in Employment. The Contractor will not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin or disability. In the event Contractor is determined by the final order of an appropriate agency or court to be in violation of this provision or any non-discrimination provision of federal, state or local law, this Contract may be suspended or terminated, in whole or in part by the County. In addition, the Contractor may be declared ineligible for further contracts with the County.
16. Drug-Free Workplace. During the performance of this agreement, the Contractor agrees to (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees of the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specifying the actions that will be taken against employees for violations of such prohibitions, (iii) state in all solicitations or advertisements for employees placed by or on its behalf that it maintains a drug-free workplace; (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.
17. Non-Appropriation Clause. Contractor acknowledges that Lee County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Lee County's obligations under this contract, then this contract shall automatically expire without penalty to Lee County thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that Lee County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations. In the event of a change in

the Lee County's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects Lee County's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to Lee County upon written notice to Contractor of such limitation or change in Lee County's legal authority.

18. No Pledge of Taxing Authority. No deficiency judgment may be rendered against Lee County or any agency of Lee County in any action for breach of a contractual obligation under this contract. The taxing power of the Lee County is not pledged directly or indirectly to secure any monies due under this contract.

19. Gov Ops. Contractor acknowledges that by contracting with Lee County and receiving public funds, they may be subject to potential examination, evaluation and investigation, including access to buildings and documents and compelled testimony, by the Joint Legislative Commission on Governmental Operations under Section 27.10(b) of North Carolina S.L. 2023-134. Contractor acknowledges that Lee County has no control over the Commission and its activities.

20. Public Records Law. The Contractor acknowledges that Lee County is a governmental agency and subject to public records law and is required to provide public records, including this contract, upon a valid, legal request. The Contractor has advised the County prior to executing this contract of all information it contends is proprietary, confidential or a trade secret.

21. This agreement becomes effective upon the last signature of both parties.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on this the _____ day of ____, _____.

_____ **CONTRACTOR / FIRM**

By: _____

Witness:

Title: _____

Date: _____

LEE COUNTY GOVERNMENT

By: _____

Witness:

Title: _____

Date: _____

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:

(Proprietorship or Partnership)

Attest: (Corporation)

By: _____

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

(Corporate Seal)

Contractor: (Trade or Corporate Name)

By: _____

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

(Surety Company)

Witness:

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

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

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)

Contractor: (Trade or Corporate Name)

By: _____

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

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

Witness:

Countersigned:

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

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

(Surety Corporate Seal)

Sheet for Attaching Power of Attorney

Sheet for Attaching Insurance Certificates

Initial Here: _____

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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ARTICLE 1. DEFINITIONS

- 1.1 Agreement- the Contract Agreement, these general conditions, and any supplementary conditions, advertisement, instructions to bidders, specifications, drawings, bonds, addendums, drawings.
- 1.2 Beneficial Occupancy- the point at which the Project can be occupied by the Owner for its intended purpose, upon achievement of Substantial Completion, as defined in 1.35.
- 1.3 Change Order- a written order to the Contractor signed by the Owner and the Designer authorizing an addition, deletion, or revision in the Work and/or an adjustment in the Contract Price and/or the Contract Time issued after execution of the Contract Agreement.
- 1.4 Completion Date- those dates identified as completion dates in the Contract Construction Schedule or elsewhere in the Contract Documents.
- 1.5 Contract Agreement- the document executed by the Contractor and Owner to formally memorialize their consent to the terms of the Agreement.
- 1.6 Construction Change Directive- a written order to the Contractor signed by the Owner and the Designer directing an addition, deletion, or revision in the Work after execution of the Contract Agreement, in circumstances when the parties have been unable to agree on an adjustment to the Contract Price or the Contract Time, but the Owner requests that the Contractor proceed with said Work subject to adjustment of the Contract Price and/or Contract Time under the procedures described herein.
- 1.7 Construction Manager- the person or firm designated as the Construction Manager in the Contract Documents, or their authorized representatives. The Construction Manager, as referred to herein, will be referred to hereinafter as if each were of the singular number, masculine gender.
- 1.8 Contract Construction Schedule- that schedule identified as the Contract Construction Schedule.
- 1.9 Contract Documents- all of the documents that make up the Agreement, plus the Drawings and Specifications that describe the scope of the work, plus allowable modifications to the contract documents.

Initial Here: _____

- 1.10 Contract Price- the total monies payable to the Contractor under the Contract Documents.
- 1.11 Contract Time- the number of calendar days stated in, or computed from, the Contract Documents for the completion of the Work, or any portion thereof. Time of completion is of the essence. The time used and referred to on the Project will be that time which is observed in Sanford, Lee County, North Carolina, being Eastern Daylight Savings Time, Eastern Standard Time, or other as designated by the Designer.
- 1.12 Contractor- the Contractor shall be that party identified in the Agreement.
- 1.13 Days- unless otherwise indicated, the term “days” shall mean consecutive calendar days.
- 1.14 Daylight Hours- the hours or portion of hours between sunrise and sunset local time.
- 1.15 Designer- the person or firm designated as the Designer, in the Contract Documents, or their authorized representatives. The Designer(s), as referred to herein, shall mean architect, landscape architect, and/or engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.
- 1.16 Drawings- the drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams. A list of the Drawings is contained in the Supplemental General Conditions.
- 1.17 Field Order- a written order issued by the Designer which clarifies or interprets the Contract Documents or orders minor changes in the Work in accordance with the Contract Documents.
- 1.18 Final Completion- the point at which the Contractor has, as determined by the Designer, completed the Work, with the exception of guaranty and warranty obligations, and becomes entitled, upon the recommendation of the Designer and determination by the Owner, to final payment.
- 1.19 Liquidated Damages- An amount, as stated in the Contract Agreement, 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 contractor(s) to complete the work within the time specified.
- 1.20 Modification- a written amendment to the Contract Documents signed by the Owner and the Contractor and identified therein as such, or a Change Order, or a Construction Change Directive, or a Field Order.
- 1.21 Notice to Proceed- see Article 11.3.

- 1.22 Owner- the Owner is the person designated as such in the Agreement.
- 1.23 Owner's Authorized Representative- a person or persons, employed by the Owner and designated from time to time by written notice to the Contractor to administer the Contract Documents, and to observe and monitor the Work on behalf of the Owner with authority and responsibility as herein specified.
- 1.24 Notice- the term "notice" or "written notice" as used herein shall mean and include all written notices, demands, instructions and claims, approvals and disapprovals furnished by the Owner or the Designer to obtain compliance with the requirements of the Contract Documents as well as all written notices, demands, instructions and claims furnished by the Contractor as required by the Contract Documents. Where notice is required under the terms of the Contract Documents, written notice shall always be required, and oral or "constructive" notice shall be insufficient and ineffective as notice unless specifically allowed by the Supplementary Conditions or a Modification to the Agreement. Written notice shall be deemed to have been duly served on the date that it is delivered in person to the individual or to a member of the firm, to an officer of the corporation for whom it is intended, to an authorized representative of such individual, firm, or corporation, or on the date that it is mailed by registered or certified mail, return receipt requested, addressed to the last business address of such individual, firm, or corporation. Written notice may also be given by facsimile transmission, provided that proof of delivery is obtained. In the case of delivery in person, such delivery shall not be effective unless and until a written and signed receipt showing the date and time of delivery is obtained.
- 1.25 Project- the total construction of which the Work performed under the Contract Documents may be the whole or a part.
- 1.26 Project Expediter- As used herein, is an entity stated in the Contract Documents, designated to effectively facilitate scheduling and coordination of Work activities. For the purpose of a single prime contract, the single prime contractor is designated as the Project Expediter.
- 1.27 Project Manager- that person designated by the Contractor who shall be in general charge of the Work and its performance.
- 1.28 Request for Information- a written communication from the Contractor to the Designer for any interpretation of, or information needed, required, or desired under the Contract Documents. The Owner reserves the right to determine the reasonable format and contents required for a Request for Information. In any Request for Information, the Contractor shall state a reasonable date by which a response is necessary in order to avoid delay in progress of the Work and shall make such request sufficiently in advance of such date as to avoid any such delay.
- 1.29 Request for Payment- document approved by Owner, which is to be used by the Contractor in requesting progress payments and which is to include a Schedule of Values as required by the Contract Documents and an affidavit of the Contractor that progress

Initial Here: _____

payments theretofore received from the Owner on account of the Work have been applied by the Contractor to discharge in full all the Contractor's obligations incurred in connection with Work covered by all prior applications for payment.

- 1.30 Superintendent- that person designated by the Contractor who has day-to-day responsibility for the prosecution of the Work and the obtaining of proper materials and equipment, and adequate labor.
- 1.31 Schedule of Values- any breakdown of the Contract Price which may be required by the Contract Documents and designated as such.
- 1.32 Specifications- the portion of the Contract Documents consisting generally of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.
- 1.33 Subcontractor- a person, firm, or corporation who has entered into a direct contract with the Contractor to perform any of the Work of the Project.
- 1.34 Submittal- shop drawings, product data, samples, and other documents required by the Contract Documents to be submitted by the Contractor to the Designer.
- 1.35 Substantial Completion- the point at which the Work, and Work by other Contractors on or in connection with the Project, as determined by the Designer, is sufficiently complete in accordance with the Contract Documents that it can be beneficially occupied by the Owner, and the Work can be utilized by the Owner for its intended use, and all necessary permits and permissions for Beneficial Occupancy and utilization having been obtained by the Contractor. All operations and maintenance manuals, Owner training, and as-built drawings must be submitted prior to Substantial Completion being achieved.
- 1.36 Work- the construction and services required by the Contract Documents, including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

ARTICLE 2. CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

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

2.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall notify the Designer in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given preference in the following order: Contract Agreement, Modifications, Addenda, Supplemental Conditions, General Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over

general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which, so applied, have a well known technical trade meaning shall be deemed to refer to such meaning and to incorporate any recognized standards which are a part of such meaning.

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

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

2.5 The Contractor shall fully complete the Work and shall be responsible for all of the Work under the Contract Documents to which the Construction Agreement applies. If the Contractor is prevented from doing so by any limitation of the Contract Documents, the Contractor shall immediately give notice thereof to the Designer and the Owner in writing before proceeding with the construction in the area where the problem or limitation exists.

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

2.7 For those materials specified without the use of brand names, the Contractor shall submit within thirty (30) days after his receiving the Contract Agreement for signatures, any product that meets the express requirements of the Specifications.

Such Submittal shall include manufacturer's data, test reports, performance data and certifications, samples, erection details, and other applicable information as required to permit determination by the Designer whether such proposed products are suitable. The Designer shall be the sole judge as to the suitability of any proposed product. The burden of proof of quality rests with the Contractor.

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

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

ARTICLE 3. FAMILIARITY WITH WORK, CONDITIONS AND LAWS

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

3.2 The Contractor shall be entitled to rely upon all information furnished to the Contractor in writing by the Owner with respect to the Project site and to make all inferences from it that would reasonably be made by a contractor having knowledge and experience with similar work; however, the Contractor shall not be entitled to infer from Owner-supplied information any fact or condition which would not be inferred by a contractor having knowledge and experience with similar work and, if the Owner-supplied information is inadequate or insufficient in any respect, the Contractor shall be required to obtain independently such other information as a knowledgeable and experienced contractor would prudently obtain in order to evaluate any such condition.

3.3 The Contractor specifically acknowledges familiarity with all Federal, State, and local laws, ordinances, rules and regulations which may in any manner affect those engaged or employed in the Work, or the materials or equipment in or about the Work, or in any way affect the conduct of the Work and agrees that the Contractor and the Contractor's employees, subcontractors, and suppliers will, at all times, comply with same. If the Contractor shall discover any provisions in the Contract Documents which are contrary to or inconsistent with any such law, ordinance, rule, or regulation, the Contractor shall immediately give notice thereof to the Designer and the Owner in writing, identifying any items of Work affected, and the Contractor shall not proceed until the Contractor has received written direction from the Designer with respect to these items. If the Contractor performs contrary to or inconsistently with any such law, ordinance, rule, or regulation without giving such notice, the Contractor shall bear all costs which are a consequence of such performance.

3.4 At times selected by the Designer after execution by the Contractor of the Construction Agreement, a pre-construction conference shall be scheduled and conducted for the benefit of the Project.

ARTICLE 4. BONDS

4.1 A performance bond in the full amount of the Contract Price shall be required of the Contractor to guarantee the faithful performance of the Work in compliance with the Contract Documents, in such form as may be required by law and approved by the Owner. The bond shall be dated the same date as the Construction Agreement and must be accompanied by a current copy of the power of attorney for the attorney-in-fact executing such bond on behalf of a surety company licensed to do business in the state of North Carolina.

4.2 A payment bond in the full amount of the Contract Price shall be required of the Contractor to guarantee the payment of all labor and material costs or claims in connection with compliance with the Contract. The payment bond shall be in such form as may be required by law and approved by the Owner. Said bond shall be dated and executed in the same manner as the performance bond in paragraph 4.1.

ARTICLE 5. INSURANCE AND INDEMNITY

5.1 CONTRACTOR PROVIDED INSURANCE

The Contractor shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by this Agreement to protect the Contractor and the Owner from claims for damages for bodily injury, including death, and from claims for property damage which may arise from the Contractor's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Agreement. Such insurance shall be of the kinds and have limits of liability and coverages not less than the minimum limits hereinafter specified or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverages. The following requirements shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of Work under the Agreement. The Contractor is strictly responsible for any losses, claims, and costs of any kind which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies.

The insurance specified shall be provided by an insurer approved by the Owner authorized to do such business in the State of North Carolina, and on terms approved by the Owner. Insurance companies utilized shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. If the insurer has a Best Rating less than A- and Class VII, the Contractor must receive specific written approval from the Owner prior to proceeding with any Work under the Agreement. All agents and brokers shall hold valid licenses from the State of North Carolina. Before commencing mobilization to the Project site and not later than 7 days after the receipt of the Construction Agreement by the Contractor for signatures, the Contractor shall furnish to the Owner a certificate or certificates of insurance in a form satisfactory to the Owner. Upon request of the Owner, the Contractor shall provide the Owner with certified copies of the insurance policies required by this Article, including without limitation declaration pages, conditions, exclusions and endorsements, and confirmation that each policy premium has been paid for the required term of this Agreement. A copy of the umbrella policy shall be provided to the Lee County Finance Department. Certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. In the event of any such cancellation, non-renewal, reduction, restriction, or change in any insurance, the Contractor is obligated to replace such

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insurance within 7 days without a gap in coverage and file accordingly such notice with the Owner, and other interested parties. Failing immediate receipt of evidence of such replacement of insurance the Owner reserves the right to procure such insurance as the Owner considers desirable and the Contractor shall pay or reimburse the cost of the premium in respect thereof. It is expressly provided, however, that any action or inaction on the part of the Owner in this respect shall in no way change or reduce the Contractor's responsibilities and liabilities under this Agreement. Self-funded, policy fronting, or other non-risk transfer insurance mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of the Agreement, justifying termination for default.

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

For any claims related to this Project, the Contractor's insurance or self-insurance shall be primary and noncontributory with respect to the Owner's insurance. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the Contractor's insurance.

All policies of insurance shall contain a clause waiving rights of subrogation against the Owner, unless the Owner approves otherwise in writing.

Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner. The Contractor shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Agreement. In addition, the Contractor shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required herein, or not covered as a result of a normal policy extension or that falls within the self insured retention, if Contractor is self insured.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The claim provisions in the Contractor's insurance policies must specifically state the insurance company or Contractor's Third Party Administrator, if self insured, has both the right and duty to adjust a claim and provide defense.

The policies shall not contain any provision or definition which would serve to exclude or eliminate from coverage third party claims, including exclusions of claims for bodily or other injury to shareholders, partners, officers, directors, or employees of the insured, the premises owner, real estate manager, or the insured's Subcontractor, or any family relative of such persons.

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If the policies contain any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations.

Any failure by any person to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees.

The insolvency or bankruptcy of the Insured or of the Insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.

Failure to comply with these requirements shall be a material breach of this Agreement justifying termination for default.

5.2 CONTRACTOR PROVIDED WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

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

The Contractor shall pay such assessments as will protect the Contractor and the Owner from claims under the Workers' Compensation laws, workers' or workmen's' compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the Certificate of Insurance.

Coverage under this section shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

Coverage A:	Statutory, State of North Carolina
Employers' Liability:	Each Accident \$1,000,000
	Disease - Policy Limit \$1,000,000
	Disease - Each Employee \$1,000,000

Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the Owner as well as other endorsements that may be required by applicable jurisdictions, i.e. United States Longshoremen and Harbor Workers Act and maritime coverage (Jones Act).

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5.3 CONTRACTOR PROVIDED AUTOMOBILE LIABILITY INSURANCE

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

This policy of insurance shall carry the following minimum Limit of Liability:

Combined Single Limit \$1,000,000

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

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

Any failure by any party to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees.

No subcontracting of waste hauling shall be permitted without prior, written approval of the Owner.

5.4 CONTRACTOR PROVIDED GENERAL LIABILITY

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

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

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

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

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

5.5 CONTRACTOR PROVIDED PROPERTY INSURANCE

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

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

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

5.6 CLAIMS

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

If a claim or alleged claim is rejected by the Contractor and/or its insurance company, the Contractor shall immediately report this fact to the Owner.

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Should 30 days elapse after the claim or alleged claim has been received by the Contractor, and the Contractor is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim.

Without limiting the foregoing, the Contractor shall notify in writing the County risk manager of any paid or incurred claims which may impair annual aggregate or general liability.

5.7 CONTRACTOR'S DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

5.8 CONTRACTOR'S SUBCONTRACTORS

The Contractor shall include all Subcontractors as Insureds under its policies, or shall furnish separate certificates, policies, and endorsements for each Subcontractor the Contractor intends to use. If a Subcontractor does not take out insurance in his own name and the Contractor wishes to provide insurance protection for such Subcontractor and such Subcontractor's employees, the Contractor shall either (a) procure appropriate policies in the name of the Subcontractor, or (b) cause a rider or riders to be attached to the Contractor's policies which shall identify the Subcontractor thereby covered; provided, however, in the case of the latter option, such a rider need not be attached to the Contractor's workers' compensation policy if such policy by its terms is sufficiently broad to cover the employees of all Subcontractors performing Work under the Contract Documents. Except as otherwise approved by the Owner in writing, Limits of Liability and coverage scope must be at a minimum as stringent as required of the Contractor by the Contract Documents. All Work performed for the Contractor by any Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance as provided herein. Insurance monies received from any loss shall be divided as the respective interest of the parties affected shall appear.

5.9 INDEMNIFICATION

To the fullest extent provided by law, the Contractor 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 expense, 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

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negligent act or omission of the Contractor, the Contractor's subcontractor, or the agents of either the Contractor or the Contractor'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.

The provisions of this paragraph shall survive the termination or cancellation or completion of this Agreement.

ARTICLE 6. OTHER DOCUMENTS AND SUBMITTALS

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

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

ARTICLE 7. CONTRACTOR

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

7.2 The Contractor shall appoint a Project Manager and shall keep on the Project at all times during its progress a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Owner except under extraordinary circumstances, in which event immediate written notice shall be given to the Designer and the Owner. The Project Manager and the Resident Superintendent may be the same person or different persons. At any time, the Owner, in its sole and absolute discretion, may require the Contractor to replace the Project Manager or Resident Superintendent with an experienced and competent person or persons upon seven (7) days written notice from the Owner to the Contractor. Such replacement shall be at the Contractor's expense and at no cost to the Owner.

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Both the Project Manager and the Resident Superintendent shall have authority to act on behalf of the Contractor, and instructions, directions or notices given to either of them shall be as binding as if given to the Contractor.

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

Any person employed by the Contractor, any Subcontractor, or any sub-subcontractor who, in the opinion of the Designer or the Owner, does not perform his Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner or Designer, be removed forthwith by the Contractor, Subcontractor, or sub-subcontractor employing such person without cost to the Owner, and shall not be employed again in any portion of the Work without the written approval of the Owner or Designer.

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

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

7.5 The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools appliances, fuel, light, heat, and all other facilities and incidentals necessary for the execution, maintenance, initial operation, and completion of the Work, other than those specifically excluded by the Contract Documents and to be furnished by the Owner or others. When use or storage of hazardous materials or equipment or methods of more than ordinary risk are necessary in accomplishing the Work, the Contractor shall give the Owner and Designer reasonable advance notice.

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

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

When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Designer. If the Contractor desires to use a method or type of equipment other than specified in the Contract Documents, the Contractor may request authority from the Designer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of

the reasons for desiring to make the change. If approval is given, it shall be on the condition that the Contractor shall be fully responsible for producing Work in conformity with the requirements of the Contract Documents. If, after trial use of the substituted methods or equipment, the Designer determines that the Work produced does not meet the requirements of the Contract Documents, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and equipment at no additional cost to the Owner. The Contractor shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the Designer may direct. No change in the Contract Price or in Contract Time shall be made as a result of authorizing a change in methods or equipment under this paragraph.

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

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

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

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

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

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7.10 The Contractor agrees to bind specifically every Subcontractor to the terms and conditions of the Contract Documents for the benefit of the Owner and to furnish written evidence thereof to the Designer and the Owner.

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

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

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

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

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

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

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

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

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

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

Parking lots, streets, and walks connecting to the Project area shall be protected by the Contractor from deposits of mud, sand, stone, litter, or debris in any form.

Pedestrian traffic areas around the construction limits must be maintained in a clean and safe condition at all times with required barricades and covered walkways. When excavation or other operations outside the Project limits is required, the Contractor shall, immediately following that work, return the area to its original condition.

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

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

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

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

Any unforeseen hazards, including but not limited to environmental, biological, chemical, physical, geological, natural or man-made, that are discovered by the Contractor or any of its subcontractors, must immediately be disclosed to the Owner in writing within twenty-four hours.

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

7.21 In emergencies affecting the safety of persons, the Work, or property at the Project site or adjacent thereto, the Contractor is obligated to act in the Contractor's discretion to prevent threatened damage, injury, or loss. As soon as practicable, the Contractor shall notify the Designer and Owner of such emergency. The Contractor shall give the Designer and the Owner prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergency. If the Contractor believes that additional work done in an emergency entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided in Articles 14 and/or 15.

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

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

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

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

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

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

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

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Project Expediter, then the Construction Manager will be responsible for these duties.

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

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

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

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

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

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

7.33 Any mechanical or electrical work such as sleeves, inserts, chases, etc. located in the Work of the Contractor for general work shall be built in by that Contractor. On multiple prime

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projects, the mechanical and electrical contractors shall set all sleeves, inserts, and other devices built into the structure in cooperation and under the supervision of the Contractor for general work. The responsibility for exact location of such items shall be that of the mechanical, plumbing, or electrical prime contractor

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

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

ARTICLE 8. OWNER

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

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

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

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

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

ARTICLE 9. CONSTRUCTION MANAGER

9.1 The Owner may employ one or more Construction Managers for the purpose of assisting the Owner, Designer, and Contractor in developing and administering budgets and cost controls, in evaluating constructability and value engineering proposals, in establishing and maintaining a

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critical path method (CPM) schedule, in coordinating and/or expediting the Work with other projects being constructed by the Owner or others adjacent or near the Work, or for such other purposes as the Owner may deem appropriate. From time to time the Owner may identify such

Construction Managers(s) to the Contractor in writing identifying any tasks assigned to such Construction Managers(s).

ARTICLE 10. DESIGNER

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

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

10.3 The Designer shall not be responsible for the construction means, methods, techniques, sequences, procedures, or the safety precautions and programs incident thereto, and shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, but shall be entitled to enforce any requirements in the Contract Documents specifying particular means, methods, techniques, sequences, or procedures.

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

ARTICLE 11. CONTRACT TIME

11.1 Within fourteen (14) days, or within a time set by mutual consent of the Parties, after execution of the Contract Agreement by the parties, the Contractor shall prepare and submit to the Designer and Owner for review and approval a preliminary progress schedule for the Work pursuant to the requirements stated in the Contract Documents.

11.2 Within fourteen (14) days after execution of the Contract Agreement by the parties, or within the time set by mutual consent of the Parties, the Contractor shall submit to the Designer a Submittal Register listing all Submittals the Contractor is required to make or proposes to make under the Contract Documents, the dates on which the Contractor proposes to make such Submittals and the dates by which the Contractor reasonably requires a response from the Designer with respect to each Submittal. The dates submitted shall be incorporated into the Contract Construction Schedule as Completion Dates when they have been approved or modified by the Owner. The Designer shall not be required to review any Submittal from the Contractor until a Submittal Register acceptable to and approved by the Owner has been submitted by the Contractor.

11.3 Not later than thirty (30) days following execution and delivery of the Contract Agreement by Owner to Contractor, or upon a date agreed to by mutual consent of the Parties, the Owner

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shall deliver to the Contractor a Notice to Proceed. The Notice to Proceed shall state a commencement date on which the Contractor will begin the Work to be performed under the

Agreement. The Contract Time shall be measured from said specified commencement date. The commencement date stated in the Notice to Proceed shall not be earlier than three (3) days after the Notice to Proceed is served on the Contractor.

If, other than by mutual agreement, said specified commencement date is more than thirty (30) days after the date of execution and delivery of the Agreement from Owner to Contractor and the Contractor believes said delay justifies an increase in Contract Price and/or an extension of Contract Time, the Contractor may make a claim therefore as provided in Article 14 and/or Article 15.

No Work shall be done prior to the date specified in the Notice to Proceed.

A final Contract Construction Schedule shall be submitted for approval by the Contractor, Designer, and Owner no later than thirty (30) days after Notice to Proceed. No payments shall be due the Contractor until this schedule is approved by all parties.

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

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

11.6 If the Contractor, for reasons beyond the Contractor's control, is delayed in beginning any activity, the Contractor shall, nevertheless, have the same number of days as is shown in the Contract Construction Schedule for the activity, and the affected activity and any succeeding activity that is dependent upon that activity shall be adjusted accordingly; provided that at any time the Owner, by means of a Change Order, may require the Contractor to work overtime, to increase labor forces or to take any necessary or appropriate action to decrease the time required for any activity, and the Contractor shall be entitled to an adjustment in the Contract Price computed in accordance with Article 15 of these General Conditions.

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

11.8 Should the Contractor fail to start any activity on the start date shown in the Contract Construction Schedule or as it may have been adjusted, or become delayed, the Contractor shall, without being entitled to any increase in the Contract Price or other compensation, work overtime, increase labor forces or take such other action as may be necessary or appropriate to complete the

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activity by the Completion Date shown on the Contract Construction Schedule, or as such Completion Date may have been adjusted.

11.9 The Designer and Owner or his Construction Consultant shall monitor progress of the Work at all times and the Contractor shall cooperate with such monitoring and provide any and all information with respect to the progress of the Work and scheduling as the Owner may reasonably require.

11.10 On a monthly basis, the Contractor shall revise the Contract Construction Schedule, showing any adjustments made by any Change Order, the progress of the Work, and any days gained or days lost with respect to any activity, and shall furnish copies thereof to the Owner and Designer.

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

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

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

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

11.14 On any day that the Contractor considers that the Project is delayed by adverse weather conditions, the Contractor shall identify in writing to the Designer and the Owner the adverse weather conditions affecting each activity, the specific nature of the activity affected, the number of hours lost, and the number of and identity (by responsibility or trade) of workers affected and shall obtain from the Designer written recognition of the delay. The time for performance of this Contract includes an allowance for a number of calendar days which may not be suitable for construction Work by reason of adverse weather. The Contract Time will be extended if the Owner and Designer agree with the adverse weather delay.

11.15 If the Contractor believes that the progress of the Work has been adversely affected by adverse weather recognized by the Designer during a particular month, the Contractor shall submit a written request for extension of time to the Designer. Such a request for time extension of the Contract Time shall be submitted in writing to the Designer, copies to the Owner, within twenty days following the cause for delay. In case of continuing cause for delay, the Contractor shall notify the Designer, with copies to the Owner, within twenty days of the beginning of the delay and only one claim is necessary. The request shall include, but is not limited to, the following information:

- a) Detailed description of weather's effect on scheduled activities and its net effect on the critical path of the Project, and
- b) Weather records from the official weather station nearest the Project site and records of actual observation as contained in daily reports, correspondence, or other documentation.

11.16 The Contractor specifically recognizes that a delay by the Contractor in achieving any Completion Date can have the effect of delaying the Substantial Completion of the Project, that such delay in Substantial Completion of the Project will necessarily cause damages, losses, and expenses to the Owner, including, but not limited to and by way of illustration only, increased capitalized costs and interests for the Project, increased and extended Project overhead, Designer's and Consultant's fees, increased costs of construction, increased and extended operation costs of other facilities, and inefficiency and loss of productivity, and that such damages, losses, and expenses may not be readily identifiable or ascertainable at the time they are incurred or at any time. Therefore, and in recognition of these factors and the likelihood that actual damages from his delay will not be readily ascertainable, the Contractor agrees to pay to the Owner \$1,000.00 one thousand dollars, as Liquidated Damages per Day, for each day by which the failure to meet any Completion Date shown in the Contract Construction Schedule, adjusted in accordance with this Article, delays the Substantial Completion of the Project.

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

11.18 The sum for Liquidated Damages is the amount stipulated in the Contract Agreement per day as Liquidated Damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said Contractor(s) to complete the Work within the time specified, such time being of the essence of this Contract Agreement and a material consideration thereof.

ARTICLE 12. CHANGES IN THE WORK

12.1 Without invalidating the Contract Documents, the Owner may, at any time, or from time to time order additions, deletions, or revisions in the Work. Said additions, deletions, or revisions shall be authorized only by written Change Orders, Construction Change Directives or Field Orders. Upon receipt of a Change Order, Construction Change Directive or Field Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any change causes an increase or decrease in the Contract Price and/or an extension or shortening of the Contract Time, adjustments shall be made as provided in Article 11 and/or Article 13.

In order to expedite the Work and avoid or minimize delay in the Work that might affect the Contract Price or Contract Time, the Designer may issue a Change Order in the form of a Construction Change Directive which when signed by the Owner and Designer, directs the Contractor to proceed promptly with the Work involved. Any claim for an adjustment in Contract Price or Time, if not defined in the Construction Change Directive, shall be promptly made in writing.

12.2 The Designer may authorize minor changes or alterations in the Work not involving change in the Contract Price or in the Contract Time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. Such alterations shall not invalidate the Contract Documents nor release the surety. If the Contractor believes that any minor change or alteration authorized by the Designer entitles him to an increase in the Contract Price and/or an extension of Contract Time, he may make a claim therefore as provided in Article 11 and/or Article 13.

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

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

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

12.6 Neither the Owner nor the Designer shall be responsible for verbal instructions which have not been confirmed in writing, and in no case shall such instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a proper Change Order, Construction Change Directive or Field Order, whether or not the cost is affected.

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

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If this requirement is exercised, the Change Orders shall require written consent of the Contractor's surety. At the time of signing a Change Order, the Contractor shall be required to certify as follows:

"I certify that all sureties have been notified that my contract has been altered by the amount of this Change Order, and that a copy of the approved Change Order will be mailed to all sureties upon its receipt by me."

If this requirement is exercised, no payment to the Contractor on account of any Change Order shall become due or payable until written evidence of the surety's consent to the Change Order has been furnished to the Designer and to the Owner, and the furnishing of such written consent is a condition precedent to such payment.

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

12.9 When a request for a Change Order involves a Subcontractor, the Contractor shall provide quotation from same on Subcontractor's letterhead. The Subcontractor's quote shall list materials, equipment, and labor separately, and show overhead and profit.

ARTICLE 13. CHANGE OF THE CONTRACT PRICE

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

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

A claim shall be made in writing and shall be delivered to the Designer and the Owner no later than fourteen (14) days after such notice. The claim shall describe in detail the basis for the claim, with specific reference to any provisions of the Contract Documents, by paragraph, drawing number, or other specific identification, and shall state the amount claimed and how it is calculated. If the Contractor, at the time the claim is made, is unable to state the amount claimed with accuracy, the Contractor shall so state and provide the estimated amount and the basis on which the amount is to be calculated. At the earliest date practicable, but in no event more than thirty (30) days after Contractor's notice of claim, the Contractor shall supplement the claim with an accurate statement of the amount claimed and how it has been calculated. The Contractor shall provide, in writing, in support of the claim all such explanations, arguments, data, receipts, expert opinions, or other documents or information as the Contractor deems appropriate to be considered in support of the claim. A claim may properly be rejected by the Owner by reason of the Contractor's failure to submit adequate or accurate documentation or information, except that within seven (7) days after being given notice that the claim has been rejected on this basis, the Contractor may submit additional documentation or information. No claim for a change of the Contract Price shall be considered or granted (except solely at the discretion of the Owner) unless a claim is so made, nor shall the

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Contractor be entitled to any increase in the Contract Price unless the Contractor has given notice and made such a written claim within the times required. The Owner shall decide, after obtaining the advice of the Designer, whether an increase in Contract Price is warranted, and the amount of such increase shall be determined. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order. Any change in the Contract Price or on a Change Order must be approved by the Board of County Commissioners or the County Manager and any decision by the Board or the Manager will be relayed to the Contractor within seven days after the Board's consideration. Any claim on which the Owner has not provided its decision to the Contractor within the applicable time period shall be deemed denied.

The Owner shall advise the Contractor of its decision with respect to the claim within fourteen (14) days of its receipt, or of the receipt of additional documentation or information if the absence of such has previously been the basis of rejection of the claim; provided, however, that if, in its sole discretion, the Owner deems that review or consideration of any part of the claim or any matter related thereto by its governing Board is necessary or appropriate, it shall so advise the Contractor and shall provide its decision to the Contractor within seven (7) days after such Board consideration, review or action. Any claim on which the Owner has not provided its decision to the Contractor within the applicable time period shall be deemed denied.

If the Contractor is not satisfied with the decision of the Owner, the Contractor may within seven (7) days of receipt of the Owner's decision initiate the mediation process as described in Appendix A to the General Conditions of the Contract for Construction.

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

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

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

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

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

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

The term 'net cost' as used herein shall include, as applicable, and shall be limited to, all direct labor, direct material, direct equipment, labor burden, sales taxes, shipping and handling charges, permits and fees, and insurance and bond premium adjustments, if any, attributable to

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the change. All other items of cost shall be considered as overhead and covered by the percentages allowed in sections A and B of this paragraph.

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

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

ARTICLE 14. UNFORESEEN CONDITIONS

14.1 Should the Contractor encounter unforeseen conditions at the Project site materially differing from those shown on the Drawings or indicated in the Specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the Contractor shall immediately, and in no event more than three days later, give notice to the Owner of such conditions before they are disturbed. The Owner and the Designer shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the Drawings or indicated in the Specifications, they shall at once make such changes in the Drawings and/or Specifications as they may find necessary. Any increase or decrease in the Contract Price resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. However, neither the Owner nor the Designer shall be liable or responsible for additional work, costs, or changes to the Work that could have been reasonably determined from any reports, surveys, and analyses made available for the Contractor's review or that could have been discovered by the Contractor through the performance of its obligations pursuant to the Contract Documents.

ARTICLE 15. CORRECTION OF WORK BEFORE FINAL PAYMENT

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

Any work, materials, fabricated items, or other parts of the Work which have been found by the Designer to be defective or not in accordance with the Contract Documents shall be condemned and shall be removed from the Project by the Contractor, and immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner or others damaged or destroyed by virtue of such condemned Work shall be made good at the expense of the Contractor.

Correction of condemned Work described above shall be commenced by the Contractor within twenty-four (24) hours after receipt of notice from the Designer and shall make satisfactory progress, as determined by the Designer, until completed. Should contractor fail to proceed with required corrections, the owner may complete the work in accordance with Article 17.

Condemned Work removed shall be the property of the Contractor and shall be removed from the Project by him within ten (10) days after notice to remove it, and if not then removed, thereafter may be disposed of by the Owner without compensation to the Contractor and the cost of such disposal shall be deducted from amounts due or to become due to the Contractor.

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Should the cost of correction of the Work and, if applicable, disposal of the condemned Work by the Owner exceed amounts due or to become due the Contractor, then the Contractor and the Contractor's sureties shall be liable for and shall pay to the Owner the amount of such excess.

ARTICLE 16. CORRECTION OF WORK AFTER SUBSTANTIAL COMPLETION; WARRANTIES AND GUARANTIES

16.1 Neither the final certificate, Final Payment, occupation of the premises by the Owner, nor any provision of the Contract Documents, nor any other act or instrument of the Owner or the Designer shall relieve the Contractor from responsibility for negligence, defective material or workmanship, or failure to comply with the Contract Documents.

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

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

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

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

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

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

ARTICLE 17. OWNER'S RIGHT TO DO WORK

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

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

ARTICLE 18. PARTIAL PAYMENTS

18.1 Within thirty (30) days after his initial receipt of the Construction Agreement for signatures, or on the date agreed to by mutual consent of both Parties, the Contractor shall submit to the Designer a Schedule of Values. The Schedule of Values shall indicate the value of the Work, including applicable overhead and profit, for each Division and section of the Project Specifications. The Designer and Owner shall be provided with the Contractor's estimate papers, Subcontractor agreements, supplier quotes, or other documents substantiating these values if so requested in writing by the Designer. The Contractor shall provide the requested documentation within seven (7) days after receipt of the Designer's written request. The Schedule of Values shall be subject to approval by the Owner, and if the Owner and the Contractor cannot agree upon the Schedule of Values, the Designer shall prepare it, and the Schedule of Values as prepared by the Designer shall be binding on the Owner and the Contractor. No Request for Payment shall be certified by the Designer until the Designer has issued approval of said Schedule of Values.

18.2 During the initial meeting between Owner, Designer and Contractor, a date will be provided to the Contractor by the Owner which will set forth the date each month a Request for Payment for Work done will be submitted. The Request for Payment for Work done will be provided to the Contractor by the Designer. The Request for Payment will show substantially the value of Work done (including the value of material delivered to the Project or stored by the Contractor at another site, subject to the conditions hereinafter set forth) during the previous calendar month, and shall sum up the financial status of the Work with the following information:

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

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- e) Current amount due.
- f) Balance remaining.

The Contractor, upon request of the Designer, shall substantiate the request with invoices, vouchers, payrolls, or other evidence.

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

18.4 Any Request for Payment received by the Designer on or before the date provided to the Contractor at the initial meeting by the Owner of each calendar month shall be certified for payment or returned for re-submission to the Contractor on or before ten days following the submission. The Designer's certification shall be for the amount which was requested or that which the Designer has decided was justly due, and shall state in writing to the Contractor and Owner the reasons for withholding payment of any or all of the amount requested.

18.5 The Designer may fail to certify all or part of any payment requested for any of the following reasons:

- a) Defective Work not corrected.
- b) Suits, actions, or claims of any character filed against the Contractor, or due to the operations of the Contractor, or information or notice that a suit, action, or claim will be filed or has been made.
- c) Information or notice that a Subcontractor or a supplier has not received payment.
- d) The balance unpaid of the Contract Price is insufficient to complete the Work in the judgment of the Designer or Owner.
- e) Damage to the Owner or another contractor.
- f) Inability of the Contractor to meet a Completion Date, including an anticipated failure to meet a Completion Date entitling the Owner to withhold anticipated Liquidated Damages.

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- g) Failure to furnish Submittal as required by the Contract Documents on a timely basis in accordance with the Submittal Register.
- h) Such other reason as to the Designer may appear prudent, proper, or equitable.

When grounds for withholding certification have been corrected, the Designer shall so certify to the Owner and the Owner shall make any payment due with respect to such certification as a part of his next payment after such certification.

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

18.7 The amount certified by the Designer for payment shall be ninety-five percent (95%) of the value of Work completed and materials stored since the Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraph 18.4, and this amount shall be paid by the Owner on or before the last business day of the month, but payment shall not be past due until not paid within fifteen (15) days thereafter.

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

ARTICLE 19. FINAL PAYMENT

19.2 Except as set forth in paragraph 19.1, within forty-five days after Substantial Completion of the Project, the remaining unpaid balance of the Contract Price shall be paid to the Contractor, less an amount equal to two and one-half times the value of punch list work or other work remaining to be completed or corrected, as reasonably estimated by the Owner.

19.3 Upon Substantial Completion, the Designer shall prepare and submit to the Contractor a deficiency list identifying all portions of the Work which are known by the Designer at that time to be incomplete or defective. Within thirty (30) days of receipt of this deficiency list, the Contractor shall complete and correct all items on that list along with all other Work required to achieve Final Completion of the Work. At any time prior to completion of the period of warranty, the Designer may submit to the Contractor a supplemental deficiency list, in which case the Contractor shall complete or correct any and all new items identified on the Supplemental deficiency list within the time period stipulated in Article 15.

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

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

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- a) Claims arising from unsettled liens or claims against the Contractor.
- b) Incomplete or faulty work or material existing at the time of Final Payment for which a deficiency list has been given to the Contractor.
- c) Faulty Work or materials appearing after Final Payment.
- d) Failure of the Contractor to perform the Work in accordance with the Contract Documents, appearing after Final Payment.
- e) As conditioned in the Performance Bond and Payment Bond.
- f) Claims made prior to Final Payment which remain unsettled.

19.6 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those claims previously made in writing and not finally resolved, except as noted in Paragraph 19.5.

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

19.8 The final Request for Payment shall be identified on its face as such and shall be presented by the Contractor to the Designer within thirty (30) days of completion of the Work. Final payment of the retained amount due the Contractor shall be made by the Owner within thirty (30) days after the later of (i) full and Final Completion of all Work required by the Contract Documents, and certification of such Work as provided in 18.4; (ii) submission of the affidavits of other documentation required by Article 20; (iii) submission by the Contractor of a Request for Payment identified on its face as final and including the Designer's certification.

ARTICLE 20. CONTRACTOR, SUBCONTRACTOR AND SUPPLIER AFFIDAVIT

The Final Payment due the Contractor on account of the Contract Documents shall not become due until the Contractor has furnished to the Owner through the Designer: (A) an affidavit by the Contractor signed, sworn, and notarized to the effect that all payments for materials, services, or for any other reason in connection with the Work or performance of the Contract Documents have been satisfied and that no claims or liens exist against the Contractor in connection with the same; (B) affidavits from each Subcontractor and supplier signed, sworn, and notarized to the effect that (i) each such Subcontractor or supplier has been paid in full by the Contractor for all Work performed and/or materials supplied by him in connection with the Project, and (ii) that all payments for materials, services, and for any other reason in connection with the subcontract or supply contract have been satisfied and that no claims or liens exist against the Subcontractor or supplier in connection therewith; and (C) the written consent of the Contractor's sureties to Final Payment. In the event that the Contractor cannot obtain an affidavit, as required above, from any Subcontractor or supplier, the Contractor shall state in the Contractor's affidavit that no claims or liens exist against such Subcontractor or supplier to the best of the Contractor's knowledge, and that if any appear afterwards, the Contractor shall save the Owner harmless for all costs and expenses, including attorney's fees, on account thereof.

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ARTICLE 21. ASSIGNMENTS AND SUBCONTRACTS

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

ARTICLE 22. MEASUREMENTS

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

ARTICLE 23. CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

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

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

23.2 The Contractor agrees that the terms of the Contract Documents, including all portions thereof, shall apply to all Subcontractors of the Contractor as if they were the Contractor, and that the Subcontractors of the Contractor shall, by means of their subcontracts, be bound by all the terms of the Contract Documents.

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

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ARTICLE 24. USE OF PREMISES

24.1 The Contractor shall confine apparatus, the storage of materials, the operations of workers, and the disposal of material to limits indicated by law, ordinances, permits, and directions of the Designer, if any.

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

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

ARTICLE 25. DISPUTE RESOLUTION

25.1 The laws of the State of North Carolina shall apply to the interpretation and enforcement of this Agreement. Any and all suits or actions to enforce, interpret, or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Lee County, North Carolina, and it is agreed by the parties that no other court shall have venue with respect to such suits or actions. Appendix A shall be a part of the Contract Documents. Prior to initiating an action under this Article, any party to this Agreement shall initiate the mediation process as provided in Appendix A to these General Conditions of the Contract for Construction.

25.2 Any person or firm that expressly or impliedly agrees to perform labor or services or to provide material, supplies, equipment, work, performance or payment bonds, insurance or indemnification for the construction of the Project or the Work shall be deemed a party to this Agreement solely for the purpose of this Article 25. The Contractor, by means of its subcontracts, shall specifically require its Subcontractors to be bound by this Article.

ARTICLE 26. TAXES

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

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

a) It shall be the Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of his Subcontractors. Such evidence shall be transmitted to the Owner with each pay request regardless of whether taxes were paid in that period.

b) The documentary evidence shall consist of a certified statement by the Contractor and each of the Contractor's Subcontractors individually, showing total purchases of materials from each separate vendor and total sales and use taxes paid to each vendor. Certified statements must show the invoice number, or numbers, covered, and inclusive dates of such invoices.

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- c) Materials used from Contractor's or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
- d) The Contractor shall not be required to certify the Subcontractor's statements.

ARTICLE 27. OPERATION OF OWNER'S FACILITIES

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

ARTICLE 29. TERMINATION OR SUSPENSION BY THE OWNER FOR CAUSE

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

ARTICLE 29. TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

29.1 The Owner may, without cause, and at any time and for any reason terminate Contractor's services and work at Owner's convenience. Upon receipt of such notice, Contractor 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.

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29.2 Upon such termination, Contractor shall be entitled to payment only as follows: 1) the actual

29.3 cost of the work completed in conformity with this Agreement; plus, 2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by Owner; plus, 3) ten percent of the cost of the work referred to Article 29.1 for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of payments made to Contractor prior to the date of the termination of this Agreement. Contractor 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.

EXHIBIT A
COUNTY OF LEE
RULES FOR IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES
IN NORTH CAROLINA PUBLIC BUILDING CONTRACTS

Table of Rules

1. Initiating Mediated Settlement Conferences
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 - A. By agreement
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RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

A. Purpose of Mandatory Settlement Conferences. Pursuant to N.C.G.S. 143-128(f1) and (g), these Rules are promulgated to implement a system of settlement events, which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the

parties from engaging in settlement procedures voluntarily at any time to or during commencement of the dispute resolution process.

B. Initiating the Dispute Resolution Process

1. The County reserves the right to require mediation as a precondition to litigation. The County also encourages all disputes to be resolved through good faith efforts of discussion by submitting a dispute to the Project Designer or Prime Contractor and working with the County before a party requests mediation.

2. Any party to a public building contract governed by Article 8, Chapter 143 of the NC General Statutes and identified in N.C.G.S. 143-128(f1) and (g) and who is a party to a dispute arising out of the building process in which the amount in controversy is at least \$15,000 may submit a written request to the County of Lee owner, notice to the Lee County Manager, for mediation of the dispute.

3. Prior to submission of a written request for mediation to the County of Lee owner, the parties requesting mediation:

a. If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute is eligible for mediation in the Formal Dispute Resolution Process and the party may submit their written request for mediation to Lee County.

b. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute is eligible for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the County of Lee.

c. If the party requesting mediation is the Project Designer, then it must first submit its claim to the County of Lee to resolve. If the dispute is not resolved with the County of Lee's involvement, then the Project Designer's dispute is eligible for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the County of Lee for mediation.

RULE 2. SELECTION OF MEDIATOR

A. Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the County of Lee a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address, and telephone number of the selected mediator, state the rate of compensation of the mediator, state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, and state that the mediator is certified pursuant to these Rules.

B. Nomination and the County of Lee Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these Rules, but who, in the opinion of the parties and the County of Lee, is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with Lee County a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator, state the training, experience or other qualifications

of the mediator, state the rate of compensation of the mediator, and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

Lee County shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

C. Appointment of Mediator by Lee County. If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify Lee County and request, on behalf of the parties, that Lee County appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, Lee County shall appoint a certified attorney mediator. If no preference is expressed, Lee County may appoint a certified attorney or a certified non-attorney mediator.

D. Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.

E. Disqualification of Mediator. Any party may request replacement of the mediator by Lee County for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

A. Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in Lee County. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons or entities required to attend.

B. When Conference is to be Held. The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after naming the mediator.

C. Request to Extend Deadline for Completion. A party, or the mediator, may request Lee County to extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communication its objection to Lee County.

Lee County may grant the request by setting a new deadline for completion of the conference.

D. Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

E. The mediated settlement conference shall not be cause for the delay of the building project which is the focus of the dispute.

RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

A. Attendance.

1. All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation may result in Lee County's withholding of monthly payment to that party until such party attends the mediation.

2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.

3. Attorneys on behalf of parties may attend the mediation but are not required to do so.

4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

B. Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel.

C. Mediation Fee. The mediation fee shall be decided amongst the parties at the time mediation is requested.

D. Failure to Compensate Mediator. Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128(f1) and (g) may subject that party to a withholding of said amount of money from the party's monthly payment by Lee County.

RULE 5. AUTHORITY AND DUTIES OF MEDIATORS

A. Authority of Mediator.

1. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.

2. Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

3. Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B. Duties of Mediator.

1. The mediator shall define and describe the following at the beginning of the conference:

- a. The process of mediation;
- b. The difference between mediation and other forms of conflict resolution;
- c. The costs of the mediated settlement conference;
- d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;

- e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - f. Whether and under what circumstances communications with the mediator will be held in confidence during the conference;
 - g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1;
 - h. The duties and responsibilities of the mediator and the participants; and
 - i. That any agreement reached will be reached by mutual consent.
2. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
3. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
4. Reporting Results of Conference. The mediator shall report to Lee County within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of the agreement. The mediator's report shall inform Lee County of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. Lee County may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the Rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from Lee County.

RULE 6. COMPENSATION OF THE MEDIATOR

A. By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon by the parties and the mediator provided that the provisions of N.C.G.S. 7A-38.1(k) are observed.

B. By Appointment. When the mediator is appointed by Lee County, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina, except when otherwise allowed by Lee County upon the request of the parties to the mediation. When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of Lee County to mediate any dispute in accordance with these Rules.

RULE 8. RULE MAKING

These Rules are subject to amendment by Lee County at any time the County deems it appropriate.

RULE 9. TIME LIMITS

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the Designer of Record shall decide all waivers or extensions of time for good cause shown.

DIVISION 1: GENERAL REQUIREMENTS
SECTION A: GENERAL CONDITIONS

1. All warranties, bonds, insurance certificates, bid documents and forms, drawings, renderings, shop drawings, submittals, product submittals, etc. shall, upon acceptance by the Owner, become a part of this Specification, Contract and the work of this Contract as if written here in full.
2. In the unlikely event of legal dispute between the contracting parties, each portion or provision of the specifications will be treated separately. The invalidity, illegality, or nullification by the court of any provision thereof shall not affect the remaining provisions thereof.

DIVISION 1: GENERAL REQUIREMENTS
SECTION B: SUPPLEMENTARY CONDITIONS

1. MANUFACTURER'S SPECIFICATIONS AND INSTRUCTIONS:

- a. All manufactured items, materials and equipment shall be installed in strict accordance with the maker's recommendations except that where the Owner's and Engineer's specifications are more stringent, the Owner's requirements shall be complied with.
- b. At the completion of the project or prior to the final acceptance by the Owner, shall be provided three (3) complete sets of operating and maintenance instructions, and have demonstrated to him procedures for proper operation and maintenance of all such equipment.

2. SUBSTITUTIONS:

Certain materials, equipment, methods, and service are required by these specifications to establish the required standards of quality, function, and appearance. Generally, other materials, equipment, methods, and service which are proven by evidence satisfactory to the Owner to meet the required standards will be acceptable. Conditions governing substitutions are as follows:

- a. No substitution of any description will be allowed unless in writing by the Owner and Engineer.
- b. The Contractor, and various subcontractors, shall refer to and comply with additional substitution requirements of the various technical sections of the specifications.
- c. The phrase "Approved, As Approved, In an Approved Manner, Satisfactory, Acceptable, Similar, Equal" and like words and phrases refer to items which, in the opinion of the Owner, are similar and equal in all respects to items indicated in the plans or specifications. The Owner will not be required to prove that an item proposed for substitution is not equal to the item specified. It will be required that the contractor submit to the Owner, in writing, all evidence to support his contention that the proposed substitution is equal to the item indicated in plans and specifications.
- d. Except as otherwise required by the specifications, substitution requests may be submitted at any time providing the contractor allows sufficient time for investigation by the Engineer, the preparation of shop drawings or submittals, fabrication and delivery without delaying the work. When it appears that sufficient lead time has not been allowed the Owner will not consider substitution.

- e. After execution of the contract agreement, proposed substitutions will be considered only if the owner received the advantage of lesser cost with no decrease in quality or earlier completion date or both, and only when such requests are submitted through the Contractor.
- f. The Owner will reject any materials and/or workmanship, either before or after installation is completed which is not indicated in the drawings or specifications or substitutions of which have not been accepted by the Owner in writing.

3. LAWS AND SAFETY DEVICES:

- a. The bidder's attention is directed to the fact that all applicable Federal, State, and Local laws, ordinances, statutes, rules, regulations, orders, codes and building codes of authorities having legal jurisdiction over the work of this project shall be complied with during the course of the work. Portions of the specifications or drawings which may conflict with these shall be promptly brought to the attention of the Owner.
- b. All machinery and equipment used or furnished under the contract shall be protected by adequate safety devices as required by the rules and regulations of Federal, State, or local authorities having jurisdiction.
- c. Heavy equipment such as cranes, hoists, etc. shall be operated solely by competent operators certified or provided by the supplier of such equipment.
- d. Confidentiality: In the event Contractor must go into the Courthouse and detention center to repair lines, the Contractor acknowledges that detention center plans, schematics, layout and location of security devices is an integral part of the security of the detention facility. No employee or agent of Contractor may take any photos or videos or make any drawings while in the detention facility. No plans and documents concerning the detention center may be copied or distributed. Contractor is solely responsible for ensuring the strict confidentiality of all aspects of the project and detention center and any information it gathers while completing the project and will be liable for any breach of any security information by any of its employees or agents. This is a material clause and survives the completion of the contract. Violation of this provision will result in the immediate termination of this contract for cause and result in liquidated damages.
- e. Unauthorized Items: Jail Staff shall inspect and authorize all work materials and tools before entering jail facility and Contractor shall ensure that all its employees, vendors and agents do not bring any items into the work area near the detention center other than work materials. Contractor shall ensure that none of its staff, employees or agents give any items to the inmates or leave any items, including work materials, in or around the

detention facility. Contractor shall make a daily check of all areas where its employees have been to scan for items. Contractor, its employees and agents shall not take any items from inmates or transport any items or messages from inmates to any other persons.

- f. Unauthorized Contact: Contactor shall ensure that all its employees, vendors and agents have no interaction with any inmates or staff at the detention center other than specific staff designated by the Sheriff as contact persons.
- g. Alcohol/Drug Free Workplace: Lee County is a drug and alcohol- free workplace. The Contractor shall ensure that its employees, staff and agents abide by the Lee County policies for a drug and alcohol- free workplace. Possession, use, manufacture or distribution of illegal drugs or alcohol by Contractor, Contractor's employees, staff or agents may result in immediate termination of this contract for cause and result in liquidated damages.
- h. PREA: The Lee County Sheriff has a zero tolerance policy for all forms of sexual abuse, sexual harassment and sexual activity which incorporates the Prison Rape Elimination Act (PREA). Contractor, its employees, staff and agents are strictly prohibited from engaging in person dealing or any conduct of a sexual nature with any inmate or staff member. Conduct and conversation must be professional at all times. If Contractor becomes aware of a report of any incidents of unduly familiar or sexually abusive behavior or sexual harassment, Contractor has a duty to immediately report it to your contact person at the Sheriff's Office.
- i. Background Checks: All employees working on this project are required to consent to a national background check. No employee may enter the building without having cleared this background check. The General Contractor is responsible for administering background checks and any associated costs and shall provide documentation of the background check for each employee to the Owner prior to the employee entering the building. General Contractor shall provide the following statement and a list of all employees and subcontractor employees that will be working on this project on company letterhead with signature and date.

4. INCLUSIONS AND INSPECTIONS:

- a. All work required by the contract not specifically described in the specifications will be done, utilizing accepted procedures of the trade in a workmanlike manner resulting in a quality product.
- b. All work will be subject to inspection by the Owner and Engineer prior to acceptance. Inspection of the work or payment for the work by the owner shall not be construed as to relieve the contractor from liability for faulty work or legal violations.

5. RULES AND REGULATIONS FOR CONTRACTORS, MACHINERY ERECTORS, ETC.

- a. Equipment, such as power lift trucks, ladders, electric drills, welding equipment, etc. are to be used only by approved employees.
- b. The contractor shall comply with all safety and health practices required by law.
- c. Contractor shall promptly report to Owner, cases of death, occupational disease and disabling injury caused by work on the job.
- d. Intoxicants or persons under the influence of intoxicants shall not be permitted on the property
- e. Firearms or ammunition are not permitted on the property.
- f. All cutting and welding operations are to be strictly supervised by the contractor. The operations are to be carried on in accordance with written cutting and welding permit procedures. Before any cutting or welding is done, the contractor is to have a signed permit by the engineer or designated alternate authorizing the work. All electric arc welding shall be shielded or curtained to protect others from arc.
- g. Fire extinguishers must be available in areas where fire hazards exist from the nature of contractor's work.
- h. Work areas and floor or ground areas under work areas shall be barricaded and danger signs shall be placed by contractor.
- i. Throwing of material at or above ground level is prohibited.
- j. Crane booms shall be kept at least 20 feet away from overhead power wiring.
- k. Tools or material used for overhead work must not be left on scaffolding, beams, piping or ledges.
- l. Contractor shall maintain good housekeeping at all times. Remove trash daily or more frequently if necessary.
- m. Contractors are to furnish their employees with any special safety or protective equipment when required.

Air Cooled Scroll Liquid Chiller

1. GENERAL

1.1. GENERAL REQUIREMENTS

- A. The requirements of this Section shall conform to the general provisions of the Contract, including General and Supplementary Conditions, Conditions of the Contract, and Contract Drawings.
- B. The Contractor is responsible for the complete installation of the new air-cooled chiller and any modifications to the existing system in accordance on drawing ME-1 and described herein.
- C. The Contractor shall clean-up all debris at the end of each workday and leave the entire project and project area in first class clean condition at project completion. Any damage to the grounds or landscaping caused by any person or vehicle working on this project shall be repaired or replaced to the original condition by this Contractor.
- D. The Contractor shall have on the job, at all times work is in progress, a well trained and experienced supervisor.
- E. Removal of existing chiller, piping, evaporative condenser, and liquid receivers shall be done by the contractor. The owner would like to keep any good coils and any remaining R410 refrigerant and requires assistance from the Contractor to remove good coils.

1.2. SCOPE

- A. Provide Microprocessor controlled, multiple scroll compressor, air-cooled, liquid chillers of the scheduled capacities as shown and indicated on the Drawings, including but not limited to:
 - 1. Chiller package
 - 2. Charge of refrigerant and oil
 - 3. Electrical power and control connections
 - 4. Chilled liquid connections
 - 5. Manufacturer start-up

1.3. QUALITY ASSURANCE

- A. Products shall be Designed, Tested, Rated and Certified in accordance with, and installed in compliance with applicable sections of the following Standards and Codes:
1. AHRI 550/590 – Water Chilling Packages Using the Vapor Compression Cycle
 2. AHRI 370 – Sound Rating of Large Outdoor Refrigerating and Air-Conditioning Equipment
 3. ANSI/ASHRAE 15 – Safety Code for Mechanical Refrigeration
 4. ANSI/ASHRAE 34 – Number Designation and Safety Classification of Refrigerants
 5. ASHRAE 90.1 – Energy Standard for Buildings Except Low-Rise Residential Buildings
 6. ANSI/NFPA 70 – National Electrical Code (N.E.C.)
 7. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1
 8. OSHA – Occupational Safety and Health Act
 9. Manufactured in facility registered to ISO 9001
 10. Conform to Intertek Testing Services for construction of chillers and provide ETL/cETL Listed Mark
- B. Factory Run Test: Chiller shall be pressure-tested, evacuated and fully charged with refrigerant and oil, and shall be factory operational run tested with water flowing through the vessel.
- C. Chiller manufacturer shall have a factory trained and supported service organization.
- D. Warranty: Manufacturer shall Warrant all equipment and material of its manufacture against defects in workmanship and material for a period of thirty-six (36) months from date of shipment or twenty-four (24) months from date of start-up, whichever occurs first.

1.4. DELIVERY AND HANDLING

- A. Unit shall be delivered to job site fully assembled with all interconnecting refrigerant piping and internal wiring ready for field installation and charged with refrigerant and oil by the Manufacturer.
- B. Provide protective covering over vulnerable components for unit protection during shipment. Fit nozzles and open ends with plastic or fabric enclosures.
- C. Unit shall be stored and handled per Manufacturer's instructions.

1.5. SUBMITTALS

- A. As soon as practical and within ten (10) days after the date of award of contract and before commencement of installation of any materials or equipment, a complete schedule of the materials and equipment proposed for installation shall be submitted for approval by the Engineer. A schedule including catalogs, cuts, diagrams, field working drawings, and such descriptive data as may be required by the Engineer shall be submitted within 30 days after award of contract.
- B. The contractor shall provide shop drawings and manufacturers' standard specification data sheets on all hardware and software to be provided. No work may begin on any segment of this project until the Engineer and Owner have reviewed submittals for conformity with the plan and specifications
- C. Submit manufacturer's installation instructions. Include manufacturer's descriptive literature, operating instructions, and maintenance data.

2. PRODUCTS

2.1. CHILLER MATERIALS AND COMPONENTS

- A. General: Install and commission, as shown on the schedules and plans, factory assembled, charged, and tested air cooled scroll compressor chiller(s) as specified herein. Chiller shall be designed, selected, and constructed using a refrigerant with Flammability rating of "1", as defined by ANSI/ASHRAE STANDARD 34 Number Designation and Safety Classification of Refrigerants. Chiller shall include not less than two refrigerant circuits above 50 tons (200kW), scroll compressors, direct-expansion type evaporator, air-cooled condenser, refrigerant, lubrication system, interconnecting wiring, safety and operating controls including capacity controller, control center, motor starting components and special features as specified herein or required for safe, automatic operation.

- B. Cabinet: External structural members shall be constructed of heavy gauge, galvanized steel coated with baked on powder paint which, when subject to ASTM B117, 1000 hour, 5% salt spray test, yields minimum ASTM 1654 rating of "6".
- C. Operating Characteristics: Provide low and high ambient temperature control options as required to ensure unit is capable of operation from 30°F to 115°F (-1°C to 46°C) ambient temperature. [Optional: -10°F to 125°F (-23°C to 52°C) ambient.]
- D. Service Isolation valves: Discharge (ball type) isolation valves factory installed per refrigerant circuit. Includes a system high-pressure relief valve in compliance with ASHRAE15.
- E. Pressure Transducers and Read out Capability
 - 1. Discharge Pressure Transducers: Permits unit to sense and display discharge pressure.
 - 2. Suction Pressure Transducers: Permits unit to sense and display suction pressure.
 - 3. High Ambient Control: Allows units to operate when the ambient temperature is above 115°F (46°C). Includes discharge pressure transducers

2.2. COMPRESSORS

- A. Compressors: Shall be hermetic, scroll-type, including:
 - 1. Compliant design for axial and radial sealing.
 - 2. Refrigerant flow through the compressor with 100% suction cooled motor.
 - 3. Large suction side free volume and oil sump to provide liquid handling capability.
 - 4. Compressor crankcase heaters to provide extra liquid migration protection.
 - 5. Annular discharge check valve and reverse vent assembly to provide low-pressure drop, silent shutdown and reverse rotation protection.
 - 6. Initial oil charge.
 - 7. Oil level sight glass.

8. Vibration isolator mounts for compressors.
9. Brazed-type connections for fully hermetic refrigerant circuits.
10. Compressor Motor overloads capable of monitoring compressor motor current. Provides extra protection against compressor reverse rotation, phase-loss and phase-imbalance.

2.3. REFRIGERANT CIRCUIT COMPONENTS

- A. Each refrigerant circuit shall include: a discharge service ball type isolation valve, high side pressure relief, liquid line shutoff valve with charging port, low side pressure relief device, filter-drier, solenoid valve, sight glass with moisture indicator, thermostatic expansion valves, and flexible, closed-cell foam insulated suction line and suction pressure transducer.

2.4. HEAT EXCHANGERS

- A. Evaporator:
 1. Evaporator shall be brazed-plate stainless steel construction capable of refrigerant working pressure of 650 psig (3103 kPa) and liquid side pressure of 150 psig (1034 kPa) [Option for 300 psig (2068 kPa) available].
 2. Brazed plate heat exchangers shall be UL listed.
 3. Exterior surfaces shall be covered with 3/4" (19mm), flexible, closed cell insulation, thermal conductivity of 0.26k ([BTU/HR-Ft² - °F]/in.) maximum.
 4. Water nozzles shall be provided with grooves for field provided ANSI/AWWA C-606 mechanical couplings.
 5. Evaporator shall include vent and drain fittings and thermostatically controlled heaters to protect to -20°F (-29°C) ambient in off-cycle.
 6. A serviceable wye-strainer and mechanical couplings shall be provided for field installation on evaporator inlet prior to startup.
 7. Evaporator shall be provided with piping extension kit and mechanical couplings to extend liquid connection from evaporator to edge of unit. Thermal dispersion type flow switch shall be factory installed in the evaporator outlet pipe extension

and wired to the unit control panel. Insulation and heat trace on piping shall be the responsibility of installing contractor. Extension kit nozzle connections shall be ANSI/AWWA C-606 (grooved).

B. Air-cooled Condenser:

1. Coils: Condenser coils shall be constructed of a single material to avoid galvanic corrosion due to dissimilar metals. Coils and headers are brazed as one piece. Integral sub cooling is included. Coils shall be designed for a design working pressure of 650 PSIG (45 bar). Condenser coil shall be washable with potable water under 100 psi (7 bar) pressure.
2. Low Sound Fans: Shall be dynamically and statically balanced, direct drive, corrosion resistant glass fiber reinforced composite blades molded into a low noise, full-airfoil cross section, providing vertical air discharge and low sound. Each fan shall be provided in an individual compartment to prevent crossflow during fan cycling. Guards of heavy gauge, PVC (poly-vinyl chloride) coated or galvanized steel shall be factory installed.
3. Fan Motors: High efficiency, direct drive, 6 pole, 3 phase, insulation class "F", current protected, Totally Enclosed Air-Over (TEAO), rigid mounted, with double sealed, permanently lubricated, ball bearings.
4. Low Sound Fans with Variable Speed Drives. All fans shall be powered by VSDs. Fans shall provide vertical air discharge from extended orifices. Fans shall be composed of corrosion resistant aluminum hub and glass-fiber-reinforced polypropylene composite blades molded into a low-noise airfoil section. Fan impeller shall be dynamically balanced for vibration-free operation. Fan guards of heavy gauge, PVC (polyvinyl chloride) coated or galvanized steel.

2.5. CONTROLS

- A. General: Automatic start, stop, operating, and protection sequences across the range of scheduled conditions and transients.
- B. Power/Control Enclosure: Rain and dust tight NEMA 3R powder painted steel cabinet with hinged, latched, and gasket sealed door.
- C. Microprocessor Control Center:
 1. Automatic control of compressor start/stop, anti-coincidence and anti-recycle timers, automatic pump down at system shutdown, condenser fans, evaporator pump, evaporator heater, unit alarm contacts, and chiller operation from -10°F to

125°F (-23°C to 52°C) ambient. Automatic reset to normal chiller operation after power failure.

2. Software stored in non-volatile memory, with programmed setpoints retained in lithium battery backed real-timeclock (RTC) memory for a minimum of 5 years.
3. Forty-character liquid crystal display, descriptions in English (or Spanish, French, Italian, or German), numeric data in English (or Metric) units. Sealed keypad with sections for Setpoints, Display/Print, Entry, Unit Options & clock, and On/Off Switch.
4. Programmable Setpoints (within Manufacturer limits): display language; chilled liquid temperature setpoint and range, remote reset temperature range, daily schedule/holiday for start/stop, manual override for servicing, low and high ambient cutouts, low liquid temperature cutout, low suction pressure cutout, high discharge pressure cutout, anti-recycle timer (compressor start cycle time), and anti-coincident timer (delay compressor starts).
5. Display Data: Return and leaving liquid temperatures, low leaving liquid temperature cutout setting, low ambient temperature cutout setting, outdoor air temperature, English or metric data, suction pressure cutout setting, each system suction pressure, liquid temperature reset via a 4-20milliamp or 0-10 VDC input, anti-recycle timer status for each compressor, anti-coincident system start timer condition, compressor run status, no cooling load condition, day, date and time, daily start/stop times, holiday status, automatic or manual system lead/lag control, lead system definition, compressor starts/operating hours (each), status of hot gas valves, evaporator heater and fan operation, run permissive status, number of compressors running, liquid solenoid valve status, load & unload timer status, water pump status.
6. System Safeties: Shall cause individual compressor systems to perform auto shut down; manual reset required after the third trip in 90 minutes. System Safeties include: high discharge pressure, low suction pressure, high pressure switch, and motor protector. Compressor motor protector shall protect against damage due to high input current or thermal overload of windings.
7. Unit Safeties: Shall be automatic reset and cause compressors to shut down if low ambient, low leaving chilled liquid temperature, under voltage, and flow switch operation.
8. Alarm Contacts: Low ambient, low leaving chilled liquid temperature, low voltage, low battery, and (per compressor circuit): high discharge pressure, and low suction pressure.

9. BAS Communications: YORKTalk 2, BACnet MS/TP, Modbus and N2 communication capabilities are standard.

D. Manufacturer shall provide any controls not listed above, necessary for automatic chiller operation. Mechanical Contractor shall provide field control wiring necessary to interface sensors to the chiller control system.

2.6. POWER CONNECTION AND DISTRIBUTION

A. Power Panels:

1. NEMA 3R/12 rain/dust tight, powder painted steel cabinets with hinged, latched, and gasket sealed outer doors. Provide main power connection(s), control power connections, compressor and fan motor start contactors, current overloads, and factory wiring.
2. Power supply shall enter unit at a single location, be 3 phase of scheduled voltage, and connect to individual terminal blocks per compressor. Separate disconnecting means and/or external branch circuit protection (by Contractor) required per applicable local or national codes.

B. Compressor, control and fan motor power wiring shall be located in an enclosed panel or routed through liquid tight conduit.

2.7. ACCESSORIES AND OPTIONS

A. Some accessories and options supersede standard product features.

B. Microprocessor controlled; Factory installed Across-the-Line type compressor motor starters as standard.

C. Low Ambient Control: Permits unit operation to -10°F ambient. Standard unit controls to 30°F ambient.

1. High Ambient Control: Permits unit operation above 115°F ambient.

D. Power Supply Connections:

1. Single Point or Multiple Point Disconnect: Single or Dual point Non-Fused Disconnect(s) and lockable external handle (in compliance with Article 440-14 of N.E.C.) can be supplied to isolate the unit power voltage for servicing. Separate

external fusing must be supplied, by others, in the incoming power wiring, which must comply with the National Electric Code and/or local codes.

- E. Control Power Transformer: Converts unit power voltage to 120-1-60 (500 VA capacity). Factory-mounting includes primary and secondary wiring between the transformer and the control panel.
- F. Protective Chiller Panels (Factory or Field Mounted)
 - 1. Louvered/Wire Panels: Louvered steel panels on external condenser coils painted as per remainder of unit cabinet. Heavy gauge, welded wire-mesh, coated to resist corrosion, around base of machine to restrict unauthorized access.
- G. Thermal Dispersion Flow Switch (Factory installed and wired in piping extension kit): Normally open, 30bar pressure rating, stainless steel 316L construction, IP67, -4°F to 158°F ambient rating.

3. EXECUTION

3.1. INSTALLATION

- A. General: Rig and install in full accordance with Manufacturer's requirements, Project drawings, and Contract documents.
- B. Location: Locate chiller as indicated on drawings, including cleaning and service maintenance clearance per Manufacturer instructions. Adjust and level chiller on support structure.
- C. Components: Installing Contractor shall provide and install all auxiliary devices and accessories for fully operational chiller.
- D. Electrical: Coordinate electrical requirements and connections for all power feeds with Electrical Sub-Contractor.
- E. Controls: Coordinate all control requirements and connections with Controls Contractor.
- F. Finish: Installing Contractor shall paint damaged and abraded factory finish with touch-up paint matching factory finish.
- G. The contractor shall be responsible for making any piping, electrical, or structural revisions to accommodate this chiller. Chiller shall be installed with proper vibration isolators to reduce vibration transmission to the structure.

4. WARRANTY

- A. Guarantee all materials, equipment and workmanship for two years from the date of final acceptance by Owner as stated in writing, except refrigeration compressors which shall have a five-year extended guarantee. Repair and/or replace, without any cost to the Owner, any defective part or parts of the work within the guarantee period from the time the system is put into operation as determined by the date of final certificate of payment with exceptions as noted.

- B. Provide periodic inspection and adjustment service throughout the guarantee period.

- C. The entire system shall be adjusted and balanced before final acceptance by the Owner and shall be guaranteed against faulty materials and workmanship for a period of two years after final acceptance by the Owner. If any defects in materials or workmanship occur, they shall be replaced and/or repaired at no additional cost to the Owner.

Vendor Application

PURCHASING DIVISION

LEE COUNTY

PO Box 1968

Sanford, NC 27330

Phone: (919)-718-4600

Fax: (919)-718-4631

Please fill out this form and send by e-mail to jwaterhouse@leecountync.gov or fax to (919) 718-4631. Your business will be added to our new vendor list.

Please Type or Print Legibly

Federal ID # _____

SS# _____

For Finance
Use Only

Vendor #

<u>Vendor Name</u>

<u>Date</u>

ORDER ADDRESS		PAY ADDRESS	
<u>Street</u>		<u>Street</u>	
<u>Street</u>		<u>PO Box</u>	
<u>City</u>		<u>City</u>	
<u>State</u>	<u>Zip Code</u>	<u>State</u>	<u>Zip Code</u>

<u>CONTACT PERSON</u>	<u>TELEPHONE NUMBER</u>	<u>FAX NUMBER</u>
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<u>CONTACT PERSON E-MAIL ADDRESS</u>	<u>TERMS</u>	<u>DISCOUNT</u>
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<u>CONTRACTOR'S LICENSE # (if applicable)</u>	<u>SIGNATURE</u>
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This firm certifies that it is a : (if applicable)

_____ Disabled _____ Minority Business Enterprise _____ Women Business Enterprise

To qualify for MWBE status, 51% of the company must be owned and controlled by minority groups or women. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, American Indians and/or American Women. To qualify for Disabled status, 51% of the company must be owned and controlled by disabled persons.

Product(s) and/or Service(s)

Please list the type product(s) and/or Service(s) that your company can provide.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

The County of Lee North Carolina

Vendor/Contractor Name: _____

**IRAN DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. 147 -86.59**

As of the date listed below, the Vendor/Contractor listed above certifies that they are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Contractor/Vendor shall not utilize any subcontractor that is identified on the list.

**E-VERIFY CERTIFICATION
REQUIRED BY N.C.G.S. 143-48.5 & 147-33.95(g)**

As of the date listed below, the Vendor/Contractor listed above and all Vendor/Contractor's subcontractors certify that they are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

The undersigned hereby certifies that he/she is authorized by the entity listed above to make the foregoing statement.

Signature

Date

Printed Name

Printed Title

Lee County, North Carolina
Terms and Conditions

By acceptance of this purchase order, the vendor or contractor, (referred to as the Seller), declares that the supplies, materials, equipment, apparatus, or services will be furnished according to the following terms and conditions:

1. **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship To Department** shown.
2. **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence and bill of lading.
3. **PRICE:** If prices or terms do not agree with your quotation, you must notify the ordering **Department** immediately. All prices are quoted **F.O.B. DESTINATION** unless specifically indicated otherwise.
4. **INVOICES:** All invoices are to be mailed to the **Ship To Department**. Each purchase order must be invoiced separately. Invoices for partial shipments will be accepted and final invoices should indicate completion of order. The Purchase Order Number must be referenced on all invoices.
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
6. **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the Seller for any reason. Invoices are payable in U.S. funds.
7. **TAXES:** Lee County is not Tax-Exempt. Prices shown on the County's purchase order may not include tax; however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the Seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
8. **QUANTITY:** The specific quantity ordered must be delivered in full and will not be changed/increased without the Purchasing Director's written consent. Any unauthorized quantity is subject to rejection and return at Seller's expense.
9. **FREIGHT AND PACKAGING:** Price quotations shall include freight, transportation, shipping, handling and similar charges. Collect freight shipments will be refused. The Seller shall absorb any increase in rates becoming effective after the date hereof. The seller agrees to assume and pay all extra expense occurring on account of improper packaging.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless Lee County, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
11. **APPLICABLE LAWS:** By the acceptance of this order, Seller represents that the goods covered by this order are in full compliance with all applicable local, state or federal laws and regulations and agrees to indemnify and defend Lee County against any loss, cost, liability or damage by reason of Seller's violation of any laws.
12. **CANCELLATION:** Lee County reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the Seller to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified, or for any other reason which causes the Seller not to perform as agreed.
13. **ACCEPTANCE AND INSPECTION:** All goods shall be subject to the County's right of inspection and rejection. Risk of loss and title to all goods shall remain with the Seller until acceptance has been made by the County. If goods are rejected, they will be returned at Seller's risk for credit or replacement at the County's option and all handling and transportation expenses both ways shall be assumed by the Seller. When goods have been rejected, the County shall have the right to cancel any unshipped portion of this order. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the Seller.
14. **WARRANTY:** The Seller expressly warrants that goods covered by this order will conform to the specifications, drawings, or samples furnished by the County, be suitable for the purpose intended, and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance or payment by the County. The Seller also warrants that the goods do not infringe any patent, registered trademark or copyright, and agrees to hold Lee County harmless in the event of any infringement or claim thereof. Additionally, Seller warrants that the goods are free and clear of all liens and encumbrances, and that Seller has a good and marketable title to the same.
15. **HAZARDOUS CHEMICALS:** The Seller shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements.
16. **MATERIAL SAFETY DATA SHEETS (MSDS):** The Seller shall ensure that Lee County is provided an appropriate current MSDS with or prior to the initial shipment of a hazardous chemical, and with or prior to the initial shipment after the MSDS is updated.
17. **NON-DISCRIMINATION POLICY:** Lee County does not discriminate on the basis of race, color, sex, national origin, religion, age or disability.
18. **VERBAL AGREEMENT:** This purchase order, including all references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the County and Seller. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the County.
19. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed that the Seller is an independent contractor and not an agent of Lee County, and as such, Seller and his or her agents and employees shall not be entitled to any county employment benefits, including but not limited to vacation, sick leave insurance, worker's compensation, pension or retirement benefits.
20. **GOVERNING LAW:** This agreement shall be governed and interpreted pursuant to Laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the County of Lee, State of North Carolina.
21. **E-VERIFY:** For purchase orders that include construction or services, employers and their subcontractors with 25 or more employees in North Carolina as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with the County. E-Verify is a Federal program operated by the US Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hire employees pursuant to federal law.
22. **IRAN DIVESTMENT ACT CERTIFICATION:** By acceptance of this purchase order Seller certifies that: (i) Seller is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this Purchase Order which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.