

Invitation for Bid



Bid Title:
Metal Roof Replacement
(Federal Funded)

Bid No. 100-24C(2)

Date of Issue: August 29, 2024

Bids Due: September 10, 2024

Issued By:

Onslow County Purchasing Department
234 NW Corridor Blvd.
Jacksonville, North Carolina 28540
Phone: (910) 455-1750

Issued For:

Richard Hoffman
Asset & Facility Management Director
234 NW Corridor Blvd.
Jacksonville, NC 28540

INVITATION TO BID

August 29, 2024

Onslow County
234 NW Corridor Blvd.
Jacksonville, NC 28540

**Project Name: Metal Roof Replacement
Onslow County Center Street Facility**

Pursuant to N.C.G.S. 143-131, the County is accepting bids from single prime roofing contractors for a metal roof replacement at the following Onslow County Building location: 165 Center Street, Jacksonville, NC 28540.

A contract will be awarded to the contractor for the replacement of the roof under **Bid No. 100-24C(2)**. Bids will be accepted by the County until **2:00 p.m. on September 10, 2024**. No bid will be accepted after this time. There will be no formal bid opening. The County will receive bids and will notify bidders after the award.

Copies of the specifications and bid forms may be obtained by applying to the County's Purchasing Department, phone (910) 455-1750, during regular business hours of 8AM until 5PM.

A **Pre-Bid Conference** will be held on September 4, 2024, at 11:00 AM at 165 Center Street, Jacksonville, NC 28540. A site visit will follow immediately after the meeting. **It is highly recommended that all bidders attend. Roofing measurements will need to be obtained by bidders.**

ALL BIDDERS are hereby notified that they must have the proper license as required under the North Carolina laws. Contracts for work under this bid will be governed by all applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project. This project will be funded by Federal funds therefore bidders will be required to adhere to Federal regulations.

The County encourages participation by small, minority, disabled, and woman-owned businesses. The County of Onslow reserves the right to reject any and/or all bids.

Christina Russell, CLGPO
Purchasing Division Head

PRE-BID CONFERENCE AND SITE VISIT:

A pre-bid conference and site visit will be held at 11AM on September 4, 2024, at 165 Center Street, Jacksonville, NC 28540. Bidders are urged to attend the conference and site visit. The purpose of the meeting is to provide Bidders with the opportunity to discuss the Project with the Owner. Any clarifications, corrections, or changes to the Bidding Documents resulting from the meeting will be included in an Addendum. A site visit will immediately follow the meeting. Roofing measurements will be required by the Bidder and access will be granted during the site visit to the Bidders. *No other opportunity will be permitted for Bidders to obtain measurements.*

PREPARATION OF BID:

Bids shall be submitted on the forms included in the Bidding Documents. The Bid Form shall not be altered in any way.

A Bidder shall prepare its Bid by inserting bid amounts for each lump sum (Base Bid) price item on the Bid Form and shall compute and enter the computed total amount for all lump sum in the space provided on the Bid Form. Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

All blanks in the Bid Form shall be completed by printing in ink or by electronically typed and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated in both words and numerals for each Bid Form provided listed therein or the words "No Bid" entered should Bidder not choose to bid on both roofing projects. Ditto marks shall not be used.

The Bid shall not contain any unauthorized additions, deletions, or conditional bids.

The Bidder shall not add any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

Alternate bids will not be considered unless specifically called for.

SUBMISSION:

Bids must be submitted on the forms contained herein. Bids will be received at the Office of the Onslow County Purchasing Department, 234 NW Corridor Blvd., Jacksonville, NC 28540 until **2:00 PM EST, September 10, 2024**. No bid will be accepted after the official time and date.

Bidder shall assume full responsibility for timely delivery at the location designated for receipt of bids. Bids received by mail or otherwise after the date and time specified will not be accepted and will be returned to the Bidder unopened.

Oral, facsimile, email, or other electronic bids will not be considered.

INTREPRETATIONS AND ADDENDA:

The Bidder shall carefully study the bidding documents and shall examine the site and local conditions. Any errors, inconsistencies or ambiguities discovered shall be reported. All questions or concerns related to the meaning or intent of the Bidding Documents shall be submitted **in writing** to the Onslow County Purchasing Division Head, Christina Russell, 234 NW Corridor Blvd., Jacksonville, NC 28540.

In order to receive consideration, questions must be received **no later than 2:00PM, September 4, 2024**.

Written questions may be emailed to Christina_Russell@onslowcountync.gov

Interpretations or clarifications considered necessary by Owner (or Engineer) in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Owner as having received the Bidding Documents. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may also be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer. All changes in specifications shall be in writing in the form of an addendum and furnished to all bidders recorded by Owner as having received the Bidding Documents.

It shall be the responsibility of the Bidder to ensure that he/she has received all addenda issued prior to submitting a Bid. Acknowledgement of receipt of all addenda shall be made by each bidder in the space provided in the Bid Form.

No allowance will be made after bids are received for oversight by Bidder. Negligence on the part of the Bidder in preparation of their Bid shall not be grounds for the modification or withdrawal of a Bid after the date and time bids are due.

MODIFICATION OR WITHDRAWAL OF BID:

Withdrawal Prior to Bid Opening:

- A. A Bidder may withdraw its Bid without penalty at any time before the time and date bids are due. Request to withdraw a bid must be submitted *in writing* to the Owner. Upon receipt of such written notice, the unopened Bid will be returned to the Bidder.

Modification Prior to Bid Opening:

- A. If a Bidder wishes to modify its Bid, Bidder must withdraw its initial Bid in the manner specified above "Withdrawal Prior to Bid Opening" and submit a new Bid.

Withdrawal After Bid Opening:

- A. A Bidder may request that his Bid be withdrawn from consideration without forfeiture of his Bid security (if required) in accordance with the provisions of North Carolina General Statute 143-129.1.

OPENING OF BIDS:

Informal bids will be opened in accordance with N.C.G.S. 143-131. This is NOT a public, formal bid opening. The County will keep a record of all bids submitted. This record is not subject to public inspection until the contract(s) has been awarded.

EVALUATION OF BIDS AND AWARD OF CONTRACT:

The award of the contract(s) will be made to the lowest responsible and responsive bidder taking into consideration quality, performance, experience, and the time specified in the bidding documents for the performance of the contract. Responsible bidders must have the ability, skill, judgement, and integrity necessary to faithfully perform the contract, and have sufficient financial resources to complete the contract.

Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner also reserves the right to waive any informality not involving price, time, or changes in the Work.

Owner reserves the right to reject any Bid not accompanied by specified documentation.

Owner reserves the right to reject any Bid that, in its sole discretion, is considered to be unbalanced or unreasonable as to the amount bid for any lump sum or unit price item.

In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not their Bids comply with the prescribed requirements, the alternatives, if any, the lump sum and unit prices, and other data as may be requested in the Bid Form or prior to the Notice of Award.

Owner will take into consideration the past performance of the Bidder on construction contracts with particular concern given to completion time, quality of work, cooperation with other contractors, and cooperation with Owner.

Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications and financial ability of the Bidders to perform the Work in accordance with the Contract Documents. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.

QUALIFICATIONS OF BIDDERS:

To be eligible to respond to the Invitation for Bid, contractors must demonstrate that they or the principles assigned to the project, have the proper licenses under the State laws governing their respective trades and that North Carolina General Statute 87 will be observed in receiving and awarding contracts.

The Bidder certifies, by submission of this Bid, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation of this transaction by any state or federal department or agency.

Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefore, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if Bidder cannot show that Bidder has the necessary ability, resources, and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the time specified. A Bid may be rejected if Bidder is already obligated for the performance of other work which would delay the commencement, prosecution, or completion of the Work.

EXAMINATION OF CONDITIONS:

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

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

DISQUALIFICATION OF BIDDERS:

More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid

for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

BID BOND:

No bid bond is required for these projects.

PERFORMANCE AND PAYMENT BONDS:

A Performance and Payment Bond may be required for these projects. Performance and Payment Bonds, issued in accordance with Article 3 of Chapter 44A of the General Statutes, each having a penal sum in the full amount of the contract sum, will be required by the awarded contractor.

MINORITY BUSINESS ENTERPRISE REQUIREMENTS:

Bidder shall make a good faith effort to ensure that, whenever possible, subcontracts are awarded to minority and women's business enterprises in accordance with County policy. The goal for this project is 10%. **The attached MBE documents must be included with bid at the time of submission.**

CONTRACT:

The award of contract under this solicitation will be paid with federal funding. Funding is contingent upon compliance with all terms and conditions of funding award. All prospective contractors shall comply with all applicable Federal laws, regulations, executive orders, FEMA requirements and the terms and conditions of the funding award. In addition, contractors providing submittals shall be responsible for complying with State law and local ordinances. A copy of the county's contract agreement is attached with Federal guidance.

COMMENCEMENT OF WORK:

Upon execution and delivery of the Contract and insurance certificates and policies, the Contract will be issued a Purchase Order and a fully executed contract. The Work shall be commenced within 30 days following such notification or as otherwise specified.

CONTRACT TIME FOR COMPLETION:

The awarded contractor shall achieve Substantial Completion of the entire Work within 90 calendar days from the date of the contract.

INSURANCE/SAFETY REQUIREMENTS:

Bidder is required to submit a Certificate of Insurance showing proof of insurance with their submitted bid. Bidder is responsible for providing their own Safety PPE, required by OSHA, for all employees while on the County job site.

Scope of Work:

Metal Roof Replacement:

Bidder is responsible for determining the exact square footage of the roof. County will not be responsible for any shortage of materials by Bidder. No Change Order will be allowed at the County's expense in relation to shortage of materials due to incorrect measurements by Bidder. Measurements will be obtained by Bidder during Pre-bid Conference. A dumpster will be provided onsite by County to be used by awarded Contractor. Contractor will be responsible for clean up during the day as well as before leaving job site daily.

The County is requesting bids for a new snap lock standing seam metal roof system. The current roofing system will be removed down to the deck; rotten or deteriorated wood replaced with County approval prior to replacement; Install self-adhesive ice and water shield on sub straight prior to underlayment; Install (1) layer of synthetic underlayment over entire roof lap per manufactures instructions minimum; Fabricate and install new metal drip edge with 1 inch over hang and 2 inch face minimum fastened for 139 mph around roof perimeter; Install 24 inch "W" valley with 1.5 inch stand metal with cleats and valley cleats over approved sealant; Install roof panels by folding bottom edge of panel approximately 1 inch and locking into metal drip edge; front edge of over lapping panel should fold around to cover cut edge at roof edge; Install hidden clips, within 1 foot from the bottom and top edge of panel and 2 foot on center and anchor (to meet a required 139 mph wind rating) with stainless wood screws; Roof needs to be vented using Z clips to install at ridge; Fabricate and install gable trim; Seal and rivet all overlaps of 1 inch minimum. Bidder shall follow all manufacturers surface preparations, manufacturers application conditions, and manufacturers application procedures. Bidder is responsible for obtaining permits, if necessary, through City of Jacksonville for roof replacement.

Warranty: 30+ year paint finish warranty shall be provided along with a 5-year workmanship warranty that will include materials and labor.

Rib: 1 ½ high, 16 inches on center

Gauge: 24 gauge

Metal Roof Color: Contractor will provide to County color samples prior to installation

Option 1 Gutter Installation:

County is requesting Bidder to provide a price to install commercial box gutters.

Bidder is responsible for determining the exact square footage for gutters. Measurements will be obtained during Pre-Bid Conference. County will not be responsible for any shortage of materials by Bidder. No Change Order will be allowed at the County's expense in relation to shortage of materials due to incorrect measurements by Bidder. Price should include materials and labor.

Size: 8 inches with 4-inch x 5-inch downspouts

Gutter Color: Contractor will provide to County color samples prior to installation

County will evaluate pricing and determine if gutters will be awarded to roofing Contractor or omitted from bid award.

Bid Proposal Form
Metal Roof Replacement
165 Center Street

The undersigned, as Bidder, proposes and agrees, if the following Bid Proposal is accepted, to contract with the County of Onslow, in the form of a contract, as issued by the County of Onslow to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to complete the Single Prime contract Work for the replacement roof in accordance with the bid documents, specifications, and contract documents, to the full and entire satisfaction of the Owner, the Owner's Representatives, with a definite understanding that no money will be allowed for extra work as set forth in the General Conditions and the Contract Documents for the following stated sum:

All bid prices must include sales taxes.

LIQUIDATED AND SPECIAL DAMAGES: Provisions for liquidated damages will be \$250.00 per day should the Contractor fail to meet final completion date.

Base Bid to include a contingency allowance of \$5,000 for unseen repairs.

Base bid shall also include a 30-year Roof Panel Finish Warranty and a 5-year Workmanship Warranty.

Description	Price
Materials/Labor/Both Warranty's: Roof Measurement _____ square feet	\$
Contingency Allowance: (Only used for unseen repairs upon County approval)	\$5,000.00
Total Base Bid: _____ Dollars (\$) (Write the numerical amount out)	
Description	Price
OPTION 1 Gutter Materials & Installation: Gutter Measurement _____ square feet	\$

When can you begin work: _____

Please acknowledge receipt of Addendums. Number of Addendums received: _____

Are you licensed and authorized to do business in the State of North Carolina? _____

Provide License Number: _____

SUBMITTED BY:

Name of Company or Corporation: _____

Address: _____

City/State/Zip: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Reference Request
Metal Roof Replacement

Please provide a list of three (3) references from completed roofing jobs.

Reference 1:

Company Name: _____

Address: _____

City/State/Zip: _____

Contact Name: _____ Phone: _____

What year was the roofing job completed? _____

Reference 2:

Company Name: _____

Address: _____

City/State/Zip: _____

Contact Name: _____ Phone: _____

What year was the roofing job completed? _____

Reference 3:

Company Name: _____

Address: _____

City/State/Zip: _____

Contact Name: _____ Phone: _____

What year was the roofing job completed? _____

NON-COLLUSION AFFIDAVIT

State of North Carolina
County of Onslow

Bid 100-24C(2)

_____, being first duly sworn, deposes and says that:

1. He/She is the _____ (title) of _____ (firm's name), the responder that has submitted the attached response;
2. He/She is fully informed respecting the preparation and contents of the attached response and of all pertinent circumstances respecting such response;
3. Such response is genuine and is not a collusive or sham response;
4. Neither the said responder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other responder firm or Person to submit a collusive or sham response in connection with the contract for which the attached response has been submitted or to refrain from responding in connection with such contract, or has in any manner, directly or indirectly sought by agreement or collusion of communication or conference with any other responder, firm or person to fix the price or prices in the attached response, if applicable, or of any other responders, or to fix any overhead, profit or cost element of the response price of the response, if applicable, of any other responder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Onslow or any person interested in the proposed contract; and

Signature

Title

NOTARIZE

Subscribed and sworn to before me,

This ____ day of _____, 202__

Notary Public _____

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

AFFIDAVIT OF COMPLIANCE – E-VERIFY

I, _____ (the individual attesting below), being duly authorized by and on behalf of _____

_____ (hereinafter "Contractor") after first being duly sworn hereby swears or affirms as follows:

1. Contractor understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Article 2 of Chapter 65 of the North Carolina General Statutes; and
2. Contractor understands that "Employer", as defined in NCGS§64-25(4), are required by law to use E-Verify to verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a). The term "Employer" does not include State agencies, counties, municipalities, or other governmental bodies.
3. Contractor is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in the state of North Carolina. (mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Contractor will ensure compliance with E-Verify by any subcontractors subsequently hired by Contractor to perform work under Contractor's contract with Onslow County.
5. Contractor shall keep the County of Onslow informed of any change on its status pursuant to Article 2 of Chapter 64 of the North Carolina Statutes.

This ____ day of _____, 20__.

Signature of Affiant

Print or Type Name: _____

State of _____ County of _____

Signed and sworn to (or affirmed) before me, this the ____
day of _____, 20__.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned applicant certifies to the best of his or her knowledge and belief, that the applicant and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entitle (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

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

Firm Name: _____

Address: _____

City/State/Zip: _____

Signature: _____

(Seal if Corporation)

Title: _____

Date: _____

NOTARIZE

SUBSCRIBED AND SWORN TO BEFORE ME,

This _____ day of _____, 202____

NOTARY PUBLIC _____

My Commission Expires: _____

MBE Contract Provisions (Construction or Repair)

Application:

The requirements of the Guidelines for Recruitment and Selection of Minority Businesses for Participation in County Construction or Repair Contracts are hereby made a part of these contract documents. These requirements will apply to all contract documents. These requirements shall apply to all contractors regardless of ownership.

MBE Subcontract Goal:

The goals for participation by Minority firms as subcontractors on this project have been set at ten percent (10%).

The Bidder shall provide, with the bid, documented proof in the form of Affidavit A - Part 1, IDENTIFICATION OF MINORITY BUSINESS PARTICIPATION, that these goals have been met or exceeded;

OR

Provide with the bid, Affidavit A – Part 2, LISTING OF GOOD FAITH EFFORTS, identifying the amount of MBE participation; and prior to award, upon request, show evidence of good faith effort made prior to the bid opening to meet these goals;

OR

Provide, with the bid, Affidavit B, INTENT TO PERFORM CONTRACT WITH OWN WORKFORCE, and upon request, information sufficient for the State to determine that the Bidder does not customarily subcontract work on this type of project.

The above information shall be submitted with the bid. This form must be attached to the bid at its submission; failure to submit the required forms will be cause for rejection of bid.

Minimum Compliance Requirements:

If the MBE subcontract goals are **not** achieved, the Bidder will provide the following documentation to the County

1. Affidavit A – Parts 1 and 2 **Must be submitted with the bid.**
2. Documentation of the Bidder's good faith efforts (Affidavit A – Part 1) to meet the goals set for the in these provisions. This documentation shall include the following evidence:
 - a. Copies of solicitations for quotes to at least three (3) MBE firms from the source list provided by the State of North Carolina (<http://www.doa.nc.gov/hub/>) for each subcontract to be let under this contract (if three (3) or more firms are shown on the source list). Each solicitation will contain a specific description of the work to be subcontracted, locative of the Prime Bidder to contact, and location, date and time when quotes must be received.
 - b. Copies of quotes or responses received from each firm responding to the solicitation.
 - c. A telephone log of follow-up calls to each firm sent a solicitation.
 - d. For subcontract where an MBE firm is not considered to be the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
 - e. Documentation of any contacts, correspondence or conversation with MBE firms made in an attempt to meet the goals.

NOTE: If the Bidder provides sufficient evidence (listed in #1) that the goals stated in the contract documents have been met, or awards all subcontracts to MBEs, the documentation listed in #2 will not be required.

Upon being named apparent low bidder, the Bidder will then provide Affidavit C, complete with a description of the scope of services and dollar value from each MBE firm proposed for use in this contract. Failure to provide the documentation as listed in these provisions may result in rejection of the bid the County reserves the right to waive any irregularities in MBE documentation if they can be resolved prior to award of the contract, and the County finds it to be in its best interest to do so and award the contract.

Program Compliance Requirements:

All written statements, certifications or intentions made by the Bidder will become a part of the agreement between the Contractor and the County for performance of this contract. Failure to comply with any of these statements, certifications or intentions, or with the MBE Guidelines will constitute a breach of the contract. A finding by the County that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, will also constitute breach of the contract in accordance with the termination provisions contained in the contract. It will be solely at the option of the County whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, the County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. The County may take into account any or all of the following:

1. Whether the Bidder attended any Prebid meetings that were scheduled by the County;
2. Whether the Bidder advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
3. Whether the Bidder provided written notice to a minimum of three MBEs for each portion of the work subcontracted, that their interest in the contract was being solicited in sufficient time to allow the MBEs to participate effectively;
4. Whether the Bidder followed up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;
5. Whether the Bidder selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);
6. Whether the Bidder provided interested MBEs with adequate information about the plans, specifications and requirements of the contract;
7. Whether the Bidder negotiated in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

AFFIDAVIT A – PART 1
BID NUMBER:100-23C(2)

TO BE INCLUDED WITH BID SUBMITTAL

IDENTIFICATION OF MINORITY BUSINESS PARTICIPATION

I, _____
(Name of Bidder)

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

Firm Name, Address and Phone #	Work type	*Minority Category

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

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

TO BE INCLUDED WITH BID SUBMITTAL

AFFIDAVIT A – PART 2: Listing of Good Faith Efforts

Bid Number: 100-23C(2)

County of Onslow, State of North Carolina

(Name of Bidder)

Affidavit of _____

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

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

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

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

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

Date: _____

Name of Authorized Officer: _____

Signature: _____

TO BE INCLUDED WITH BID SUBMITTAL

AFFIDAVIT B - Intent to Perform Contract with Own Workforce.

Bid Number: 100-23C(2)

County of Onslow, State of North Carolina

Affidavit of _____

(Name of Bidder)

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

contract.

(Name of Project)

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

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____

DO NOT SUBMIT WITH BID:

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

AFFIDAVIT C - Portion of the Work to be Performed by Minority Forms

Bid Number: 100-23C(2)

County of Onslow, State of North Carolina

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

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

Project ID# MPC Roof Replacement

Amount of Bid \$ _____

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

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

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

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

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

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____

NOTE: The General Conditions included are the County's standard GC's for all construction and repair building projects; therefore, some items may not be applicable.

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

TABLE OF ARTICLES

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1 **BASIC DEFINITIONS**

- 1.1.1 Contract for Construction. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification.
- 1.1.2 Contract Documents. The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, advertisement or invitation to bid, Instructions to Bidders, other documents listed in the Agreement and Modifications issued after execution of the Contract.
- 1.1.3 Contractor. The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Unless otherwise stated, the term "Contractor" means the General Contractor or the General Contractor's authorized representative.
- 1.1.4 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, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.1.5 Designer. The Architect or Engineer registered in accordance with the provisions of Chapter 89C of the North Carolina General Statutes identified as such in the Contract for Construction and is referred to throughout the Contract Documents as if singular in number. The term "Designer" refers to the Designer or the Designer's authorized representative(s). The Designer shall be entitled to performance and enforcement of obligations under the Contract for Construction intended to facilitate performance of the Designers' duties.
- 1.1.6 Modification. A Modification is (1) a written amendment to the Contract signed by the parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Designer.
- 1.1.7 Owner. The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.
- 1.1.8 Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

- 1.1.9 Project Manual. The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.
- 1.1.10 Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.1.11 Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.2 EXECUTION, CORRELATION, AND INTENT

- 1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Designer shall identify such unsigned Documents and insure that they are properly signed by the necessary parties.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, has checked and verified all site conditions, and hereby waives any and all claims, present or future, for misrepresentation on the part of the Owner or Designer.
- 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- 1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any Subcontractor.
- 1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 1.3.1 The Drawings, Specifications and other documents prepared by the Designer are instruments of the Designer's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Designer. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright of the drawings, specifications and other documents prepared by the Designer. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Designer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project; they are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier

on other projects without the specific written consent of the Owner and Designer. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Designer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Designer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents.

1.5 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 **OWNER**

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.1.1 The Owner shall furnish plan and profile of existing County utilities. The Contractor is responsible for locating all existing utilities prior to Work.
- 2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 2.1.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Designer's

additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior review and confirmation by the Designer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 **CONTRACTOR**

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Paragraph 2.1, and shall at once report to the Designer errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity knowing or should have known it involves an error, inconsistency or omission in the Contract Documents without such notice to the Designer, the Contractor shall assume full responsibility for such performance and shall bear the full costs for correction.
- 3.1.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Designer immediately.
- 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.11.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.
- 3.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.
- 3.2.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.
- 3.2.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3 LABOR AND MATERIALS

- 3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper

execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- 3.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 3.3.3 Materials, equipment or items required for a complete job which are shown on the drawings but not mentioned in the specifications or materials, equipment or items required by the specifications but not shown on the drawings, shall be furnished and installed the same as though both shown on the drawings and required by the specifications.

3.4 WARRANTY

- 3.4.1 The Contractor warrants to the Owner and Designer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Designer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.4.2 Except as otherwise specifically stated below, the Contractor shall guarantee his materials and workmanship against defect due to faulty materials or faulty workmanship or negligence for a period of twelve (12) months following Substantial Completion of the Work. Where the manufacturer's warranty on equipment or parts thereof exceeds twelve (12) months, the guarantee period on such equipment or parts thereof shall be extended to include the full warranty of the manufacturer. The Contractor shall repair or replace such defective materials, equipment or workmanship to the full satisfaction of the Owner within the stipulated guarantee period without cost to the Owner.

3.5 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6 PERMITS, FEES AND NOTICES

- 3.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract for Construction and which are legally required when bids are received or negotiations concluded.
- 3.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.
- 3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents

are at variance therewith, the Contractor shall promptly notify the Designer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

- 3.6.4 If the Contractor performs Work the Contractor knows or should have known it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Designer and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.7 ALLOWANCES

- 3.7.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

- 3.7.2 Unless otherwise provided in the Contract Documents:

- (1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- (2) allowances shall cover the cost to the Contractor of materials and equipment delivered to the site and all required taxes, less applicable trade discounts;
- (3) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- (4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by a Change Order. The amount of the Change Order shall reflect (a) the difference between actual costs and the allowances under Clause 3.7.2(2) and (b) changes in Contractor's costs under Clause 3.7.2(3). To the extent that any allowance is not fully used, then the unused amount of each allowance shall be credited to the Owner by a Change Order.

3.8 SUPERINTENDENT

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing upon request.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

- 3.9.1 Promptly after being awarded the Contract, the Contractor shall prepare and submit for the Designer's review and comment a construction schedule for the Work. The schedule shall not exceed time limits provided in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. If separate prime contracts are awarded by the Owner in connection with this Project, the Contractor shall additionally submit a Contractor's

construction schedule for the Work to the General Contractor in order for the General Contractor to carry out its duties under Article 6.

3.9.2 The Contractor shall prepare and keep current, for the Designer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Designer reasonable time to review submittals.

3.9.3 The Contractor shall conform to the most recent schedules.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Designer and shall be delivered to the Designer for submittal to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.11.3 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Designer is subject to the limitations of Subparagraph 4.1.6.

3.11.5 The Contractor shall review, approve and submit to the Designer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.11.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or other appropriate action taken by the Designer. Such Work shall be in accordance with approved submittals.

3.11.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- 3.11.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Designer's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Designer in writing of such deviation at the time of submittal and the Designer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Designer's approval thereof.
- 3.11.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Designer on previous submittals.
- 3.11.10 Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.
- 3.11.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certificates.

3.12 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13 CUTTING AND PATCHING

- 3.13.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.13.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14 CLEANING UP

- 3.14.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.
- 3.14.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.15 ACCESS TO WORK

The Contractor shall provide the Owner and Designer access to the Work in preparation and progress wherever located.

3.16 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Designer harmless from loss unless a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Designer.

3.17 INDEMNIFICATION

- 3.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Designer, Designer's consultants, and agents and employees of any of them from and against claims, damages, economic losses and expenses of any kind (including but not limited to fees and charges of engineers, attorneys, and other professionals and costs related to court action or arbitration), arising out of or resulting from performance of the Work under this Agreement, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable unless caused in whole or part by the negligence of Owner. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.17.
- 3.17.2 In claims against any person or entity indemnified under this Paragraph 3.17, by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.17, shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 3.17.3 The obligations of the Contractor under this Paragraph 3.17, shall not extend to the liability of the Designer, the Designer's consultants, and agents and employees of any of them arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Designer, the Designer's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 **ADMINISTRATION OF THE CONTRACT**

4.1 DESIGNER'S ADMINISTRATION OF THE CONTRACT

- 4.1.1 The Designer will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative during construction through final payment, and with the Owner's concurrence, from time to time during the correction period described in Paragraph 11.2. The Designer will advise and consult with the Owner. The Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

- 4.1.2 The Designer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.2. The Designer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Designer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 4.1.3 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Designer. Communications by and with the Designer's consultants shall be through the Designer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Designer.
- 4.1.4 Based on the Designer's inspections, observations and evaluations of the Contractor's Applications for Payment, the Designer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 4.1.5 The Designer will have authority to reject Work which does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Designer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 12.5.2 and 12.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Designer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Designer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- 4.1.6 The Designer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Designer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Designer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Designer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Designer, of any construction means, methods, techniques, sequences or procedures. The Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.1.7 The Designer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- 4.1.8 The Designer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the

Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

- 4.1.9 The Designer will interpret and decide matters concerning performance under and requirements of the Contract documents on written request of either the Owner or Contractor. The Designer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Designer shall be furnished in compliance with this Subparagraph 4.1.9, then delay shall not be recognized on account of failure by the Designer to furnish such interpretations until 15 days after written request is made for them.
- 4.1.10 Interpretations and decisions of the Designer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Designer will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.
- 4.1.11 The Designer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
- 4.1.12 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 11.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Designer may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Designer to stop the Work shall not give rise to a duty on the part of the Designer to exercise this right for the benefit of the Contractor or any other person or entity.

4.2 CLAIMS AND DISPUTES

- 4.2.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made pursuant to the Dispute Resolution Procedure set forth in Paragraph 4.4. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 4.2.2 DECISION OF DESIGNER. Claims, including those alleging an error or omission by the Designer, shall be referred initially to the Designer for action as provided in Paragraph 4.4. A decision by the Designer shall be required as a condition precedent to mediation and litigation of a Claim between any party involved in this construction Project as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work or the extent to which the Work has been completed. The decision by the Designer in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Designer is vacant, (2) the Designer has not received evidence or has failed to render a decision within agreed time limits, or (3) 45 days have passed after the Claim has been referred to the Designer.
- 4.2.3 TIME LIMITS ON CLAIMS. Claims by the Contractor must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.

- 4.2.4 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 4.2.5 WAIVER OF CLAIMS: FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:
- (1) unsettled claims arising out of the Contract; or
 - (2) failure of the Work to comply with the requirements of the Contract Documents; or
 - (3) terms of special warranties required by the Contract Documents.
- 4.2.6 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Designer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Designer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified the Designer shall so notify the Owner and Contractor in writing stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Designer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Designer for initial determination, subject to further proceedings pursuant to Paragraph 4.4.
- 4.2.7 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (a) a written interpretation from the Designer, (b) a written order for a minor change in the Work issued by the Designer, (c) termination of the Contract by the Owner, Claim shall be filed in accordance with the procedure established herein. This Article, and Article 7, shall be the exclusive means by which the Contractor may claim additional cost or damages from the Owner, and the Contractor hereby waives any and all right to claim additional cost or damages by any other remedy including, without limitation, quantum meruit, subrogation, or implied contract.
- 4.2.8 CLAIMS FOR ADDITIONAL TIME. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Adverse weather conditions shall not be a basis for a Claim for additional costs.

4.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice as such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.2.7 or 4.2.8.

4.4 DISPUTE RESOLUTION PROCEDURE

- 4.4.1 To prevent all disputes and litigation, it is agreed by the parties that any claim, question, difficulty or dispute arising from this Agreement or the construction process shall be first submitted to the Designer to address the issue. Upon review of the Claim, the Designer shall take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Designer expects to take action, (3) reject the Claim in whole or in part stating reasons for rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. The Designer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.
- 4.4.2 If a Claim has been resolved, the Designer will prepare or obtain appropriate documentation.
- 4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Designer's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Designer, (2) modify the initial Claim and resubmit it to the Designer, or (3) notify the Designer that the initial Claim stands and submit the Claim to the Onslow County Manager for mediation pursuant to Subparagraph 4.4.4, below.
- 4.4.4 The Onslow County Manager, as mediator, shall address any properly submitted claim, question, difficulty or dispute arising from this Agreement or the construction process, which has not been satisfactorily resolved by the Designer. Such requests shall be made to the Onslow County Manager in writing within ten (10) days after the Designer's preliminary response. The mediator shall notify Contractor in writing of the decision within thirty (30) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless the mediator requires additional time to gather information or allow the parties to provide additional information. The mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this Subparagraph, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.
- 4.4.5 The mediation session shall be private. Prior to commencement of mediation, if requested by either party or the mediator, the parties and the mediator shall execute a written confidentiality agreement in accordance with the provisions of North Carolina law. All such mediation sessions shall be held in Onslow County, North Carolina.
- 4.4.6 If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the mediator shall be deemed

appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgement may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

- 4.4.7 If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Onslow and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.
- 4.4.8 The dispute resolution procedure set forth in this Paragraph shall be made available to any party involved in this construction project including County, Contractor, Designer, Subcontractors as well as Sub-subcontractors and is a precondition to initiation of litigation concerning the dispute.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Designer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work, including (1) Heating, ventilating, and air conditioning, (2) Plumbing, (3) Electrical, and (4) General. The Designer will promptly reply to the Contractor in writing stating whether or not the Owner or the Designer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Designer to reply promptly shall constitute notice of no reasonable objection.
- 5.2.2 The Contractor shall NOT substitute any person or company listed in the Contractor's original Bid Proposal, except (1) when one of the listed subcontractor's bid is later determined by the Contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the Work, or (2) with the approval of the Owner for good cause shown by the Contractor.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms and conditions of the Contract Documents and Contract for Construction, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner and Designer. Each subcontract agreement shall preserve and protect the rights of the Owner and Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- 6.1.3 The General Contractor shall provide for coordination of the activities of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the General Contractor in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor and separate contractors until subsequently revised.
- 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10 and 11.
- 6.1.5 The General Contractor shall be responsible for scheduling the work of all contractors; the maintenance of the progress schedule for all prime contractors for this Project; and for the notification of the Designer of any changes in the progress schedule.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 The Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Designer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.
- 6.2.3 Costs caused by delays, by improperly timed activities, defective construction, or any other damages shall be borne by the party responsible therefor. The Owner shall not be liable nor responsible for any delays or damages to the Contractor caused by separate Contractors or the Designer.
- 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate Contractors as provided in Subparagraph 10.2.5.
- 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate Contractor shall be subject to the provisions of Paragraphs 4.2 and 4.4, provided the separate Contractor has reciprocal obligations.
- 6.2.6 The Owner and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.13.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.14, the Owner may clean up and allocate the cost among those responsible as the Designer determines to be just.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 CHANGES

- 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Designer; a Construction Change Directive requires agreement by the Owner and

Designer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Designer alone pursuant to Paragraph 7.4.

- 7.1.3 Changes in the Work shall be performed under applicable Provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.
- 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 7.1.5 Overhead and profit shall not exceed 15% of the value of labor and material for work performed by any contractor or subcontractor. If the work is performed by a subcontractor, the prime contractor's overhead and profit shall not exceed 5%.

7.2 CHANGE ORDERS

- 7.2.1 A Change Order is a written instrument prepared by the Designer and signed by the Owner, Contractor, and Designer, stating their agreement upon all of the following:
 - (1) a change in the Work;
 - (2) the amount of the adjustment in the Contract Sum, if any; and
 - (3) the extent of the adjustment in the Contract Time, if any.
- 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

- 7.3.1 A Construction Change Directive is a written order prepared by the Designer and signed by the Owner and Designer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (2) unit prices stated in the Contract Documents or subsequently agreed upon;
 - (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

- (4) as provided in Subparagraph 7.3.6.
- 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Designer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Designer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3(3), the Contractor shall keep and present, in such form as the Designer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:
- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - (2) costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - (4) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - (5) additional costs of supervision and field office personnel directly attributable to the change.
- 7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Designer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Designer for determination.
- 7.3.9 When the Owner and Contractor agree with the determination made by the Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

The Designer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 **TIME**

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- 8.1.3 The date of Substantial Completion is the date certified by the Designer in accordance with Paragraph 9.9.
- 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

- 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor and the Contractor's surety shall be liable for and shall pay the Owner such sums as shall be set forth in the Agreement between Owner and Contractor as liquidated damages each calendar day of delay until the Work is substantially complete.
- 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by the Contract for Construction to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Designer, the Contractor shall notify the Owner and Designer in writing not less than five days before commencing the Work.
- 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Designer, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidably casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation, or by other causes which

the Designer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Designer may determine.

- 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Subparagraph 4.2.8.
- 8.3.3 Should the Work be interrupted or hindered by the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to such interruption or hindrance but such interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.
- 8.3.4 Should the Work be delayed in whole by any act or acts of the Contractor, the Contractor shall not be entitled to an extension of time pursuant to Paragraph 4.2, nor shall such delay constitute a claim either for damages or for loss of anticipated profits by the Contractor. Should the Work be delayed in part by any act or acts of the Contractor and in part by any act or acts of the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to that portion of the delay for which the Contractor is not responsible, but such delay shall not constitute a claim either for damages or for loss of anticipated profits by the Contractor.
- 8.3.5 Should the Work be delayed, interrupted or hindered, in whole or in part, by any act or acts of any separate prime contractors, the Contractor shall be entitled to an extension of time pursuant to Subparagraph 4.2.8 in an amount equal to such delay, interruption or hindrance but such delay, interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Contractor shall submit to the Designer a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer may require. This Schedule of Values, unless objected to by the Designer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

- 9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Designer an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, supported by such data substantiating the Contractor's right to payment as the Owner or Designer may require, such as copies of requisitions from subcontractors and material suppliers and reflecting retainage if provided for elsewhere in the Contract Documents.

- 9.3.2 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.
- 9.3.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- 9.3.4 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- 9.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.
- 9.3.6 Provided an Application for Payment is received by the Designer not later than the tenth (10th) day of a month, the Owner shall make payment to the Contractor pursuant to a Certificate of Payment not later than the thirtieth (30th) day of the month.

9.4 **RETAINAGE**

To ensure proper performance of this Contract, Owner shall retain five percent (5%) of the amount of each approved Application for Payment until the project Work is 50% complete provided that the Contractor continues to perform satisfactorily and any non-conforming Work identified in writing prior to that date has been corrected by the Contractor and accepted by the Owner. If the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate retainage in the amount of 5% for each subsequent periodic Application for Payment until the Contractor's performance becomes satisfactory. The project shall be deemed fifty percent (50%) complete when 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. Following 50% completion of the project, the Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed 5%, in order to allow the Owner to retain 2 1/2% total retainage through the completion of the project. Within sixty (60) days after the submission of a final pay application, the Owner with written consent of the Surety shall release to the Contractor all retainage on payments held by the Owner if (1) the Owner receives a certificate of substantial completion from the architect, Designer or design consultant in charge of this Project, or (2) the Owner receives beneficial occupancy or use of the project. However, the Owner may retain sufficient funds to secure completion of the project or corrections to any Work. If the Owner retains funds, the amount retained shall not exceed two and one half

times the estimated cost of the Work to be completed or corrected. Any reduction in the amount of retainage on payments shall be with the consent of the Contractor's Surety. Retainer provisions contained in Contractor's subcontracts may not exceed the terms and conditions for retainage provided herein. Contractor is further required to satisfy the retainage provisions of N.C.G.S. §143-134.1(b2) with regard to subcontracts for early finishing trades (structural steel, piling, caisson, and demolition) and to coordinate the release of retainage for such trades from the retainage held by Owner from the Contractor pursuant to statute. Nothing herein shall prevent the Owner from withholding payment to the Contractor in addition to the amounts identified herein for unsatisfactory job progress, defective construction not remedied, disputed Work, or third party claims filed against the owner or reasonable evidence that a third party claim will be filed.

9.5 CERTIFICATES FOR PAYMENT

- 9.5.1 The Designer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Designer determines is properly due, or notify the Contractor and Owner in writing of the Designer's reasons for withholding certification in whole or in part as provided in Paragraph 9.6.1.
- 9.5.2 The Designer's certification for payment shall constitute a representation to the Owner, based on the Designer's inspections at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that the inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of his profession; and that to the best of his knowledge and in the professional opinion of the Designer, the Contractor has fulfilled the obligations of such plans, specifications, and contract. The Designer's certification for payment shall be signed and sealed by the Designer and presented to the Owner. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Designer. The issuance of a Certificate for Payment shall further constitute a representation by the Designer, that the Contractor is entitled to payment in the amount certified.

9.6 DECISIONS TO WITHHOLD CERTIFICATION

- 9.6.1 The Designer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Designer's opinion, the representations to the Owner required by Subparagraph 9.5.2 cannot be made. If the Designer is unable to certify payment in the amount of the Application, the Designer will notify the Contractor and Owner as provided in Subparagraph 9.5.1. If the Contractor and Designer cannot agree on a revised amount, the Designer will promptly issue a Certificate for Payment for the amount for which the Designer is able to make such representations to the Owner. The Designer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Designer's opinion to protect the Owner from loss due to:
- (1) defective Work not remedied;
 - (2) third party claims filed or reasonable evidence indicating probable filing of such claims;

- (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (5) damage to the Owner or another contractor;
- (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (7) persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7 PROGRESS PAYMENTS

9.7.1 After the Designer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Designer.

9.7.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.7.3 The Designer will furnish to a Subcontractor, upon request and if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Designer and Owner on account of portions of the Work done by such Subcontractor.

9.7.4 Neither the Owner nor Designer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.7.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.7.2, 9.7.3, and 9.7.4.

9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.8 FAILURE OF PAYMENT

The Contractor shall not stop the Work for the failure of the Designer to issue a Certificate of Payment, or the Owner to make timely payment.

9.9 SUBSTANTIAL COMPLETION

- 9.9.1 Substantial Completion is the stage in the progress of the Project when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, so the Owner can occupy or utilize the Work for its intended use.
- 9.9.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Designer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility for the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Designer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer. The Contractor shall then submit a request for another inspection by the Designer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Designer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.
- 9.9.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Designer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.10 PARTIAL OCCUPANCY OR USE

- 9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Designer as provided under Subparagraph 9.9.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Designer.
- 9.10.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Designer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

- 9.10.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.11 FINAL COMPLETION AND FINAL PAYMENT

- 9.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Designer will promptly make such inspections and, when the Designer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Designer will promptly issue a Final Certificate for Payment stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate is due and payable. The Designer's Final Certificate for Payment will constitute a further representation that the conditions listed in Subparagraph 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.
- 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract for Construction to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) if required by the Owner, other or additional data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances rising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 9.11.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Designer so confirms, the Owner shall, upon application by the Contractor and certification by the Designer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed and accepted is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Designer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 9.11.4 Acceptance of final payment by the Contractor, Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and construction of the Project.
- 10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (hereinafter PCB”) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Designer by phone and in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Designer.
- 10.1.3 The Contractor shall not be required to perform without consent of Owner and Designer any Work relating to asbestos or PCB.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- (1) employees on the working on the Project and other persons who may be affected thereby;
 - (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.
- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including erecting necessary barricades or other temporary walls and structures as required during the period of construction, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

- 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Clauses 10.2.1(2) and (3), caused in whole or in part by the Contractor, Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1(2) and (3), except damage or loss attributable to acts or omissions of the Owner or Designer and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3. All costs to repair any damage and loss to property referred to in Clauses 10.2.1(2) and (3), shall be the sole responsibility of the Contractor and such repair or replacement shall be performed expeditiously without cost to the Owner.
- 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent, required under Paragraph 3.8, unless otherwise designated by the Contractor in writing to the Owner and Designer.
- 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 10.2.8 Existing utilities have been identified and described in the Contract Documents insofar as information is reasonably available, however, it is the Contractor's responsibility to verify such information and to preserve all existing utilities whether shown in the Contract Documents or not. If utility conflicts are encountered by the Contractor during construction, Contractor shall file sufficient notice to the owners of the utilities so that they may make the necessary adjustments, as well as the Designer.

10.3 EMERGENCIES

In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Subparagraphs 4.2.7, 4.2.8 and Article 7.

ARTICLE 11 **UNCOVERING AND CORRECTION OF WORK**

11.1 UNCOVERING OF WORK

- 11.1.1 If a portion of the Work is covered contrary to the Designer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Designer, be uncovered for the Designer's observation and be replaced at the Contractor's sole expense without change in the Contract Time.
- 11.1.2 If a portion of the Work has been covered which the Designer has not specifically requested to observe prior to its being covered, the Designer may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner or separate contractor shall be responsible for payment of such costs. If such Work is in accordance with the Contract Documents, the Owner, by appropriate Change Order, shall be charged with the cost of uncovering and replacement.

11.2 CORRECTION OF WORK

- 11.2.1 The Contractor shall promptly correct Work rejected by the Designer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear any and all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Designer's services and expenses made necessary thereby.
- 11.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.10.1 or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 11.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 11.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 11.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.2. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Designer, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Designer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 11.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 11.2.6 Nothing contained in this Paragraph 11.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 11.2.2, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

11.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 **MISCELLANEOUS PROVISIONS**

- 12.1 **GOVERNING LAW.** This Contract for Construction shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract, shall be brought in the General Court of Justice in the County of Onslow and the State of North Carolina, after exhausting the dispute resolution procedure set forth in Paragraph 4.4, herein.
- 12.2 **SUCCESSORS AND ASSIGNS.** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- 12.3 **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the business address listed in the Contract for Construction.
- 12.4 **RIGHTS AND REMEDIES.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 12.5 **WAIVER OF A RIGHTS.** No action or failure to act by the Owner or Designer shall constitute an obligation or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- 12.6 **COMPLIANCE WITH LAWS.** Contractor represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this contract will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

12.7 TESTS AND INSPECTIONS

- 12.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear the costs of tests, inspections, and approvals. Should any retest be necessary due to the failure of the Work to pass the first test or for any other reason

whatsoever, the Contractor shall bear all related costs of retests, inspections or re-inspections, and approvals. The Contractor shall give the Designer timely notice of when and where tests and inspections are to be made so the Designer may observe such procedures.

- 12.7.2 If the Designer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Subparagraph 12.7.1, the Designer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Designer of when and where tests and inspections are to be made so the Designer may observe such procedures.
- 12.7.3 If such procedures for testing, inspection or approval under Subparagraphs 12.7.1 and 12.7.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Designer's services and expenses.
- 12.7.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Designer.
- 12.7.5 If the Designer is required by the Contract Documents to observe tests, inspections, or approvals, the Designer will do so promptly and, where practicable, at the normal place of testing.
- 12.7.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

12.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

As between the Owner and Contractor:

- (1) Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- (2) Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the Final Certificate for Payment; and
- (3) After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.4, the date of any correction of the Work or failure

to correct the Work by the Contractor under Paragraph 11.2 or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE CONTRACTOR

13.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 180 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- (1) issuance of an order of a court or other public authority having jurisdiction;
- (2) an act of government, such as a declaration of national emergency, making material unavailable;
- (3) because the Designer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 9.6.

13.1.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days written notice to the Owner and Designer, terminate the Contract and recover from the Owner payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, not including overhead, profit, or damages.

13.2 TERMINATION BY THE OWNER FOR CAUSE

13.2.1 The Owner may terminate the Contract if the Contractor:

- (1) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (2) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- (3) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- (4) otherwise is in substantial breach of a provision of the Contract Documents.

13.2.2 When any of the above reasons exist, the Owner, upon certification by the Designer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of surety:

- (1) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and

- (2) finish the Work by whatever reasonable method the Owner may deem expedient.
- 13.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 13.2.1, the Contractor shall not be entitled to receive further payment.
- 13.2.4 If the unpaid balance of the Contract Sum does not cover the cost of finishing the Work, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by the Designer, upon application, and this obligation for payment shall survive termination of the Contract.

13.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

13.4 BANKRUPTCY

- 13.4.1 The bankruptcy of the Contractor shall not terminate this Contract until such time that it is specifically rejected by the Trustee or Contractor in bankruptcy. During the election period the Contractor has to assume or reject this Contract, the Contractor shall continue to perform its Work under the Contract.
- 13.4.2 In the event the Contractor in Bankruptcy assumes the Contract, the Contractor shall apply progress payments to all of its unpaid obligations on this project before using any of these monies for either administrative expenses of the bankruptcy or as general assets of the estate.

ARTICLE 14 **SECURITY OF NON-PUBLIC RECORDS**

14.1 SECURITY OF NON-PUBLIC RECORDS

Pursuant to N.C.G.S. § 132-1.7 entitled, “Sensitive Public Security Information”, public records, as defined in N.C.G.S. § 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Therefore, all information provided, received, gathered or obtained by Contractor containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities shall be held confidential and shall be used by the Contractor only for the purpose of fulfilling the terms of this Agreement. All plans and drawings shall be returned to the County, or otherwise destroyed at the direction of the County, upon termination or expiration of this Agreement. Any breach of this Paragraph by Contractor shall result in the immediate termination of this Contract.

SAMPLE – DO NOT FILL IN

NORTH CAROLINA

**CONTRACT for CONSTRUCTION or Repair
BETWEEN OWNER AND CONTRACTOR**

ONSLOW COUNTY

This Contract for Construction is made, and entered into this the [] day of [], 20[], by and between the **COUNTY OF ONSLOW**, a political subdivision of the State of North Carolina, (hereinafter “**OWNER**”), and [], (hereinafter “**CONTRACTOR**”), whose principal place of business is: [].

The Project:

Name and Location:

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1. **CONTRACT DOCUMENTS.** The “Contract Documents” consist of this Contract for Construction, General Conditions, Bid Proposal Package No.100-23C entitled Roof Repair/Replacement – Building location, Contractor Bid Proposal dated [], Addenda issued prior to execution of this Agreement and listed below, and any Modifications executed by the parties after execution of this Contract. The Contract Documents form the Contract and are fully a part of the Contract as if attached to this Contract or repeated herein. The Contract represents the entire and integrated agreement between the Owner and Contractor hereto and supersedes any and all prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents and other than Modifications, appears in Article 18, herein.

Owner and Contractor agree that should the Contractor utilize the services of a subcontractor for any Work under this Contract, the subcontractor shall be required to comply with all terms and conditions of this Contract and any and all Contract Documents entered into between the Owner and Contractor and any of its contractors or subcontractors shall so require of their subcontractors.

2. **WORK.** Contractor shall execute all of the Work described collectively in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.
3. **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION.**
 - 3.1 This Contract shall commence on the date first written above (hereinafter “Commencement Date”). The Contractor shall notify the Owner in writing not less than five (5) days before commencing the Work.
 - 3.2 The Contractor shall achieve Substantial Completion of the entire Work no later than the time established in the Contract Documents; subject to adjustments of the Contract Time as provided in the Contract Documents. In view of the difficulty of estimating damages to the Owner by reason of the failure of the Contractor to complete the work herein

proposed within the time limit herein proposed, or within such further time as same may be extended, as provided for, proposed, Owner shall be and hereby is authorized to deduct and retain out of the moneys which may be due or become due to Contractor the sum of Two Hundred and Fifty Dollars and No Cents (\$250.00) per day for each and every calendar day that the work may be incomplete beyond the time limit fixed for its completion, or as same may have been extended, which sum per day is hereby agreed upon, fixed and determined by the parties hereto as the ascertained and liquidated damages that the Owner will suffer by reason of such default. The above sum shall be held to include the additional expense to the Owner for loss of interest or investment, for the employment of architects, engineers, inspectors, and other employees, together with their expenses, and all other damages to the Owner by reason of such delay.

4. CONTRACT SUM AND PAYMENT

4.1 Contractor shall receive from Owner a sum not to exceed _____ Dollars (\$ _____), as full compensation for the provision of construction services provided under this Contract, subject to additions and deductions as provided in the Contract Documents. Owner agrees to pay for services, satisfactorily performed, in accordance with the Contract Documents. Unless otherwise specified, Contractor shall submit an Application for Payment in the manner described in Article 9 of the General Conditions. Payment will be processed promptly upon receipt and approval of the Application by Owner.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

4.3 Unit prices, if any, are as follows:

5. **PROGRESS PAYMENTS.** Based upon Applications for Payment submitted to the Designer by the Contractor and Certificates for Payment issued by the Designer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in Paragraph 9.3 of the General Conditions.
6. **FINAL PAYMENT.** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor and all requirements imposed by Paragraphs 9.3 and 9.11 of the General Conditions have been satisfied except for those requirements set forth in Paragraphs 11.2 and 11.3 of the General Conditions and any other requirements which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Designer; such final payment shall be made by the Owner not more than 30 days after the issuance of the Designer's final Certificate for Payment.
7. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless the Owner and its officials, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to fees and charges of engineers, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this Contract or the actions of the Contractor or its officials, employees, or contractors under this Contract or under the contracts entered into by the Contractor in connection with the work to be performed and as further set forth in Paragraph 3.17 of the General Conditions.
8. **NOTICES.** All notices which may be required by this Contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

FOR: **COUNTY OF ONSLOW**
Attn: Richard Hoffman
234 NW Corridor Blvd.
Jacksonville, NC 28540

FOR: **CONTRACTOR**

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9. **NON-DISCRIMINATION.** Contractor shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their 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 any non-discrimination provision of federal, state, or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by Owner, and Contractor may be declared ineligible for further Owner contracts.
10. **HEALTH AND SAFETY.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing services under this Contract.
11. **NON-ASSIGNMENT.** This Contract is not assignable by either party, by operation of law or otherwise.

12. MODIFICATION. This Contract may be modified only by a written agreement executed by both parties hereto.
13. TERMINATION OR SUSPENSION. This Contract may be terminated by the Owner or the Contractor as provided in Article 13 of the General Conditions. The Work may be suspended by the Owner as provided in Paragraph 13.3 of the General Conditions.
14. E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.
15. IRAN DIVESTMENT ACT. Contractor certifies that they are not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) It is each vendor's or contractor's responsibility to monitor its compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL. The vendor or contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
17. INSURANCE AND BONDS
 - 17.1 CONTRACTOR'S LIABILITY INSURANCE. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in North Carolina such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - (1) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed;
 - (2) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
 - (4) claims for damages insured by usual personal injury liability coverage which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or by another person;
 - (5) claims for damages, other than to the Work itself, because of injury to or

destruction of tangible property, including loss of use resulting therefrom;

(6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

(7) claims involving contractual liability insurance applicable to the Contractor's obligations under Article 3 of the General Conditions.

17.2 The insurance required as stated above shall be written for not less than the limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

17.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. The Certificates and the insurance policies required by this Article 17 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment as required by Subparagraph 9.11.2 of the General Conditions. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

17.4 BUILDER'S ALL RISK COVERAGE. Unless otherwise provided the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in North Carolina, Builder's All Risk Coverage, in an amount equal to 100% of the Contract Sum under this Agreement.

17.5 PERFORMANCE BOND AND PAYMENT BOND. The Contractor shall furnish bonds covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or required by North Carolina law.

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

18. ENUMERATION OF CONTRACT DOCUMENTS

18.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(1) This executed Contract for Construction between Owner and Contractor.

(2) The General Conditions of the Contract for Construction. Where reference is made in this Contract to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

(3) The Supplementary and other Conditions of the Contract are those contained in the Project

Manual dated [].

- (4) The Specifications are those contained in the Project Manual dated as in Paragraph 18.1(3) above, and are as follows:

Section	Title	Pages

- (5) The Drawings are as follows, and are dated [], unless a different date is shown below:

Number	Title	Date
--------	-------	------

- (6) The Addenda, if any, are as follows:

Addendum No. [] Dated: [] Addendum No. [] Dated: []

Addendum No. [] Dated: [] Addendum No. [] Dated: []

- (7) Other documents, if any, forming part of the Contract Documents are as follows:

Invitation to Bid
Instruction to Bidders

19. GOOD STANDING WITH COUNTY. CONTRACTOR certifies that it is not delinquent on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY. CONTRACTOR covenants and agrees to remain current on any taxes, fees, or other debt owed by CONTRACTOR to COUNTY during the Term of this Contract
20. This Contract and the Contract Documents described herein set forth the entire agreement between the parties and supersedes any and all other agreements on this subject between the parties.
21. This Contract, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Contract may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Contract by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Designer for use in the administration of the Contract, and the remainder to the Owner.

COUNTY OF ONSLOW

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

By: _____

Date: _____

Finance Officer

CONTRACTOR

ATTEST:

By: _____

Secretary

Print Name/Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____
personally appeared before me this day and acknowledged that he is _____ of
, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the
foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by
as its _____.

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

Notary Public

(SEAL)

My commission expires: _____

ATTACHMENT 2

Federal Contracting Requirements

This **Attachment 2** is incorporated into the Service Contract between the County and the Contractor. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or “Company” or “Contractor” or “Provider” shall be deemed to mean the Contractor.

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This **Attachment 2** identifies the federal requirements that may be applicable to this contract. The Contractor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

Drug Free Workplace Requirements

Drug-free workplace required in accordance with Drug Free Workplace Act of 1988 (Pub 100-690, Title V, Subtitle D). All Contractor entering into federal funded contracts over \$100,000 must comply with federal drug free workplace requirements as “Drug Free Workplace Act of 1988.”

Contractor Compliance

The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirement for federal awards.

Conflict of Interest

The Contractor must disclose in writing any potential conflict of interest to the County of Onslow or pass through entity in accordance with federal policy.

Mandatory Disclosures

The Contractor must disclose in writing all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Energy Conservation

The Contractor and subcontractors agree to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

Federal Water Pollution Control Act

For contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include those requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

Clean Air Act

For contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act as amended (33 U.S.C. § 1251-1387).

The Contractor agrees to report any violation to the County immediately upon discovery. The Contractor understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

Access to Records and Reports (Applies to all contracts regardless of the contract amount)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the County, the State of North Carolina, the FEMA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

All Contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

No Obligation by Federal Government (Applies to all contracts regardless of the contract amount)

The County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts (Applies to all contracts regardless of the contract amount)

The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Changes (Applies to all contracts regardless of the contract amount)

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor's failure to do so shall constitute a material breach of the contract.

Termination (Applies to all contacts over \$10,000)

Termination Without Cause. The County may immediately terminate this Agreement at any time without cause by giving written notice to the Contractor.

Termination for Default by Either Party. By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

Additional Grounds for Default Termination by the County. By giving written notice to the Contractor, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

The Contractor takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Contractor shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

No Effect on Taxes, Fees, Charges, or Reports. Any termination of the Agreement shall not relieve the Contractor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor from any claim for damages previously accrued or then accruing against the Contractor.

Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, the Contractor shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new Contractor access to the systems, software, infrastructure, or processes of the

Contractor that are necessary to migrate the Services to a new contractor; and (d) refund to the County all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that the County disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

Authority to Terminate. The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

Audit. During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor necessary to evaluate Contractor's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse the County for the cost of the audit.

Remedies (Applies to all contracts above the simplified acquisition threshold (currently \$250,000))

Liquidated Damages: The County and the Contractor acknowledge and agree that the County may incur costs if the Contractor fails to meet the delivery times set forth in the Request for Proposal for the Products and Services. The parties further acknowledge and agree that: (a) the County may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that the County might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay liquidated damages at the rates set forth in the Request for Proposal (if applicable). The parties agree that the liquidated damages set forth in the Request for Proposal shall be the County's exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor to meet such delivery times but shall not be the remedy for the cost to cover or other direct damages.

Right to Cover. If the Contractor fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from the County of such failure, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor is again able to resume performance under this Agreement; and

Deduct any and all reasonable expenses incurred by the County in obtaining or performing the Services from any money then due or to become due to the Contractor, and, should the County's reasonable cost of obtaining or performing the services exceed the amount due to the Contractor, collect the difference from the Contractor.

Right to Withhold Payment. If the Contractor materially breaches any provision of this Agreement, the County shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

Specific Performance and Injunctive Relief. The Contractor agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor hereby agrees that the County may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction within the State of North Carolina. The Contractor further consents to the County seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor breaches the Agreement in any material respect.

Setoff. Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the

payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

Other Remedies. Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

Debarment and Suspension (Applies to all contracts and subcontracts regardless of the contract amount)

A contract award (see C.F.R. 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor shall certify compliance.

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor is required to comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies that:

This certification is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Equal Employment Opportunity (Applies to all federally assisted CONSTRUCTION contracts regardless of the contract amount)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his

books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or contractor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis-Bacon Requirements (Applies to all CONSTRUCTION contracts above \$2,000. It does NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance (PA) Program or HMGP)

If applicable to this contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

1. *Minimum Wages.*

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding.

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic included the amount of any costs reasonably anticipated in

providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Option Form WH-347 is available for this purpose from the Wage and Hour Division website at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) The payroll for the payroll period contains the information required to be provided under 29 C.F.R. §5.5(a)(3)(ii), the appropriate information is being maintained under 29 C.F.R. §5.5 (a)(3)(i), and that such information is correct and complete;
- (2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 C.F.R. Part 3;
- (3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of optional form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (express in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits; apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to, and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

7. Contract Termination: Debarment

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Copeland "Anti-Kickback" Act (Applies to all CONSTRUCTION contracts above \$2,000).

Contractor. The Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 C.F.R. Part 3, *as may be applicable*, which are incorporated by reference into this contract.

Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractors with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provide in 29 C.F.R. §5.12."

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such

workweek unless such laborer or mechanic receives compensation at a rate not less than one and one half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontractors.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Rights to Inventions Made Under a Contract or Agreement

Patent and Rights in Data

Applies only to Contracts Involving Experimental, Developmental, or Research Work.

Rights in Data – The following requirements apply to each contract involving experimental, developmental, or research work:

The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the federal government, until such time as the federal government may have either released or approved the release of such data to the public; this restriction on publication; however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the federal government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “federal government purposes,” any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence “for federal government purposes” means use only for the direct purposes of the federal government. Without the copyright owner’s consent, the federal government may not extend its federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor using federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the federal government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with federal assistance.

Unless prohibited by state law, upon request by the federal government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.

Nothing contained in this clause regarding rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.

Data developed by the Purchaser or Contractor and financed entirely without the use of federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Unless the federal government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e.: a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.) the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due to the federal government as described in U.S. Department of Commerce regulation, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Patent Rights – The following requirements apply to each contract involving experimental, developmental, or research work:

General – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the federal government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due to the federal government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts,

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

Procurement of Recovered Materials (Applies to procurement of both prime and subcontracts)

Contractor and subcontractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R. Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 C.F.R. Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item(s) during the fiscal year; or
2. The Contractor has procured \$10,000 or more of a designated item using federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the Contractor can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA – designated items, is available at EPA’s Comprehensive Procurement Guidelines website: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

Safeguarding Personal Identifiable Information

Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable, federal, state, and/or local laws regarding privacy and obligations of confidentiality.

DHS Seal, Logo, and Flags

The Contractor shall not use the DHS seals(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

Domestic Preference Procurement Clause

Contractor and any of its subcontractors must comply with C.F.R. 200.322 which states that as appropriate, and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

Certification Regarding Lobbying

(Applies to all contracts over \$100,000)

“Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended)

This certification requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for an award of \$100,000 or more shall file the required certification required by 49 C.F.R. part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobby Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the County.

The offeror, by signing its offer, hereby certifies, to the best of his or her knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Printed Name of Contractor’s Authorized Official

Date: _____

Title of Authorized Official