

OWNER-CONTRACTOR AGREEMENT

SCHOOL NAME: **Southport Elementary**

THIS AGREEMENT, made this 25th day of March, Two Thousand and Twenty-One by and between County of Brunswick, North Carolina (herein referred to as the "Owner"), whose mailing address is 30 Government Center Dr., NE, Bolivia, NC 28422 and AAR of North Carolina, Inc., (herein referred to as the "Contractor"), whose mailing address is 655 Peddycord Rd., Kernersville, NC 27284. Correspondence, submittals, and notices relating to or required under this Contract shall be sent in writing to the above addresses; unless either party is notified in writing by the other, of a change in address.

WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the roof replacement at Southport Elementary (hereinafter referred to as the "Project" or the "Work"); and

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

Article 1

DEFINITIONS

- 1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.
- 1.2 The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

Article 2

STATEMENT OF THE WORK

- 2.1 The Project is the Work identified in the plans and specifications prepared by REI Engineers dated February 12, 2021 for Brunswick County Board of Education, Southport Elementary Roof Replacement, including the following addenda:

Addendum 1 dated March 5, 2021

A listing of the plans and specifications included in the Contract Documents is attached as Exhibit A.

2.2 The Parties agree that the Project shall include the following alternates:

Alternate No. 1: Provide roof replacement as specified on Roof Area F - \$216,750

2.3 The Parties agree to the following modifications to the Project's plans and specifications, including the noted value engineering items:

None

2.4 The Parties agree that the following allowances are included in the Contract Sum in Section 5.1 below:

Contingency Allowance \$25,000.00

Repair 5,000 SF of Corroded Steel Deck with Coating

Repair 500 SF of Steel Deck with Steel Plates

Repair 200 SF of deteriorated steel deck with new steel deck

Replace 600 BF of deteriorated wood blocking

Replace 200 SF of deteriorated plywood

Provide 100 LF of additional manufacturer's walk pad material

2.5 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.6 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3

DESIGN CONSULTANT

3.1 The Design Consultant (as defined in the General Conditions) shall be REI Engineers whose address is 1927 JN Pease Place, Ste 201, Charlotte, NC 28262, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by

designating a different person or organization to act as its Design Consultant and so advising the Contractor in writing, at which time the person or organization so designated shall be the Design Consultant for purposes of this Contract.

Article 4

TIME OF COMMENCEMENT AND COMPLETION

- 4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.
- 4.2 Time is of the essence. The Contractor shall achieve Final Completion, as defined in the General Conditions on or before the date established for Final Completion in the Supplemental Conditions.
- 4.3 The Supplemental Conditions contains certain specific dates that shall be adhered to and are the last acceptable dates unless modified in writing by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under 7.2 DELAYS AND EXTENSIONS OF TIME.
- 4.4 Should the Contractor fail to complete the Work on or before the dates stipulated for Substantial Completion and/or Final Completion, or such later date as may result from an extension of time granted by the Owner, he shall pay the Owner, as liquidated damages the sums set forth in the General and Supplemental Conditions.

Article 5

CONTRACT SUM

- 5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the time and in the installments hereinafter specified, the sum of Eight hundred sixty-four thousand, seven hundred fifty Dollars (\$864,750) herein referred to as the "Contract Sum". This amount includes the base bid and the Alternates in Section 2.2
- 5.2 The Contract Sum includes the value engineering items and other contract modifications noted in Section 2.3 above that total \$0.00.
- 5.3 Unit Prices are established as follows for the Project:

Unit Price No. 1	Steel roof deck repair and securement- coating	\$3.00SF
Unit Price No. 2	Steel Roof Deck Repair and securement – steel plates	\$6.50SF

Unit Price No. 3	Deteriorated Steel Deck with New Steel Deck	\$7.00SF
Unit Price No. 4	Rough Carpentry- Blocking	\$4.00BF
Unit Price No. 5	Rough Carpentry - Plywood	\$4.00SF
Unit Price No. 6	Additional manufacturer's walk pa material	\$12.00LF

Article 6

PROGRESS PAYMENTS

- 6.1 The Contractor hereby agrees that on or about the First day of the month for every month during the performance of the Work he will deliver to the Owner's Project Manager an Application for Payment in accordance with the provisions of Article 8 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions. Payments due and unpaid under the Contract Documents shall not bear interest.

Article 7

OTHER REQUIREMENTS

- 7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.
- 7.2 The Owner shall furnish to the Contractor one **(1)** set of drawings and one **(1)** set of specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications may be obtained by the Contractor by paying the Owner for the costs of reproduction, handling and mailing.
- 7.3 The Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's) per N.C. Gen. Stat. 143-128.2, and as described in the construction documents.
- 7.4 The General Conditions, Supplemental Conditions and the plans and specifications, including any addenda, are incorporated herein by reference.
- 7.5 This Agreement, 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 Agreement 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 Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

IN WITNESS WHEREOF, County of Brunswick, North Carolina (hereinbefore called the "Owner") has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by its Chairperson and Secretary, and AAR of North Carolina, Inc. (here in before called "Contractor") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

COUNTY OF BRUNSWICK, NORTH CAROLINA

APPROVED AS TO FORM

Bryan W. BattonBryan W. Batton, Asst. County Attorney
Brunswick County, NC

_____(Seal)

Chairman, Board of Commissioners

ATTEST:

_____(Seal)

Clerk to the Board of Commissioners

[Seal]

This contract was approved by the Board on the 3rd day of May, 2021.**AAR of North Carolina, Inc.**By: Brad KurthBrad Kurth (Print Name), Vice-President

ATTEST:

Michelle Siod

Corporate Secretary

[Corporate Seal]

This Instrument Has Been Pre-audited In The Manner Required By The School Budget And Fiscal Control Act	This Instrument Has Been Pre-audited In The Manner Required By The Local Government Budget And Fiscal Control Act
<u>Freyja Cahill</u>	<u>Julie A. Miller</u>
Freyja Cahill, Finance Officer Brunswick County Schools	Julie A. Miller, Director Of Fiscal Operations, County of Brunswick, North Carolina

4.9003.696.529.336.838.00

SECTION GC
GENERAL CONDITIONS
OF THE
CONTRACT FOR CONSTRUCTION
FOR ROOFING PROJECTS

TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
 2. OWNER
 3. CONTRACTOR
 4. SUBCONTRACTORS
 5. WORK BY OWNER OR BY SEPARATE CONTRACTORS
 6. MISCELLANEOUS PROVISIONS
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- APPENDIX A – Contractor's Sales Tax Report
APPENDIX B-1 – Change Proposal Form (Time & Materials or Unit Price)
APPENDIX B-2 – Change Proposal Form (Fixed Price)

ARTICLE 1

CONTRACT DOCUMENTS

1.1 GENERAL

- 1.1.1 The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order issued pursuant to the provisions of Article 10, (3) a written interpretation issued by the Design Consultant, or (4) a written order for a minor change in the Work issued pursuant to this contract.
- 1.1.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- 1.1.3 All Drawings, Specifications and copies thereof furnished by the Design Consultant are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project.
- 1.1.4 The Contractor will be furnished with one set of drawings and specifications at no cost. Additional copies may be purchased.

END OF ARTICLE 1

ARTICLE 2

OWNER

2.1 INFORMATION, SERVICES AND RIGHTS OF THE OWNER

- 2.1.1 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
- 2.1.2 The Owner shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout contract performance and is not limited to regular working hours.
- 2.1.3 The Owner will have authority to require special inspection or testing of the work whether or not such Work is then fabricated, installed, or completed. However, neither the Owner's authority to act under Subparagraph 2.2.4, nor any decision made by the Owner in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.1.4 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Design Consultant, to discuss such matters as procedures, progress, problems, and scheduling.
- 2.1.5 The Owner and Design Consultant shall not be responsible or liable to Contractor for the acts, errors or omission of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

- 2.1.6 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid unreasonable delay in the orderly progress of the Work.
- 2.1.7 The parties acknowledge that the Owner may perform all or part of its obligations pursuant to this Agreement through the Superintendent or his designee.
- 2.1.8 The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.
- 2.2 OWNER'S RIGHT TO STOP OR TO SUSPEND THE WORK
- 2.2.1 If the Contractor fails to correct defective Work or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by a written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.
- 2.2.2 The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.
- 2.2.3 If the performance of all or any part of the Work (including the work of the Contractor and its subcontractors) is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner or the Design Consultant in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim shall be made under this Subparagraph for any suspension, delay, or interruption pursuant to Subparagraph 2.3.1, or for which claim is provided or excluded under any other provision of this Contract. No claim under this Subparagraph shall be allowed on behalf of the Contractor or its subcontractors, unless within 10 days after the act or failure to act involved, and for continuing or ongoing acts or failures to act within 10 days of the first day of the act or failure to act the Contractor submits to the Owner a written statement setting forth, as fully as then practicable, the extent of such claim, and unless the claim is asserted in writing within 20 days after the termination of such suspension, delay, or interruption. For continuing or ongoing acts or failures to act, the Contractor shall update its written statement every 15 days until the suspension, delay or interruption is terminated. The Contractor shall waive any and all claims not filed in strict conformance with this paragraph. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.
- 2.2.4 In the event of a suspension of work or delay or interruption of work, the Contractor will and will cause his subcontractors to protect carefully his, and their, materials and work against damage or injury from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.
- 2.2.5 No claim by the Contractor shall be allowed if asserted after final payment under this Contract or if it is not asserted in strict conformance with Subparagraph 2.2.
- 2.3 OWNER'S RIGHT TO CARRY OUT THE WORK
- 2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within ten days after the date written notice is mailed by the Owner to commence and continue remedy of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the Owner may select, including the use of a new contractor. In such case the Owner shall issue a Change Order deducting from the payments then or thereafter due the Contractor the cost of correcting such

deficiencies, including compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Design Consultant. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. Notwithstanding the Owner's right to carry out a portion of the work, warranty, maintenance and protection of the work remains the Contractor's responsibility. Further, the provisions of this paragraph do not affect the Owner's right to require the correction of defective or non-conforming work in accordance with this contract.

END OF ARTICLE 2

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

- 3.1.1 This entire Contract is not one of agency by the Contractor for Owner but one in which Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS

- 3.2.1 Before placing his proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. If the Contractor has reported in writing an error, inconsistency or omission, has promptly stopped the affected work until otherwise instructed, and has otherwise followed the instructions of the Owner, the Contractor shall not be liable to the Owner or the Design Consultant for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.
- 3.2.2 All designs, drawings, specifications, design calculations, notes and other works provided for this contract are the sole property of the Owner and may not be used on any other design or construction project. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project, shall be at the full risk of such person or entity

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and all statutory or legal requirements. This requirement applies continuously throughout contract performance and is not limited to regular working hours.
- 3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub- subcontractors, suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.
- 3.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the Owner or the Design Consultant in their

administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Paragraph 6.5 by persons other than the Contractor.

3.3.4 The Contractor shall verify all grades, lines, levels and dimensions as indicated and shown on the plans and specifications prior to beginning the work and shall immediately report in writing any errors or inconsistencies to the Design Consultant before commencing the work.

3.3.5 Contractor shall protect existing surfaces, finishes and adjacent facilities from damage during construction. Any damage shall be repaired by Contractor at his own expense prior to completion of the Project. Prior to construction start, Contractor and Owner shall perform an inspection to record existing conditions, damaged and undamaged.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final payment will not be made until the Work is so completed.

3.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner may, by notice in writing, require the Contractor to remove from the work any employee the Owner deems incompetent, careless or otherwise objectionable. All agents and workers of the contractor and its subcontractors shall wear identification badges provided by the Contractor at all times they are on the Owner's property. The identification badges shall at a minimum display the company name, telephone number and employee's picture and name and must be worn in plain view at all times. Additionally, once school staff occupies the building, all contractors and their respective subcontractors shall be required to sign in and out of the visitor's log each day they are performing services. They must also wear a visitor's pass which will indicate to staff that they have met this requirement which applies to anyone performing services anywhere on the school property.

3.4.3 The Contractor shall be responsible for ensuring that the work is completed in a skillful and workmanlike manner.

3.4.4 All equipment, apparatus and/or devices of any kind to be incorporated into the work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the work shall be entirely satisfactory to the Owner and the Design Consultant as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus and/or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, etc. or put in good working order satisfactory to the Owner and Design Consultant without additional cost to the Owner.

3.4.5 All materials and Work shall meet North Carolina Building Codes. Should there be any discrepancies between design and code, the more stringent requirement shall apply. All materials shall comply with standards (or approved products) as set by the specifications. Unless otherwise specified, NO ASBESTOS CONTAINING MATERIALS SHALL BE INSTALLED. BY DEFINITION, INSTALLATION OF ASBESTOS MATERIALS WILL BE CONSIDERED CONTRACTOR'S NEGLIGENCE AND THE CONTRACTOR SHALL PERFORM ALL NECESSARY WORK TO REMOVE THE ASBESTOS AND RESTORE THE SITE TO THE 'PRE-CONTRACT' CONDITION. Contractor shall assume all facilities built prior to 1979 have lead-based paint. Any paint removal shall be in accordance with OSHA standard pertaining to lead (29 CFR 1915.1025).

3.5 WARRANTY

- 3.5.1 The Contractor warrants to the Owner and the Design Consultant that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Design Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 11.
- 3.5.2 The warranties set forth in this Paragraph 3.5 and elsewhere in the Contract Documents shall survive Final Completion of the Work.
- 3.5.3 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract documents, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice with reasonable promptness after discovery of the condition. For items, which remain incomplete or uncorrected on the date of Substantial Completion, the one-year warranty shall begin on the date of Final Completion of the Work. If the Contract Documents include painting work, the one year warranty period in this section shall be extended to two years.
- 3.5.4 If at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.
- 3.5.5 The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article 3, Article 11 or elsewhere in the Contract Documents.

3.6 TAXES

- 3.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.
- 3.6.2 The Contractor shall provide a completed Contractor's Sales Tax Report (attached hereto as Appendix A) with each application for payment for all items provided by the Contractor or any Sub-Contractors and incorporated into this project. The Contractor shall account for at least 2% of the total contract amount in sales tax or provide justification satisfactory to the Owner that the actual sales tax paid is less than 2%. In the event the Contractor does not provide adequate justification to support the shortfall, the Contractor shall pay the Owner the difference between the amount accounted for and the 2% minimum. Such compensation shall not be deemed a penalty, but reimbursement of funds the Owner would otherwise be entitled to recover from the State.
- 3.6.3 Sales and Use Tax. Contractor shall be responsible for complying with any applicable sales and use tax obligations imposed by Chapter 105, Article 5 of the North Carolina General Statutes. Where Contractor has been contracted with to oversee "new construction" or "reconstruction" as defined in G.S. 105-164.4H, Contractor shall be responsible for issuing and maintaining an Affidavit of Capital Improvement.

3.7 PERMITS, FEES AND NOTICES

- 3.7.1 The Contractor shall secure and pay for the building permit and for all other permits and governmental fees necessary for the proper execution and completion of the Work. Costs for service and final service connections by public utilities will be reimbursed to the Contractor by the Owner. The Owner shall not be responsible for the cost of any temporary utilities.
- 3.7.2 Each Contractor will pay for his own license and reinspection fees for his part of the work necessary for the proper execution and completion of the work.
- 3.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.8 PROGRESS SCHEDULE

- 3.8.1 The Contractor shall prepare and submit to the Owner for the Owner's review and approval an estimated progress schedule for the Work. This schedule shall be in accordance with any general requirements included in the specifications for this project.

3.9 RESPONSIBILITY FOR COMPLETION

- 3.9.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement.
- 3.9.2 If the actions taken by the Contractor are not satisfactory, the Design Consultant or Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

- 3.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.11.1 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data, Manuals and Samples required by the Contract Documents.
- 3.11.2 Do not order materials until receipt of written approval. Furnish materials equal in every respect to approved samples.
- 3.11.3 By approving and submitting Shop Drawings, Product Data, Manuals and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to Shop Drawings, which may be issued by the Design Consultant.

- 3.11.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Consultant's review of Shop Drawings, Product Data, Samples or Manuals under unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submission and the Design Consultant has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or Manuals by the Design Consultant's review thereof.
- 3.11.5 The Contractor shall make corrections required by the Design Consultant and shall resubmit the required number of corrected copies of Shop Drawings or new Product Data or Samples. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Design Consultant on previous submittals. Resubmittals necessitated by required corrections due to Contractor's errors or omissions shall not be cause for extension of Contract Time, and any costs associated with the processing of these resubmittals shall be paid by the Contractor.
- 3.11.6 No portion of the Work requiring submission of Shop Drawings, Product Data, Samples or Manuals shall be commenced until the submittal has been approved by the Design Consultant. All such portions of the Work shall be in accordance with approved submittals.

3.12 EQUAL PRODUCTS AND SUBSTITUTIONS

- 3.12.1 All materials, supplies and articles furnished under this Contract shall, whenever specified and otherwise practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise specifically provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor, in such cases, may with Owner approval, use any brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which in the judgment of the Design Consultant is equal to that specified. An item may be considered equal to the item so named or described if, in the opinion of the Owner and Design Consultant (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval by the Owner and Design Consultant will be granted based upon considerations of quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the Project.
- 3.12.2 Contractor must provide evidence that proposed substitution does not require revisions to the Contract Documents, that is consistent with Contract Documents, and will produce the indicated results, and is comparable with other portions of the Work. Contractor must provide a detailed comparison of significant qualities or proposed substitution with those of the Work Specified, including but not limited to the following significant qualities: performance, weight, size, durability, visual effect, sustainable design features, warranties, and any specific features and requirements indicated in Contract Documents. An annotated copy of applicable Specification Section and point-by-point comparison between specified product and the proposed substitution describing each point of compliance, non-compliance, and variance between the specified and proposed product shall be provided.
- 3.13 USE OF SITE
- 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner, to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

3.14 CUTTING AND PATCHING OF WORK

3.14.1 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation.

3.14.2 Existing structures and facilities including but not limited to building, utilities, topography, streets, curbs, walks, etc., that are damaged or removed due to required excavations or other construction work, shall be patched, repaired or replaced by the Contractor to satisfaction of the Design Consultant and the Owner of such structures and facilities and authorities having jurisdiction.

3.15 CLEANING UP

3.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 INDEMNIFICATION

3.16.1 To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless the Owner and the Design Consultant and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or caused by any negligent act, error or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The above obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this Paragraph 3.16. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The parties also specifically acknowledge that the Owner is a public body and it is the intent of the parties that the Owner not incur any expenses when the Contractor is solely responsible for the claims.

3.16.2 In any and all claims against the Owner or the Design Consultant or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.16 shall not be limited in any way by Contractor's insurance coverage required herein.

3.16.3 No provision of this Paragraph 3.16 shall give rise to any duties on the part of the Design Consultant or the Owner, or any of their agents, representatives, or employees.

3.18 CONDITIONS AFFECTING THE WORK

3.18.1 The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions, which can affect the Work or the cost thereof. The Owner assumes no responsibility for any understanding or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

3.19 MISCELLANEOUS.

3.19.1 The Contractor shall provide documentation acceptable to the Owner showing the amount of MBE participation (including a complete list of all subcontractors and their final subcontract amounts) and sales tax paid by the Contractor and its subcontractors for materials purchased for Projects completed under this contract.

3.20 APPLICABLE LAWS.

3.20.1 This Contract and the relationship of the parties shall be governed by the laws of the state of North Carolina.

3.20.2 Contractor shall comply with all applicable laws and regulations in providing services under this Contract. Contractor shall not employ any individuals to provide services to the Owner who are not authorized

by federal law to work in the United States. Contractor represents and warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Contract by any governmental department or agency. Contractor must notify Owner within thirty (30) days if debarred by any government entity during this Contract. The Contractor represents that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. The Contractor further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the term of this Contract, and that it will remain in compliance with all I-9 requirements throughout the term of this Contract. The Contractor shall also ensure that any subcontractors use the E-Verify system at all times while providing subcontracted services in connection with this Contract. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the school system. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

- 3.20.3 The Contractor also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. The Contractor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office, provided that such office is not located at a school site; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Contractor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, the Contractor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. The Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. The Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. The Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Owner upon request. The Contractor specifically acknowledges that the Owner retains the right to audit these records to ensure compliance with this section at any time in the Owner's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, the Owner may conduct additional criminal records checks at the Owner's expense. If the Owner exercises this right to conduct additional criminal records checks, the Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the Owner for all contractual personnel who may deliver goods or perform services under this Agreement. The Contractor further agrees that it has an ongoing obligation to provide the Owner with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The Owner reserves the right to prohibit any contractual personnel of the Contractor from delivering goods or providing services under this Agreement if the Owner determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

- 3.20.4 Anti-Nepotism. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law

relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Owner without further financial liability to Contractor.

- 3.20.5 Restricted Companies Lists. Contractor represents that as of the date of this Contract, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Contract, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

3.21 COMPLIANCE WITH BOARD POLICIES AND PROCEDURES

The Contractor agrees to comply with the all of the Owner's policies at all times that the Contractor, its subcontractors and employees are on the Owner's property. The Contractor acknowledges that Board policies are available for review at the Owner's website and agrees to comply with the policies. The Contractor also agrees to comply with the following provisions:

- 3.21.1 The Contractor, its Subcontractors and employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles or firearm racks within vehicles. The Contractor, its Subcontractors and employees shall not cause, encourage or aid a minor, who is less than 18 years old to possess or carry, whether openly or concealed, any weapons on any property owned by the Owner.
- 3.21.2 The Contractor, its Subcontractors and employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.
- 3.21.3 The Contractor and its Subcontractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the Owner.
- 3.21.4 The Contractor and its Subcontractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on school premises, both indoor and outdoor. The prohibition of the display of tobacco or nicotine products shall not extend to a display that has a legitimate instructional or pedagogical purpose. For purposes of this Contract, "tobacco product" is defined to include cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snuff, and any other items containing or reasonably resembling tobacco, tobacco products, or any facsimile thereof. "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.
- 3.21.5 The Contractor, its Subcontractors and employees shall not solicit from or sell to students or staff within the Owner's facilities or campuses, and shall not give gifts of any value to school system employees.
- 3.21.6 Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion and follow-up testing for drugs and alcohol.
- 3.21.7 The Contractor, its Subcontractors and employees are prohibited from using access to the site pursuant to this Agreement as a means to date, court, or enter into a romantic or sexual relationship with any student enrolled in the School System. The Contractor agrees to indemnify the Owner for claims against the Owner resulting from relationships which have occurred or may occur between a student and an employee of the Contractor or Subcontractor.

END OF ARTICLE 3

ARTICLE 4

SUBCONTRACTORS

4.1 DEFINITION

- 4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any Separate Contractor or his subcontractors.
- 4.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site or who contracts to perform or supply any of the Work under the scope of a Subcontractor's subcontract. The term Sub-subcontractor may be referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.
- 4.1.3 Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Design Consultant, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, Sub-subcontractor, Supplier or Vendor of the Contractor, except the relationship between Owner and Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.
- 4.1.4 The Owner and Design Consultant will not deal directly with any Subcontractor, Sub-subcontractor or Material Supplier. Communication will be made only through the Contractor. Subcontractor, Sub-subcontractors or Material Suppliers shall route requests for information or clarification through the Contractor to the Design Consultant.

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

- 4.2.1 The Contractor, in compliance with the requirements of the Contract Documents and within ten (10) days after the Notice to Proceed, shall furnish in writing to the Owner the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the Owner and any of the Contractor's Subcontractors or Sub-subcontractors. Further, the Contractor understands and agrees that he alone is responsible to the Owner for the Work under this Contract and that any review of Subcontractors or Sub-subcontractors by the Owner will not in any way make the Owner responsible to any Subcontractor, nor responsible for the actions or failures of any Subcontractor or Sub-subcontractor.
- 4.2.1.1 The Contractor shall identify in the list of names of the Subcontractors proposed, those Subcontractors that are Historically Underutilized Businesses (HUB's) and indicate the portion of the Work that each Subcontractor will perform.
- 4.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Paragraph 4.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.
- 4.2.3 If the Owner has reasonable objection to any proposed person or entity under Paragraph 4.2.1, the Contractor shall name a substitute to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued, subject to an audit of said difference by the Owner; provided, however, that no increase in the

Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Paragraph 4.2.1 and the original proposed Subcontractor was: (i) able to carry out his work under his proposed subcontract, (ii) able to comply with all applicable laws, (iii) was an ongoing business in the field of his proposed subcontract, and (iv) had a labor force, capital and a means of supply compatible with the scope of his proposed subcontract.

4.2.4 If the Owner requires a change of any proposed Subcontractor or person or organization previously accepted by him on the Project, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued, subject to an audit by Owner.

4.2.5 The Contractor shall notify the Owner and the Design Consultant of any substitution for any Subcontractor identified in accordance with Subparagraph 4.2.1.1. The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or the Design Consultant makes reasonable objection to such substitution. Also, Contractor may make no substitution of Subcontractors in violation of applicable law.

4.2.6 If during the duration of the Project, the Contractor effects a substitution for any Subcontractor per Paragraph 5.2.5, or if additional subcontract opportunities become available, the Contractor shall make a good faith effort to utilize Historically Underutilized Businesses (HUB's).

4.3 SUBCONTRACTUAL RELATIONS

4.3.1 By an appropriate written agreement, 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Contract Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the agreement between the Contractor and Subcontractor, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 4.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors.

4.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to the Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract with any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner the Work required by this Contract.

4.3.3 The Contractor shall submit Notice to the Owner of any Claims by Subcontractors for which the Owner is believed to be responsible, in strict conformance with the same time requirements and other procedures established for the submission of the Contractor's Claims to the Owner.

4.4 QUALIFICATION SUBMITTALS

4.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Specifications and shall be collected and submitted by the Contractor for review and approval by the Design Consultant. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Design Consultant's request.

4.4.2 The Owner and Design Consultant shall reject any proposed Subcontractor, installer or supplier, or any

qualification submittals related thereto, for the following reasons:

- .1 The Contractor's failure to submit requested information within the specified time; or
- .2 The Contractor's failure to provide all of the requested information; or
- .3 The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner or Design Consultant.

4.4.3 Should the Owner or Design Consultant have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another person or firm who are reasonably acceptable to the Owner and Design Consultant.

4.5 PREPARATORY WORK

4.5.1 Before starting a portion of the Work, the Contractor and the responsible Subcontractor shall carefully examine all preparatory work that has been executed to receive his work. The Subcontractor shall check carefully, by whatever means are required, to ensure that his work and adjacent related work will finish to proper contours, planes and levels. He shall promptly notify the Contractor and the Design Consultant of any defects or imperfections in preparatory work, which will, in any way, affect satisfactory completion of his work. Absence of such notification will be construed as an acceptance of preparatory work and later Claims of defects therein will not be recognized.

4.5.2 Under no conditions shall a portion of the Work proceed prior to preparatory work having been completed, cured, dried, and otherwise made satisfactory to receive such related work. Responsibility for timely installation of all materials rests solely with the Contractor, who shall maintain coordination control at all times.

END OF ARTICLE 4

ARTICLE 5

WORK BY OWNER OR BY SEPARATE CONTRACTORS

5.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

5.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract.

5.2 MUTUAL RESPONSIBILITY

5.2.1 Should the Contractor cause damage to the work or property of the Owner or of any separate contractor on the Project, or to other work on the Site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

5.2.2 Should a separate contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

5.2.3 In no event shall the Contractor seek to recover from the Owner or the Design Consultant, and the Contractor

hereby waives any claims against the Owner and Design Consultant relating to any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

5.3 COORDINATION OF THE WORK

- 5.3.1 By entering into this contract, Contractor acknowledges that there may be other contractors on the site whose work will be coordinated with that of his own. Contractor expressly warrants and guarantees that he will cooperate with other contractors and will do nothing to delay, hinder or interfere with the work of other separate contractors, the Owner or Design Consultant. Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in this Article 5. Contractor will have no remedy, and hereby expressly waives any remedy, against the Owner and/or the Design Consultant on account of delay, hindrance, interference or other event caused by a separate contractor.

END OF ARTICLE 5

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 GOVERNING LAW

- 6.1.1 This contract shall be governed by the law of the State of North Carolina. The Contractor and Owner agree that the county where the Project is located shall be the proper venue for any litigation arising out of this Agreement.
- 6.1.2 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly or fully inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

6.2 CLAIMS AND DAMAGES

- 6.2.1 Should the Contractor or any of its Subcontractors suffer injury or damage to person or property because of any act or omission of the Owner or Design Consultant, or of any of their employees, agents or others for whose acts either is legally liable, the claim on behalf of the Contractor or its subcontractors shall be made in writing to the Owner within 10 days after the first observance of such injury or damage; otherwise, the Contractor shall have waived any and all rights he may have against the Owner or the Design Consultant, or their employees, representatives and agents. The Contractor shall indemnify, defend and hold the Owner harmless from any claim by a Subcontractor that is waived because it is not filed in strict conformance with this paragraph or any other provision of this Agreement regarding claims.

6.4 RIGHTS AND REMEDIES

- 6.4.1 The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 6.4.2 Except as may be specifically agreed in writing, the failure of the Owner or the Design Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of this Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provisions or right(s) or of the right to subsequently demand such

strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

6.4.3 The Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Design Consultant, except for failure to make progress payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, save only his right to money damages.

6.4.4 Contractor and Owner acknowledge that the Contract Documents shall not be construed against Owner due to the fact that they may have been drafted by Owner. For purposes of construing the Contract Documents, both Contractor and Owner shall be considered to have jointly drafted the Contract Documents.

6.4.5 In the event that Owner incurs attorney's fees or litigation expenses in connection with enforcing or protecting its rights under the Contract Documents or defending any claim or lawsuit brought against it arising out of the Work or the Contract Documents, Contractor shall reimburse Owner for such reasonable attorney's fees and expenses.

6.5 TESTS AND INSPECTIONS

6.5.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner timely notice of its readiness so the Design Consultant and the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

6.5.2 Unless otherwise stipulated in other Contract Documents, the Contractor shall pay for all utilities required for testing of installed equipment of all of his work and work of each Subcontractor. Boiler fuel other than gas shall be provided by Subcontractor furnishing boilers. Labor and supervision required for making such tests shall be provided at no additional cost to the Owner.

6.5.3 If the Design Consultant or the Owner determines that any Work requires special inspection, testing, or approval which Subparagraph 6.51 does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 6.51. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including compensation for the Design Consultant's and Owner's additional construction management expenses made necessary by such failure.

6.6 UNENFORCEABILITY OF ANY PROVISION

6.6.1 If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

6.7 ATTORNEYS' FEES AND OTHER EXPENSES

6.7.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated claims or claims he has specifically waived under the terms of the Contract Documents. In the event that the Contractor's or its Subcontractor's claims, or any separate item of a claim, is without substantial justification, the Contractor shall reimburse the Owner or Design Consultant for all costs and expenses associated with defending such claim or separate item, including but not limited to, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction

management expenses, or services and any other consultant costs.

- 6.7.2 If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.
- 6.7.3 If the Owner or Design Consultant prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner and Design Consultant for all costs and expenses incurred by them relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional Design Consultant expenses, additional construction management expenses, and any other consultant costs.
- 6.8 **SUCCESSORS AND ASSIGNS**
- 6.8.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

END OF ARTICLE 6

ARTICLE 7

TIME

- 7.1 **DEFINITIONS**
- 7.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work, as defined in Subparagraph 7.1.3 and 7.1.4, including any allowances and alternates. The Contractor shall complete his Work within Contract Time, unless the Contract Time is modified.
- 7.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein. The Contractor shall not commence Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent.
- 7.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and the Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully occupy and utilize the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for the Owner's full use may remain for final completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Substantial Completion. Educational operational systems such as voice, data, security cameras, security card readers, security motion detection systems and building automation systems including functional graphics at the site are required for Substantial Completion.
- 7.1.4 The date of Final Completion of the work is the date certified by the Design Consultant and the Owner when the Work is totally complete, to include punch list work, in accordance with the Contract Documents and the Owner may fully occupy and utilize the work for the use for which it is intended. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute Final Completion.

7.2 DELAYS AND EXTENSIONS OF TIME

7.2.1 The time during which the Contractor or any of its subcontractors delayed in the performance of the Work by the acts or omissions of the Owner, Design Consultant or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's or its subcontractors' control and which the Contractor or its subcontractors could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work (i.e., the Contract Time) stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in strict compliance with the requirements of this Article and other provisions of the Contract Documents.

7.2.1.1 For excessive inclement weather, the Contract time will not be extended due to reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this Contract, the Contractor agrees that the number of calendar days per month based on a five-year average shall be considered reasonably anticipated inclement weather and planned for in the construction schedule per the Contract. Unless the Contractor can substantiate to the satisfaction of the Owner that there was greater than the reasonably anticipated inclement weather considering the time from the Notice to Proceed until the date established for substantial completion using data from the national weather service station noted in the Supplemental General Conditions or a weather station acceptable to the Owner and that such alleged greater than reasonably anticipated inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract time, the Contractor shall not be entitled to an extension of time.

Also, the Contractor agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of the five-year average for each month, in which precipitation exceeded one tenth (.10) inch, or in which the highest temperature was 32 degrees For less as recorded at the approved weather station. Rain days from hurricanes and tropical storms not causing damage in the county where the Project is located shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the Notice to Proceed until the date established for substantial completion, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the date established for substantial completion. No change in Contract sum will be authorized because of adjustment of Contract time due to excessive inclement weather.

7.2.2 Should a time extension be granted for Substantial Completion the date for Final Completion shall be appropriately adjusted unless specifically stated otherwise.

7.2.3 Neither the Owner nor the Design Consultant shall be obligated or liable to the Contractor or its Subcontractors for, and the Contractor hereby expressly waives any claims against the Owner and the Design Consultant on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by Contractor, and it is understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time in accordance with the Contract Documents, unless the delays, interferences, changes in sequence or the like arise solely from or out of any act or omission of the Owner or the Design Consultant, or their agents, employees, consultants or independent. The Contractor shall not be entitled to any damages pursuant to this section if there are any concurrent delays for which the Owner and/or the Design Consultant are not solely responsible.

7.2.4 Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, his Subcontractors or suppliers, unless caused solely by the

Owner or Design Consultant.

- 7.2.5 The Contractor and its subcontractors shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the Owner within ten (10) days of the first instance of delay.

END OF ARTICLE 7

ARTICLE 8

PAYMENTS AND COMPLETION

8.1 SCHEDULE OF VALUES

- 8.1.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work.

8.2 APPLICATIONS FOR PAYMENT

- 8.2.1 Prior to the date for each progress payment established in the Owner-Contractor Agreement, the Contractor, shall submit to the Owner an itemized Application for Payment including a completed Contractor's Sales Tax Report (attached hereto as Appendix A) for all items provided by the Contractor or any Subcontractors included in the application. The Contractor shall also certify that he has paid all due and payable amounts for which previous certificates for payment were issued and payments received from the Owner and that the work for which payment is requested has been completed.

- 8.2.2 The Owner will retain funds from each progress payment to the maximum extent allowed by N.C. General Statute 143-134.1 until the Work is finally completed and accepted, whether or not the Owner has occupied any or all of the Project before such time. If a reduction in retainage has been made or the Owner stops withholding retainage for any reason, the Owner may increase or commence the retainage as authorized by N.C. Gen. Stat. 143-134.1.

- 8.2.3 Owner will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work. Materials once paid for by the Owner become the property of the Owner and may not be removed from the work site without the Owner's written permission.

- 8.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 8 as "liens".

- 8.2.5 All invoices shall show the following:

- .1 Total amount of contract
- .2 Amount of change orders
- .3 Total value of completed work
- .4 Amount retained by Owner
- .5 Amount due Contractor

8.3 CERTIFICATES FOR PAYMENT

- 8.3.1 By signing a Certificate for Payment, the Design Consultant shall not thereby be deemed to represent that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that it has reviewed the construction means, methods, techniques, sequences, or procedures, or that it has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

8.4 PROGRESS PAYMENTS

- 8.4.1 The Contractor shall promptly pay each Subcontractor (including suppliers, laborers, and material-men) performing labor or furnishing material for the Work, upon receipt of payment from the Owner.
- 8.4.2 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.
- 8.4.3 The Contractor shall not submit more than one pay application during any 30-day period.

8.5 PAYMENTS WITHHELD

- 8.5.1 The Design Consultant may decline to certify payment and may withhold their Certificate in whole or in part, to the extent the Design Consultant deems necessary to reasonably protect the Owner from loss associated with unsatisfactory job progress, defective construction, disputed work, claims or any other similar issue. If the Design Consultant is unable to make representations to the Owner and to certify payment in the amount of the Application, it will notify the Contractor as provided herein. The Design Consultant may also decline to certify payment because of subsequently discovered evidence or subsequent observations that may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in its opinion to protect the Owner from loss.

8.6 FAILURE OF PAYMENT

- 8.6.1 Payments due and unpaid under the Contract Documents shall not bear interest.

8.7 SUBSTANTIAL COMPLETION

- 8.7.1 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Design Consultant and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy and utilize the Work for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective work and any final cleaning beyond that needed for Owner's full use may remain for Final Completion. The Contractor shall be solely responsible for the cost to repair or replace any work damaged or destroyed prior to the Date of Substantial Completion.
- 8.7.2 When the Design Consultant and the Owner on the basis of an inspection jointly determine that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. 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 Contractor shall provide operation & maintenance manuals, and operation training to the Owner as required by the Contract Documents prior to Substantial Completion. The Owner's occupancy of incomplete work shall not alter the Contractor's responsibilities pursuant to this section.
- 8.7.3 The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Contractor and its Subcontractors except those previously made in writing and identified by the Contractor as unsettled at the time the Contractor submits the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance. The Contractor shall indemnify and hold the Owner harmless against any claims by its Subcontractors that are waived because they were not made in writing and identified by the Contractor as unsettled when the Contractor submitted the Application for Payment for Substantial Completion.

8.7.4 The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the Owner, and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.

8.7.5 There will be two inspections by the Design Consultant at Substantial Completion:

- .1 To generate a list of items to be completed or corrected before Owner takes possession of the Work.
- .2 To check that the list of items has been completed before issuing Final Payment.

Any additional inspections by the Design Consultant requested by Contractor to complete the Punch List shall result in money being withheld from the Final Payment to cover the cost of these additional inspections

8.8 FINAL COMPLETION AND FINAL PAYMENT

8.8.1 When the Design Consultant and the Owner find the Work acceptable under the Contract Documents and the Contract fully performed, they will approve a final Certificate of Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the 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, except for an amount mutually agreed upon for any work remaining incomplete or uncorrected for which the Owner is entitled a credit under the Contract Documents. If the Design Consultant and the Owner find the Work to be incomplete or unacceptable, the costs of reinspections shall be paid by the Contractor.

8.8.2 Final Payment shall not become due until the Contractor provides to the Design Consultant and Owner: three (3) copies of any of the following required:

- .1 Final Change Order
- .2 Final Application for Payment
- .3 Consent of Surety to Final Payment - AIA G707(if applicable)
- .4 Contractor's Affidavit of Release of Liens - AIA G706A
- .5 Contractor's Affidavit of Payment of Debts and Claims - AIA G706;
- .6 Certificate of Occupancy (if applicable)
- .7 Contractor's Warranty, notarized
- .8 Warranty Summary Sheet with Original Warranties (if not included in O & M Manuals)
- .9 Certification Letter from Contractor that no Asbestos-Containing Materials were used on the project
- .10 Final List of Subcontractors (name, address, phone, fax nos.)
- .11 Record Drawings (As-Built) - 1 set
- .12 Operation and Maintenance Manuals - 3 sets
- .13 Other project close-out submittals, as required by the Contract Documents.

8.8.3 Neither the final payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the Owner:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied;
- .2 if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner; and
- .3 As-built drawings, and other project closeout submittals, as required by the Owner.

8.8.4 The making of final payment shall constitute a waiver of all claims by the Owner against the Contractor except those arising from:

- .1 unsettled liens, and claims against the Owner or the Design Consultant, or their employees, agents, or representatives,
- .2 faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
- .4 terms of any warranties contained in or required by the Contract Documents,
- .5 damages incurred by the Owner resulting from lawsuits brought against the Owner, the Design Consultant, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, Sub-subcontractors, or any of their employees, agents or representatives, or
- .6 fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of work but discovered by Owner after Final Payment.

8.8.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment

8.9 LIQUIDATED DAMAGES

8.9.1 Should the Contractor fail to substantially complete the Work on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by Owner), he shall pay the Owner, as Substantial Completion liquidated damages the daily amount stated in the Supplementary Conditions for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the Owner will sustain per day by failure of the Contractor to complete work within time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

8.9.2 For each consecutive calendar day that the Work remains incomplete after the date established for Final Completion, the Contractor shall pay or Owner will retain the daily amount stated in the Supplementary Conditions as Final Completion Liquidated Damages from the compensation otherwise to be paid to the Contractor. This amount is the minimum measure of damages the Owner will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of contract management time and resources, administration time, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for Substantial Completion.

8.9.3 The amount of liquidated damages set forth above and in the corresponding Supplementary Conditions shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

8.10 OWNER'S RIGHT TO OCCUPY INCOMPLETE WORK

8.10.1 Should the Project, or any portion thereof, be incomplete for Substantial or Final Completion at the scheduled date or dates, the Owner shall have the right to occupy any portion of the Project. In such an event, the Contractor shall not be entitled to any extra compensation on account of said occupancy by the Owner or by the Owner's normal full use of the Project, nor shall the Contractor interfere in any way with said normal full use of the Project. Further, in such an event, the Contractor shall not be entitled to any extra compensation on account of the Owner's occupancy and use of the Project, nor shall the Contractor be relieved of any

responsibilities of the Contract including the required times of completion. Such occupancy by the Owner shall not, in itself, constitute Substantial or Final Completion.

END OF ARTICLE 8

ARTICLE 9

INSURANCE AND BONDS

9.1.1 CONTRACTOR'S INSURANCE AND BONDS

The Contractor shall purchase and maintain in companies properly licensed by the Insurance Department of the State of North Carolina and acceptable to the Owner such insurance as will protect him, the Owner, and the Owner's agents, representatives, and employees from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include:

9.1.1.1 Worker's Compensation including Occupational Disease and Employer's Liability Insurance

- .1 Statutory - Amount and coverage as required by State of North Carolina Worker's Compensation laws
- .2 Employer's Liability
 \$1,000,000 Each Accident
 \$1,000,000 Policy Limit
 \$1,000,000 Each Employee

9.1.1.2 Commercial General Liability (Occurrence Form) - The Contractor shall provide during the life of this Contract such Commercial General Liability (Occurrence Form) Insurance as shall protect Contractor and any Subcontractor performing work under this Contract from claims for damages for Bodily Injury including accidental death, as well as from claims for Property Damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. This insurance shall be on the Standard Insurance Services Office, Inc. (ISO) Commercial Liability Occurrence Form. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

A Combined Single Limit for Bodily Injury, Property Damage and Personal Injury of:

\$2,000,000	General Aggregate (except Products - Completed Operations) Limit
\$2,000,000	Products - Completed Operations Aggregate Limit
\$1,000,000	Personal and Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$ 5,000	Medical Expense

9.1.1.3 Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary.

9.1.1.4 Completed Operations Liability: Continuous coverage in force for one year after completion of Work.

9.1.1.5 Commercial Automobile Insurance, including coverage for owned, non-owned and hired vehicles - with limits not less than a Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000.

9.1.1.6 Umbrella Liability Insurance: Policy to 'pay on behalf of the Insured' with Limits of Liability: \$1,000,000.

- 9.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Owner. Failure to provide such notice shall not limit the liability of the Insurer, its agents or representatives.
- 9.3 All insurance policies required in this Article, except Worker's Compensation and Commercial Automobile, shall name the Owner as additional named insured for the insurance. The Owner shall be included in the definition of "insured" in the Commercial Automobile Policy.
- 9.4 Contractor shall not commence work under this Contract until he has obtained all the insurance and bonds required under Article 5 of this Contract and until such insurance and bonds have been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by Owner shall not relieve or decrease the liability of Contractor hereunder.
- 9.5 The Commercial General Liability and Workers Compensation Policies provided by Contractor shall have endorsements waiving subrogation against Owner.
- 9.6 PROPERTY INSURANCE. Contractor shall provide the following property insurance:
- 9.6.1 Unless stated otherwise in the Supplemental Conditions, Contractor shall purchase and at all times maintain such insurance as will protect Contractor, Owner, Subcontractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished work until Final Completion. This insurance shall be in the form of 'Builder's Risk Covered Cause of Loss Form' to include, but not limited to, theft, collapse, earth movement and flood. Any deductible provision in such insurance shall not exceed \$5,000.00. Notwithstanding any such deductible provision, Contractor shall remain solely liable for the full amount of any item covered by such insurance.
- 9.6.2 If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Contractor, and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 9.7 Owner shall be under no obligation to review any Certificates of Insurance provided by Contractor, or to check or verify Contractor's compliance with any and all requirements regarding insurance imposed by the Contract Documents. Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or certificate of insurance provided by Contractor not comply with any and all requirements regarding insurance imposed by the Contract Documents.
- 9.8 All insurance companies providing the above insurance shall be licensed by the Insurance Department of the State of North Carolina and maintain a rating by AM Best or a similar rating company with a minimum of an "A-" rating.
- 9.9 PERFORMANCE AND PAYMENT BONDS
- "If required by law, or in the Supplemental Conditions or the Contract Documents, Contractor must provide performance and payment bonds each in the amount of the Contract Sum. Such bonds shall be on forms acceptable to Owner and issued by surety companies licensed to do business in North Carolina and having a rating of at least AM Best "A" rating. Contractor may, at its option, make deposit in the form of certified check with Owner in lieu of the performance and payment bonds in an amount equal to the Contract Sum for each such bond, for a total of 200% of the Contract Sum."

END OF ARTICLE 9

ARTICLE 10

CHANGES IN THE WORK

10.1 CHANGE ORDERS

- 10.1.1 The Owner may, at any time, by written order designated or indicated to be a Change Order, make any change or modification in the Work or add to the Work within the general scope of the Contract.

10.2 OWNER DIRECTED CHANGES REQUIRING AN INCREASE IN CONTRACT SUM.

- 10.2.1 If the Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such Change in the Work).

If the Owner elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum Proposal which shall be submitted by the Contractor to the Owner within seven (7) days of the Contractor's receipt of a request therefore (but the Owner's request for a lump sum Proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's Proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed Proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The Proposal shall also include the Contractor's estimate of the time required to perform said changes. The Contractor shall provide any documentation that may be requested by the Owner or Architect to support the change proposal, including but not limited to payroll records, insurance rates, material quotes, and rental quotes. The Change Proposal Forms attached as Appendix B shall be used to submit change proposals on the Project.

The portion of the Proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime time, if overtime is anticipated, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for the Contractor or any such Subcontractor, as applicable (said overhead and profit to include all supervision except foremen). Payroll costs are limited to 39% of the net pay of the worker.

The portion of the Proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the Contractor or any such Subcontractor (said overhead and profit to include all small tools), and may further include the Contractor's and any of its Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for the Contractor or any such Subcontractors, as applicable. The Contractor shall provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses. Notwithstanding the above, overhead and profit shall not be applied to any sales tax paid for any purpose or to any transportation or shipping costs incurred by the Contractor or any subcontractor. If any of the items included in the lump sum Proposal are covered by unit prices contained in the Contract Documents, the Owner may, if it requires the Change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

The lump sum Proposal may include up to eight percent (8%) of the amount which the Contractor will pay to any of its Subcontractors for Changes in the Work as overhead and profit for the Contractor. The Contractor shall not be reimbursed for the costs of the Subcontractors' Payment and Performance Bonds, as such bonding is not required by the Owner.

- 10.2.2 In the event that the Contractor fails to submit his Proposal within the designated period, the Owner may order the Contractor to proceed with the Change to the Work and the Contractor shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor. The Contractor may dispute such action in accordance with the Article 15.
- 10.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work based upon the Contractor's Proposal and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner may choose to make a determination of the reasonable cost and time to perform the Change in the Work, based upon its own estimates, the Contractor's submission or a combination thereof. A Construction Change Directive shall be issued in this case for the amounts of cost and time determined by the Owner and shall become final and binding upon the Contractor, subject to Contractor's right to dispute such action in accordance with Article 10.9. Owner has the right to direct by Construction Change Directive a Change in the Work, which is the subject of such Change Order. Failure of the parties to reach agreement regarding the cost and time of the performing the Construction Change Directive, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.
- 10.2.3.1 The Owner reserves the right to reject the Contractor's Proposal for a Change in the Work and to elect to perform said Work using a Separate Contractor. Under such circumstances, all provisions of Article 6 shall be in force.
- 10.2.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus fifteen percent (15%) thereof as the total overhead and profit (except that said fifteen percent (15%) shall not be applied against any payroll costs, as set forth in Paragraph 10.2.1.) The Contractor shall submit to the Owner daily time and material tickets, on a daily basis to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any Claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.
- 10.2.5 No overhead and profit will be paid by the Owner on account of a Change in the Work except as specifically provided in Section 10.2. Overhead and profit, as allowed under Section 10.2, shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to Section 10.2.
- 10.3 CONTRACTOR NOTICE OF CHANGE
- 10.3.1 If the Contractor or any of its Subcontractors asserts that any event or occurrence has caused a change in or addition to the Work which change causes an increase or decrease in the Contractor's or its Subcontractors' cost or the time required for the performance of any part of the Work under the Contract, including Work not affected directly by the change, the Contractor shall, within ten (10) days of such event, give the Owner written

notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.

10.3.2 If the Contractor intends to assert a claim under this Article, he must, within ten (10) days after receipt of a written Change Order under Subparagraph 10.2.1 above or the furnishing of a written notice under Subparagraph 10.3.1, submit to the Owner a written statement setting forth the specific nature and cost of such claim, unless this period is extended by the Owner. The statement of claim hereunder may be included in the notice under Subparagraph 10.3.1 above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. The Contractor and its subcontractors shall not be entitled to reimbursement for any claims that are not filed in strict conformance with this Article. The Contractor shall indemnify and hold the Owner harmless against any claims by Subcontractors that are waived because they are not filed in strict conformance with this Article.

10.3.3 If the parties are unable to agree to the reasonable cost and time to perform the Change, or are unable to agree as to whether a change occurred, the Owner shall make a unilateral determination as described in Article 10.2.2. The Contractor shall proceed pursuant to the provisions of that Article.

10.4 GENERAL PROVISIONS RELATED TO CHANGES

10.4.1 The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 10, and which the Contractor, its Subcontractors or Sub-subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 10, unless the delay is caused solely by the Owner or its agent. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents. The phrase "Owner or its agent" as used in this Agreement, does not include the Prime Contractors or their Subcontractors.

10.4.2 No claim by the Contractor hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change or commencement of the change by the Contractor.

10.5 CHANGES REQUIRING A DECREASE IN CONTRACT SUM.

10.5.1 If the Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days of the Owner's request and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner in its reasonable judgment, plus fifteen percent (15%) thereof as overhead and profit.

10.6 DISPUTES REGARDING CHANGES.

10.6.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner shall, however, pay to the Contractor up to the Owner's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the Owner shall have the right to decrease the Contract Sum up to the Owner's reasonable estimated

value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Sum.

10.7 MINOR CHANGES IN THE WORK

10.7.1 The Owner shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an 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 the Contractor. The Contractor shall carry out such written orders promptly.

10.7.2 The Contractor shall not perform any changes in the Work unless authorized in writing by the Design Consultant or Owner.

10.8 DIFFERING SITE CONDITIONS

10.8.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and the Design Consultant shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the Owner nor the Design Consultant shall be liable or responsible for additional work, costs or changes to the work due to material differences between actual conditions and any geotechnical, soils and other reports, surveys and analyses made available for the Contractor's review.

10.9 CLAIMS AND DISPUTE RESOLUTION

10.9.1 Definition. A Claim is a demand or assertion by the Contractor 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 from the Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the Contractor.

10.9.2 Time Limits on Claims. Claims by Contractor must be initiated within 10 days 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 initiated by written notice to the Design Consultant (if there is one) and the other party.

10.9.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

10.9.4 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 when the giving of such notice would increase the risk of injury or damage to persons or property.

10.9.5 Claims for Additional Time. If the Contractor wishes to make Claim for an extension of the dates set for Substantial or Final Completion, 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. Contractor bears the burden of proving it is entitled to an extension of time. Unless Contractor meets this burden, Liquidated Damages shall be assessed automatically.

- 10.9.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the relevant period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
- 10.9.7 Resolution of Claims and Disputes. Claims, including those alleging an error or omission by the Design Consultant, shall be referred initially to the Design Consultant for decision, if there is a Design Consultant with Contract Administration duties which include Claims resolution; otherwise, such Claims by Contractor shall initially be referred to the Owner. An initial decision by such Design Consultant (or Owner as applicable) shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant (or Owner as applicable) with no decision having been rendered. The Design Consultant (or Owner as applicable) will not decide disputes between the Contractor and persons or entities other than the Owner.
- 10.9.8 The Design Consultant (or Owner as applicable) will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Design Consultant is unable to resolve the Claim if the Design Consultant lacks sufficient information to evaluate the merits of the Claim or if the Design Consultant concludes that, in the Design Consultant's sole discretion, it would be inappropriate for the Design Consultant to resolve the Claim.
- 10.9.9 Upon receipt of the response or supporting data, if any, the Design Consultant (or Owner as applicable) will either reject or approve the Claim in whole or in part.
- 10.9.10 The Design Consultant (or Owner as applicable) will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time, or both. The approval or rejection of a Claim by the Design Consultant (or Owner as applicable) shall be final and binding on the parties but subject to mediation and litigation.
- 10.9.11 When a written decision of the Design Consultant (or Owner as applicable) states that (1) the decision is final but subject to mediation and litigation and (2) a demand for mediation of a Claim (if required by Owner's Dispute Resolution Procedures) or the commencement of a lawsuit (if mediation is not required as a pre-condition to litigation in Owner's Dispute Resolution Procedures) covered by such decision must be made or done within 30 days after the date on which the party making the demand (or filing the lawsuit) receives the final written decision, then failure to demand mediation in writing (if required) or file the lawsuit within said 30 days' period shall result in the Design Consultant's (or Owner's as applicable) decision becoming final and binding upon the Owner and Contractor. If the Design Consultant (or Owner as applicable) renders a decision after litigation proceedings have been initiated, such decision may be entered as evidence, but shall not supersede litigation proceedings unless the decision is acceptable to all parties concerned.
- 10.9.12 In the event of a dispute, the Owner, Contractor, and other parties involved in the Project shall utilize the Dispute Resolution Procedures adopted by Owner pursuant to N.C.G.S. §143-128(g), if applicable. Owner's Dispute Resolution Procedures are as follows:

These Procedures are applicable to the resolution of disputes with amounts in controversy in excess of \$15,000.00 arising between or among any parties involved in Owner's construction and repair Projects, including the Design Consultant and the Contractors, and the first and lower tier subcontractors, on Claims arising out of the contract or construction process. In no event shall the Owner be subject to arbitration proceedings pursuant to these Procedures. Unless otherwise specified in these Procedures, if there is any conflict between these Procedures and the other provisions of the Contract Documents, the terms of these Procedures control.

Any Claim as defined in the Contract Documents or any dispute between parties to a construction contract involving the Project, other than the Owner's claims, except those Claims which are waived shall be subject to nonbinding mediation as a condition precedent to the institution of legal proceedings by any party, except that any party may institute legal proceedings in order to meet any applicable statute of limitations or similar deadlines prior to engaging in nonbinding mediation.

The parties shall endeavor to resolve their claims by nonbinding mediation, which, unless the parties mutually agree otherwise, shall be in accordance with rules established by Owner if Owner is a party to the mediation. If Owner is not a party to the mediation, the mediation shall be conducted in accordance with rules established by the parties to the mediation. The parties to the mediation shall share the cost of mediation equally. The mediation shall be held in the place where the project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 10.9.13 All suits in law or equity between the Owner and the Contractor arising out of the Contract shall be heard in the appropriate court of justice in the county where the Project is located.

END OF ARTICLE 10

ARTICLE 11

CORRECTION OF WORK

11.1 CORRECTION OF WORK

- 11.1.1 The Contractor shall promptly reconstruct, replace or correct all Work rejected by the Design Consultant as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Design Consultant's and the Owner's additional construction management services made necessary thereby.
- 11.1.2 The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.
- 11.1.3 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may either (1) by separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the Owner thereby and remove and store the materials or equipment at the expense of the Contractor, or (2) terminate this Contract for default as provided in Paragraph 12.3. If the Contractor does not pay the cost of such replacement or correction and the removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for additional services of the Design Consultant and the Owner made necessary thereby. If such proceeds of sale do not cover all costs, which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.
- 11.1.4 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.
- 11.1.5 Nothing contained in this Paragraph 11.1 shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 his obligations other than specifically to correct the Work.

END OF ARTICLE 11

ARTICLE 12

TERMINATION OF THE CONTRACT

12.1 TERMINATION BY THE CONTRACTOR

- 12.1.1 If the Work is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Design Consultant, terminate the Contract and recover from the Owner payment on a quantum merit basis, for all Work executed. The Contractor shall not be entitled to collect and hereby expressly waives, any profit on work not performed or any damages related to that portion of the Contract, which has been terminated.

12.2 TERMINATION FOR CONVENIENCE OF THE OWNER

- 12.2.1 The Owner may, at any time upon ten (10) days' written notice to the Contractor which notice shall specify that portion of the Work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the work for the convenience of the Owner. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 12.4. Contractor shall include termination clauses identical to Article 12 in each of his Subcontracts.

12.3 DEFAULT TERMINATION

- 12.3.1 Subject to the provisions of Paragraph 2.3.1, ten (10) days after written notice is mailed to the Contractor, the Owner may terminate (without prejudice to any right or remedy of the Owner or any subsequent buyer of any portion of the Work) the employment of the Contractor and his right to proceed either as to the whole or any portion of the Work required by the Contract Documents and may take possession of the Work and complete the Work by contract or otherwise in any one of the following circumstances:
- .1 if the Contractor refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the Substantial or Final Completion of the Work within the Contract Time or fails to complete the Work or remedy a default within said period;
 - .2 if the Contractor is in material default in carrying out any provisions of the Contract for a cause within his control;
 - .3 if the Contractor fails to supply a sufficient number of properly skilled workmen or proper equipment or materials;
 - .4 if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, unless he otherwise provides the Owner satisfactory evidence that payment is not legally due;
 - .5 if the Contractor disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the instructions of the Owner;
 - .6 if the Contractor substantially violates any provisions of the Contract Documents; or

- .7 if the Contractor refuses or fails to properly schedule, plan, coordinate and execute the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents.

12.3.2 If, after the Contractor has been terminated for default pursuant to Paragraph 12.3, it is determined that none of the circumstances set forth in Subparagraph 12.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Paragraph 12.2. In such case, the Contractor's sole remedy will be the costs permitted by Article 12.4.

12.3.3 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation is to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative, consultant and inspection services and any damages for delay) such excess shall be paid to the Contractor.

12.3.4 If such expenses shall exceed the unpaid balance, the Contractor shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the work that is not terminated.

12.4 ALLOWABLE TERMINATION COSTS

12.4.1 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, then the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with Subparagraph 12.4.2, plus a markup of ten percent for profit and overhead on the actual fully accounted costs recovered under 12.4.2; provided however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

12.4.1.1 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

12.4.2 If the Owner terminates the whole or any portion of the Work pursuant to Paragraph 12.2, the Owner shall pay the Contractor the amounts determined by the Owner as follows:

- .1 an amount for supplies, services, or property accepted by the Owner pursuant to Clause 12.5.1.6 or sold or acquired pursuant to Clause 12.5.1.7 and not heretofore paid for, and to the extent provided in the Contract such amount shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges; and
- .2 the total of:
 - (1) the cost incurred in the performance of the Work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Clauses 12.4.2.1 or 12.4.2.2.(2);

- (2) the cost of settling and paying claims arising out of the termination of Work under Subcontracts or orders, pursuant to Clause 12.5.1.5, which are properly chargeable to the terminated portion of the Work (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by Subcontractors or vendors prior to the effective date of the notice of termination), which amounts shall be included in the costs payable under (1) above; and
- (3) the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Work and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

.3 Provided, however, that neither the Owner nor the Design Consultant will be liable for payments to subcontractors pursuant to Article 12.4.2.2 unless each subcontract contains termination provisions identical to those set forth in Article 12. The Owner and the Design Consultant will not be liable to the Contractor or any of his subcontractors for any costs associated with termination if the subcontract of the party involved does not include the proper termination clauses.

12.4.3 In arriving at any amount due the Contractor pursuant to Paragraph 12.4, there shall be deducted the following:

- .1 all unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim which the Owner may have against the Contractor;
- .3 such amount as the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and
- .4 the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Clause 12.5.1.7, and not otherwise recovered by or credited to the Owner.

12.4.4 The total sum to be paid to the Contractor under Paragraph 12.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made or to be made for Work not terminated and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in Subparagraph 12.4.2, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to Clause 12.5.1.7.

12.4.5 If the Owner terminates the whole or any part of the Work pursuant to Paragraph 12.3, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

12.5 GENERAL TERMINATION PROVISIONS

12.5.1 After receipt of a notice of termination from the Owner, pursuant to Paragraph 12.2 or 12.3, and except as otherwise directed by the Owner, the Contractor shall:

- .1 stop Work under the Contract on the date and to the extent specified in the notice of termination;
- .2 place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- .3 terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;

- .4 at the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the contracts so terminated, in which case the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;
- .6 transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as had been terminated, the following:
 - (1) the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and
 - (2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner;
- .7 use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner, any property of the types referred to in Clause 12.5.1.6; provided, however, that the Contractor:
 - (1) shall not be required to extend credit to any buyer, and
 - (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Sum covered by the Contract or paid in such other manner as the Owner may direct;
- .8 complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
- .9 take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to the Contract, which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.

12.5.2 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under the Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder, or, to the extent approved by the Owner, photographs, micro-photographs or other authentic reproductions thereof.

12.5.3 If the termination, pursuant to Paragraph 12.2, be partial, the Contractor may file with the Owner a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this Subparagraph must be asserted within six (6) months from the effective date of the notice of termination.

- 12.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under Paragraph 12.4.
- 12.5.5 The Contractor shall be entitled to only those damages and that relief from termination by the Owner as specifically provided in Article 12.

END OF ARTICLE 12
END OF GENERAL CONDITIONS

PROJECT: _____
FOR PERIOD FROM: _____
TO: _____

I hereby certify that, during the period stated above, all North Carolina sales and use taxes have been paid for the materials, supplies, fixtures, and equipment purchased during that period which have become a part of, or annexed to, a building or structure erected, altered or repaired for the Owner. I further certify that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth above during the time period noted above.

Title:

CHANGE PROPOSAL FORM
Time and Material / Unit Price Estimate

Project: _____
Contract: _____
Contractor: _____

Proposal #: _____
Project #: _____
Contractor #: _____

Description of change: _____

Materials & Labor

Estimated cost of labor & materials including shipping, overtime, payroll taxes and insurance, and overhead and profit.

Maintain accurate records for billing purposes.

SUBTOTALS

Unit Price Work

Estimated quantity of units required less allowance units not used, times the established unit cost.

Maintain accurate records for billing purposes. Third party records may be required.

Equipment Rental

Estimated cost of equipment rental including shipping, taxes and overhead and profit.

Maintain accurate records for billing purposes.

Subcontractors

Estimated cost of subcontracts including all subcontractor expenses.

Maintain accurate records for billing purposes.

Subtotal of Proposal

*** TOTAL NOT TO EXCEED CHANGE PROPOSAL ESTIMATE**

Time Extension Requests: ____day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for an amount that shall not exceed the amount stated above and in accordance with the Contract documents if the work is authorized by the Owner. If the price to perform the work is expected to exceed the above stated amount, a new change proposal form for the additional work is required.

* Actual amount paid will be based on actual documented expenses.

Contractor's Signature: _____

Date: _____

Approval Recommended by Design Consultant: _____

Date: _____

Owner's Representative Approval: _____

Date: _____

CHANGE PROPOSAL FORM

Project: _____ **Proposal #:** _____
Contract: _____ **Project #:** _____
Contractor: _____ **Contractor #:** _____

Description of change: _____

Materials	(Attach list with Qty, Item, Unit \$, Unit mh, Total mh, OT mh, Total \$)	SUBTOTALS
1 Total Direct Cost of Materials	_____	
2 Overhead & Profit on Item 1.	_____	
(15% maximum, includes small tools & consumables)	_____	
3 Sales Tax	_____	
4 Shipping & Transportation	_____	
Labor	_____	
5 Total Manhours: _____ MH @ _____ /hr.	_____	
6 Overhead & Profit on Item 5.	_____	
(15% maximum on straight labor cost, not premium portion)	_____	
(O & P includes supervisor's time)	_____	
7 Payroll Taxes & Insurance _____ %	_____	
Equipment Rental	_____	
(Include quotes)	_____	
8 Equipment Rental	_____	
9 Overhead & Profit on Item 8 (6% maximum).	_____	
Subcontractors	_____	
(Include quotes with material & equipment backup)	_____	
10 Subcontractors	_____	
11 Overhead & Profit on Item 10 (6% maximum).	_____	
Subtotal of Proposal		_____

TOTAL OF CHANGE PROPOSAL _____

Time Extension Requests: _____ day(s) Schedule Activity # Affected: _____

The Contractor agrees to perform the work outlined in this change proposal for the amount specified above and in accordance with the Contract documents if the work is authorized by the Owner.

Contractor's Signature: _____ **Date:** _____

Approval Recommended by Design Consultant: _____ **Date:** _____

Owner's Representative Approval: _____ **Date:** _____

SECTION SC

SUPPLEMENTAL CONDITIONS

GENERAL CONDITIONS

Document GC, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, constitutes the General Conditions of this Contract, and is hereinafter called "General Conditions." The General Conditions are further revised and supplemented by the provisions of these Supplemental Conditions. The General Conditions and the Supplemental Conditions are applicable to all of the Work under this contract and shall apply to the Contractor and all Subcontractors and Sub-subcontractors.

SUPPLEMENTS:

The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. If there is a discrepancy between the General Conditions and these Supplemental Conditions, the Supplemental Conditions shall control.

ARTICLE 3 – CONTRACTOR

ADD THE FOLLOWING TO PARAGRAPH 3.21:

3.21 The Owner's policies are available for review at www.bcswan.net.

ARTICLE 7 – TIME

ADD THE FOLLOWING TO THE END OF THE FIRST PARAGRAPH IN 7.2.1.1:

The Parties agree that the weather station applicable to this Project shall be the one located at Wilmington, NC

ARTICLE 8 – PAYMENTS AND COMPLETION

ADD THE FOLLOWING TO PARAGRAPH 8.9:

8.9.1 Substantial Completion Liquidated Damages shall be the sum of five hundred dollars (\$500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.1 of the General Conditions.

8.9.2 Final Completion Liquidated Damages shall be the sum of five hundred dollars (\$500) per calendar day, and this amount shall be assessed in accordance with Subparagraph 8.9.2 of the General Conditions.

ADD THE FOLLOWING PARAGRAPH 8.11:

8.11.1 The schedule below contains certain specific dates in addition to date of Notice to Proceed and Time for Completion. These dates shall be adhered to and are the last acceptable dates unless modified by mutual agreement between the Contractor and the Owner. All dates indicate midnight unless otherwise stipulated. The only exceptions to this schedule are defined in the General Conditions under Paragraph 7.2 DELAYS AND EXTENSIONS OF TIME.

Notice of Intent to award – March 25, 2021
Return of Owner Contractor Agreement by Contractor – March 31, 2021
Notice to Proceed – May 18, 2021
Substantial Completion – August 30, 2021
Completion of all Commissioning – September 7, 2021

- 8.11.2 The Owner reserves the right to withhold the issuance of Notice to Proceed by up to forty-five (45) days. For each day that Notice to Proceed is withheld pursuant to this Subparagraph, the dates established for Substantial Completion and Final Completion shall be adjusted. The contractor shall not be entitled to additional compensation if the owner withholds the issuance of Notice to Proceed pursuant to this Subparagraph.

ARTICLE 9 – INSURANCE AND BONDS

ADD THE FOLLOWING TO PARAGRAPH 9.9:

- 9.9 Separate performance and payment bonds in the total amount of the Contract are required for Contract amounts in excess of \$300,000.

ARTICLE 10 – CHANGES IN WORK

ADD THE FOLLOWING NEW PARAGRAPH 10.9.14:

- 10.9.14 Additional services and dispute resolution services by the Design Consultant shall be paid by the Contractor at the rate of two hundred twenty dollars (\$220) per hour.

ADD THE FOLLOWING NEW PARAGRAPH 10.9.15:

- 10.9.15 The Owner's Dispute Resolution Policy required by N.C.G.S. § 143-128(f1) is contained in Policy 9020 (www.bcswan.net). The Dispute Resolution Policy is also included in the bid and contract documents

END OF SUPPLEMENTAL CONDITIONS