

**REQUEST FOR BIDS**

**RFB # 16-0103**

**ELEVATOR MODERNIZATION AT NHC JUDICIAL BUILDING**

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**COUNTY COMMISSIONERS**

**JONATHAN BARFIELD, JR., CHAIRMAN**

**BETH DAWSON, VICE-CHAIRMAN**

**WOODY WHITE**

**SKIP WATKINS**

**ROB ZAPPLE**

**CHRIS COUDRIET, COUNTY MANAGER**

## Section 1 - Advertisement

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Pursuant to GS 143-129, sealed bids addressed to Lena Butler, Purchasing Supervisor, New Hanover County Finance Department, 230 Government Center Drive, Suite 165, Wilmington, NC 28403 and marked “**ELEVATOR MODERNIZATION- RFB # 16-0103**” will be accepted until **2:00 PM EST, Tuesday, September 1, 2015** for the following work:

**Elevator Modernization:** The work consists of furnishing labor, materials, and supplies for the modernization of four (4) elevators at the County’s Judicial Building located at 316 Princess Street, Wilmington, NC.

**The bids will be publicly opened and read aloud following the latest time for receipt of bids in the New Hanover County Finance Office, Suite 165, Conference Room 500, Wilmington, North Carolina.**

Bidders must be properly licensed under Chapter 87 of the North Carolina General Statutes.

All prime bidders on this project must be pre-qualified in accordance with New Hanover County’s Pre-qualification Ordinance in order to bid. Bids will not be accepted unless the bidder is pre-qualified. Pre-qualification applications may be obtained at the County Legal Department, 230 Government Center Drive, Suite 155, Wilmington, NC 28403 or by visiting the County’s website at <http://legalinsurance.nhcgov.com/contractors-approved-for-bidding/>.

Visit the County’s website at <http://www.nhcgov.com/business-nhc/bids/> for a complete copy of the bidding documents.

The County will conduct a **Mandatory Pre-Bid meeting at 10:00 am on Tuesday, August 18, 2015**. The meeting will be held at the Historic Court House, located at 24 Third Street, Wilmington, NC. The purpose of this conference is to review project requirements and to respond to questions from prospective bidders and their subcontractors or material suppliers related to the intent of bidding documents.

A Bid Bond Equal to 5% of the base bid price is required by all bidders. The successful bidder will be required to provide Performance and Payment bonds equal to one hundred percent (100%) of the contract price.

No Bid may be withdrawn sixty (60) days after bid opening date.

The bidder shall make good faith efforts, as defined in the bid specifications, to subcontract 10% of the dollar value of the single prime contract to businesses owned and controlled by minorities.

The County reserves the right to waive any informalities, to reject any or all bids, and to accept that Bid or Bids which is in the best interest of the County.

Released: August 13, 2015

## Section 2 Instructions to Bidders

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### 2.1 SCHEDULE

Advertisement	Thursday, August 13, 2015
Mandatory Pre-Bid Meeting	Tuesday, August 18, 2015 at 10:00 am
Deadline for Final Questions	Friday, August 21, 2015
Deadline for Receipt of Bids	Tuesday, September 1, 2015 at 2:00 pm New Hanover County Finance Office 230 Government Center Drive, Suite 165 Wilmington, NC 28403 (Bid Opening: Conference Room 500)
Board Meeting for Award	Monday, September 21, 2015 at 9:00 am

### 2.2 PURPOSE

The intent of this RFB is to obtain the services of a qualified elevator installer and repair contractor to modernize four (4) elevators located at New Hanover County Judicial Building, 316 Princess Street, Wilmington, NC. The scope of work involves the elevators:

1. Controls
2. Main Car Operating Panel
3. Mechanical
4. Door Equipment

The County views Otis, Schindler, Thyssenkrupp, and Kone, as acceptable quality for elevator controls. Any product bid shall be equivalent to these manufacturers. The County shall be the sole judge as to the quality and suitability of any alternate brand bid.

### 2.3 PRE-BID CONFERENCE

The County will conduct a **Mandatory Pre-Bid meeting at 10:00 am on Tuesday, August 18, 2015**. The meeting will be held at the Historic Court House, located at 24 Third Street, Wilmington, NC. The purpose of this conference is to review project requirements and to respond to questions from prospective bidders and their subcontractors or material suppliers related to the intent of bidding documents.

**It is requested that prospective Bidders review the bidding documents and submit their initial questions to Lena Butler** by emailing [lbutler@nhcgov.com](mailto:lbutler@nhcgov.com) prior to the Pre-Bid Meeting. Bidders will also have an opportunity to submit follow-up questions following the Pre-Bid Meeting. The deadline for follow-up questions is **August 21, 2015 by 5:00 pm**.

### 2.4 PREQUALIFICATION REQUIRED

All prime bidders on this project must be pre-qualified in accordance with New Hanover County's Pre-qualification Ordinance in order to bid. Bids will not be accepted unless

the bidder is pre-qualified. Pre-qualification applications may be obtained at the County's Legal Department, 230 Government Center Drive, Suite 155, Wilmington, NC 28403 or by visiting the County's website <http://legalinsurance.nhcgov.com/contractors-approved-for-bidding/>.

## **2.5 BID PROPOSAL**

Proposals shall be made in strict accordance with the "Bid Proposal Package" provided herein, and all blank spaces for bids, alternates and unit prices shall be properly filled in. When requested alternates are not bid, the proposal may be considered incomplete. Any modifications to the "Bid Proposal Package" (including alternates and/or unit prices) may disqualify the bid and cause the bid to be rejected.

The Bidder agrees that the "Bid Proposal Package" detached from specifications will be considered and will have the same force and effect as if attached thereto. Photocopied or faxed proposals will not be accepted. Numbers shall be stated both in writing and in figures for the base bids and alternates.

Unit prices quoted in the "Bid Proposal Package" shall include overhead, profit and taxes and shall be the full compensation for the Bidder's cost involved in the work.

Proposals may be rejected if they show omissions, alterations of form, additions not called for, conditional bids, or irregularities of any kind.

Bidder shall identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts or an affidavit indicating work under contract will be self-performed, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f). Failure to comply with these requirements is grounds for rejection of the bid.

## **2.6 EXAMINATION OF CONDITIONS**

By submitting a bid, the Bidder is affirming that he has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and has satisfied himself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant, and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including but not limited to the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto.

The Bidder further affirms by submitting a proposal that he has satisfied himself as to the feasibility and meaning of the plans, drawings, specifications, and other contract documents for the construction of work and that he accepts all the terms, conditions and

stipulations contained therein, and that he is prepared to work in cooperation with other Contractors performing work on the site.

Reference is made to contract documents for the identification of those surveys and investigative reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work which have been relied upon by the Designer/owner in preparing the documents. The County will make copies of all such surveys and reports available to the Bidder upon request. Each Bidder may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his bid price for the performance of the work. Any on-site investigation shall be done at the convenience of the County. Any reasonable request for access to the site will be honored by the County.

## **2.7 FAMILIARITY WITH LAWS**

The bidders are assumed to have made themselves familiar with all laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in or upon the work, or in any way affects the conduct of the work.

## **2.8 CODES AND STANDARDS**

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

## **2.9 PREPARATION OF PROPOSAL**

The bidder must submit their bid proposal on the form herewith provided, and prices must be given both in writing and in figures (if requested). The bidder shall sign the bid proposal. **Bids not signed will be rejected.**

## **2.10 SUBMISSION OF BID FORM**

**2.10.1 Bid Bond:** Each bid shall be accompanied by a deposit of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required

herein. (**Bidders providing a bid bond in lieu of the cash deposit must use the attached bid bond form**).

**2.10.2 Addressee:** Bids must be on the form contained in this bid package and must be submitted in a sealed envelope properly marked “**ELEVATOR MODERNIZATION: RFB # 16-0103**” and shall be addressed to County at the following address:

New Hanover County Finance Office  
Attn: Lena Butler, Purchasing Supervisor  
230 Government Center Drive, Suite 165  
Wilmington, NC 28403

**2.10.3 Unacceptable Bids:** Bids submitted via telegraph, facsimile (FAX), telephone, and electronic means, including but not limited to e-mail, in response to the Request for Bids will not be acceptable.

## **2.11 LICENSING**

The successful Contractor must be properly licensed to do the work in accordance with the North Carolina General Statutes (Chapter 87, Article 1). Upon request, bidders shall show evidence of proper license type and limitation.

## **2.12 LATE BIDS**

Late bids will not be accepted. It is the responsibility of the Bidder to have his/her bid in the office specified in the Request for Bids by the time and date of the opening.

## **2.13 COMMUNICATION**

After the bid issue date, all communications between the County and prospective Bidders regarding this bid request shall be in writing. Any inquires, requests for interpretation, technical questions, clarification, or additional information shall be directed to **Lena L. Butler, Purchasing Supervisor** by emailing [lbutler@nhcgov.com](mailto:lbutler@nhcgov.com) or faxing (910) 798-7806. All questions concerning this bid shall reference the bid number, section number and paragraph. Questions and responses affecting the specifications of the bid will be provided by issuance of an Addendum to all known bidders of record. The first round of questions is due prior to the Pre-Bid Meeting to be held on **Tuesday, August 18, 2015 at 10:00 AM**. Final questions related to this Request for Bids shall be received no later than **5:00 P.M., EST, Friday, August 21, 2015**.

## **2.134 TIME OF BID OPENING**

Bids shall be opened and read aloud. After the opening of bids, no bid may be withdrawn, except under the provisions of General Statute 143-129.1, for a period of sixty (60) days unless otherwise specified. Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder. **Bids**

**will be publicly opened and read aloud on Tuesday, September 1, 2015 at 2:00 pm** in Conference Room 500 located within the New Hanover County Finance Department, 230 Government Center Drive, Suite 165, Wilmington, NC 28403.

#### **2.14 WITHDRAWAL OF BIDS**

Bidders may withdraw or withdraw and resubmit their bid at any time prior to the closing time for receipt of bids. No bid may be withdrawn after the scheduled closing time for receipt of bids for a period of sixty(60) days except as provided under G.S. 143-129.1 which allows a bidder to withdraw his/her bid from consideration after the bid opening without forfeiture of his/her bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, apparatus, supplies, materials, equipment, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn.

#### **2.15 AWARD OF CONTRACT**

The award of any contract resulting from this bid will be made to the lowest responsible bidder, taking into consideration quality, performance and time specified in the bid for the performance of the contract. In the event the lowest responsible, responsive bid is in excess of the funds available for the project, the County may enter into negotiations with the lowest responsible, responsive bidder and may make reasonable changes in the plans and specifications to bring the price within the funds available for the project and award the bid. If such negotiations prove to be unsuccessful, the County will re-advertise the project after making such changes in the plans and specifications as may be necessary to bring the cost of the project within the funds available.

#### **2.16 SUBSTITUTIONS**

In accordance with the provisions of G.S. 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the Designer/owner with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order.

Submittals for proposed substitutions shall include the following information:

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

d. Detailed comparison with specified products including performance capabilities, warranties, and test results.

e. Other pertinent data including data requested by the Designer/owner to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the Designer/owner to those specified, all bidders of record will be notified by Addendum.

## **2.17 PERFORMANCE BOND**

Each contractor shall furnish a performance bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form included with these specifications. The bond shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

## **2.18 PAYMENT BOND**

Each contractor shall furnish a performance bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form included with these specifications. The bond shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

## **2.19 ADDENDA**

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. It shall be the bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required.

Should the bidder find discrepancies in, or omission from, the drawings or documents or should he be in doubt as to their meaning, he shall at once notify Lena Butler by emailing [lbutler@nhcgov.com](mailto:lbutler@nhcgov.com) who will send written instructions in the form of addenda to all bidders. Notification should be no later than seven (7) days prior to the date set for receipt of bids. Neither the owner nor the designer/owner will be responsible for any oral instructions.

All addenda should be acknowledged by the bidder(s) on the Bid Proposal Form. However, even if not acknowledged, by submitting a bid, the bidder has certified that he has reviewed all issued addenda and has included all costs associated within his bid.

## **2.20 LIQUIDATED DAMAGES**

Since actual damages for any delay in the completion of the work which the contractor is required to perform under this contract are or will be difficult to determine, Bidders and his /her sureties shall be liable for and shall pay to the Owner the sum of **\$200** as fixed and agreed as liquidated damages, and not as penalty for each calendar day of delay from the date stipulated for completion, or as modified in accordance with the terms of this agreement until such work is satisfactorily completed and accepted. Said liquidated

damages may be deducted from any payments owed to the contractor by the Owner or collected from the sureties, whichever is deemed expedient by the Owner.

## **2.21 COMPLIANCE WITH BID REQUIREMENTS**

Failure to comply with these provisions or any other provisions of the General Statutes of North Carolina will result in rejection of bid.

## **2.22 E-VERIFY**

Pursuant to N.C.G.S. § 143-48.5 (Session Law 2014-418), Contractor shall fully comply and certify compliance of each of its subcontractors with Article 2 of Chapter 64 of the N.C. General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. County shall be provided affidavits attesting to Contractor's and subcontractor's compliance or exemption. Violation of the provision, unless timely cured, shall constitute a breach of Contract.

## **2.23 RIGHT TO REJECT BIDS**

The County reserves the right to waive any or all informalities, to reject any or all bids, and to accept that Bid or Bids which is in the best interest of the County.

**Section 3 – General Conditions**

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## ARTICLE 1-DEFINITIONS

1. The **contract documents** consist of the Instructions to Bidders; General Conditions, special conditions if applicable; drawings and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the proposal; the contract; the performance bond; the payment bond; and insurance certificates.
2. The **owner** is New Hanover County.
3. The **designer** are those referred to within this contract, or their authorized representatives. The Designer/owner(s), as referred to herein, shall mean architect and/or engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.
4. The **contractor**, as referred to hereinafter, shall be deemed to be either of the several contracting parties called the "Party of the First Part" in either of the several contracts in connection with the total project. Where, in special instances hereinafter, a particular contractor is intended, an adjective precedes the word "contractor," as "general," "heating," etc. For the purposes of a single prime contract, the term Contractor shall be deemed to be the single contracting entity identified as the "Party of the First Part" in the single Construction Contract. Any references or adjectives that name or infer multiple prime contractors shall be interpreted to mean the single prime Contractor.
5. A **subcontractor**, as the term is used herein, shall be understood to be one who has entered into a direct contract with a contractor, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
6. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
7. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor.
8. The **project** is the total construction work to be performed under the contract documents.
9. **Project Expediter**, as used herein, is an entity stated in the contract documents, designated to effectively facilitate scheduling and coordination of work activities. **For the purposes of a single prime contract, the single prime contractor shall be designated as the Project Expediter.**
10. **Change order** shall mean a written order to the Contractor executed by the County, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.
11. **Field Order**, as used herein, shall mean a written approval for the contractor to proceed with the work requested by owner prior to issuance of a formal Change Order. The field order shall be signed by the contractor, designer/owner, owner, and State Construction Office.
12. **Time of completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed.
13. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the contractor(s)

to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the contractor, or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the Contractor (e.g., if a multi-phased project-subsequent phases, delays in start other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).

14. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the contractor, and which engages to be responsible for the contractor and his acceptable performance of the work.
15. **Routine written communications between the Designer/owner and the Contractor** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information."
16. **Clarification or Request for information (RFI)** is a request from the Contractor seeking an interpretation or clarification by the Designer/owner relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Contractor's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
17. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
18. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
19. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents. Acceptance of equal is subject to approval of Designer/owner and owner.
20. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation. Acceptance of substitution is subject to the approval of the Designer/owner and owner.
21. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
22. **Indicated and shown** shall mean provide as detailed, or called for, and reasonably implied in the contract documents.
23. **Special inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with the approved construction documents and referenced standards.
24. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance to the owner's project requirements and the project design documents.
25. **Final Inspection** is the inspection performed by the County to determine the completeness of the project in accordance with NC Building Codes and approved plans and specifications.
26. **Beneficial Occupancy** is requested by the owner and is occupancy or partial occupancy of the building after all life safety items have been completed as determined by the County. Life

safety items include but not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.

27. **Final Acceptance** is the date in which the County accepts the construction as totally complete. This includes the County's Final Inspection and certification by the designer/owner that all punch lists are completed.
28. **Parks/Gardens** shall be the Owner's representative assigned to monitor the project and receive communication from the contractor regarding all issues related to the project.

## **ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS**

a. The drawings and specifications are complementary, one to the other, and that which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a bid for a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Agreement, Modifications, Addenda, Supplementary Conditions, Special Conditions, and Instructions to Bidders, General Conditions, Specifications and Drawings.

b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

c. The contractor shall execute each copy of the proposal, contract, performance bond and payment bond as follows:

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

10. The contractor's signature on the performance bond and the payment bond shall correspond with that on the contract. The date of performance and payment bond shall not be prior to the date of the contract.

### **ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS**

a. In such cases where the nature of the work requires clarification by the designer/owner, such clarification shall be furnished by the designer/owner with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.

b. The contractor(s) and the designer/owner shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the work. The designer/owner shall furnish drawings or clarifications in accordance with that schedule. The contractor shall not proceed with the work without such detail drawings and/or written clarifications.

### **ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS**

Bidding Documents and Site Development Plans may be examined and/or obtained at the County's Parks & Gardens Office located at 230 Government Center Drive, Suite 120, Wilmington, NC 28403 during regular office hours or by contacting Copy Cat at [info@copycatprintshop.com](mailto:info@copycatprintshop.com) or visit <http://www.nhcgov.com/business-nhc/bids/>. Persons requesting shipment of documents shall bear the additional, non-refundable cost of shipment, if applicable.

### **ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA**

a. Within 10 consecutive calendar days after the notice to proceed, the contractor shall submit a schedule for submission of all shop drawings, product data, samples, and similar submittals to the Owner. This schedule shall indicate the items, relevant specification sections, other related submittal, data, and the date when these items will be furnished to the designer.

b. The Contractor(s) shall review, approve and submit to the Owner all Shop Drawings, Coordination Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the Contractor's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Owner to retain up to two (2) copies of each submittal for his own use plus additional copies as may be required by the Contractor. Submittals shall be presented to the Owner in accordance with the schedule submitted in paragraph (a) so as to cause no delay in the activities of the Owner or of separate Contractors, if applicable.

c. The Owner shall review required submittals promptly, noting desired corrections if any, and retaining two (2) copies for the Owners use. The remaining copies of each submittal shall be returned to the Contractor not later than twenty (20) days from the date of receipt by the Owner, for the Contractor's use or for corrections and resubmittal as noted by the Owner.

When resubmittals are required, the submittal procedure shall be the same as for the original submittals.

d. Approval of shop drawings/submittals by the Designer/owner shall not be construed as relieving the Contractor from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such lack of compliance or errors first have been called in writing to the attention of the Designer/owner by the Contractor.

#### **ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE**

a. The contractor shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the designer/Owner and any authorized representative.

b. The contractor shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the contractor and submitted to the designer/owner upon project completion and no later than 30 days after final acceptance of the project.

c. The contractor shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

#### **ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

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

#### **ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES**

a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

c. Upon notice, the contractor shall furnish evidence as to quality of materials.

d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the designer/owner for approval or disapproval; such approval or disapproval shall be made by the designer/owner prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the owner and the designer/owner and owner approves.

e. The designer/owner is the judge of equality for proposed substitution of products, materials or equipment.

f. If at any time during the construction and completion of the work covered by these contract documents, the language, conduct, or attire of any workman of the various crafts be adjudged a nuisance to the owner or designer/owner, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.

## **ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS**

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

## **ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS**

a. The contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer/owner in writing. See Instructions to Bidders, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer/owner, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.

b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the contractor and included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by the contractor unless otherwise noted.

c. Projects constructed by the County are subject to inspection by county authorities and are subject to county building codes. Permits shall be obtained at no cost.

## **ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC**

a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer/owner, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.

b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.

c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer/owner and owner.

d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer/owner to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.

e. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in

Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

g. The contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer/owner and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.

h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).

i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

#### **ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973**

a. Any land-disturbing activity performed by the contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the contractor(s) shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.

c. The contractor(s) shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.

d. To the fullest extent permitted by law, the contractor(s) shall indemnify and hold harmless the owner, the designer/owner and the agents, consultants and employees of the owner and designer/owner, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

## **ARTICLE 13 - INSPECTION OF THE WORK**

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

b. All instructions to the contractor will be made only by or through the designer/owner or his designated project representative. Observations made by official representatives of the owner shall be conveyed to the designer/owner for review and coordination prior to issuance to the contractor.

c. All work shall be inspected by the designer/owner and/or special inspector prior to being covered by the contractor. Contractor shall give a minimum two weeks' notice unless otherwise agreed to by all parties. If inspection fails, after the first re-inspection all costs associated with additional re-inspections shall be borne by the contractor.

d. Where special inspection or testing is required by virtue of any state laws, instructions of the designer/owner, specifications or codes, the contractor shall give adequate notice to the designer/owner of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer/owner. Such special tests or inspections will be made in the presence of the designer/owner, or his authorized representative, and it shall be the contractor's responsibility to serve ample notice of such tests.

e. All laboratory tests shall be paid by the owner unless provided otherwise in the contract documents except the general contractor shall pay for laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.

f. Should any work be covered up or concealed prior to inspection and approval by the designer/owner, or special inspector, such work shall be uncovered or exposed for inspection, if so requested by the designer/owner in writing. Inspection of the work will be made upon notice from the contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the contractor involved.

## **ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE**

a. Throughout the progress of the work, each contractor shall keep at the job site, a competent superintendent and supervisory staff satisfactory to the designer/owner and the owner. The superintendent and supervisory staff shall not be changed without the consent of the designer/owner and owner unless said superintendent ceases to be employed by the contractor or ceases to be competent as determined by the contractor, designer/owner or owner. The superintendent and other staff designated by the contractor in writing shall have authority to act on behalf of the contractor, and instructions, directions or notices given to him shall be as binding as if given to the contractor. However, directions, instructions, and notices shall be confirmed in writing.

b. The contractor shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer/owner without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.

c. All contractors shall be required to cooperate and consult with each other during the construction of this project. Prior to installation of work, all contractors shall jointly prepare coordination drawings, showing locations of various ductworks, piping, motors, pumps, and other mechanical or electrical equipment, in relation to the structure, walls and ceilings. These drawings shall be submitted to the designer/owner through the Contractor for information only. Each contractor shall lay out and execute his work to cause the least delay to other contractors. Each contractor shall be financially responsible for any damage to other contractor's work and for undue delay caused to other contractors on the project.

d. The contractor is required to attend job site progress conferences as called by the designer/owner. The contractor shall be represented at these job progress conferences by both home office and project personnel. These representatives shall have authority to act on behalf of the contractor. These meetings shall be open to subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. Each contractor shall be prepared to assess progress of the work as required in his particular contract and to recommend remedial measures for correction of progress as may be appropriate. The designer/owner or his authorized representative shall be the coordinator of the conferences and shall preside as chairman. The contractor shall turn over a copy of his daily reports to the Owner at the progress meetings. Owner will determine daily report format.

**Bar Chart Schedule:** Where a bar chart schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by designer/owners, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all commissioning, required inspections and completion of final punch list(s). Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

**CPM Schedule:** Where a CPM schedule is required, it shall be in time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be

**Early Completion of Project:** The Contractor may attempt to complete the project prior to the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or

the Contract Completion Date. The Contractor shall not be required to pay liquidated damages to the Owner because of its failure to complete by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for early completion nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to complete earlier than the date required by the Contract Documents.

h. The proposed project construction schedule shall be presented to the owner no later than fifteen (10) days after written notice to proceed. No application for payment will be processed until this schedule is accepted by the owner.

i. The approved project construction schedule shall be distributed to all contractors and displayed at the job site by the Contractor.

## **ARTICLE 15 - SEPARATE CONTRACTS AND CONTRACTOR RELATIONSHIPS**

a. Chapter 143, Article 8, allows public contracts to be delivered by the following delivery methods: separate prime, single prime, dual, construction manager at risk, design-build, design-build bridging, private-public-partnership, and alternative contracting method as approved by the State Building Commission. The owner reserves the right to prepare separate specifications, receive separate bids, and award separate contracts for such other major items of work as may be in the best interest of the County. For the purposes of a single prime contract, refer to Article 1 – Definitions.

b. All contractors shall cooperate with each other in the execution of their work, and shall plan their work in such manner as to avoid conflicting schedules or delay of the work. See Article 14, Construction Supervision.

c. If any part of contractor's work depends upon the work of another contractor, defects which may affect that work shall be reported to the designer/owner/owner in order that prompt inspection may be made and the defects corrected. Commencement of work by a contractor where such condition exists will constitute acceptance of the other contractor's work as being satisfactory in all respects to receive the work commenced, except as to defects which may later develop. The designer/owner shall be the judge as to the quality of work and shall settle all disputes on the matter between contractors.

d. Any mechanical or electrical work such as sleeves, inserts, chases, openings, penetrations, etc., which is located in the work of the general contractor shall be built in by the general contractor. The respective mechanical and electrical contractors shall set all sleeves, inserts and other devices that are to be incorporated into the structure in cooperation and under the supervision of the general contractor. The responsibility for the exact location of such items shall be that of the mechanical and/or electrical contractor.

e. The designer/owner and the owner shall have access to the work whenever it is in preparation and progress and during normal working hours. The contractor shall provide facilities for such access so the designer/owner may perform his functions under the contract documents.

f. Should a contractor cause damage to the work or property of another contractor, he shall be directly responsible, and upon notice, shall promptly settle the claim or otherwise resolve the dispute.

## **ARTICLE 16 - SUBCONTRACTS AND SUBCONTRACTORS**

a. The contractor shall submit to the owner a list giving the names and addresses of subcontractors and equipment and material suppliers he proposes to use, together with the scope of their respective parts of the work. Should any subcontractor be disapproved by the owner, the owner shall submit his reasons for disapproval in writing for its consideration with a copy to the contractor. If the Owner concurs with the owner's recommendation, the contractor shall submit a substitute for approval. The owner shall act promptly in the approval of subcontractors, and when approval of the list is given, no changes of subcontractors will be permitted except for cause or reason considered justifiable by the designer/owner or owner.

b. The Owner will furnish to any subcontractor, upon request, evidence regarding amounts of money paid to the contractor on account of the subcontractor's work.

c. The contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The contractor agrees that no contractual relationship exists between the subcontractor and the owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the contractor.

## **ARTICLE 17 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS**

The contractor agrees that the terms of these contract documents shall apply equally to each subcontractor as to the contractor, and the contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. The contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to contractor-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer/owner to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the

date such contracts have been certified to be completed by the designer/owner or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

b. Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

c. The percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

d. Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by owner.

## **ARTICLE 18 – DESIGNER STATUS**

a. The designer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to direct work to be performed, to stop work, to order work removed, or to order corrections of faulty work, where any such action by the designer/owner may be necessary to assure successful completion of the work.

b. The designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the owner and the contractor, taking sides with neither.

c. Should the designer cease to be employed on the work for any reason whatsoever, then the owner shall employ a competent replacement who shall assume the status of the former designer/owner.

d. The designer and his consultants will make inspections of the project. He will inspect the progress, the quality and the quantity of the work.

e. The designer shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer and owner may perform their functions under the contract documents.

f. Based on the designer inspections and evaluations of the project, the designer shall issue interpretations, directives and decisions as may be necessary to administer the project. His/her decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract.

## **ARTICLE 19 - CHANGES IN THE WORK**

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

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

1. A field order, transmitted by fax, electronically, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.
2. In the event of emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the designer/owner, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

c. In determining the values of changes, either additive or deductive, contractors are restricted to the use of the following methods:

1. Where the extra work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by the Contractor, Designer/owner, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or

more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.

2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined shall be as follows: all contractors (the single contracting entity (prime), his subcontractors(1<sup>st</sup> tier subs), or their sub-subcontractors (2<sup>nd</sup> tier subs, 3<sup>rd</sup> tier subs, etc)) shall be allowed a maximum of 10% on work they each self-perform; the prime contractor shall be allowed a maximum of 5% on contracted work of his 1<sup>st</sup> tier sub; 1<sup>st</sup> tier, 2<sup>nd</sup> tier, 3<sup>rd</sup> tier, etc contractors shall be allowed a maximum of 2.5% on the contracted work of their subs. ; Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.

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

1. The actual costs of materials and supplies incorporated or consumed as part of the work;

2. The actual costs of labor expended on the project site; labor expended in coordination, change order negotiation, record document maintenance, shop drawing revision or other tasks necessary to the administration of the project are considered overhead whether they take place in an office or on the project site.

3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;

4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the work;

5. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the work.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the owner.

f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change

shall be arrived at by one of the foregoing methods. All change orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.

g. In all change orders, the contractor will provide a proposal and supporting data in suitable format. The designer/owner shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by the contractor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of the contractor's accepted proposal including all supporting documentation required by the designer/owner, the designer/owner shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the designer/owner shall, certify the change order by his signature, and forward the change order and all supporting data to the owner for the owner's signature. The owner shall execute the change order within seven (7) days of receipt. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

h. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

i. If, during the progress of the work, the owner requests a change order and the contractor's terms are unacceptable, the owner may require the contractor to perform such work on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the owner, a correct account of cost together with all proper invoices, payrolls and supporting data. Upon completion of the work a change order will be prepared with allowances for overhead and profit per paragraph d. above and "net cost" and "cost" per paragraph e. above. Without prejudice, nothing in this paragraph shall preclude the owner from performing or to have performed that portion of the work requested in the change order.

## **ARTICLE 20 - CLAIMS FOR EXTRA COST**

a. Should the contractor consider that as a result of instructions given by the designer/owner/owner, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer/owner within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The contractor shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation shall be considered unless the claim is so made. The designer/owner shall render a written decision within seven (7) days of receipt of claim.

b. The contractor shall not act on instructions received by him from persons other than the designer/owner, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The designer/owner shall not be responsible for misunderstandings claimed by the contractor of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as

permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

c. Should a claim for extra compensation that complies with the requirements of (a) above by the contractor and is denied by the designer/owner or owner, and cannot be resolved, the contractor may request a mediation in connection with GS 143-128(f1) in the dispute resolution rules adopted by the New Hanover County

#### **ARTICLE 21 - MINOR CHANGES IN THE WORK**

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

#### **ARTICLE 22 - UNCORRECTED FAULTY WORK**

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the owner and the designer/owner, the owner shall be reimbursed by the contractor. A change order will be issued to reflect a reduction in the contract sum.

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

a. The time of completion is stated in the Contract Document. The Contractor, upon notice of award of contract, shall prepare a construction schedule to complete the project within the time of completion as required by Article 14.

b. The contractors shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the owner and shall fully complete all work hereunder within the time of completion stated. Time is of the essence and the contractor acknowledges the Owner will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the contractor(s) shall pay the owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.

c. In the event of multiple prime contractors, the designer/owner shall be the judge as to the division of responsibility between the contractor(s), based on the construction schedule, weekly reports and job records, and shall apportion the amount of liquidated damages to be paid by each of them, according to delay caused by any or all of them.

d. If the contractor is delayed at any time in the progress of his work solely by any act or negligence of the owner, the designer, or by any employee of either; by any separate contractor employed by the owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer/owner and owner

determine may justify the delay, then the contract time may be extended by change order only for the time which the designer/owner and owner may determine is reasonable. Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the contractor reflecting the effect of the weather on progress of the work and initialed by the designer/owner's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle the Contractor to compensable damages for delays. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer/owner caused delays in the case of concurrent delays.

e. Request for extension of time shall be made in writing to the owner within twenty (20) days following cause of delay. In case of continuing cause for delay, the Contractor shall notify the owner of the delay within 20 days of the beginning of the delay and only one claim is necessary.

f. No claim for time extension shall be allowed on account of failure of the designer/owner to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c. Demand must be in written form clearly stating the potential for delay unless the drawings or instructions are provided. Any delay granted will begin after the twenty (20) day demand period is concluded.

#### **ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY**

a. The owner may desire to occupy or utilize all or a portion of the project prior to the completion of the project.

b. Should the owner request a utilization of a building or portion thereof, the designer/owner shall perform a designer/owner final inspection of area after being notified by the contractor that the area is ready for such. After the contractor has completed designer/owner final inspection punch list and the designer/owner has verified, then the designer/owner shall schedule a beneficial occupancy inspection at a time and date acceptable to the owner, contractor(s) and State Construction Office. If beneficial occupancy is granted by the State Construction Office, in such areas the following will be established:

1. The beginning of guarantees and warranties period for the equipment necessary to support in the area.
2. The owner assumes all responsibilities for utility costs for entire building.
3. Contractor will obtain consent of surety.

4. Contractor will obtain endorsement from insurance company permitting beneficial occupancy.
- c. The owner shall have the right to exclude the contractor from any part of the project which the designer/owner has so certified to be substantially complete, but the owner will allow the contractor reasonable access to complete or correct work to bring it into compliance with the contract.
- d. Occupancy by the owner under this article will in no way relieve the contractor from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The owner may prorate liquidated damages based on the percentage of project occupied.

#### **ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT**

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

**personnel regarding operating, maintenance, care, and adjustment of all equipment and special construction elements. In addition, the contractor shall provide to the owner a complete instructional video (media format acceptable to the owner) on the operation, maintenance, care and adjustment of all equipment and special construction elements.**

#### **ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT**

a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer/owner shall be promptly removed from the work site by the contractor, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the owner. Work or property of other contractors or the owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the contractor whose work is faulty.

b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the designer/owner, and shall make satisfactory progress, as determined by the designer/owner, until completed.

c. Should the contractor fail to proceed with the required corrections, then the owner may complete the work in accordance with the provisions of Article 28.

#### **ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT**

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

#### **ARTICLE 28 - OWNER'S RIGHT TO DO WORK**

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

## **ARTICLE 29 - ANNULMENT OF CONTRACT**

If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely and/or competent manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the County may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials owned by the County and may finish the Work by whatever methods it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

29.1 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the County's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such cost exceeds the unpaid balance, the Contractor shall pay the difference to the County. This obligation for payment shall survive the termination of the Contract.

29.2 In the event the employment of the Contractor is terminated by the County for cause and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience, such termination shall thereupon be deemed a Termination for Convenience.

## **ARTICLE 30 - CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the contractor, or if the owner should fail or refuse to make payment on account of a certificate issued by the owner within forty-five (45) days after receipt of same, then the contractor, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the owner, may suspend operations on the work or terminate the contract.

b. The owner shall be liable to the contractor for the cost of all materials delivered and work performed on this contract to date.

## **ARTICLE 31 - REQUEST FOR PAYMENT**

a. Not later than the fifth day of the month, the contractor shall submit to the Owner a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and owner. The Request for Payment shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:

1. Total of contract including change orders.
2. Value of work completed to date.

3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the contractor's work has been satisfactorily completed on schedule, with approval of the owner, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.

4. Less previous payments.

5. Current amount due.

b. The contractor, upon request of the Owner, shall substantiate the request with invoices of vouchers or payrolls or other evidence.

c. Prior to submitting the first request, the contractor shall prepare for the owner a schedule showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to subcontractors in accordance with Article 17, Contractor and Subcontractor Relationships. The contractor(s) shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier as listed in Affidavit C, if applicable.

d. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the contractor, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the contractor desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in an independent, licensed, bonded warehouse approved by the owner and located as close to the site as possible. The warehouse selected must be approved by the contractor's bonding and insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer/owner. Upon approval by the designer/owner, of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the contractor. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the owner may approve storage of materials at the point of manufacture, which conditions shall be approved by the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the Owner absolute right to possession of the materials at any time. Bond, security and insurance protection shall continue to be the responsibility of the contractor(s).

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

## ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the contractor, the designer/owner shall issue and forward to the owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer/owner. If the certificate is not approved by the designer/owner, he shall state in writing to the contractor and the owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the owner except:
1. Claims arising from unsettled liens or claims against the contractor.
  2. Faulty work or materials appearing after final payment.
  3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
  4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the contractor except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer/owner for approval, the contractor shall fully comply with all requirements specified in the “ project closeout” section of the specifications. These requirements include but not limited to the following:
1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The designer/owner must approve the Manuals prior to delivery to the owner).
  2. Transfer of Required attic stock material and all keys in an organized manner.
  3. Record of Owner’s training.
  4. Resolution of any final inspection discrepancies.
  5. Granting access to Contractor’s records, if Owner’s internal auditors have made a request for such access pursuant to Article 52.
- e. The contractor shall forward to the designer/owner, the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
  2. Affidavit of Release of Liens.

3. Affidavit of contractors of payment to material suppliers and subcontractors. (See Article 36).

4. Consent of Surety to Final Payment.

f. The designer/owner will not authorize final payment until the work under contract has been certified by designer/owner, certificates of compliance issued, and the contractor has complied with the closeout requirements. The designer/owner shall forward the contractor's final application for payment to the owner along with respective certificate(s) of compliance required by law.

### **ARTICLE 33 - PAYMENTS WITHHELD**

- a. The designer/owner may withhold payment for the following reasons:
  - 1. Faulty work not corrected.
  - 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer/owner.
  - 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- b. The owner may authorize the withholding of payment for the following reasons:
  - 1. Claims filed against the contractor or evidence that a claim will be filed.
  - 2. Evidence that subcontractors have not been paid.
- c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the contractor without cause will make owner liable for payment of interest to the contractor in accordance with G.S. 143-134.1. As provided in G.S.143-134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

### **ARTICLE 34 – INSURANCE REQUIREMENTS**

Before commencing any work, the successful bidder shall procure insurance in the bidder's name and maintain all insurance policies for the duration of the contract of the types and in the amounts listed below. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees, or subcontractors, whether such operations by himself/herself or anyone directly or indirectly employed by him/her.

Commercial General Liability. Bidder shall maintain Commercial General Liability and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$10,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

CGL insurance shall be written on Insurance Services Office (ISO) “occurrence” form CG 00 01 covering Commercial General Liability or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

New Hanover County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 **or** CG 20 33 **and** CG 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the contractor; products and completed operations of the contractor; premises owned, leased or used by the contractor; and under the commercial umbrella, if any.

There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, employment-related practices, or damage to the named insured’s work.

The bidder’s Commercial General Liability insurance shall be primary as respects New Hanover County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by New Hanover County, its officers, officials, and employees shall be excess of and not contribute with the bidder’s insurance.

Workers’ Compensation and Employer’s Liability. Bidder shall maintain Workers’ Compensation as required by the general statutes of the State of North Carolina and Employer’s Liability Insurance.

The Employer’s Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$10,000,000 each accident for bodily injury by accident, \$10,000,000 each employee for bodily injury by disease, and \$10,000,000 policy limit.

The insurer shall agree to waive all rights of subrogation against the New Hanover County, its officers, officials, agents and employees for losses arising from work performed by the bidder for New Hanover County.

Business Auto Liability. Bidder shall maintain Business Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$5,000,000 each accident.

Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01.

The bidder's Business Auto Liability insurance shall be primary as New Hanover County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by New Hanover County, its officers, officials, and employees shall be excess of and not contribute with the bidder's insurance.

Environmental/Pollution Liability. If required, bidder shall maintain Environmental/Pollution Liability covering losses caused by pollution incidents that arise from the operations of the contractor described under the scope of services of this contract.

Environmental/Pollution Liability shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs and defense, including costs and expenses incurred in the investigation defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least \$10,000,000 per claim, with an annual aggregate of at least \$10,000,000.

Contractors Pollution Liability shall include as an additional insured New Hanover County, its officers, officials, agents, and employees.

If Contractors Pollution Liability is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning from the time that work under the contract is complete.

If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, the Contractor must furnish to the New Hanover County evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the New Hanover County under this paragraph must be maintained in minimum amounts of \$10,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Installation Floater. If required, Bidder shall purchase and maintain in force Installation Floater insurance for the installation of equipment. Such insurance shall be written in an amount equal to the replacement cost of the equipment. The insurance shall apply on a replacement cost basis.

Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit.

Installation Floater insurance shall name New Hanover County as loss payee.

Installation Floater Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30).

Any deductible applicable to the Installation Floater shall be paid by the Bidder.

If New Hanover County is damaged by the failure of Bidder to maintain Installation Floater insurance, then Bidder shall bear all reasonable costs properly attributable to that failure.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by New Hanover County. At the option of New Hanover County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects New Hanover County, its officers, officials, agents, and employees; or the contractor shall procure a bond guaranteeing payment deductibles or self-insured retentions. The bidder shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not New Hanover County is an insured under the policy.

Miscellaneous Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

Each insurance policy required by this contract shall be endorsed to state that coverage shall not canceled by either party except after 30 days prior written notice has been given to New Hanover County, 230 Government Center Drive #125, Wilmington, NC 28403.

If bidder's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by New Hanover County.

Evidence of Insurance. The bidder shall furnish New Hanover County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this contract are deemed complete.

Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in 2.16.3 above.

Subcontractors. Bidder shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent contractors' coverage, and the contractor shall be responsible for assuring that all subcontractors are properly insured.

Conditions.

The insurance required for this contract must be on forms acceptable to New Hanover County.

Where circumstances warrant, New Hanover County may, at its discretion subject to acceptance by the Risk Management and Finance Department accept letters of credit or custodial accounts in lieu of specific insurance requirements.

The bidder shall provide that the insurance contributing to satisfaction of insurance requirements shall not be canceled, terminated or modified by the contractor without prior written approval of New Hanover County.

The bidder shall promptly notify the Risk Management Office at (910) 798-7497 of any accidents arising in the course of operations under the contract causing bodily injury or property damage.

New Hanover County reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

Failure of New Hanover County to demand a certificate or other evidence of full compliance with these insurance requirements or failure of New Hanover County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

By requiring insurance herein, New Hanover County does not represent that coverage and limits will necessarily be adequate to protect the bidder and such coverage and limits shall not be deemed as a limitation of bidder's liability under the indemnities granted to New Hanover County in this contract.

If bidder fails to maintain the insurance as set forth herein, New Hanover County shall have the right, but not the obligation, to purchase said insurance at bidder's expense.

The bidder may apply to New Hanover County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

New Hanover County shall have the right, but not the obligation of prohibiting bidder or any subcontractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by New Hanover County.

#### **ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND**

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

#### **ARTICLE 36 - CONTRACTOR'S AFFIDAVIT**

The final payment of retained amount due the contractor on account of the contract shall not become due until the contractor has furnished to the owner an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the contractor in connection with this contract. In the event that the contractor cannot obtain similar affidavits from subcontractors to protect the contractor and the owner from possible liens or claims against the subcontractor, the contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the contractor's) knowledge, and if any appear afterward, the contractor shall save the owner harmless.

#### **ARTICLE 37 - ASSIGNMENTS**

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

## **ARTICLE 38 - USE OF PREMISES**

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

## **ARTICLE 39 - CUTTING, PATCHING AND DIGGING**

- a. The contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer/owner may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No contractor shall endanger any work of another contractor by cutting, digging or other means. No contractor shall cut or alter the work of any other contractor without the consent of the designer/owner and the affected contractor(s).

## **ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS**

- a. The contractor shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer and other utility services which may be necessary and required for completion of the project including all utilities required for testing, cleaning, balancing, and sterilization of designated plumbing, mechanical and electrical systems. Any permanent meters installed shall be listed in the contractor's name until work has a final acceptance. The contractor will be solely responsible for all utility costs prior to final acceptance. Contractor shall contact all affected utility companies prior to bid to determine their requirements to provide temporary and permanent service and include all costs associated with providing those services in their bid. Coordination of the work of the utility companies during construction is the sole responsibility of the contractor.
- b. Meters shall be relisted in the owner's name on the day following final acceptance of the Contractor's work, and the owner shall pay for services used after that date.
- c. The owner shall be reimbursed for all metered utility charges after the meter is relisted in the owner's name and prior to completion and acceptance of the work of **all** contractors. Reimbursement shall be made by the contractor whose work has not been

completed and accepted. If the work of two or more contractors has not been completed and accepted, reimbursement to the owner shall be paid by the contractors involved on the basis of assessments by the designer/owner.

d Prior to the operation of permanent systems, the Contractor will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.

e. All contractors shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the contractor(s), the designer/owner and owner. Use of the equipment in this manner shall be subject to the approval of the Designer/owner and owner and shall in no way affect the warranty requirements of the contractor(s).

f. The electrical contractor shall have the building's permanent power wiring distribution system in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.

g. The electrical contractor shall have the building's permanent lighting system ready at the time the general contractor begins interior painting and shall provide adequate lighting in those areas where interior painting and finishing is being performed.

h. Each prime contractor shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:

1. Prior to final acceptance of work by the Owner, each contractor shall remove and replace any parts of the permanent building systems damaged through use during construction.
2. Temporary filters as recommended by the equipment manufacturer in order to keep the equipment and ductwork clean and free of dust and debris shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the owner's acceptance of the work.
3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.
4. It shall be understood that any warranty on equipment presented to the owner shall extend from the day of final acceptance by the owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
5. The electrical contractor shall have all lamps in proper working condition at the time of final project acceptance.

i. The Contractor shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.

j. The Project Expediter shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer/owner so direct.

k. On multi-story construction projects, the Contractor shall provide temporary elevators, lifts, or other special equipment for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the Project Expediter's bid.

l. The Contractor will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the names of prime contractors on the project, and the name of the designer/owner and consultants. Directional signs may be erected on the owner's property subject to approval of the owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the owner.

#### **ARTICLE 41 - CLEANING UP**

a. The contractors shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the Owner. The Contractor shall provide an onsite refuse container(s) for the use of all contractors. Each contractor shall remove their rubbish and debris from the job site on a daily basis. If a building is involved, the Contractor shall broom clean the building as required to minimize dust and dirt accumulation.

b. The Contractor shall provide and maintain suitable all-weather access to the building.

c. Before final inspection and acceptance of the building, each contractor shall clean his portion of the work, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the owner, with no cleaning required by the owner.

#### **ARTICLE 42 - GUARANTEE**

a. The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the owner.

b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

c. Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

#### **ARTICLE 43 - CODES AND STANDARDS**

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

#### **ARTICLE 44 - INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless County, its officers, officials, agents and employees from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, anyone directly or indirectly employed by it or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by County, its officers, officials, agents and employees.

#### **ARTICLE 45 - TAXES**

a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).

b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).

c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the bid proposal and contract sum.

d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the bid proposal and contract sum.

**e. Accounting Procedures for Refund of County Sales & Use Tax**

Amount of county sales and use tax paid per contractor's statements: Contractors performing contracts for state agencies shall give the state agency for whose project the property was purchased a signed statement containing the information listed in G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

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

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

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the contractor.

Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

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

**ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE**

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

## **ARTICLE 47 - EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES**

The contractor(s) agree not to discriminate against any employee or applicant for employment because of physical or mental disabilities in regard to any position for which the employee or applicant is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with such disabilities without discrimination based upon their physical or mental disability in all employment practices.

## **ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)**

There are no asbestos-containing materials in the work areas; however, Contractors are reminded of the requirements of instructions under Instructions to Bidders and General Conditions of the Contract, titled Examination of Conditions.

## **ARTICLE 49 - MINORITY BUSINESS PARTICIPATION**

For construction contracts with an estimated value of \$300,000 or more, the Bidder has the responsibility to make a good faith effort to solicit minority bids. The County has established a verifiable goal of ten percent (10%). Each bidder will make good faith efforts to subcontract with individuals who are minorities to include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

The bidder shall include with his bid his/her a completed Identification of HUB Certified/Minority Business Participation form and Affidavit A or Affidavit B.

With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to M/WBE subcontractors.

The document, "New Hanover County Minority and/or Women Business Enterprise (M/WBE) Program" including Affidavits are hereby incorporated into and made a part of this contract.

## **ARTICLE 50 – GIFTS**

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

During the construction of the Project, the Contractor is prohibited from making gifts to any of the Owner's employees, Owner's project representatives (architect, engineers, construction manager and their employees or any other person that may have any

involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

#### **ARTICLE 51 – AUDITING-ACCESS TO PERSONS AND RECORDS**

The County shall have access to Contractor’s officers, employees, agents and/or other persons in control of and/or responsible for the Contractor’s records that relate to this Contracts for purposes of conducting audits. The Owner’s internal auditors shall also have the right to access and copy the Contractor’s records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor’s requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from Owner and/or its project representatives.

#### **ARTICLE 52 – TERMINATION FOR CONVENIENCE**

The County may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The County shall give written notice of such termination to the Contractor specifying when termination becomes effective.

52.1 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The County may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County or its designee.

52.2 The Contractor shall transfer title and deliver to the County such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights Contractor controls or possesses.

52.3 (a) The Contractor shall submit a termination claim to the County specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the County. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the County shall pay the Contractor, an amount derived in accordance with subparagraph [c] below.

(b) The County and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the County shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment, and other services accepted under this Contract.

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however,

that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant hereto. These costs shall not include amounts paid in accordance with other provisions hereof.

**Section 4 – Bid Proposal Form**

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**ELEVATOR MODERNIZATION AT NHC JUDICIAL BUILDING**

**RFB # 16-0103**

**Bid Proposal Form**

**Deadline for Receipt of Bids: 2:00 P.M. EST, Tuesday, September 1, 2015**

Name of Bidder: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

\_\_\_\_\_

Bidders Phone Number: \_\_\_\_\_

Bidder's Email: \_\_\_\_\_

Bidder's License Number: \_\_\_\_\_

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The bidder further declares that he and his subcontractors have fully complied with NCGS 64, Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

The undersigned, as bidder, proposes and agrees if this bid is accepted, to contract with the New Hanover County for the furnishing of all materials, equipment, and labor necessary to complete the construction of the work described in these documents in full and complete accordance with plans, specifications, and contract documents, and to the full and entire satisfaction of the New Hanover County for the sum of:

Bidder's Name: \_\_\_\_\_

1. Base Bid (Cars # 1-3; Car # 5) \$ \_\_\_\_\_

2. Alternate (Car # 4) \$ \_\_\_\_\_

Total Bid plus Alternate \$ \_\_\_\_\_

The Contractor is hereby notified that the Contract will contain a Liquidated Damages Clause.

A. Performance and Delivery Time:

The Contractor shall begin work on or before the "commence work" date specified in the **NOTICE TO PROCEED** issued by the Owner and as set forth in the plans, specifications, and proposal. All work shall be completed in all events on or before the date set forth in the **NOTICE TO PROCEED**.

B. Liquidated Damages:

Since actual damages for any delay in the completion of the work which the contractor is required to perform under this contract are or will be difficult to determine, the contractor and his /her sureties shall be liable for and shall pay to the Owner the sum of **\$200** as fixed and agreed as liquidated damages, and not as penalty for each calendar day of delay from the date stipulated for completion, or as modified in accordance with

Bidder's Name: \_\_\_\_\_

the terms of this agreement until such work is satisfactorily completed and accepted. Said liquidated damages may be deducted from any payments owed to the contractor by the Owner or collected from the sureties, whichever is deemed expedient by the Owner.

**Acknowledgment of Addenda**

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

**Attachments to Bid Proposal**

- 1. Bid Bond
- 2. Sample Certificate of Insurance
- 3. E-Verify Form
- 4. Identification of Minority/Women Business Participation and Affidavit A or Affidavit B

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name/Title

Date \_\_\_\_\_

**NEW HANOVER COUNTY JUDICIAL BUILDING**  
**Elevator Modernization Bid**

**A. Elevator Contractor: Successful Elevator Contractor must be in the business of maintaining and manufacturing elevator equipment.**

<b>QUANTITY:</b>	(4) DOVER TRACTION ELEVATORS
<b>CAPACITY:</b>	PASSENGER – (CARS #1 – 3 ) 3,500 LB PRISONER – (#5) 3,500
<b>SPEED:</b>	200 FPM
<b>STOPS:</b>	5
<b>OPENINGS:</b>	5
<b>TRAVEL:</b>	APPROX: 42’
<b>MACHINE TYPE:</b>	OVERHEAD TRACTION
<b>MACHINE LOCATION:</b>	PENTHOUSE
<b>POWER SUPPLY:</b>	480 V 3 PH 60 CYC
<b>OPERATION:</b>	VVVF

**SECTION I: CONTROLS AND DRIVE SYSTEMS**

**A. Controller:** Furnish and install new. The elevator control system shall be microprocessor based and software oriented. The system shall operate in real time, continuously analyzing the car (s) changing position, condition, and work load. All controller and operational circuits including the brake control and drive system shall be all digital. Control of the elevator shall be automatic in operation by means of push buttons in the car numbered to correspond to floors served, for registering car stops, and by “up-down” push buttons at each intermediate landing and “call” push buttons at terminal landings.

1. Momentary pressing of one or more buttons shall dispatch the car to the designated landings in the order in which the landings are reached by the car, irrespective of the sequence in which the buttons are pressed. Each landing call shall be canceled when answered.
2. When the car is traveling in the up direction, it shall stop at all floors for which car buttons or “up” hall pressed, unless the stop for that floor has been registered by a car button or unless the down call is at the highest floor for which any buttons have been pressed.  
Pressing the “up” button when the car is traveling in the down direction shall not intercept the travel unless the stop for that floor has been registered by a car button or unless the up call is the lowest for which any button has been pressed.
3. When the car has responded to its highest or lowest stop, and stops are registered for the opposite direction, its direction of travel shall reverse automatically and it shall then answer the calls registered for that direction. If both up and down calls are registered at an intermediate floor, only the call corresponding to the direction of car travel shall be canceled upon the stopping of the car at the landing.
4. A car that is stopping for the last hall call in the preferred direction, and that hall call is for the opposite direction with no onward car calls, shall reverse preference when the selector position advances to the landing at which the car is committed to stop. A car that

is stopping for the last hall call in the preference direction, and that hall call is for the same direction, shall hold its preference until the door is almost closed allowing time for a passenger to register an onward car call which will maintain the preference. If no car call is registered before the door is almost closed, the car will lose its preference and shall be available to accept calls in either direction.

**VVVF Drive:** Furnish and install new. The controller is connected to a 3 phase, 460 volt, 60 Hz building supply and converts it to a variable voltage frequency output to the AC motor.

**B. Group Operation:** The group supervisory operation shall be embedded within selected car controllers. No separate group controller shall be supplied. The microprocessor shall constantly scan the system for hall calls. When hall calls are registered, the control system shall instantly calculate the estimated time of arrival, number of floors to travel from the current position, the time it takes to travel one floor at top speed, calls assigned to a car, and car reversal time to respond to a call in the opposite direction of travel. An internal constant shall be set, requiring a maximum time for a car to respond to a call. When a car's status changes or additional hall calls are registered, the estimated time of arrival shall be recalculated and calls reassigned if necessary.

1. **Traffic Pattern:** The microprocessor shall provide flexibility to meet well defined patterns of traffic, including up peak, down peak, and heavy interfloor demands, and adjust for indeterminate variations in these patterns which occur in buildings.
2. **Fuzzy logic:** fuzzy logic shall be an integral part of the group control system software. The enhanced fuzzy logic will optimize the interfloor traffic performance. Inputs for the fuzzy logic shall include accurate passenger load from an electronic loadweigher, probable car calls generated from each hall call, type of building and observed traffic patterns.

**C. Load Weighing Device:** Provide a load weighing device at each car which, when the particular car is filled to an adjustable percentage of the capacity load, shall cause the car to bypass landing calls but not car calls. The passed landing calls shall remain registered for the next following car. The device shall be unaffected by the action of compensating chain or rope. The device shall detect a 15 pound (7kg.) load change under all conditions.

1. The load sensor shall use a linear variable differential transformer to accurately measure the weight in the car. The information shall be transferred via a serial link to the elevator controller.

**D. Anti-Nuisance Call Control:** The microprocessor control system shall evaluate the number of people on the car and compare that value to the number of car calls registered. If the number of car calls exceeds the number of people by a field programmable value, the car calls shall be canceled after the first call has been answered.

- E. Motion Control:** The drive control system shall be dual-loop feedback system based primarily on car position. The velocity profile shall be calculated by the microprocessor control system producing extremely smooth and accurate stops. The velocity encoder shall permit continuous comparison of machine speed to velocity profile and to actual car speed. This accurate position/velocity feedback shall permit a fast and accurate control of acceleration and retardation.
- F. Motor Pre-Torque:** Current shall be applied to the elevator drive before the brake is released and the speed pattern is dictated to eliminate roll back and sling shot effects of unbalanced loads in the car. The electronic load weigher shall determine the load on the car determining a pre-torque reference to send to the drive.
- G. Non-Proprietary User Interface Tool (UIT)** User-friendly, on-board UIT with unrestricted access provides all the diagnostic equipment required for adjusting, maintaining and troubleshooting the system.

## **SECTION II: MACHINE ROOM EQUIPMENT**

### **MACHINE AND MOTORS:**

**Machine:** Cars #1,2,3 and #5 (prisoner) – Retain existing hoist machine. Replace all seals. Drain, flush, and refill existing gear box.

**Motor & Rope Gripper:** Furnish and install new totally enclosed, non-ventilated AC motors with Class F insulation. Motor armature shall be dynamically balanced and supported by ball bearings of ample capacity. Furnish and install new rope gripper.

### **GOVERNOR**

**Governor:** Provide New Governor and Tail Sheave

## **SECTION III HOISTWAY EQUIPMENT**

### **CAR**

**Platform:** Retain the existing platform.

**Sling:** Retain the existing steel stiles affixed to a steel crosshead and bolstered with bracing members to remove strain from the car enclosure.

**Roller Guides:** Provide New Roller Guide Assemblies.

**Car Enclosure:** Retain existing car enclosure.

**Cab Interior:** Provide new cab interior with plastic laminate panels, stainless steels reveals, stainless steel LED Down Light Ceiling, and rear handrail. (owner to choose laminate color)

## **NEW HOISTWAY OPERATING DEVICES**

Furnish and install new terminal stopping devices shall be provided to slow or automatically stop the car at the terminal landings and to automatically cut off power and apply the brake, should the car travel beyond the terminal landings.

## **SAFETIES**

Retain. Drop, clean, and lube the existing safeties.

## **ROPES, RAILS, AND COUNTERWEIGHTS**

Replace existing car and counterweight ropes with new. Counterbalance each elevator for smooth and economical operation by cast iron or steel plate weights contained in a structural steel frame. Counterweight shall equal a complete elevator car and approximately 40 percent of the specified load.

Counterweight Roller Guides: Provide new counterweight roller guide assemblies

## **BUFFERS:**

Retain the existing spring buffers. Clean and paint.

## **SECTION IV FIXTURES**

### **CAR FIXTURES:**

**Car Operating Station:** Furnish and install new main car control panels that shall be provided in each car and shall contain the devices required for the specified operations.

The lowest module shall contain the "door open", "door close", "emergency stop switch" and alarm button. Intermediate modules shall contain illuminated floor buttons which will illuminate when a call is registered and will remain illuminated until the call is answered.

The top module shall contain the required switches. All raised floor indications and handicap symbols shall be located immediately adjacent to the floor buttons and fully integrated in the module design. No applied symbols shall be allowed. There shall be no floor indications or symbols on the buttons. Call buttons shall be stainless steel with LED Halo.

### **HALL FIXTURES:**

**Landing Buttons:** Riser(s) of landing push button stations shall be provided. Each intermediate station shall consist of two illuminated push buttons with raised direction arrow, one for the up direction and the other for the down direction. Each terminal station shall contain an illuminated push button with raised direction arrow. The buttons shall be illuminated to indicate that a call has been registered at that floor for the indicated direction. Surface mounted.

**Hall Lanterns / Combination PI:** Provide new Hall Lantern/PI combo for each elevator at the first landing only. Provide new Hall Lantern for remaining floors on each elevator.

## SECTION V DOOR EQUIPMENT

**Door Operation:** Provide a direct current motor driven heavy duty operator designed to operate the car and hoistway doors simultaneously. The door control system shall be closed loop, all electronic and digital operation. The closed loop circuit shall give constant feedback on the position and velocity of the elevator door. The motor torque shall be constantly adjusted to maintain the correct door speed based on its position and load. All adjustments and setup shall be through the computer based service tool. Door movements shall be electrically cushioned at both limits of travel and the door operating mechanism shall be arranged for manual operation in event of power failure. Doors shall automatically open when the car arrives at the landing and automatically close after an adjustable time interval or when the car is dispatched to another landing.

1. **No Unnecessary Door Operation:** Car door shall open only if the car is stopping for a car or hall call, answering a car or hall call at the present or selected as the next car up.
2. **Door Open Time Saver:** If a car is stopping in response to a car call assignment only (no coincident hall call), the current door hold open time is changed to a shorter field programmable time when the electronic door protection device is activated.
3. **Double Door Operation:** When a car stops at a landing with concurrent up and down hall calls, no car calls, and no other hall call assignments, the car door opens to answer the hall call in the direction of the car's current travel. If an onward car call is not registered before the door closes to within 6 inches of fully closed, the travel will reverse and the door will reopen to answer the other call.
4. **Nudging Operation:** The doors shall remain open as long as the electronic detector senses the presence of a passenger or object in the door opening. If door movement is obstructed for a field programmable time, a buzzer will sound and the doors will close at reduced speed. If the infrared door protection system detects a person or object while closing, the doors will stop and resume closing after the obstruction has been removed.
5. **Limited Door Reversal:** If the doors are closing and an infrared beam is interrupted, the doors will reverse and reopen partially. After the obstruction is cleared, the doors will begin to close.
6. **Door Open Watchdog:** If the doors are opening, but do not fully open after a field adjustable time, the doors will recycle closed then open six times to try and correct the fault.
7. **Door Close Watchdog:** If the doors are closing, but do not fully close after a field adjustable time, the doors will recycle open then close six times to try and correct the fault.
8. **Door Close Assist:** When the doors have failed to fully close and are in the recycle mode, the door drive motor shall have increased torque applied to possibly overcome mechanical resistance or differential air pressure and allow the door to close.

**Door Protection Device:** Provide a door protection system using 40 microprocessor controlled infrared light beams. The beams shall project across the car opening detecting the presence of a passenger or object. If door movement is obstructed, the doors shall immediately reopen. A mechanical reopening device shall not be acceptable.

**Car Door Equipment:** Furnish and install new car hanger rollers, clutch, and gate switch.

**Car Door:** Provide new car doors in satin stainless steel.

**Hoistway doors:** Retain existing hoistway doors

**Hoistway door equipment:** Furnish and install new hanger rollers, pick up assemblies, and closers for each hoistway landing.

**Interlocks:** Provide New. Each hoistway entrance shall be equipped with approved type interlock tested as required by Code. The interlock shall be designed to prevent operation of the car away from the landing until the doors are locked in the closed position as defined by Code and shall prevent opening the doors at any landing from the corridor side unless the car is at rest at that landing or is in the leveling zone and stopping at that landing. Interlocks shall bear Underwriters' Laboratories "B" label of approval.-

**Hoistway Door Locking Device:** Hoistway door unlocking devices as specified by the ASME A17.1 Code shall be provided to permit authorized persons to gain access to the hoistway when the elevator car is away from the landing.

## **SECTION VI        GENERAL REQUIREMENTS**

**Wiring:** Provide new traveling cable and hoistway wiring throughout project per ANSI A17.1.

## ATTACHMENTS

1. E-Verify Form
2. Form of Bid Bond
3. Form of Performance Bond
4. Form of Payment Bond
5. MWBE Program
6. Draft Contract

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

**AFFIDAVIT of COMPLIANCE**  
**with N.C. E-Verify Statutes**

I, \_\_\_\_\_ (hereinafter the "Affiant"), duly authorized by and on behalf of \_\_\_\_\_ (hereinafter the "Employer") after being first duly sworn deposes and says as follows:

1. I am the \_\_\_\_\_ (President, Manager, CEO, etc.) of the Employer and possess the full authority to speak for and on behalf of the Employer identified above.
2. Employer understands that "E-Verify" means the federal E-Verify program operated by the United States Dept. of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.
3. \_\_\_\_\_ Employer employs 25 or more employees in the State of North Carolina, and is in compliance with the provisions of N.C. Gen. Stat. §64-26. Employer has verified the work authorization of its employees through E-Verify and shall retain the records of verification for a period of at least one year.  
  
\_\_\_\_\_ Employer employs fewer than 25 Employees and is therefore not subject to the provisions of N.C. Gen. Stat. §64-26.
4. All subcontractors engaged by or to be engaged by Employer have or will have likewise complied with the provisions of N.C. Gen. Stat. §64-26.
5. Employer shall keep New Hanover County informed of any change in its status pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes.

Further this affiant sayeth not.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Affiant

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My commission expires: \_\_\_\_\_

**FORM OF BID BOND**

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_  
\_\_\_\_\_ as  
principal, and \_\_\_\_\_, as surety, who  
is duly licensed to act as surety in North Carolina, are held and firmly bound unto New  
Hanover County as obligee, in the penal sum of \_\_\_\_\_  
DOLLARS, lawful money of the United States of America, for the payment of which, well  
and truly to be made, we bind ourselves, our heirs, executors, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this \_\_\_\_ day of \_\_\_\_ 20\_\_

WHEREAS, the said principal is herewith submitting proposal for and the principal  
desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that  
if the principal shall be awarded the contract for which the bid is submitted and shall  
execute the contract and give bond for the faithful performance thereof within ten days  
after the award of same to the principal, then this obligation shall be null and void; but if the  
principal fails to so execute such contract and give performance bond as required by G.S.  
143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth  
in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided  
by G.S. 143-129.1

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

## FORM OF PERFORMANCE BOND

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name of Principal: \_\_\_\_\_  
(Contractor)

Name of Surety: \_\_\_\_\_

Name of Contracting Body: NEW HANOVER COUNTY \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

Project: \_\_\_\_\_

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

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

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

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

Executed in \_\_\_\_\_ counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

\_\_\_\_\_  
Contractor: (Trade or Corporate Name)

By: \_\_\_\_\_

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

\_\_\_\_\_  
(Surety Company)

Witness:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Attorney in Fact)

Countersigned:

\_\_\_\_\_

(Surety Corporate Seal)

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_

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

## FORM OF PAYMENT BOND

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name of Principal: \_\_\_\_\_  
(Contractor)

Name of Surety: \_\_\_\_\_

Name of Contracting Body: NEW HANOVER COUNTY

Amount of Bond: \_\_\_\_\_

Project: \_\_\_\_\_

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

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

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

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

Executed in \_\_\_\_\_ counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

Attest: (Corporation)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Corp. Sec. or Asst. Sec., only)

(Corporate Seal)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

\_\_\_\_\_  
(N.C. Licensed Resident Agent)

\_\_\_\_\_

\_\_\_\_\_  
Name and Address-Surety Agency

\_\_\_\_\_

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

\_\_\_\_\_  
Contractor: (Trade or Corporate Name)

By: \_\_\_\_\_

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

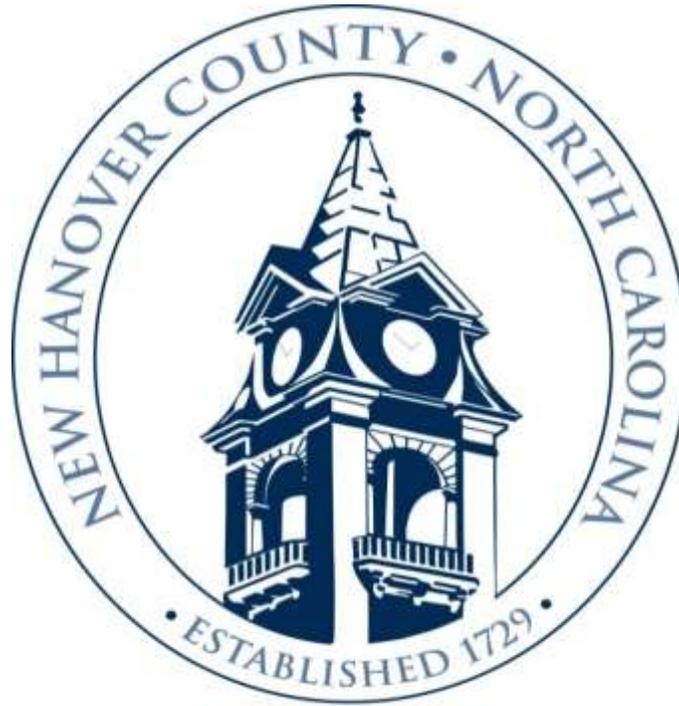
\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Attorney in Fact)

(Surety Corporate Seal)

New Hanover County  
Minority and/or Women Business Enterprise  
(M/WBE) Program



Construction Guidelines and Affidavits

These instructions shall be included with each bid solicitation.

New Hanover County  
Minority and/or Women Business Enterprise Program

Construction Guidelines for M/WBE Participants

Policy Statement

It is the policy of New Hanover County that minority businesses, as defined by North Carolina General Statute 143-128 have maximum opportunity to participate in the performance of contracts and subcontracts funded in whole or in part with public funds. This includes all aspects of the County's contracting and procurement programs, including but not limited to construction projects, supplies and materials, as well as professional and personal service contracts.

Goals and Good Faith Efforts

Bidders responding to this solicitation shall comply with the M/WBE program by making Good Faith Efforts to achieve the following aspiration goals for participation.

PROJECT	MBE	WBE
ELEVATOR MODERNIZATION	2 %	8%

Bidders shall submit M/WBE information with their bids on the forms provided. This information will be subject to verification by the County prior to contract award. Firms qualifying as "M/WBE" for the County's goals must be certified by the NC Department of Historically Underutilized Businesses (NCHUB) or by the NC Department of Transportation (NCDOT). Firms qualifying as "WBE" must be designated as "women-owned business and firms qualifying as "MBE" must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). Those firms who are certified as both a "WBE" and "MBE" may only satisfy the "MBE" requirement. A complete database of NC HUB certified firms may be found at <http://www.doa.nc.gov/hub/default.aspx> and NCDOT firms may be found at <https://partner.ncdot.gov/VendorDirectory/default.html> <https://partner.ncdot.gov/VendorDirectory/default.html>.

**Please note: A contractor may utilize any firm desired; however, in order for the County to count the participation towards the goal, all M/WBE vendors who wish to do business as a minority or female must be certified by NC HUB or NCDOT.**

The Bidder shall make good faith efforts to encourage participation of M/WBEs prior to submission of bids in order to be considered as a responsive bidder. Bidders are cautioned that even though their submittal indicates they will meet the M/WBE goal, they should document their good faith efforts and be prepared to submit this information, if requested.

The M/WBE's listed by the Contractor on the Identification of Minority/Women Business Participation which are determined by the County to be certified shall perform the work and supply the materials for which they are listed unless the Contractors receive prior authorization from the County to perform the work with other forces or to obtain materials from other sources. If a contractor is proposing to perform all elements of the work with his own forces, he must be prepared to document evidence satisfactory to the owner of similar government contracts where he has self-performed.

The Contractor shall enter into and supply copies of fully executed subcontracts with each M/WBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.

## Instructions

The Bidder shall provide with the bid the following documentation:

- Identification of Minority/Women Business Participation  
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit A (if subcontracting)

OR

- Identification of Minority/Women Business Participation  
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit B (if self-performing; must attest that bidder does not customarily subcontract work on this type of project—includes supplies and materials)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

- Affidavit C (if aspirational goals are met or are exceeded)

OR

- Affidavit D (if aspirational goals are not met)

After award of contract and prior to issuance of notice to proceed:

- Letter(s) of Intent or Executed Contracts

\*\*With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to M/WBE subcontractors.

\*\*\*If a change is needed in M/WBE Participation, submit a Request to Change M/WBE Participation Form. Good Faith Efforts to substitute with another M/WBE contractor must be demonstrated.

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the County for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the County that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the County whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the COUNTY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.



NEW HANOVER COUNTY AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_ (Name of Bidder)

Affidavit of \_\_\_\_\_

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

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

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

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

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

# NEW HANOVER COUNTY --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

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

(Name of Project)

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

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

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

Do not submit with bid    Do not submit with bid    Do not submit with bid    Do not submit with bid  
**NEW HANOVER COUNTY - AFFIDAVIT C - Portion of the Work to be  
 Performed by M/WBE Firms**

County of \_\_\_\_\_

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

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

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

\_\_\_\_\_  
 (Project Name)

Project ID# \_\_\_\_\_ Amount of Bid: \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with MBE firms and a minimum of \_\_\_\_\_% of the total dollar amount of the contract with WBE firms. Minority/women businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets, if needed

Name and Phone Number	*M/WBE Category	Work description	Dollar Value

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

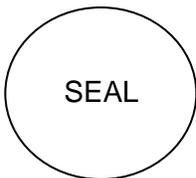
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with M/WBE Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

NEW HANOVER COUNTY AFFIDAVIT D – Good Faith Efforts

County of \_\_\_\_\_

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

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

Affidavit of \_\_\_\_\_ I do hereby certify  
that on the \_\_\_\_\_

(Name of Bidder)

\_\_\_\_\_  
(Project Name)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with MBE firms and a minimum of \_\_\_\_\_% of the total dollar amount of the contract with WBE firms. Minority/women businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

(Attach additional sheets if needed)

Name and Phone Number	*M/WBE Category	Work description	Dollar Value

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

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

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.

G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

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

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

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

# LETTER OF INTENT

## M/WBE Subcontractor Performance

Please submit this form or executed subcontracts with M/WBE firms after award of contract and prior to issuance of notice to proceed.

PROJECT: \_\_\_\_\_  
(Project Name)

TO: \_\_\_\_\_  
(Name of Prime Bidder/Architect)

The undersigned intends to perform work in connection with the above project as a:

\_\_\_\_ Minority Business Enterprise                      \_\_\_\_ Women Business Enterprise

The M/WBE status of the undersigned is certified the NC Office of Historically Underutilized Businesses (required).    \_\_\_\_ Yes    \_\_\_\_ No

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project at the following dollar amount:

Work/Materials/Service Provided	Dollar Amount of Contract	Projected Start Date	Projected End Date

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Name & Phone No. of M/WBE Firm)

\_\_\_\_\_  
(Name & Title of Authorized Representative of M/WBE)

\_\_\_\_\_  
(Signature of Authorized Representative of M/WBE)

## REQUEST TO CHANGE M/WBE PARTICIPATION

(Submit changes only if notified as apparent lowest bidder, continuing through project completion)

Project: \_\_\_\_\_

Bidder or Prime Contractor: \_\_\_\_\_

Name & Title of Authorized Representative: \_\_\_\_\_

Address: \_\_\_\_\_ Phone #: \_\_\_\_\_

\_\_\_\_\_ Email Address: \_\_\_\_\_

Total Contract Amount (including approved change orders or amendments): \$\_\_\_\_\_

Name of subcontractor: \_\_\_\_\_

Good or service provided: \_\_\_\_\_

### Proposed Action:

Replace subcontractor

Perform work with own forces

For the above actions, you must provide one of the following reasons (Please check applicable reason):

The listed MBE/WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract.

The listed MBE/WBE is bankrupt or insolvent.

The listed MBE/WBE fails or refuses to perform his/her subcontract or furnish the listed materials.

The work performed by the listed subcontractor is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subcontractor is substantially delaying or disrupting the progress of the work.

*If replacing subcontractor:*

Name of replacement subcontractor: \_\_\_\_\_

The M/WBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required).  Yes  No

Dollar amount of original contract \$ \_\_\_\_\_

Dollar amount of amended contract \$ \_\_\_\_\_

**Other Proposed Action:**

Increase total dollar amount of work

Add additional subcontractor

Decrease total dollar amount of work

Other

Please describe reason for requested action: \_\_\_\_\_

*If adding\* additional subcontractor:*

The M/WBE status of the contractor is certified by the NC Office of Historically Underutilized Businesses (required).  Yes  No

*\*Please attach Letter of Intent or executed contract document*

Dollar amount of original contract \$ \_\_\_\_\_

Dollar amount of amended contract \$ \_\_\_\_\_

**Interoffice Use Only:**

**Approval**  Y  N

**Date** \_\_\_\_\_

**Signature** \_\_\_\_\_

<b>Pay Application No.</b> _____ <b>Purchase Order No.</b> _____
---

## Proof of Payment Certification M/WBE Contractors, Suppliers, Service Providers

Project Name: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Current Contract Amount (including change orders): \$\_\_\_\_\_

Requested Payment Amount for this Period: \$\_\_\_\_\_

Is this the final payment? \_\_\_Yes \_\_\_No

Firm Name	M/WBE Category*	Total Amount Paid from this Pay Request	Total Contract Amount (including changes)	Total Amount Remaining

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

Date: \_\_\_\_\_

Certified By: \_\_\_\_\_

Name

Title

Signature

NORTH CAROLINA

**AGREEMENT**

NEW HANOVER COUNTY

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015 by and between **NEW HANOVER COUNTY**, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and \_\_\_\_\_, hereinafter referred to as "Contractor."

**WITNESSETH:**

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the County as follows:

1. Scope of Services. Contractor shall provide labor and materials for elevator modernization at the New Hanover County Judicial Building located at 316 Princess Street, as more fully described on Exhibit A, attached hereto and incorporated herein by reference.

2. Time of Performance. The term of this Agreement shall begin from Notice to Proceed and all work shall be completed within two-hundred ten (210) days

3. Payment. County hereby agrees to pay for the cost of this Contract not to exceed a sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars. Payment is contingent upon a final County inspection and acceptance of work.

4. Extra Work. County and Contractor shall negotiate and agree upon the value of any extra work or services prior to the issuance of a County Change Order or Renewal/Amendment (CRA) form covering said extra work or services. Such Change Order or CRA shall set forth the corresponding adjustment, if any, to the Contract Price and Contract Time.

5. Indemnity. Contractor shall indemnify and hold County, its officers, officials, agents, and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of Contract or personal injuries or death or on account of property damages arising out of or relating to the work or services to be performed by Contractor hereunder, resulting from the negligence of or the willful act or omission of Contractor, its agents, employees and subcontractors.

6. Insurance. Before commencing any work or services, Contractor shall procure insurance in Contractor's name and maintain all insurance policies for the duration of the Contract of the types and in the amounts listed in this Contract. The insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from operations or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors, whether such operations by itself or anyone directly or indirectly employed by it.

7. Minimum Scope and Limits of Insurance

7.1 Commercial General Liability

7.1.1 Contractor shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability insurance with a total limit of not less than \$10,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

7.1.2 CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent Contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract, including the tort liability of another assumed in a business contract.

7.1.3 County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 & GC 20 37 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees

7.1.4 Contractor's CGL insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall

be excess of and not contribute with Contractor's insurance.

7.2 Worker's Compensation and Employer's Liability

7.2.1 Contractor shall maintain Work or Worker's Compensation as required by the General Statutes of the State of North Carolina and Employer's Liability Insurance.

7.2.2 The Employer's Liability, and if necessary, Commercial Umbrella Liability insurance shall not be less than \$10,000,000 each accident for bodily injury by accident, \$10,000,000 each employee for bodily injury by disease, and \$10,000,000 policy limit.

7.2.3 The insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from work or services performed by Contractor for County.

7.3 Business Auto Liability

7.3.1 Contractor shall maintain Business or Personal Auto Liability and, if necessary, Commercial Umbrella Liability insurance with a limit of not less than \$10,000,000 each accident.

7.3.2 Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos.

7.3.3 Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide Contractual liability coverage equivalent to that provided in ISO form CA 00 01.

7.3.4 Contractor's Business Auto Liability insurance shall be primary as respects County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be excess of and not contribute with Contractor's insurance.

7.4 Surety Bond

7.4.1 Contractor shall furnish and deliver to County a Payment Bond and a Performance Bond covering the faithful performance and completion of the work included in this Contract and payment for all materials and labor furnished or supplied in connection with the work included in this Contract.

7.4.2 Said bonds shall be issued and furnished to County prior to, and as a condition precedent to, commencement of the work of this Contract.

7.4.3 Each of the Payment Bond and Performance Bond shall be furnished on behalf of contractor, shall name County obligee, and shall be in the amount equal to one hundred (100%) percent of the amount of the guaranteed repair and maintenance costs. Such bond(s) shall be solely for the protection of County.

7.4.4 The Payment Bond and the Performance Bond shall be in the forms set forth as Exhibit "B" hereto, and shall be issued by a surety of financial standing having a rating from A.M. Best Company equal to or better than A and must be included on the approved list of sureties issued by the United States Department of Treasury.

7.4.5 The bond shall remain in effect at least one (1) year after the date when final payment becomes due.

7.4.6 The surety bond must be in the form set forth in NCGS 44A-33, without any variations therefrom.

7.4.7 Contractor shall provide surety bond wherein Surety waives notice of any and all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by the Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments.

7.4.8 The surety bond must set forth no requirement that suit be initiated prior to the time stipulated in applicable North Carolina Statutes of Limitation

7.5 Deductibles and Self-Insured Retentions

7.5.1 Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, agents, and employees; or Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

7.5.2 Contractor shall be solely responsible for the payment

of all deductibles to which such policies are subject, whether or not County is an insured under the policy.

7.6 Miscellaneous Insurance Provisions

7.6.1 The policies are to contain, or be endorsed to contain, the following provisions:

7.6.2 Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County its officers, officials, agents, and employees.

7.6.3 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to County, 230 Government Center Drive #125, Wilmington, NC 28403.

7.6.4 If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

7.7 Acceptability of Insurers

7.8.1 Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless County has granted specific approval.

7.8 Evidence of Insurance

7.8.1 Contractor shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work or services, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

7.8.2 Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

7.8.3 With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for

which such insurance must be maintained.

7.9 Sub-Contractors. Contractor may utilize Walter Holmes Electric Inc. as subcontractor for this work. Subcontractor shall refer to Section 7 for insurance requirements Contractor shall include all sub-contractors as insureds under its policies or shall furnish separate certificates for each sub-contractor. All coverage for sub-contractors shall be subject to all of the requirements stated herein. CGL coverage shall include independent contractors' coverage, and Contractor shall be responsible for assuring that all sub-contractors are properly insured.

7.10 Conditions

7.10.1 The insurance required for this Contract must be on forms acceptable to County.

7.10.2 Where circumstances warrant, County may, at its discretion subject to acceptance by the Risk Management and Finance Department accept letters of credit or custodial accounts in lieu of specific insurance requirements.

7.10.3 Contractor shall provide that the insurance contributing to satisfaction of insurance requirements in this Contract shall not be canceled, terminated, or modified by Contractor without prior written approval of County.

7.10.4 Contractor shall promptly notify the New Hanover Property Management and the Risk Management Office at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

7.10.5 County reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

7.10.6 Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

7.10.7 By requiring insurance herein, County does not represent that coverage and limits will necessarily be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation of Contractor's liability under the indemnities granted to County in this Contract.

7.10.8 If Contractor fails to maintain the insurance as set forth herein, County shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

7.10.9 Contractor or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

7.10.10 County shall have the right, but not the obligation of prohibiting Contractor or any sub-contractor from entering the project site or withhold payment until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by County.

7.12 Standard of Care. Contractor shall exercise reasonable care and skill as might be expected from similarly situated Contractors performing work or services of the kind required under this Contract at the time and the place where the services are rendered. The staff of and subcontracted Contractors engaged by Contractor shall possess the experience, knowledge and character necessary to qualify them to perform the particular duties to which they are assigned.

8. Independent Contractor. The parties mutually agree that the Contractor is an independent contractor and not an agent of the County, and as such, the Contractor shall not be entitled to any County employment benefits, such as, but not limited to, vacation, sick leave, insurance, workmen's compensation, or pension and retirement benefits.

9. Default and Termination. If Contractor fails to prosecute the work or services with such diligence as will insure its completion within the Contract time, or if Contractor breaches any of the terms or conditions contained in this Contract and fails to cure said breach within two (2) days of County's mailing of Notice of Default, or otherwise fails to perform the work or services hereunder to the County's reasonable satisfaction, County may terminate this Contract forthwith. Upon termination, County may, without prejudice to an action for damages or any other remedy, take the prosecution of the work or services out of the hands of Contractor. County may enter into another Contract for the completion of the Contract, or use such other methods as may be required for the completion of the Contract. County may deduct all costs of

completing the Contract from any monies due or which may become due to Contractor. In the event this Contract is terminated prior to completion of the services by the Contractor, the Contractor shall be paid for work or services performed to the date of termination. In no event will the amount due Contractor in the event of termination exceed that amount set forth in this Contract. Nothing contained herein shall prevent the County from pursuing any other remedy, which it may have against Contractor, including claims for damages.

10. Termination for Convenience. County may terminate this Contract for convenience at any time and without cause. Upon receipt of notice, Contractor shall immediately discontinue providing the work or service and, if applicable, placing any orders for any materials, facilities, and supplies in connection with the performance of the work or services of this Contract.

11. Non-appropriation. All funds for payment by County under this Contract are subject to the availability of any annual appropriation for this purpose by the Board of Commissioners. In the event of non-appropriation of funds by the Board of Commissioners for the services provided under the Contract, County will terminate the Contract, without termination charge or liability, on the last day of the then-current fiscal year or when the appropriation made for then-current year for the services/items covered by this Contract is spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Contract, cancellation shall be accepted by the Professional on ten (10) business days' prior written notice, but failure to give such notice shall be of no effect and County shall not be obligated under this Contract beyond the date of termination.

12. Non-waiver of Rights. The parties mutually agree that either party's failure to insist upon the strict performance of any provision of this Contract or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Contract.

13. Conflict of Interest. No paid employee of the County shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Contract.

14. Subcontracts. The Contractor shall utilize no subcontractors for carrying out the services to be performed under this Contract without the written approval of the County.

15. Entire Contract. This Contract constitutes the entire understanding of the parties.

16. Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

17. Further Actions. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Contract.

18. Severability. If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

19. Inclusive Terms. Use of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

20. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

21. Accounting Procedures for Refund of County Sales & Use Tax. Pursuant to G.S. 105-164.14(c), the County is entitled to a refund of sales and/or use taxes paid by contractors on purchases of building materials, supplies, fixtures and equipment that become a part of or are annexed to any building or structure that is owned or leased by the County and is being erected, altered or repaired for use by the County.

Contractors shall provide a "certified statement" containing the specific required information. The certified statement must include all of the following information:

- a. the date the property was purchased;
- b. the type of property purchased;
- c. the cost of property purchased and the amount of sales and use taxes paid thereon;
- d. the project for which the property was used;

- e. if the property was purchased in this State, the county to which it was delivered; and
- f. if the property was not purchased in this State, the county in which the property was used.

If the contractor makes several purchases from the same vendor, the certified statement must indicate each invoice number, the inclusive dates of the invoices, the total amount each invoice, and the state and local sales and use taxes paid on the purchase. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid by the contractor. If subcontractors are used, similar certified statements by its subcontractors must be obtained by the general contractor and furnished to the County. Local sales or use taxes included in the contractor's statements must be shown separately from the State sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by the contractor for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure that is owned or leased by the County and is being erected, altered or repaired for use by the County.

Examples of property on which sales or use tax has been paid by the contractor and which shall not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts and equipment rentals.

A certified statement must be provided with each pay request. If there was no sales or use tax paid during the period, the contractor shall provide a "Zero" sales and use tax statement.

22. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Certified Mail, Return Receipt Requested:

**To County:**

New Hanover County Property Management  
Attn: Scott Gordon  
200 Division Drive  
Wilmington, NC 28401

**To Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

23. Assignability. The parties hereto agree that this Contract is not transferable and shall not be assigned by either party without the written consent of the other party to this Contract.

24. Contract Under Seal. The parties hereto expressly agree to create a Contract under seal.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.

[SEAL]

NEW HANOVER COUNTY

\_\_\_\_\_  
\_\_\_\_\_  
County Manager

ATTEST:

\_\_\_\_\_  
Clerk to the Board

[SEAL]

CONTRACTOR

\_\_\_\_\_  
\_\_\_\_\_  
President (Seal)

ATTEST:

\_\_\_\_\_  
Secretary

This instrument has been pre-

Acct#32520100-800700

audited in the manner required by the Local Government Budget and Fiscal Control Act.

Approved as to form:

\_\_\_\_\_  
County Finance Director

\_\_\_\_\_  
County Attorney

NORTH CAROLINA

NEW HANOVER COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that Teresa P. Elmore acknowledged that she is Clerk to the Board of Commissioners of New Hanover County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its \_\_\_\_\_ County Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_ came before me this day and acknowledged that (s)he is Secretary of \_\_\_\_\_ an \_\_\_\_\_, and that by County duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and sealed with its corporate seal.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_