

## FORM OF SINGLE PRIME CONSTRUCTION CONTRACT

THIS AGREEMENT, made this 9<sup>th</sup> day of July, 2024, by and between Eagle Solar and Light, LLC, a North Carolina limited liability company (“Contractor”) and Buncombe County, a body politic and corporate organized under the laws of the State of North Carolina (“Owner” or “County”).

### WITNESSETH

The Owner and the Contractor for the consideration named herein agree as follows:

1. **Scope of Work.** This Agreement concerns the installation and commissioning of photovoltaic solar energy systems to be performed by the Contractor. The Contractor shall furnish and deliver all materials, perform all work in the manner and form provided by the approved design drawings and specifications from the preconstruction phase, and those items not on the approved design to ensure the project is functional and complete. These plans, specifications, and documents, entitled “Solar on Buncombe County Fire Departments” are attached hereto and made a part hereof as if fully set forth herein:
  - a. Scope of Work
  - b. Buncombe Owner Construction Contract General Conditions of the Contract
  - c. Buncombe Owner’s Invitation for Construction Bids
  - d. Responsive Bid Bond
  - e. RFP Bidder Information Workbook
  - f. Federal Uniform Guidance
  - g. Certificate of Insurance
  - h. Performance and Payment Bonds

Project name: Buncombe County Fire Department Solar Projects

2. The Contractor shall commence work to be performed under this contract on 07-09-2024 and Contractor shall complete the Scope of Work by 12-31-2024. For each day in excess thereof, liquidated damages shall be limited to \$250 per day minus any weather delays or other circumstances beyond the control of either party. The Contractor, as one of the considerations for the awarding of this contract, shall furnish to the Owner, a schedule setting forth planned progress of the project broken down by the various divisions or party of the work and by calendar days.
3. The Owner hereby agrees to pay to the Contractor for the faithful performance of this contract, subject to additions and deductions as provided in the specifications or proposal, a maximum of:

Six hundred and twenty-six thousand one hundred and twenty-seven and 00/100 Dollars (\$626,177.00)

4. The Owner shall review, and if approved, process the Contractor’s pay request within 30 days upon milestones listed below. The Owner, after reviewing and approving said pay request, shall make payments to the Contractor on the basis of progress on the identified milestones, less five percent (5%) of the amount of such estimate which is to be retained by the Owner until all work has been performed

strictly in accordance with this agreement and until such work has been accepted by the Owner. The Owner may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.

- a. Payment Milestones
  - i. Contract Execution (10% of entire contract value, minus O&M)
  - ii. Module PO Issued (50% of entire contract value, minus O&M)
  - iii. Substantial Completion of 3 projects (10% of entire contract value, minus O&M and 5% retainage)
  - iv. Substantial Completion of 3 projects (10% of entire contract value, minus O&M and 5% retainage)
  - v. Substantial Completion of 3 projects (10% of entire contract value, minus O&M and 5% retainage)
  - vi. Commissioning of All Projects (10% of project value plus O&M and retainage)
5. The Contractor shall perform the work associated with this Agreement in such a manner as not to void any warranties, including those for labor, materials, or parts, that are held by the Owner, Fire Departments, and/or that are applicable to the property on which any activities under this contract occur, and/or that remain in effect on any of the locations at which the Contractor is performing work associated with this Agreement. The Owner and/or Fire Departments and/or their respective governing bodies upon whose property any activities under this contract occur, may allow for the issuer of any such warranties to inspect the drawings, specifications, and/or the work performed by the Contractor to ensure that any such warranties remain valid for their remaining term. The Owner and/or the respective Fire Departments shall be responsible for providing notice to the issuers of any warranties.
6. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Owners to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.
7. The Contractor attests that it and all of its subcontractors have fully complied with all requirements of NCGS 64 Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).
8. The work to be performed under Agreement is being done on properties owned or controlled by independent 501C3 fire departments. These fire departments are an intended third-party beneficiary to this contract.

9. The individual signatories below have the expressed and implied authority on behalf of their respective boards to execute this Agreement. The parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an e-mail.

NOW THEREFORE, the parties hereby make, agree, and execute this Contract by the below signatures of duly authorized officials or agents.

CONTRACTOR

By: *Samuel Yates*  
(Signature)

Samuel Yates  
(Printed Name)

CEO  
(Title)

July 9, 2004  
(Date)

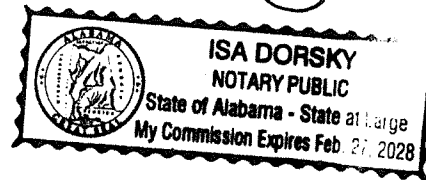
STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, ISA DORSKY, a Notary Public of the County and State aforesaid, do hereby certify that Samuel Yates personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this 9 day of JULY, 20 24

My commission expires: 02/27/2028

*ISA DORSKY*  
Notary Public



BUNCOMBE COUNTY

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

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

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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

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

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

*M Moore*  
\_\_\_\_\_

**GENERAL CONDITIONS OF THE CONTRACT**

**STANDARD FORM FOR SINGLE PRIME CONSTRUCTION PROJECTS**

**NORTH CAROLINA  
COUNTY OF BUNCOMBE**

**GENERAL CONDITIONS OF THE CONTRACT**

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## ARTICLE 1 - DEFINITIONS

- a. The **contract documents** consist of the Request for Proposal (RFP); General Contractor's formal response to the RFP; General Conditions of the Contract; special conditions if applicable; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates. All of these items together form the contract.
- b. The **Owner** is Buncombe County Government.
- c. The **designer** or **project designer** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the project pursuant to a contract with the Owner, (hereinafter, the "design contract").
- d. Intentionally left blank for sequential numbering purposes.
- e. A **subcontractor**, as the term is used herein, shall be a trade contractor, a general, mechanical, electrical, plumbing, specialty contractor, or a trade contractor, who has entered into a direct contract with a GC, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor as supervised by the GC.
- h. The **project** is the total construction work to be performed under the contract documents.
- i. Intentionally left blank for sequential numbering purposes.
- j. **Change order**, as used herein, shall mean a written order to the GC subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the GC, designer and the Owner, in that order (Article 19).
- k. **Field Order**, as used herein, shall mean a written approval for the GC to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the GC, designer, and Owner.
- l. **Field Change**, as used herein shall mean a written approval from the Owner for the GC to proceed with work requested by the Owner.



- m. **Time of Completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).
- n. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the GC to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the GC, or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the GC (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
- o. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the GC, and which engages to be responsible for the GC and his acceptable performance of the work.
- p. **Routine written communications between the Designer and the General Contractor** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".
- q. **Clarification or Request for information (RFI)** is a request from the GC seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the GC's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- r. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- s. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
- t. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents. Acceptance of equal is subject to approval of the designer and owner.
- u. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve

competition and/or enhance the finished installation. Acceptance of substitution is subject to the approval of the designer and owner.

- v. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
  - w. **Indicated and shown** shall mean provide as detailed, or called for, and reasonably implied in the contract documents.
  - x. **Special inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with the approved construction documents and referenced standards.
  - y. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance to the owner's project requirements and the project design documents.
  - z. **Designer Final Inspection** is the inspection performed by the design team to determine the completeness of the project in accordance with approved plans and specifications. This inspection occurs prior to final inspection.
- aa. left blank for numbering purposes
  - bb. **Beneficial Occupancy** is requested by the owner and is occupancy or partial occupancy of the building after all life safety items have been completed as determined by the local Authority Having Jurisdiction (AHJ). Life safety items include but not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.
  - cc. **Final Acceptance** is the date in which the Owner accepts the construction as totally complete. This includes the local AHJ and certification by the designer that all punch lists are completed.

## ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small- scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The GC shall execute each copy of the response to RFP, contract, performance bond and payment bond as follows:

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

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

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The GC and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The GC shall not proceed with the work without such detail drawings and/or written clarifications.

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

The Designer or owner shall furnish free of charge to the GC electronic copies of plans and specifications. If requested by the GC, up to 3 paper copies of plans and specifications will be provided free of charge, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the GC shall clearly and legibly record all work-in-place that is at variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the GC at the request of the GC.

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

- a. Within fifteen (15) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the GC and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.
- b. The GC shall review, approve and submit to the Designer all Shop Drawings, Coordination Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the GC's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the GC. Submittals shall be presented to the Designer in accordance with the schedule submitted in paragraph (a) so as to cause no delay in the activities of the Owner.
- c. The Designer shall review required submittals promptly, noting desired corrections if any, and retaining three (3) copies (1 for the Designer, 1 for the owner) for his use. The remaining copies of each submittal shall be returned to the GC not later than twenty (20) days from the date of receipt by the Designer, for the GC's use or for corrections and resubmittal as noted by the Designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- d. Approval of shop drawings by the designer shall not be construed as relieving the GC from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the designer in writing by the GC.

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

- a. The GC shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the Designer or his authorized representative, and the owner.

- b. The GC shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the GC and submitted to the designer upon project completion and no later than thirty (30) days after acceptance of the project.
- c. The contractor shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

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

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

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

- a. The GC shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The GC shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the GC shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the GC may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the GC has the option of using any product and manufacturer combination listed. However, the GC shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The GC shall be responsible for reviewing all substitution requests from their subcontractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials

may be requested after award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and the owner approves.

- e. The GC shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any workman be considered detrimental to the work, the GC shall order such parties removed immediately from grounds.

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

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

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

- a. The GC shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the GC observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the GC performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the GC unless otherwise specified.
- c. Projects constructed by Buncombe County or a subdivision thereof are subject to inspection by appropriate county or municipal authorities and building codes. The GC shall cooperate with the county and/or municipal authorities by obtaining building permits. Permits shall be obtained at GC's cost.
- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The GC shall pay the cost of these permits and inspections unless otherwise specified.

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

- a. The GC shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or designer, and by laws or ordinances governing such conditions. The GC shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The GC shall be responsible for and pay for any damages caused to the Owner. The GC shall have access to the project at all times.
- b. The GC shall be responsible to cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.
- d. The GC shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The GC shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the job, including the requirements of the *A.G.C. Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. The GC shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The GC shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f. The GC shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.
- g. The GC shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made

known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.

- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the GC is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the GC on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

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

- a. Any land-disturbing activity performed by the GC in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the GC shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The GC shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the GC shall indemnify and hold harmless the Owner, the designer and the agents, consultants and employees of the Owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

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

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



- b. All instructions to the GC will be made only by or through the designer or his designated project representative. Observations made by official representatives of the Owner shall be conveyed to the designer for review and coordination prior to issuance to the GC.
- c. The GC shall perform quality control inspections on the work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designer. The GC shall advise the Project Designer of any apparent variation and/or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. All work shall be inspected by designer, special inspector prior to being covered by the contractor. The GC shall give a minimum of two week notice unless otherwise agreed to by all parties. If inspection fails, after the first re-inspection all costs associated with additional re-inspections shall be borne by the GC.
- e. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the GC shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the GC's responsibility to serve ample notice of such tests.
- f. All laboratory tests shall be paid by the Owner unless provided otherwise in the contract documents except the GC shall pay for laboratory tests to establish design mix for concrete and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- g. Should any work be covered up or concealed prior to inspection and approval by the Project Designer such work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the work will be made promptly upon notice from the GC. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the GC.

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

- a. On-site representatives of the GC shall manage the work and coordinate the work with the activities of the Owner and Project Designer to complete the project with the Owner's objectives of cost, time and quality. Throughout the progress of the work, the GC shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the GC will remain on the job and in responsible charge as long as those persons remain employed by the GC unless otherwise requested or agreed to by the Owner. The GC shall establish an on-site organization with appropriate lines of authority to act on behalf of the GC. Instructions, directions or notices given to the designated on-site authority shall be as

binding as if given to the GC. However, directions, instructions, and notices shall be confirmed in writing.

- b. The GC shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. The GC shall call and preside over monthly job site progress conferences. The GC shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. The GC shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate. The GC with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman. The GC shall turn over a copy of his daily reports to the Designer and Owner at the job site progress conference. Owner will determine daily report format.
- d. The GC, if necessary, shall employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- e. Intentionally left blank for sequential numbering purposes.
- f. The CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- g. Intentionally left blank for sequential numbering purposes.
- h. The GC shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the project within the time allotted by the contract. In doing so, the GC shall keep the designer fully informed as to all changes and updates to the schedule. The GC shall submit to the Project Designer a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the GC must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the GC shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the GC to abide by the directives

in this paragraph will give the Owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

**ARTICLE 15 – {NOT USED}**

**ARTICLE 16 – {NOT USED}**

**ARTICLE 17 – {NOT USED}**

**ARTICLE 18 - DESIGNER'S STATUS**

- a. The Project Designer shall provide liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the Owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.
- b. The Project Designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the GC, taking sides with neither.
- c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The GC shall provide facilities for such access so the Designer may perform his functions under the contract documents.
- f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the GC in the administration of the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The GC's decisions, however, relating to means and methods, and administration of the contracts the GC holds are final.

**ARTICLE 19 - CHANGES IN THE WORK**

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

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

A field order, transmitted by email, fax, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of emergency endangering life or property, the County may direct the GC to proceed on a time and material basis whereupon the GC shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, the GC is restricted to the use of the following methods:

- 1 Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
- 2 The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of **net cost** of the work. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.

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

- 1 The actual costs of materials and supplies incorporated or consumed as part of the project;
- 2 The actual costs of labor expended on the project site;
- 3 The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions;

worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;

- 4 The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;
  - 5 The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project. Overtime and extra pay for holidays and weekends shall not be incurred by the Owner as a cost item or otherwise.
- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a breakdown showing method of arriving at net cost as defined above.
- g. In all change orders, the procedure will be for the Project Designer to request proposals for the change order work in writing. The Project Designer shall verify correctness. Within fourteen (14) days after receipt of the GC's proposal, the Project Designer shall prepare the change order and forward to the GC for his signature or otherwise respond, in writing, to the GC's proposal. Within seven (7) days after receipt of the change order executed by the GC, the Project Designer shall, certify the change order by his signature, and forward the change order and all supporting data to the Owner for the Owner's signature. The Owner shall execute the change order for final approval, within seven (7) days of receipt. Copies will be sent to the Project Designer for distribution to the GC and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the GC shall be required to certify as follows:
- "I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- j. If, during the progress of the work, the Owner requests a change order and the GC's terms are unacceptable, the Owner, may require the GC to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

## ARTICLE 20 - CLAIMS FOR EXTRA COST AND DISPUTE RESOLUTION

- a. Should the GC consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The GC shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.
- b. The GC shall not act on instructions received by him from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer will not be responsible for misunderstandings claimed by the GC of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.
- c. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- d. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- e. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.
- f. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically

waives all of its rights provided hereunder, including its rights and remedies under State law.

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

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

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

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be reimbursed by the GC. A change order will be issued to reflect a reduction in the contract sum.

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

- a. The final completion date will be as determined by the Owner, Designer and GC during the pre-construction phase of the project and will be incorporated into the contract for construction services between the Owner and the GC.
- b. The GC shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall fully complete all work hereunder within the time of completion specified. For each day in excess of the above number of days, the GC shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the GC to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. If the GC is delayed at any time in the progress of his work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and Owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and Owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the GC reflecting the effect of the weather on progress of the work and initialed by the designer's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved

updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle the Contractor to compensable damages for delays. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- d. Request for extension of time shall be made in writing to the designer, copies to the owner, within twenty (20) days following cause of delay. In case of continuing cause for delay, the GC shall notify the designer copies to the owner, of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- e. The GC shall notify his surety in writing of extension of time granted.
- f. No claim shall be allowed on account of failure of the Project Designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c. Demand must be in written form clearly stating the potential for delay unless the drawings or instructions are provided. Any delay granted will begin after the twenty (20) day demand period is concluded.

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

- a. The Owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Should the owner request a utilization of a building or portion thereof, the designer shall perform a designer final inspection of area after being notified by the contractor that the area is ready for such. After the contractor has completed designer final inspection punch list and the designer has verified, then the designer shall schedule a beneficial occupancy inspection at a time and date acceptable to the owner and contractor(s). If beneficial occupancy is granted, in such areas the following will be established:
  - 1. The beginning of guarantees and warranties period for the equipment necessary to support in the area.
  - 2. The owner assumes all responsibilities for utility costs for entire building.
  - 3. Contractor will obtain consent of surety.
  - 4. Contractor will obtain endorsement from insurance company permitting beneficial occupancy.
  - 5. The Owner shall have the right to exclude the GC from any part of the project which the Project Designer has so certified to be substantially complete, but the Owner will allow the GC reasonable access to complete or correct work to bring it into compliance with the contract.



6. Occupancy by the Owner under this article will in no way relieve the GC from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

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

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

- f. **Prior to issuance of final acceptance date, the contractor shall have his authorized representatives visit the project and give full instructions to the designated personnel regarding operating, maintenance, care, and adjustment of all equipment and special construction elements. In addition, the contractor shall provide to the owner a complete instructional video (media format acceptable to the owner) on the operation, maintenance, care and adjustment of all equipment and special construction elements.**

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

- a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer shall be promptly removed from the work site by the GC, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the GC.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and shall make satisfactory progress until completed.
- c. Should the GC fail to proceed with the required corrections, then the Owner may complete the work in accordance with the provisions of Article 28.

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

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

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

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

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

If the GC fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the GC shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the GC and his surety of such delay, neglect or default, specifying the same, and if the GC within a period of seven(7) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within seven(7) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said GC, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said GC and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said GC, then the said GC and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the GC and the surety shall be liable and shall pay to the Owner the amount of said excess.

## **ARTICLE 30 – GENERAL CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the GC, or if the Owner should fail or refuse to make payment on account of a certificate issued by the designer within forty-five (45) days after receipt of same, then the GC, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner and the designer, may suspend operations on the work or terminate the contract.
- b. The Owner shall be liable to the GC for the cost of all materials delivered and work performed on this contract plus ten (10) percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

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

- a. Not later than the fifth day of the month, the GC shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the GC and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
  1. Total of contract including change orders.
  2. Value of work completed to date.
  3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the GC's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.
  4. Less previous payments.
  5. Current amount due.
- b. Prior to submitting the first payment request, the GC shall prepare a schedule showing a breakdown of the contract price. This schedule of values will be submitted to & approved by the designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the designer and Owner may require.
- c. Applications for payment shall be in a form agreed upon by the GC, designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the designer may require.
- d. Intentionally left blank for sequential numbering purposes.
- e. Intentionally left blank for sequential numbering purposes.
- f. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the GC regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the GC, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the GC desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in an independent, licensed, bonded warehouse approved by the designer and owner and located as close to the site as possible. The warehouse selected must be approved by the GC's bonding and

insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer and owner of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the GC. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the County absolute right to possession of the materials at any time. Bond, security and insurance protection shall continue to be the responsibility of the GC.

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

## **ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT**

- a. Within five (5) days from receipt of request for payment from the GC, the designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the GC and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
  - 1. Claims arising from unsettled liens or claims against the GC.
  - 2. Faulty work or materials appearing after final payment.
  - 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
  - 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the GC except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer for approval, the GC shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but not limited to the following:
  - 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or

Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the Owner).

2. Transfer of required attic stock material and all keys in an organized manner.
  3. Record of Owner's training.
  4. Resolution of any final inspection discrepancies.
  5. Granting access to Contractor's records, if Owner's internal auditors have made a request for such access pursuant to Article 52.
- e. The GC shall forward to the designer, the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of contracts amounts and total actual payments to subcontractors and material suppliers.
  2. Affidavit of Release of Liens.
  3. Affidavit from GC of payment to material suppliers and subcontractors. (See Article 36).
  4. Consent of Surety to Final Payment.
  5. Certificates of state agencies required by state law.
- f. The designer will not authorize final payment until the work under contract has been certified by Project Designer, certificates of compliance issued, and the GC has complied with the closeout requirements. The designer shall forward the GC's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

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

- a. The designer may withhold payment for the following reasons:
1. Faulty work not corrected.
  2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the GC.
- b. The Owner may authorize the withholding of payment for the following reasons:
1. Claims filed against the GC or evidence that a claim will be filed.

2. Evidence that subcontractors have not been paid.
- c. Intentionally left blank for sequential numbering purposes.
- d. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the GC without cause will make owner liable for payment of interest to the GC in accordance with G.S. 143-134.1. As provided in G.S.143-134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

## **ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS**

GC agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on GC's duty to carry adequate insurance. All policies of insurance shall be on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the County. The minimum insurance coverage which the GC shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

**Worker's Compensation.** Coverage at the statutory limits in compliance with applicable State and Federal laws. GC shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

**Employer's Liability.** Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

**Commercial General Liability.** Insurance covering all operations performed by the GC with a minimum limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe County shall be named as an additional insured under the policy.

Commercial general liability coverage shall not restrict coverage under such policy with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to County. This policy shall not limit the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or damage to the work.

**Professional Liability.** Insurance covering GC for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. Policy is to be on a primary basis if other professional liability is carried. This policy shall remain in effect three (3) years after project completion.

**Contractor's Pollution Liability.** If GC's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, GC will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. GC shall keep this policy in effect 3 years after completion of the project. Buncombe

County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of GC, including completed operations.

**Business Automobile Liability.** Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

**Umbrella/Excess Liability.** If the underlying liability policy limits are less than those required, GC may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying general liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

**Builder's Risk.** GC shall purchase and maintain property insurance (Builder's Risk) in the amount of the initial contract plus values of subsequent modification, change orders, and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis (subject to such deductible amounts as may be required by laws and regulations). Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Buncombe County has insurable interest in the property to be covered, whichever is earlier. This insurance shall include the interests of the Owner, Contractor, Subcontractors, Owner's Representatives and Owner's Representative's Consultants in the Work.

The Builders' Risk Coverage shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal including demolition, increased cost of construction, architect's fees and expenses, soft costs, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.

Contractors engaged in modifications of existing structures are required to secure a Beneficial Occupancy Endorsement to enable the County to occupy the facility during construction.

**Additional Insurance Provisions.**

If GC maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by GC. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

GC shall provide the County with certificates of insurance listing County as the certificate holder and evidencing the above amounts. Buncombe County shall be named as additional insured under the commercial general liability policy and if applicable, GC's Pollution Liability policy. Before



commencing work and for any subsequent renewals, GC shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- or better as determined by A. M. Best Company and shall be in a form acceptable to the County.

GC shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and GC shall ensure that Buncombe County is an additional insured on insurance required from subcontractors.

Waiver of Subrogation: GC hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of payment of any loss under such insurance. GC agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Providing and maintaining adequate insurance coverage is a material obligation of GC and is of the essence of this contract. GC may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. GC shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by GC shall not be interpreted as limiting the contractor's liability and obligations under the contract.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

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

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

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

The final payment of retained amount due the GC on account of the contract shall not become due until the GC has furnished to the Owner through the designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the GC in connection with this contract.

## **ARTICLE 37 - ASSIGNMENTS**

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

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

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

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

- a. The GC shall ensure that all cutting, fitting or patching that may be required to make the work come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No subcontractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the designer and the affected contractor(s).

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

- a. The GC shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the GC is to pay all utilities, any permanent meters installed shall be listed in the GC's name until his work is fully accepted by the Owner. The Owner may: (1) pay utilities cost directly, (2) require the GC to pay all utilities cost, (3) or reimburse the GC for the actual cost of utilities. The Owner or GC, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur

in project completion. Coordination of the work of the utility companies during construction is the sole responsibility of the GC.

- b. If applicable Meters shall be relisted in the Owner's name on the day following completion and acceptance of the GC's work, and the Owner shall pay for services used after that date.
- c. Prior to the operation of permanent systems, the GC will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- d. The GC shall ensure that the permanent building systems are in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the GC and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the GC.
- e. The GC shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- f. The GC shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- g. The GC shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
  - 1. Prior to acceptance of work by the Designer and Owner, the GC shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
  - 2. Temporary filters as recommended by the equipment manufacturer in order to keep the equipment and ductwork clean and free of dust and debris shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.
  - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.

4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
5. The GC shall ensure that all lamps are in proper working condition at the time of final project acceptance.
- h. The GC shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
- i. The GC shall, if required by Owner and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- j. On multi-story construction projects, the GC shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the GC bid.
- k. The GC will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the GC's name, and the name of the designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

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

- a. The GC shall ensure that the building and surrounding area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer. The GC shall provide an on-site refuse container(s) for the use of all subcontractors. The GC shall ensure that each subcontractor removes their rubbish and debris from the building on a daily basis. The GC shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The GC shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the GC shall ensure that all portions of the work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

## **ARTICLE 42 - GUARANTEE**

- a. The GC shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The GC shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.
- c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the GC, which is hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

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

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

## **ARTICLE 44 - INDEMNIFICATION**

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

## **ARTICLE 45 - TAXES**

- a. Federal excise taxes do not apply to materials entering into local government work.

- b. Federal transportation taxes do not apply to materials entering into local government work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into local government work and such costs shall be included in the bid proposal and contract sum.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into local government work as applicable and such costs shall be included in the bid proposal and contract sum.
- e. Accounting Procedures for Refund of County Sales & Use Tax Amount of county sales and use tax paid per GC's statements:

GC's performing contracts for local government agencies shall ensure that they and all subcontractors will provide information to give the local government agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C.G.S. 105-164.14(e).

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

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

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

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the GC.

Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials,

supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

#### **ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE**

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

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

The GC agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The GC agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

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

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. General Contractors are reminded of the requirements of instructions under General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina.

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

N.C.G.S. 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project and requires documentation of good faith efforts for meeting that goal. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix F are hereby incorporated into and made a part of this contract.

#### **ARTICLE 50 – CONTRACTOR EVALUATION**

The GC's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to compete for future capital improvement projects for institutions and agencies of the State of North Carolina. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, General Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The Owner may request the GC's comments to evaluate the designer.

#### **ARTICLE 51 – GIFTS**

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, General Contractor, design professional, engineer, subcontractor, supplier,

vendor, etc.), to make gifts or to give favors to any County employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, the Contractor is prohibited from making gifts to any of the Owner's employees, Owner's project representatives (architect, engineers, General Contractor and their employees), employees of the County that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

#### **ARTICLE 52 – AUDITING-ACCESS TO PERSONS AND RECORDS**

In accordance with N.C. General Statute 147-64.7, the State Auditor shall have access to Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contracts for purposes of conducting audits under the referenced statute. The Owner's internal auditors shall also have the right to access and copy the Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions, and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from Owner and/or its project representatives.

#### **ARTICLE 53 – LEFT BLANK FOR NUMBERING PURPOSES**

#### **ARTICLE 54 – TERMINATION FOR CONVENIENCE**

- a. Owner may at any time and for any reason terminate GC's services and work at Owner's convenience. Upon receipt of such notice, GC shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.
- b. Upon such termination, GC shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by GC as are permitted by the prime contract and approved by Owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to GC prior to the date of the termination of this Agreement. GC shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.





# **BUNCOMBE COUNTY**

## **INVITATION FOR CONSTRUCTION BID**

### **RENEWABLE ENERGY PROCUREMENT & INSTALLATION FOR FIRE DEPARTMENTS**

**Date of Issue: May 1, 2024**

**Proposal Submission Deadline: May 31, 2023**

**At 2:00pm ET**

**Invitation for Construction Bids  
BUNCOMBE COUNTY, NORTH CAROLINA  
RENEWABLE ENERGY PROCUREMENT AND INSTALLATION  
NOTICE:**

Buncombe County is soliciting construction bids from qualified firms who can provide installation of solar renewable power generating systems (“PV Systems”). This solicitation is a collaborative procurement among local agencies within the geographic boundaries of Buncombe County (individually “Agency” and collectively, the “Agencies”).

A bid package which includes a description of the required services can be obtained on the Buncombe County website at [www.buncombecounty.org](http://www.buncombecounty.org) beginning **May 1, 2024**. Bids must be submitted in a sealed envelope by **May 31, 2024**. Proposals may be delivered to the following address:

**Buncombe County Office of Sustainability  
Attn: Jeremiah LeRoy  
200 College St., Fourth Floor  
Asheville NC, 28801**

Respondents may contact the County Procurement Director, Ron Venturella, with requests for information regarding this solicitation. Questions should be submitted in writing via email to [ron.venturella@buncombecounty.org](mailto:ron.venturella@buncombecounty.org). All requests for information will be submitted no later than **May 20, 2024 at 3:00pm**. An Addendum will be issued to address all relevant questions if necessary.

The right to reject any and all proposals by Agencies is reserved.

Any and all costs of preparing proposals (including site visits where needed) shall be the responsibility of the submitting firm.

**Mandatory Pre-Bid Online Meeting** to be held at **3:00 pm on May 8, 2024**.

The online meeting will be a Microsoft Teams Meeting. Please ensure MS Teams is functional on any device from which you plan to attend this virtual meeting.

**The online pre-bid meeting is mandatory for all organizations who plan to submit bid proposals. At least one representative from all respondents must participate in this online meeting. If an organization does not attend this online pre-bid meeting, their bid will be considered NON RESPONSIVE and will not be reviewed.**

## **General Overview**

### **Background**

Buncombe County is located in the Blue Ridge Mountains, in the Western portion of the state of North Carolina and has a population of over 270,000. Buncombe County has seen steady and continued business and residential growth in recent years. In addressing the benefits and challenges of this continued growth, these local governments have set aggressive goals to reduce the adverse carbon impacts their communities have on the environment. Buncombe County has adopted renewable energy goals – Buncombe County adopted a resolution setting a goal of 100% renewable energy for County operations by 2030 and 100% renewable for the overall community by 2042. In order to achieve these goals, the communities must transition to low-carbon and renewable energy sources. Development of renewable energy resources on public sector facilities has become a priority for the residents of Buncombe County.

This solicitation is intended to result in renewable energy development on public facilities and for public agencies to fully understand the cost implications of such development.

### **Introduction**

Buncombe County (the “County”) is soliciting proposals from qualified firms to provide “turnkey” design, installation, operation and maintenance of solar photovoltaic systems (“PV Systems”) on Fire District facilities within the County.

The County is leading the procurement collaborative for the various fire depts. The PV systems will be located on the respective Fire Depts properties. Each Agency has agreed to participate in the solicitation.

Firms submitting responses to this solicitation do so understanding that neither the County as lead agency nor any other Agency guarantees the award of any contracts or work. All agencies reserve the right, in their sole and absolute discretion to reject any and all proposals.

The Firms responding to this solicitation must have identified and established relationships with engineers, installers, operators, maintenance, and verification firms. The County recognizes that some Firms may have integrated PV System development.

### **Introduction and PV System Sites**

#### Goals

The County and other Agencies aim to reduce carbon emissions, promote clean and renewable energy technology, spur innovation and job creation in the region, educate the public about renewable energy, and reduce budgetary uncertainty resulting from potentially unpredictable electricity and natural gas prices.

In reviewing bid responses, emphasis will be placed on the total cost of the PV systems. All responding firms, in order to be considered responsive, will be required to provide in their base bid the cost for direct purchase and ownership of the PV systems. Agencies are not currently exploring alternative

methods of procurement such as financing or leasing.

### **PV System Sites**

The Agencies have contracted with an experience solar contractor to perform assessments of their respective facilities to evaluate and select potential PV System sites. These assessments **include structural engineering analysis, preliminary PV system layout, electrical system evaluation, production estimates, and detailed product specifications**. This documentation has been included in the solicitation package and should be used to provide bid costs. Bids should be based on the provided layouts and product specifications.

Information and documentation on the individual sites can be found at the following web portal:

<https://www.buncombecounty.org/Governing/Depts/Purchasing/default.aspx>

### **Site Visit Schedule**

The Agencies will make every effort to accommodate site visits on a set schedule to be outlined in this solicitation. The intent is to provide a general understanding of the scope of the work, information in relation to viable PV Systems, attract highly qualified firms with performance track record with similar work, and secure more favorable pricing and best value for the Agencies. However, the Agencies make no representations with respect to the sites, including their suitability. Submitting firms take sole and full responsibility for conducting any necessary due diligence and assessing the sites and their conditions in developing their proposal. Such self-assessment of the sites and its conditions shall be performed by the Firms at their own cost. Agencies are not responsible to compensate for such work.

### **Scope of Agreement**

The selected respondent will be required to provide all labor, supervision, materials, engineering, supplies, transportation, equipment, and services necessary to assume overall responsibility for the coordination and communication of this project's goals.

### **Timeline and Bid Selection**

Timeline – This timeline is tentative and may be changed via an addendum to this solicitation.

<b>Event</b>	<b>Responsibility</b>	<b>Date and Time</b>
Issue IFB	County	5/1/2024
Mandatory Pre-Bid Meeting	Vendor	5/8/2024 3:00pm Via Microsoft Teams
Site Visits	Vendor	5/14 and 5/15 2024
Written Questions Deadline	Vendor	5/20/2024
Addendum Issued	County	5/24/2024 if necessary
Submit Bids	Vendor	5/31/2024 2:00pm
Bids Opened	County	5/31/2024 3:00pm
Notice to Proceed or Contract Award	County	TBD
Commercial Operation Date	County	No later than Dec. 5, 2024

### **Mandatory Pre-Bid Meeting**

This is a Microsoft Teams meeting – please take the time to ensure that your computer works with MS Teams in advance of the meeting. The link should take you to the meeting directly.

[Meeting Link](#)

In the event you have trouble you can also use the following:

- MS Teams meeting ID: 264 983 721 512
- Passcode: ukbeE2

### **Submission Deadline**

Proposals shall be delivered in a sealed envelope no later than **May 31, 2024 at 2:00pm ET**, and delivered to the following address:

#### **Buncombe County Office of Sustainability**

**Attn: Jeremiah P. LeRoy**

**200 College St. 4<sup>th</sup> floor**

**Asheville, NC 28801**

A public bid opening will be held at this same location **on May 31, 2024 at 3:00 PM EST**

### **Additional Information**

No interpretation of the meaning of any provision in this solicitation, nor any correction of any apparent ambiguity, inconsistency, error, or other matter pertaining to this solicitation shall be made to a respondent orally. All requests for interpretation, clarification or additional information regarding this solicitation should be made in writing, via email to [ron.venturella@buncombecounty.org](mailto:ron.venturella@buncombecounty.org). The **deadline for questions shall be May 20, 2024 at 5:00 pm**. The County shall not be obligated to respond to requests for such interpretation or correction.

Respondents or their agents are instructed not to contact any other County employees, agents or contractors of the County and participating Agencies, the County Manager offices, or the County Commission, or to externally manipulate or influence the procurement process in any way, other than through the instructions contained herein, from the date of release of this solicitation to the date of execution of the Agreement resulting from this solicitation. Agencies, at their sole discretion, may disqualify Respondents in violation of this paragraph.

Agencies reserve the right to cancel or modify the terms of this solicitation at any time. County will provide Respondents with written notice of the cancellation or modification.

## Renewable Energy Installation Services

### Scope of Work

As mentioned in the background section of this solicitation, Buncombe County is working to develop an approach to reach their goals for carbon footprint reduction and renewable energy. A major step in this process is to install renewable energy systems on as many facilities as is financially viable.

The Respondent must demonstrate the ability to perform the work described in the Scope of Services and have significant experience to perform the outlined work successfully. The design and engineering of the PV systems is to maximize the energy resources, taking into consideration the customer's electrical demand and load patterns, proposed installation site, available solar resources, existing site conditions, and other relevant factors.

### Scope of Services

- The scope of services provided by the Respondent shall include all tasks required to engineer, fabricate, deliver, install and interconnect PV systems on the identified public facilities that stress cost savings, energy use reduction and efficient operation.
- The scope shall also include, but not be limited to, securing all permits and approvals from governing and regulatory agencies including utility interconnection, all labor, taxes, services, permit fees, and equipment necessary to produce and install and interconnect a fully operational PV system;
- Supply all equipment, materials, and labor necessary to install the PV systems and integrate them with other power sources. All applications and costs associated with utility interconnection shall be borne by the awarded Respondent.
- Provide a monitoring program that allows Agencies to monitor, analyze and display historical and live solar electricity generation data for installed sites. The system will allow Agencies to track progress toward the renewable goal for all the systems for each Agency as well as monitor performance against the warranted production requirements on a site-by-site basis.
- A five (5) year workmanship warranty on all aspects of the systems will be required of the awarded contractor and should be factored in to any submitted bid costs.
- Operation and Maintenance contracts will be listed as an alternate on the bid and will be discussed during contract negotiations.

### Design Guidelines for PV Systems:

Preliminary layouts for all PV systems have been provided for each project. Respondents should use the provided layouts and product specifications to create their bids without exception. Spec sheets for the racking systems and inverters have been provided with this RFP. In order to provide some level of flexibility for respondents the County will except bids which include modules that meet the following specifications

- **Manufacturer: Trina or QCell**
- **Module Type: Bifacial**
- **Wattage: 465W or greater**
- **Efficiency: 19.8% or greater**

- **Performance Warranty Term: 30 Years**
- **Product Warranty Term: 12 Years**
- **Connectors: Staubli MC4 connectors for both Modules and MLPEs with no compatible connectors allowed**

The awarded Respondent will be required to complete all **due diligence and installation requirements necessary to maintain any and all existing roof warranties** at all of the facilities listed in the RFP documentation and to minimize roof penetrations wherever possible.

#### **Utility Interconnection**

The contractor shall coordinate with Duke Energy Progress (DEP) or other Utility provider to ensure that the project satisfies all Utility company criteria for interconnection of the project to the electric distribution system. This includes submitting all interconnection application documents, coordinating all negotiations, meeting with the Utility Company, conducting design reviews, and participating in any needed interaction between the Utility Company and the Agencies.

The contractor shall manage the interconnection and start-up of the project in coordination with the sites and the Utility Company. The contractor shall include any expense for interconnection, processing, and other fees and expenses as may be required by the Utility Company for interconnection and operation of the project in the submitted solicitation response budget.

#### **Bid Format**

Bids should be submitted in a format that allows for uniform review and easy access to information. The proposals should be clear and concise. Emphasis should be placed on the specific qualifications of Respondent and their ability to manage the requested services. To assist in the evaluation process the proposal shall contain at least the following information:

- **Transmittal Letter and Signature Page:** Provide a brief cover letter identifying the primary contact person, their telephone number and email. The letter should state your firm's commitment to provide the services as needed in this solicitation, summarizing the key points of the submittal. (One page max).
- **Budget Spreadsheet: Found in the Attachments section of this solicitation. The budget spreadsheet will be included in the solicitation documents available online. Respondents are required to provide an itemized budget for each individual project that separates out the various costs such as modules, racking, inverters, permits, interconnection, etc. for each project. This spreadsheet should be completed and provided on a USB drive and included with the sealed bid. There is no need to print the entire spreadsheet.**
- **ONLY the Summary tab of the spreadsheet should be printed and signed by the respondent and included in the sealed envelope.**

So the County can determine if a bidder is responsible please provide the following:

- **Basic Qualifications**
  - GC License held in North Carolina is required;
  - Provide the firm's history and experience with commercial renewable energy installation in the last 2 years;

- A complete list with brief descriptions of recent and relevant commercial renewable installations the firm has participated in in the last 2 years;
- Qualified firms must have a minimum experience of 2 years in commercial solar development and installation (residential installations will not count as qualified experience)
- Qualified firms must have experience with turn-key solar development and installations on commercial facilities
- Information describing the firm’s knowledge or experience coordinating with utilities
- NABCEP Certified PV Installer on Staff – Provide documentation
- **Staff Qualifications**
  - Provide an overview of the qualifications of your project manager and key project staff, including any anticipated sub-contractors;
  - Describe who will perform the various tasks and what will be their level of involvement and responsibilities and give their qualifications for this specific project;
  - Include resumes of individuals; and
  - Indicate the location of the office that agent(s) will work out of while services will be performed.
- **Approach to Project**
  - Provide a general estimated timeline for completion. Respondents will not be expected to adhere to any timeline in the solicitation submission, rather this is for the Agencies to get a sense for the estimated amount of time it will take to complete a project of this scope. A formal timeline will be defined with the awarded respondent during contract negotiations. However, general expectations will be that commercial operation should be achieved no later than December 5, 2024.
- **Examples of Work**
  - References: Provide at least three (3) specific example(s) of your firm’s projects which might closely mirror the proposed scope of services in this solicitation. Where available, online links to examples should be provided for reference during proposal review. Provide the role your organization performed in the project (e.g. supplier, lead contractor, design, consulting, etc.) including: location, date installed and customer contact information.

**Construction Administration**

The County has contracted with a 3<sup>rd</sup> party construction administrator to ensure the highest quality products and services are offered by the awarded bidder. This administrator will be conducting inspections during the installation of these systems. In order to understand what this administrator will be inspecting, a checklist has been provided in the solicitation documents.

Each bid shall be accompanied by a cash deposit, a cashier's check or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation of an amount equal to not less than five percent (5%) of the proposal or in lieu thereof, a bidder may offer a bid bond of five percent (5%) of the maximum amount of the total bid executed by a surety company licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will, upon demand, forthwith make payment to the obliges upon said bond if the bidder fails to execute the contract in accordance



with the bid bond. Said deposit shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten (10) days after the award or to give satisfactory surety as required by law.

Performance Bond and a Payment Bonds will be required from the winning bidders for one hundred percent (100%) of each project price. Contractors will be allowed to obtain performance and payment bonds individually for each project as they are built so as not to over tax the bonding capacity of the awarded bidder. A Corporate Surety approved by the Owner, will be required for the faithful performance of the contract.

### **Bid Award**

This solicitation will adhere to North Carolina General Statutes for construction contracting. The contract will be awarded to the **lowest responsive, responsible bidder** for purchasing of the PV systems.

As stated above, all responding firms, in order to be considered responsive, **will be required to provide a base bid for the cost for direct purchase and ownership of the PV systems.**

The County staff will conduct reference checks by contacting those individuals submitted by the Respondent with their bid in response to this solicitation. In addition, the Agencies may contact references not listed by the Firm.

References checks will be used to validate information included in the Bid Proposal submitted by Respondents.

Agencies reserve the right to investigate and confirm the Respondent's financial responsibility. This may include financial statements, bank references and interviews with past clients, employees, and creditors, as well as the quality of services. Unfavorable responses to these investigations are grounds for rejection of a bid proposal.

If compensation or other terms cannot be agreed upon with the selected firm, the County will terminate negotiations with that firm and may enter into negotiations with the next lowest, responsive responsible bidder.

### **General Terms & Conditions**

**READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFQ document.

**LATE PROPOSALS:** Late proposals, regardless of cause, will not be considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals.

**ACCEPTANCE AND REJECTION:** Agencies reserve the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the

proposal.

INFORMATION AND DESCRIPTIVE LITERATURE: If required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.

SUSTAINABILITY: To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:

All copies of the proposal are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%. Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable. Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

HISTORICALLY UNDERUTILIZED BUSINESSES: Buncombe County is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the County encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on County contracts. Buncombe County has a current verifiable goal of twelve percent (12%) for minority participation on building construction or repair projects, ten percent (10%) each for procurement, and services

INELIGIBLE VENDORS: As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the Buncombe County by any company identified in a) or b) above shall be void *ab initio*.

CONFIDENTIAL INFORMATION: County requests that no confidential information be included in the initial proposals. To the extent permitted by applicable statutes and rules, the County will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has

made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the County will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

MISCELLANEOUS: Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

INFORMAL COMMENTS: Buncombe County shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the County during the competitive process or after award. The County is bound only by information provided in writing in this RFQ and in formal Addenda issued through IPS.

COST FOR PROPOSAL PREPARATION: Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; Buncombe County will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.

AVAILABILITY OF FUNDS: Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.

SITUS AND GOVERNING LAWS: This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

PAYMENT TERMS: If a payment schedule is not part of The Contract then payment terms will be Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.

NON-DISCRIMINATION: The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.

ADVERTISING: Vendor agrees not to use the existence of The Contract or the name of Buncombe County as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the County is willing to act as a reference by providing factual information directly to other prospective customers.

#### INSURANCE

**Insurance.** Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance. All policies of

insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the Contractor shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

**Worker's Compensation.** Coverage at the statutory limits in compliance with applicable State and Federal laws. Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

**Employer's Liability.** Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

**Commercial General Liability.** Insurance covering all operations performed by the Contractor with a minimum limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting coverage for premises operations, independent contractors, completed operations, product and contractual exposure, and shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them. All Agencies for which the bidder is supplying bids shall be named as an additional insured under the policy.

**Professional Liability.** Insurance covering the Contractor and any subcontractors for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. The policy shall remain in effect two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

**Business Automobile Liability.** Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

**Umbrella/Excess Liability.** If the underlying liability policy limits are less than those required, Contractor may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying general liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

**Contractor's Pollution Liability.** If the Contractor's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, Contractor will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. Contractor shall keep this policy in effect 3 years after completion of the project. Buncombe County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations.

**Installation Floater** insuring the amount of the contract. Coverage is to be written on a Special Covered Cause of Loss Form and is to include theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, soft costs (expediting expenses); deletion of any coinsurance provision is also required; any exclusions for underground exposures to be deleted. Flood and Earthquake coverages are also to be provided. Coverage shall end when the work is accepted by each Agency regarding each property owner's respective work locations.

**Additional Insurance Provisions.**

If the Contractor maintains higher limits than the minimums shown above, the Agencies require and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agencies regarding each property owner's respective property interests.

The Contractor shall provide the all Agencies with certificates of insurance on an approved form, evidencing the above amounts. All Agencies shall be named as an additional insured under the commercial general liability and contractor's pollution liability policies. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Agencies, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- VII or better as determined by A. M. Best Company and shall be in a form acceptable to the Agencies.

The Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall ensure that Agencies are additional insureds on insurance policies required from subcontractors.

Waiver of Subrogation: The Contractor hereby grants to Agencies a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Agencies by virtue of payment of any loss under such insurance. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement.

Nothing in this section is intended to affect or abrogate the Agencies' governmental immunity.

GENERAL INDEMNITY: The Vendor shall hold and save all Agencies, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection

with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the Agency has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the County's and or any other Agencies' agents who are involved in the delivery or processing of Vendor deliverables or Services to the Agency. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

CONFIDENTIALITY: Any County information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval by Buncombe County.

COMPLIANCE WITH LAWS: Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

ENTIRE AGREEMENT: This solicitation and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This solicitation, any addenda hereto, and the Vendor's bid proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

AMENDMENTS: The Contract may be amended only by a written amendment duly executed by the Agencies and the Vendor.

NO WAIVER: Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the Agencies under applicable law. The waiver by the Agencies of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or state or federal constitutional provision or principle that otherwise would be available to

the Agencies under applicable law.

### **Minority Business Participation**

It is the policy of Buncombe County to: (1) provide minorities equal opportunity to participate in all aspects of County contracting and purchasing programs, including but not limited to, participation in procurement contracts for equipment, professional and other services contracts, and construction contracts; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability or national origin, and to conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all claims of such discrimination.

Buncombe County will actively seek to identify qualified minority businesses and offer them an opportunity to participate as providers of goods and services to the County. It is the intent of this plan to widen opportunities for participation, increase competition and to ensure the proper and diligent use of public funds.

This policy is not intended in any manner to require that contracts be awarded to anyone other than the lowest responsible bidder, not to supersede the requirement of any federal, state or local laws and rules, regulations and policies adopted pursuant thereto.

Buncombe County has a current verifiable goal of twelve percent (12%) for minority participation on building construction or repair projects, ten percent (10%) each for procurement of goods and services.

### **DEFINITIONS**

1. **Minority**- a person who is a citizen or lawful permanent resident of the United States and who is:
  - a. Black, that is, a person having origins in any of the black racial groups in Africa;
  - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
  - e. Female
  
2. **Minority Business (MBE)** - means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
  - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

#### MINORITY OUTREACH PLAN AND GUIDELINES

Buncombe County will employ the following strategies to encourage participation from MBEs.

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids.
2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
4. Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in Buncombe County projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
6. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share "best practices" and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Buncombe County's outreach plan with interested businesses and organizations
8. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
9. Enhance Buncombe County's web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
10. Advertise upcoming bid opportunities in minority-focused media.
11. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

Certification



Buncombe County requires certification for minority, disadvantaged or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification  
North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification

Small Business Administration 8(a) certification

Other governmental agencies on a case-by-case basis

#### MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and Buncombe County for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by Buncombe 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 Buncombe County whether to terminate the contract for breach.

In determining whether a contractor for construction projects has made good faith efforts, Buncombe County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

1. Contacting 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 or proposal date and notifying them of the nature and scope of the work to be performed. (10 pts.)
2. Making 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 bid or proposals are due. (10 pts.)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 pts.)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 pts.)

5. Attending any pre-bid meetings scheduled by the public owner. (10 pts.)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 pts.)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
8. Providing 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. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 pts.)
9. Negotiating 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. (20 pts.)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 pts.)

**MBE SUBCONTRACT GOALS:**

The goals for participation by Minority firms as subcontractors on this project have been set by the Buncombe County Board (hereinafter Board) at 12%.

**MBE FORMS ARE FOUND IN THE "ATTACHMENTS" SECTION OF THIS SOLICITATION**

The bidder must identify on MBE Form 1, the businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

**The lowest responsible, responsive bidder must provide Affidavit C**, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

**OR**

Provide Affidavit C, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, **with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal.**

**OR**

Provide Affidavit B, which includes sufficient information for the State to determine that the bidder does not customarily subcontract work on this type project.

**The above information must be provided as required. Failure to provide this evidence may result in rejection of the bid and award to the next low bidder.**

MINIMUM COMPLIANCE REQUIREMENTS:

If the MBE subcontract goals are not achieved, the Bidder shall provide the following documentation to the Board.

1. MBE Utilization Commitment (MBE Form 1) with the bid.
2. Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions (upon request prior to award). This documentation shall include the following evidence:
  - A. Copies of solicitations for quotes to at least three (3) MBE firms from the source list provided by the Minority -Business Development Agency of the Small Business Development Division, North Carolina Department of Economic & Community Development (hereinafter Minority Business Development Agency) 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 an MBE firm is not considered to be the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
  - E. Documentation of any contacts, correspondence or conversation with MBE firms made in an attempt to meet the goals.

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

Upon being named apparent low bidder, the Bidder shall provide a Letter of Intent (MBE) Form 3), complete with a description of the scope of services and dollar value from each MBE firm proposed for use in this contract. Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder. The Board reserves the right to waive any irregularities in MBE documentation

if they can be resolved prior to award of the contract, and the Board finds it to be in its best interest to do so and award the contract.

**SUBCONTRACTOR PAYMENT REQUIREMENTS:**

North Carolina General Statute 143-134. 1, states that the percentage of retainage on payment made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the Board to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each MBE subcontractor with each request for payment or before final payment is processed.

**PROGRAM COMPLIANCE REQUIREMENTS:**

All written statements, certification or intentions made by the Bidder shall become a part of the agreement between the Contractor and the Board for performance of this contract. Failure to comply with any of these states, certifications, or intentions, or with the MBE Guidelines shall constitute a breach of the contract. A finding by the Board 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 Board whether to terminate the contract for breach.

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

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

**FORM 1**

**Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid**

**Identification of Minority Business Participation**

I, \_\_\_\_\_  
 (Name of Bidder)

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

<b>Firm Name, Address and Phone #</b>	<b>Work type</b>	<b>*Minority</b>
<b>Category</b>		


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

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

**State of North Carolina AFFIDAVIT A - Listing of the Good Faith Effort**

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 1.0101)

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

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

a breach of the contract.

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

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



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

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

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

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

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

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

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

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

(Name of Bidder)

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

\_\_\_\_\_ contract.

(Name of Project)

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

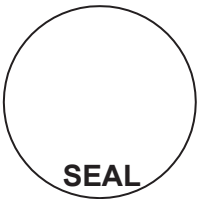
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The 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 \_\_\_\_\_



**Eagle Solar & Light, LLC**

**Summary of All Project Costs**

Facility Name	Direct Purchase Cost
Swannanoa	\$33,156
Reems Creek	\$0
Black Mountain Fire 19	\$43,059
Reynolds	\$58,919
Skyland	\$71,464
Town of Black Mounatin	\$102,359
Leicester	\$58,528
Swannanoa Bee Tree	\$45,053
Upper Hominy	\$74,319
West Buncombe	\$81,204
Woodfin	\$58,115
<b>TOTAL COST</b>	<b>\$626,177</b>

Please identify the module that you have spec'd for this bid here --->	Hanwa QCell 485W
--	------------------

**Please remember to print and sign this page and submit it with you bid**

   
Authorized Signature Date



# Buncombe County Solar RFP Bidder Info.



Legal Name of Applicant Unit:	Eagle Solar & Light, LLC
Name and Title of Manager or CEO:	Sam Yates, CEO
Street Address:	2544 Durham-Chapel Hill Blvd, Durham, NC 27707
Mailing Address:	2544 Durham-Chapel Hill Blvd, Durham, NC 27707
Phone:	800-982-0808
Email:	<a href="mailto:svates@eaglesolarandlight.com">svates@eaglesolarandlight.com</a>

Name and Title of Project Contact:	Michael Churchman, VP of Operations
<i>(This project contact should be the person who can best answer project questions)</i>	
Telephone:	205-999-5328
Email:	<a href="mailto:mchurchman@eaglesolarandlight.com">mchurchman@eaglesolarandlight.com</a>
Address:	135 Sweeten Creek Road, Station H, Asheville, NC 28803
Federal Tax ID Number:	81-2080160

### Instructions for Completing this Workbook:

This workbook is designed to require responding bidders to provide the county and its partner agencies project costs for each individual solar installation requested in the RFP. Each tab represents an individual project and should be completed. **The summary tab will be automatically populated and should not be altered by respondents.**

***Please be sure to print, sign, and include the Summary worksheet in your bid submission.***

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

County of Buncombe  
Affidavit of Eagle Solar and Light  
(Name of Bidder)

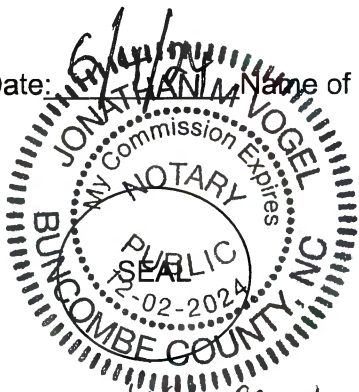
I hereby certify that it is our intent to perform 100% of the work required for the Renewable Energy Procurement and Installation for fire departments contract.  
(Name of Project)

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

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

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

Date: 6/14/24 Name of Authorized Officer: Michael J. Churchman  
Signature: [Handwritten Signature]  
Title: VP of Operations



State of North Carolina County of Buncombe  
Subscribed and sworn to before me this 14 day of June 2024  
Notary Public [Handwritten Signature]  
My commission expires 12/02/2024



**Eagle Solar & Light, LLC**

**North Carolina General Contractor #79280**

Construction Bid

BUNCOMBE COUNTY, NORTH CAROLINA  
SOLAR RFP 2024

RENEWABLE ENERGY PROCUREMENT AND INSTALLATION

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## Financial Summary Table

Eagle Solar & Light, LLC. Summary of All Project Costs					
Site	DC Size	AC Size	Modules	Inverter(s)	Total Cost
<b>Black Mountain Fire 19</b>	15.52kW	11.4kW	32	1x SE11.4kW	\$41,009
<b>Leicester</b>	29.1kW	20kW	60	2x SE10kW	\$55,741
<b>Reynolds</b>	29.1kW	20kW	60	2xSE10kW	\$56,113
<b>Skyland</b>	36.86kW	27.3kW	76	1xSE10kW 1x17.3kW	\$68,061
<b>Swannanoa 103 South Ave</b>	12.61kW	10kW	26	1xSE10kW 240V	\$31,577
<b>Swannanoa 510 Bee Tree</b>	23.28kW	17.3kW	48	1x SE17.3kW	\$42,908
<b>Town of Black Mountain</b>	60.14kW	40kW	124	1xSE40kW	\$97,485
<b>Upper Hominy</b>	34.92kW	27.3kW	72	1xSE10kW 1x17.3kW	\$70,780
<b>West Buncombe VFD Station 5</b>	41.23kW	27.3kW	85	1xSE10kW 1x17.3kW	\$77,337
<b>Woodfin</b>	29.1kW	20kW	60	2x SE10kW	\$55,348
<b>Total</b>					<b>\$596,359</b>

Working with Duke Energy requires perseverance, ingenuity and patience given its large bureaucratic processes.

## 2.4 North Carolina General Contractor's and Electrical Licensure

NC GC License #79280

Limitation: Unlimited

Classification: Building

Copy of the current license can be found in Appendix B

NC Electrical License: #U.36068

Limitation: Unlimited

Classification: Electric

Copy of the current license can be found in Appendix B

## 2.5 NABCEP Certification

Certificate Holder: Aaron Schwartz

PV Installation Professional

Certificate Number: PV-071522-013738

Copy of the current certification can be found in Appendix C

## Staff Qualifications

### 3.1 Sam Yates

Sam Yates, CEO and owner of ESL, is the overall Project Director for this project and is responsible for all the financial matters relating to this project including contract administration, payments and accounting (Abbreviated Resume in Appendix A). Sam has 38 years of engineering experience including time with Exxon USA, another start-up renewable energy company, and a vertically integrated manufacturing/distribution group. Sam has a Mechanical Engineering/Materials Science degree from Vanderbilt University, and an MBA from the University of Virginia. He created ESL in 2016 because he saw a dearth of professional firms operating in the rooftop solar space in Alabama. Sam is the overall lead as well as the financial modeler for this project. We estimate that Sam will spend 20% of his time during the design and permitting phases, 30% during installation, and 10% post-installation. Sam will work out of the Highlands, Asheville, and Birmingham offices.

## Major Subcontractors

### 4.1 Consulting, Construction and Engineering (CCE)

Frank Cater, Founder of Consulting Construction Engineering, will be the Lead Electrical Engineer (Abbreviated Resume in Appendix A). Frank has been actively practicing Electrical Engineering since 1968. Mr. Cater's experience includes 13 years as a designer with another firm and 30+ years of experience running a multidiscipline firm with 70 employees. His experiences include major health care facilities, commercial office buildings, schools, and University facilities including infrastructure design. Frank has a Bachelor of Science degree in Electrical Engineering from Auburn University, and he is a registered Engineer in Alabama and Mississippi. We estimate that Frank will spend up to 25% of his time during the design and installation phase.

### 4.2 GreenTech Renewables

GreenTech Renewables in Raleigh will be the main source for most solar components for this project. They have been a valuable partner helping ESL expand across the North Carolina footprint and have the advantage of a nationwide network of distribution centers and local warehouses.

### 4.3 Mayer Electrical Supply

Mayer Electrical Supplier will provide a significant proportion of our balance of system costs. Mayer Electric is a Woman-owned business with locations in North Carolina and Alabama.

## Project Approach

If contracted in June of 2024, we expect that installation could begin late summer depending on final interconnection request approval. Given the scope and scale of this project, ESL is engaging our proven 5-step approach to commercial solar installations. Currently, these five distinct steps can be taken sequentially and concurrently, but we are amenable to other suggestions and arrangements. These steps include: 1) Interconnection Request and Rebate Application, 2) Permit Package, 3) Material Ordering, 4) On-Site Construction, and 5) Commissioning and Close Out. We have laid out a provisional timeline for the project in Appendix B.

- **Interconnection Request and Rebate Application:** This first step includes a formal site visit with Buncombe County and Pisgah Energy to verify site specifics and points of contact for facility/equipment questions, interconnection request, and billing. ESL will then obtain a Docket Number from the NC Utilities Commission and submit the required "Report of Proposed Construction" (ROPC) with the docket number and relevant info. After the ROPC process, ESL will submit the Interconnection Application, which will include an engineer-stamped Single Line Drawing of the design. We will also need the Buncombe County Contact to notarize a site verification form for Duke and sign the

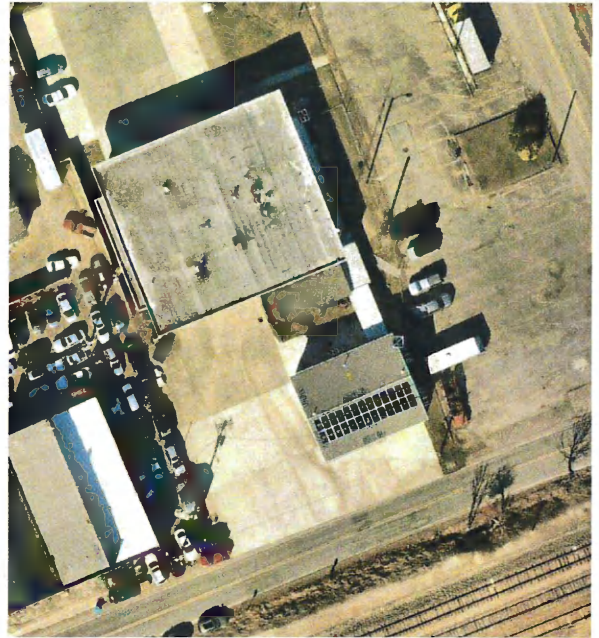


- Carol Woods, in Chapel Hill, a 116kw flush mount system installed in 2023. POC: James Best ([jbest@carolwoods.org](mailto:jbest@carolwoods.org))
- Lee Walker Heights, in Asheville, a 174kW ballasted rooftop system installed in 2022. ESL did not design/develop this system. POC: Rich Olejniczak ([rich@mtnhousing.org](mailto:rich@mtnhousing.org))
- Rebuilding Broken Places, in Goldsboro, two leased systems totaling 114kw installed in 2022. POC: John Barnes ([jbarnes@rbpcdc.org](mailto:jbarnes@rbpcdc.org))
- Lumbee Regional Development Authority, a 76kw flush mount system installed in 2022. POC: Travis Bryant ([rtbryant@lumbee.org](mailto:rtbryant@lumbee.org))
- Durham Literacy Center in Durham, a 50kW ballasted roof mount installed in 2022. POC: Lizzie Ellis-Furlong ([lizzie@durhamliteracy.org](mailto:lizzie@durhamliteracy.org))
- St. Francis of Assisi Catholic Church in Raleigh, a 75kW flush-mount system that is leased with a market value of app \$145,000 installed in 2020. POC: Rob Neppel ([Rob.Neppel@stfrancisraleigh.org](mailto:Rob.Neppel@stfrancisraleigh.org))
- Oak City Baptist in Raleigh, a 42kW flush-mount system installed in 2021. POC: Patrick McNair ([media@oakcitybaptist.org](mailto:media@oakcitybaptist.org))
- Carolina Day School in Asheville, three leased roof-top systems totaling over 300kW with a market value of \$600,000 (one ballasted roof mount, two flush-mount, installed in 2019 and 2021). Point of Contact (POC): Brett Fuhrman ([bfuhrman@carolinaday.org](mailto:bfuhrman@carolinaday.org))
- St. Andrews Episcopal Church of Greensboro, 51kW flush-mounted system that is leased with a market value of app \$100,000 installed in 2020. POC: Chris Berger ([ceberger5@me.com](mailto:ceberger5@me.com))

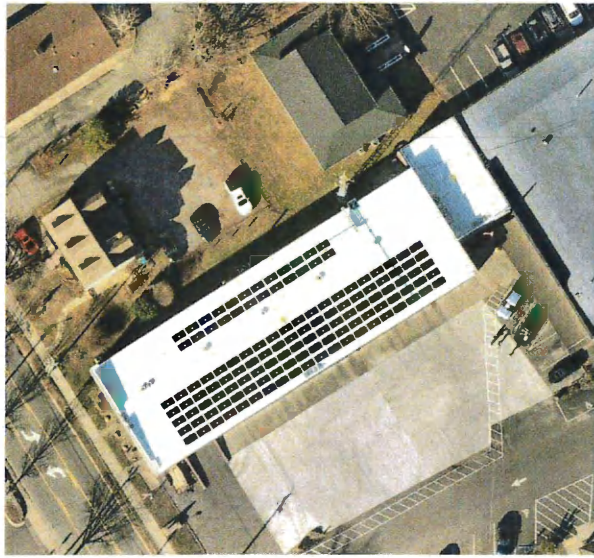
Site	485W QCell Modules	Number of Optimizers	Optimizer type
<b>Black Mountain Fire 19</b>	<b>32</b>	32	S500B
<b>Leicester</b>	<b>60</b>	30	P1101
<b>Reynolds</b>	<b>60</b>	30	P1101
<b>Skyland</b>	<b>76</b>	40	P1101
<b>Swannanoa 103 South Ave</b>	<b>26</b>	26	S500B
<b>Swannanoa 510 Bee Tree</b>	<b>48</b>	24	P1101
<b>Town of Black Mountain</b>	<b>124</b>	75	P1101
<b>Upper Hominy</b>	<b>72</b>	36	P1101
<b>West Buncombe VFD Station 5</b>	<b>85</b>	45	P1101
<b>Woodfin</b>	<b>60</b>	30	P1101



Swannanoa 103



Swannanoa Bee Tree



Town of Blk Mtn



Upper Hominy

## Appendix A- O&M Service Option

### System Monitoring

- a) Monitor and Report monthly and annual production totals

### System Alarm & Servicing

- b) Respond to alarm and alert conditions and dispatch service personnel

### Photovoltaic Generation Equipment-Annually

- c) Visually inspect and document all electrical enclosures for corrosion, heat distortion, moisture entry, electrical termination, insect infestation, rodent issues, and exterior damage
- d) Visually inspect and document module cleanliness (e.g. inconsistent soiling patterns, spot spoiling, etc.) and remove any build-up of debris and trash in the array
- e) Visually inspect and document PV modules, racking, and wiring for broken/missing modules, damage, unexpected wear, loose racking hardware, unsecured wiring, chafing of electrical conductor insulation, and evidence of corrosion
- f) Visually inspect and document roof and/or canopy structures for damage, moisture entry and corrosion, where applicable
- g) Visually inspect and document grounding connections for loose or corroded connections at module frames and module racking/support structure
- h) Visually inspect and document all accessible wiring runs, elbows, weather heads, piping, conduits, and wire ways for loose connections, missing sealant, corrosion, or moisture intrusion
- i) Operate all inverter AC and DC disconnect switches. Validate inverter response to shut down and proper start-up
- j) Check inverter operating display readings and remote monitoring system
- k) Address, replace, or rectify any warranty or workmanship issue identified during inspection.

### System Testing, Preventative Maintenance-Annually

- l) Perform all component supplier recommended maintenance
- m) Validate functionality of all communications, and data logging, verify loss of communication alarms

### Warranty Administration

- n) Manage and supervise all warranty-eligible repairs of all equipment

Expiration Date

12/31/2024

License No.

79280

# North Carolina

Licensing Board for General Contractors

This is to Certify That:

Eagle Solar & Light, LLC

Birmingham, AL

is duly registered and entitled to practice

## General Contracting

Limitation: Unlimited

Classification: Building

until

December 31, 2024

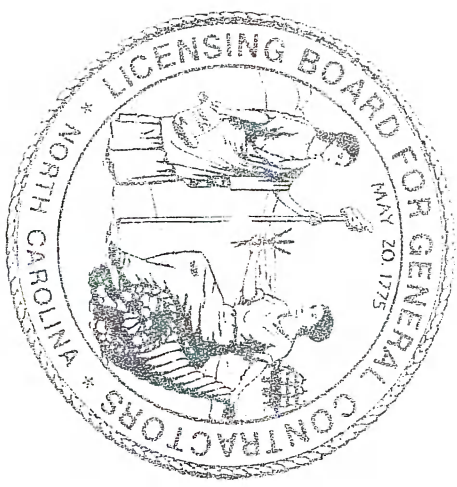
when this Certificate expires.

Witness our hands and seal of the Board.

Rated, Raleigh, N.C.

01/01/2024

This certificate may not be altered.



*Robert A. H. H.*  
Chairman

*C. Frank Wiener*  
Secretary-Treasurer

LICENSE NUMBER

U.36068

STATE OF NORTH CAROLINA

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

EXPIRATION DATE

03/26/2025

**THIS IS TO CERTIFY THAT:**

Eagle Solar and Light LLC

Tommy Beverage

*is duly registered and entitled to practice Electrical Contracting in the*

Unlimited Classification License  
Limitation: Any project regardless of value



*Witness our hands and seal of the Board*

Eagle Solar and Light LLC  
4005 2nd Ave South  
Birmingham, AL 35222

*[Signature]*  
Chairman

*[Signature]*  
Secretary - Tomason

THIS CHECK CONTAINS THE FOLLOWING SECURITY FEATURES: MULTI-COLOR PRINTING ON FACE, WATERMARK IN PAPER, AND MICROPRINTING ON BORDER.



# OFFICIAL CHECK

850 Shades Creek Pkwy  
Birmingham, AL 35209

NOTICE TO CUSTOMERS  
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED  
BEFORE ANY Official Check OF THIS BANK WILL BE  
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,  
MISPLACED OR STOLEN.

61-670  
620

23373

DATE May 31, 2024

REMITTER Eagle Solar & Light, LLC

\$\*\*\*\*\*30,000.00

PAY Thirty Thousand Dollars AND 00/100

TO THE ORDER OF Buncombe County

AUTHORIZED SIGNATURE

PURPOSE

⑈ 23373 ⑈



# OFFICIAL CHECK

850 Shades Creek Pkwy  
Birmingham, AL 35209

NOTICE TO CUSTOMERS  
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED  
BEFORE ANY Official Check OF THIS BANK WILL BE  
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,  
MISPLACED OR STOLEN.

61-670  
620

23373

DATE May 31, 2024

REMITTER Eagle Solar & Light, LLC

\$\*\*\*\*\*30,000.00

PAY Thirty Thousand Dollars AND 00/100

TO THE ORDER OF Buncombe County

NON NEGOTIABLE

PURPOSE

CUSTOMER COPY

## Federal Uniform Guidance

Portions if not all of this contract shall be Federally funded, therefore the contract shall follow the requirements under 2 C.F.R. §200.326 and 2 C.F.R. Part 200, Appendix II. During the performance of this contract, the contractor agrees as follows:

### I. Equal Employment Opportunity

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.



The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

II. Compliance with the Davis-Bacon Act

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the CSFRF/CLFRF program (Coronavirus State and Local Fiscal Recovery Funds).

III. Compliance with the Copeland "Anti-Kickback" Act

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

IV. Compliance with the Contract Work Hours and Safety Standards Act

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1)

of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

V. Clean Air Act and the Federal Water Pollution Control Act<sup>1</sup>

(1) Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

(2) Federal Water Pollution Control Act

- a. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The contractor agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

VI. Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2

C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). To determine if a person or organization is excluded or disqualified one may go to the System for Award Management Exclusions webpage at SAM.gov.

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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

## VII. Domestic Preferences

Per Federal Uniform Guidance 2 C.F.R. § 200.322, as appropriate and to the extent consistent with law, the Contractor should provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## VIII. Prohibition of certain telecommunications & video surveillance services or equipment

Per Federal Uniform Guidance 2 C.F.R. § 200.216, for the purpose of a contract to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system is prohibited from purchasing video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

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<sup>1</sup> This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.

FORM OF PERFORMANCE BOND

Date of Contract:

Date of Execution:

Name of Principal (Contractor):

Name of Surety:

Name of Contracting Body: Buncombe County, a body politic and Corporate

Amount of Bond:

Project:

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety, a surety company authorized to do business in North Carolina, 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.

*{Signature Pages Follow}*

FORM OF PERFORMANCE BOND

Date of Contract:

Bond #100333744

Date of Execution: 07/12/2024

Name of Principal (Contractor): Eagle Solar & Light, LLC, 4005 2<sup>nd</sup> Ave S, Birmingham, AL 35222

Name of Surety: Merchants National Bonding, Inc, PO Box 14498, Des Moines, IA 50306

Name of Contracting Body: Buncombe County, a body politic and Corporate

Amount of Bond: \$626,177.00

Project: Buncombe County Fire Department Solar Projects

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety, a surety company authorized to do business in North Carolina, 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.

*{Signature Pages Follow}*

NOW THEREFORE, the parties hereby make, agree, and execute this Performance Bond by the below signatures of duly authorized officials or agents.

CONTRACTOR  
Eagle Solar & Light, LLC

WITNESS

By: \_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Printed Name)  
  
\_\_\_\_\_  
(Title)  
  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Printed Name)  
  
\_\_\_\_\_  
(Title)  
  
\_\_\_\_\_  
(Date)

SURETY COMPANY

WITNESS

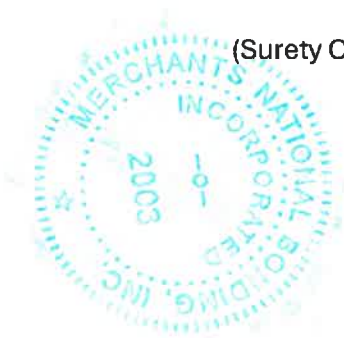
Merchants National Bonding Company, Inc.  
A Company Licensed to do Business in N.C.

Jennifer Edwards  
(Signature)

By: Melissa Propst  
(Signature)  
  
Melissa Propst  
(Printed Name)  
  
Attorney-in-fact  
(Title)  
  
07/12/2024  
(Date)

Jennifer Edwards  
(Printed Name)  
  
Bond Associate  
(Title)  
  
07/12/2024  
(Date)

(Surety Corporate Seal)



REGISTERED AGENT

(An authorized agent of the Surety Company who is licensed to do business in North Carolina must Countersign)

N/A  
(Signature)  
  
\_\_\_\_\_  
(Printed Name)  
  
\_\_\_\_\_  
(Title)  
  
\_\_\_\_\_  
(Date)

# MERCHANTS BONDING COMPANY™

## POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Adam Harris; Alex M Rechtin; Brian L Sewell; Kenny Albert; Lakala Carter; Melissa Propst; Steven M Baas

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."


"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

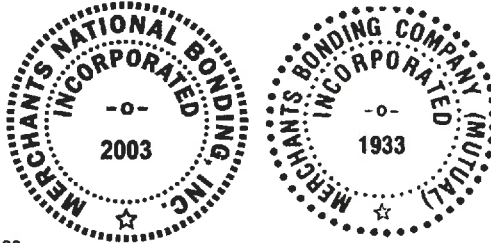
In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 3rd day of February, 2024.

MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.  
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By   
President

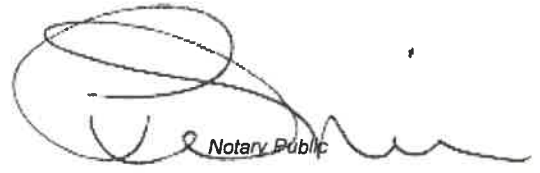


STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 3rd day of February 2024, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

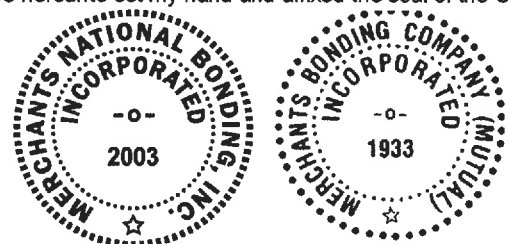


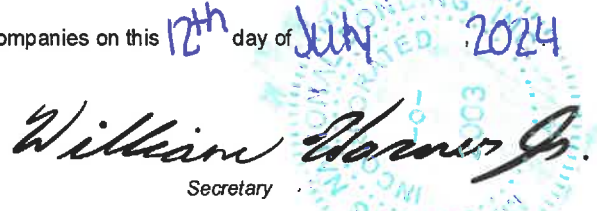
(Expiration of notary's commission does not invalidate this instrument)

  
Notary Public

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 12th day of July 2024



  
Secretary