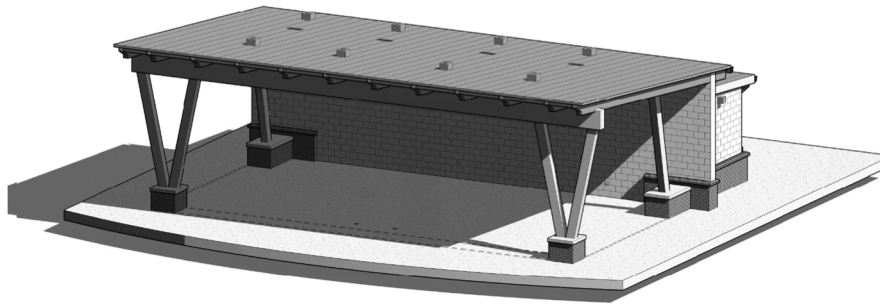


Town of Badin
Waterfront Park
Badin, North Carolina

Project Manual



Miles-McClellan Construction

Becker Morgan Group

2.27.2024

Project Manual

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002113 INSTRUCTIONS TO BIDDERS**1.0 BID SUBMISSION**

- A. Bids signed and sealed, executed, and dated will be received at the Town of Badin Conference Hall located at 29 Falls Road, Badin North Carolina 28009. To the attention of Grey London until 3:00pm local daylight time on March 12th 2024.
- B. Alternatively Bids signed and sealed, executed, and dated may be received at Miles-McClellan Construction Company's office located at 7504 East Independence Blvd Suite 100 Charlotte North Carolina 28227 until 9:00am on March 12th .
- C. Offers submitted after the above time(s) shall be returned to the bidder unopened
- D. A public bid opening will occur at the aforementioned time. A certified bid tab will be issued within 5 business days of the receipt of the bids.

2.0 INTENT

- 2.1 The intent of this Bid Request is to obtain and perform work to construct the Town of Badin Waterfront Park in Badin, North Carolina for a stipulated sum contract, in accordance with the Contract Documents.

3.0 WORK IDENTIFIED IN THE CONTRACT DOCUMENTS

- 3.1 Work for this proposed Contract comprises of sitework, utilities, concrete, masonry, framing, drywall, doors frames and hardware, drywall, paint, plumbing, HVAC, and electrical.

4.0 PRE-BID CONFERENCE

- 4.1 There is no scheduled Pre-Bid conference for this project.

002200 LIST OF DRAWINGS

GENERAL

G001 COVER SHEET

CIVIL

C100 EXISTING CONDITIONS AND DEMO PLAN

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C201 CONFERENCE CENTER IMPROVEMENTS

C300 EROSION CONTROL PLAN

C301 GRADING AND DRAINAGE PLAN

C400 UTILITY PLAN

C500 DETAILS - EROSION

C501 DETAILS - STORM

C502 DETAILS - UTILITY

C503 DETAILS - SITE I

C504 DETAILS - SITE II

C505 DETAILS - SITE III

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STRUCTURAL

S001 GENERAL NOTES

S002 GENERAL NOTES, ABBREVIATIONS, AND SYMBOLS

S101 FOUNDATION AND ROOF FRAMING PLAN

S261 WOOD ELEVATIONS

S301 SLAB ON GRADE DETAILS

S302 FOUNDATION DETAILS

S303 FOUNDATION DETAILS

S401 CMU DETAILS

S402 CMU DETAILS

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A001 CONSTRUCTION TYPES - EXTERIOR WALLS, SLABS, FLOORS, ROOFS, AND SOFFITS

A402 SIGN WALL DETAILS

A002 CONSTRUCTION TYPES - INTERIOR WALL TYPES, SIGNAGE, RAILINGS, LADDERS

A101 OVERALL FLOOR PLAN

A102 OVERALL CEILING & ROOF PLAN

A201 EXTERIOR ELEVATIONS AND BUILDING SECTIONS

A301 WALL SECTIONS

A401 ENLARGED PLANS AND SECTIONS

A501 DETAILS

A601 DOOR & WINDOW TYPES AND SCHEDULES

PLUMBING

P001 PLUMBING LEGEND AND NOTES

P002 PLUMBING - DETAILS

P101 PLUMBING PLANS - PAVILLION

P201 PLUMBING RISERS

MECHANICAL

M001 MECHANICAL LEGEND, NOTES, AND SPECIFICATIONS

M101 MECHANICAL PLAN - PAVILLION

ELECTRICAL

E001 ELECTRICAL LEGEND AND NOTES

E002 ELECTRICAL DETAILS

E101 ELECTRICAL PLANS - PAVILLION

E102 ELECTRICAL SITE PLAN

E201 ELECTRICAL RISERS AND SCHEDULES

004113 BID FORM

Town of Badin – Waterfront Park Bid

March 12th 2024 at 3:00pm

29 Falls Road Badin North Carolina

Date: _____

Contractor’s Name: _____

License No. (If Applicable): _____

HUB Certified (If Applicable): _____

Project Scope Package: _____

The Bidder further declares that he has carefully examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done, that he has examined the specifications for the work and contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; and he has satisfied himself as to the nature and location of the work, the general and local conditions, and all matters which may in any way affect the work or its performance, and that as a result of such examination and investigation, he fully understands the intent and purpose of the documents and conditions of bidding. Claims for additional compensation and/or extensions of time because of the Contractor's failure to follow the foregoing procedure and to familiarize himself/ herself with the Contract Documents and all conditions which might affect the work will not be allowed.

BASE BID:

_____ **Dollars(\$ _____).**

Acknowledge Of Addenda

Addenda: _____ **Date:** _____

Addenda: _____ **Date:** _____

Addenda: _____ **Date:** _____

Addenda: _____ **Date:** _____

(Name of Firm or Corporation Bidding): _____

By (Printed Name): _____

By (Signature): _____

Title: _____

004321 PROJECT SCOPE PACKAGES**1.1 Project Scope Packages – Detailed Project Scope Packages will be issued in Addenda 001.**

- A. Structural Concrete
- B. Masonry
 - a. CMU
 - b. Split Face
 - c. Veneer
- C. Misc. Steel
 - a. Lintels
 - b. Hand Rail
- D. Wood Framing Package
 - a. Framing
 - b. Heavy Timbers
- E. Roofing Package
 - a. Standing Seam Metal Roof
 - b. Gutters Down Spouts
 - c. Metal Soffit Panels
 - d. Metal Fascia
- F. Hollow Metals Doors Frames and Hardware
- G. Storefront Aluminum and Glazing
- H. Epoxy Flooring
- I. Painting
- J. Div. 10 Specialties
 - a. Partitions
- K. Playground
- L. Plumbing Package
- M. HVAC Package
- N. Electrical Package
- O. Grading Package
 - a. Erosion Control
 - b. Storm
- P. Site Concrete
 - a. Curb and Gutter
 - b. Sidewalks
 - c. Asphalt
- Q. Site Amenities
 - a. Benches, Bike Racks, Signage etc.
- R. Landscaping Package
- S. Utilities Package
 - a. Water
 - b. Sewer
 - c. Fire Line

004323 ALTERNATES FORM

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004333 HUB FORMS

1.1 Hub Forms:

- A. Identification of HUB Certified/Minority Business Participation
- B. State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts
- C. State of North Carolina AFFIDAVIT C – Portion of Work to be Performed by HUB Certified/Minority Businesses.
- D. State of North Carolina AFFIDAVIT D- Good Faith Efforts

State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of _____

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

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

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

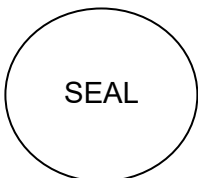
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure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

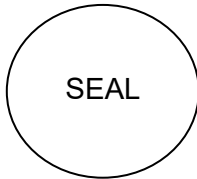
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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: _____ 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 C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

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

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

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

_____ (Project Name)
 Project ID# _____ Amount of Bid \$ _____

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

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

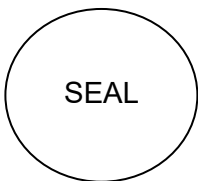
*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

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

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

Date: _____ Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of _____

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

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

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

Project ID# _____ (Project Name) Amount of Bid \$ _____

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

Name and Phone Number	*Minority Category	**HUB Certified Y/N	Work Description	Dollar Value

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

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

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

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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

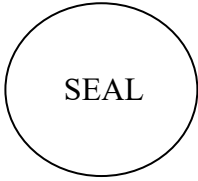
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

004393 BID SUBMITTAL CHECKLIST

- Used the Correct Bid Form Provided in the Project Manual
- Prepared the Bid Form as required in the Instructions to Bidders
- Indicated on the Bid Form the Addenda Received
- Attached the Appropriate Bid Form – Alternates Form
- All Contents Secured in a Bid Envelope Labeled as Follows
 - Bidders Name
 - Bidders Address
 - Project Name Being Bid On
 - Project Package Being Bid On
 - Time and Date of Bid Opening

005213 SUBCONTRACTOR AGREEMENT FORM

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**STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR
(Where Subcontractor Shares Credit Risk of Owner)**

TABLE OF ARTICLES

1. SCOPE OF WORK
2. SUBCONTRACTOR'S RESPONSIBILITIES
3. CONTRACTOR'S RESPONSIBILITIES
4. PROGRESS SCHEDULE
5. SUBCONTRACT AMOUNT
6. CHANGES IN THE SUBCONTRACT WORK
7. PAYMENT
8. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
9. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT
10. DISPUTE RESOLUTION
11. MISCELLANEOUS PROVISIONS
12. EXISTING SUBCONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification.

**ARTICLE 1
SCOPE OF WORK**

1.1 SUBCONTRACT WORK: The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work for the project described in the subcontract summary page and as may be set forth in further detail in Exhibit A, in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.

1.2 CONTRACTOR'S WORK: The Contractor's Work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The Subcontract Work is a portion of the Contractor's Work.

1.2.1 The Contractor and the Subcontractor shall perform their obligations with integrity, ensuring at a minimum that:

1.2.1.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

1.2.1.2 The Contractor and the Subcontractor warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

1.3 SUBCONTRACT DOCUMENTS: The Subcontract Documents include this Agreement, the Owner-Contractor agreement, all special conditions, all general conditions, all supplementary general conditions, specifications, drawings, addenda, Subcontract Change Orders, approved submittals, amendments and any pending and exercised alternates. The Contractor shall provide to the Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall provide copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. The Subcontract Documents existing at the time of the execution of this Agreement are listed in Article 12.

1.3.1 ELECTRONIC DOCUMENTS: If the Owner requires that the Owner, Architect/Engineer, Contractor and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Architect/Engineer and Contractor shall agree to a written protocol governing all exchanges, which, at a minimum, shall specify:

- (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally;
- (2) management and coordination responsibilities;
- (3) necessary equipment, software and services;
- (4) acceptable formats, transmission methods and verification procedures;
- (5) methods for maintaining version control;
- (6) privacy and security requirements; and
- (7) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the Contractor in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

1.4 CONFLICTS: In the event of a conflict between this Agreement and the other Subcontract Documents, this Agreement shall govern.

1.5 EXTENT OF AGREEMENT: Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.6 DEFINITIONS:

1.6.1 Wherever the term **Progress Schedule** is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

1.6.2 Whenever the term **Change Order** is used in this Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.

1.6.3 Unless otherwise indicated, the term **Day** shall mean calendar day.

2.6.4 **Immediate Notice** as used herein is to mean as soon as possible after the event that gave rise to the need for notice but not later than the end of the work on the day the Event occurred.

2.6.5 Whenever the term **Prime Contract** is used in this agreement, it shall mean the Owner-Contractor agreement and all Exhibits, special conditions, general conditions, supplementary general conditions, modifications, addendums, documents incorporated by reference and change orders existing at the time of this agreement.

ARTICLE 2 SUBCONTRACTOR'S RESPONSIBILITIES

2.1 OBLIGATIONS: The Contractor and Subcontractor are hereby mutually bound by the terms of this Agreement. The terms of the Owner-Contractor agreement apply to the Subcontract Work, such that the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime contract assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and Architect/Engineer under the prime contract. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

2.2 RESPONSIBILITIES: The Subcontractor agrees to furnish its diligent efforts and judgment in the performance of the Subcontract Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required to meet the Progress Schedule. The Subcontractor shall carefully and completely review the Subcontract Documents and Project Manual and shall evaluate and satisfy itself as to the conditions and limitations under which the Subcontract Work is to be performed.

2.3 INCONSISTENCIES AND OMISSIONS: The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be for the purpose of facilitating the Subcontract Work and for the discovery of errors, inconsistencies or omissions in the Subcontract Documents and for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within two (2) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Subcontractor bears full responsibility for accuracy of measurements obtained at the site. No extra compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the Drawings, Specifications or other Construction Documents nor for the Subcontractor's failure to coordinate the Subcontract Work with actual field measurements. Subcontractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. Before ordering any materials or performing any of the Subcontract Work, Subcontractor shall verify that all dimensions specified in the Drawings, Specifications and other Construction Documents are consistent with all actual dimensions in the field. Any inconsistency shall be brought to the attention of the Contractor in writing within two (2) days. In the event inconsistencies exist and are not brought to the attention of the Contractor as set forth above, the all costs to correct and/or replace the ordered materials or Subcontract Work shall be borne by the Subcontractor. Nothing in this paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

2.4 SITE VISITATION: Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become completely familiar with local conditions and to correlate site observations with the Subcontract Documents. Subcontractor represents and warrants that it has carefully and completely examined the Project Manual and Addenda, the Subcontract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Subcontract Work, and that, from its own investigations, has satisfied itself as to the nature and location of the Subcontract Work,

the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of machinery and equipment and other facilities needed for the performance of the Subcontract Work, the character, quality, quantity and availability of labor and sub-Subcontractors required for the Subcontract Work, the character, quality, quantity and availability of professional services required for the Subcontract Work, the character, quality, quantity and availability of materials required for the Subcontract Work, and all other matters and things which may in any way affect the Subcontract Work or its performance. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, the Subcontractor shall, by immediate written notice, report such discrepancies to the Contractor.

2.5 INCREASED COSTS OR TIME: The Subcontractor may assert a Claim as provided in Article 6 if Contractor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 2.3 and 2.4, above, the Subcontractor shall not be entitled to assert any Claim for increased cost or time and to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

2.6 COMMUNICATIONS: Unless otherwise provided in the Subcontract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to the Contractor.

2.7 SUBMITTALS:

2.7.1 The Subcontractor shall, within fifteen (15) days of the execution of this agreement, submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. Submittals shall be submitted in electronic form if required in accordance with Subparagraph 1.3.1. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. Such approval shall be promptly memorialized in a Subcontract Change Order within seven (7) Days following approval by the Contractor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect/Engineer.

2.7.2 The Contractor, Owner, and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

2.8 DESIGN DELEGATION:

2.8.1 If the Subcontract Documents (1) specifically require the Subcontractor to procure design services and (2) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

2.8.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Subparagraph 4.4.1, or exclusion from participation in the multiparty proceedings requirement of Paragraph 10.4. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

2.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

2.9 TEMPORARY SERVICES: The Subcontractor's and Contractor's respective responsibilities for temporary services are set forth in the contract documents.

2.10 COORDINATION: The Subcontractor shall:

2.10.1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;

2.10.2 specifically note and send immediate notice, in writing, to the Contractor advising of any such failure to interface

with the Subcontract Work; and

2.10.3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

2.11 SUBCONTRACTOR'S REPRESENTATIVE: The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor must provide to the Contractor, in writing, this representative's name, title and contact information.

2.12 TESTS AND INSPECTIONS: The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give a minimum of two (2) days written notice, unless greater notice is required in the Subcontract Documents, to all required Parties of such tests, approvals and inspections. Except as otherwise provided in the Subcontract Documents the Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

2.13 CLEANUP:

2.13.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Work site clean and free on a daily basis from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

2.13.2 If the Subcontractor fails to commence compliance with cleanup duties within one (1) day after written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor in the next payment period, from this or any other Subcontract Agreement.

2.14 SAFETY:

2.14.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

2.14.1.1 Employees and other persons at the site;

2.14.1.2 Materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work; and

2.14.1.3 All property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

2.14.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

2.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

2.14.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

2.14.5 Damage or loss not insured under property insurance and to the extent caused by the negligent acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss to the extent caused by the negligent acts or omissions of the Contractor, or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor.

2.14.6 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend site safety meetings as requested by the Contractor.

2.14.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures, or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from

the Contractor loading information concerning the structures at the site.

2.14.8 The Subcontractor shall give immediate notice, in writing, to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

2.14.9 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other Parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefore. The Subcontractor shall give the Contractor immediate notice, in writing, following a reportable incident under applicable rules, regulations, orders and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. To the fullest extent permitted by law, each Party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the Subcontractor's failure to comply with applicable rules, regulations, orders and other lawful requirements.

2.14.10 Subcontractor shall indemnify and hold Contractor harmless with respect to any and all damages of any kind including, but not limited to, penalties, abatement costs, court costs and attorney fees, incurred by Contractor as a direct or indirect result of any condition created or controlled by Subcontractor which violates or is alleged to violate any OSHA standard, regulation or safety requirement.

2.14.11 Exhibit "I" – Miles-McClellan Construction Site Specific Safety and Health Program Guidelines are hereby made a part of this agreement.

2.15 PROTECTION OF THE WORK: The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may, after forty-eight (48) hours written notice to the Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, from this or any other Subcontract Agreement unless such costs are recovered under applicable property insurance.

2.16 PERMITS, FEES, LICENSES AND TAXES: The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Owner-Contractor agreement, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement.

2.17 ASSIGNMENT OF SUBCONTRACT WORK: The Subcontractor shall neither assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor.

2.17.1 SUB-SUBCONTRACTORS and "1099 EMPLOYEES": The Subcontractor hereby agrees that it shall not subcontract any portion of the work covered by this agreement to any other firm or individual without having such subcontract authorized in writing first by Contractor. No "1099 Employees" are permitted on the job at any time. Subcontractor agrees that if it violates this provision, it shall hold Contractor harmless from any claims, actions or damages attributable to the sub-subcontractor or 1099 Employee.

2.18 HAZARDOUS MATERIALS: To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

2.19 MATERIAL SAFETY DATA (MSD) SHEETS: Not less than fifteen (15) days prior to the delivery of such to the project, the Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

2.20 LAYOUT RESPONSIBILITY AND LEVELS: The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall layout and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to layout or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

2.21 WARRANTIES: In addition to the Warranties and Guarantees provided for in the Subcontract Documents, the Subcontractor warrants that all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality,

in conformance with the Subcontract Documents, and free from defective workmanship and materials. Subcontractor further warrants and guarantees that Subcontractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction projects similar to the Project, except to the extent that the Subcontract Documents expressly specify a higher standard, in which case the standard shall be the higher standard. All material shall be uniform, and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Warranties shall commence on the date of Final Completion of the Work as defined in the Subcontract Documents.

2.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK:

2.22.1 UNCOVERING OF SUBCONTRACT WORK:

2.22.1.1 If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such work for the Contractor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

2.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Subparagraph 2.22.1.1, this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

2.22.2 CORRECTION OF WORK:

2.22.2.1 If the Architect/Engineer or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and Contractor made necessary by the defective Subcontract Work and all such costs shall be deducted from any monies due or to become due the Subcontractor under this or any other Subcontract Agreement.

2.22.2.2 In addition to the Subcontractor's obligations under Paragraph 2.21, the Subcontractor agrees to begin work to correct within two (2) days following receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. If, during the one-year period, the Contractor fails to provide the Subcontractor with written notice of the discovery of defective or nonconforming Subcontract Work within fifteen (15) days of such discovery, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 9.1.1.

2.22.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 2.22 shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year as described in this Paragraph 2.22 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

2.22.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, the Subcontractor shall be responsible for the reasonable cost of correcting such destroyed or damaged property.

2.22.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

2.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS: In the event the scope of the Subcontract Work includes

installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and give the Contractor immediate notice, in writing, of any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install non-conforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall, upon two (2) days written notice to the Subcontractor be deducted from any amounts due or to become due the Subcontractor.

2.24 SUBSTITUTIONS: No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

2.25 USE OF CONTRACTOR'S EQUIPMENT: The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the prior express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the Contractor's equipment.

2.26 WORK FOR OTHERS: Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless approved in writing by the Contractor in advance of such work or dealing.

2.27 SYSTEMS AND EQUIPMENT STARTUP: With the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

2.28 COMPLIANCE WITH LAWS: The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, environmental, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 2.14.9.

2.29 CONFIDENTIALITY: To the extent the Owner-Contractor agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements.

2.30 ROYALTIES, PATENTS AND COPYRIGHTS: The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.

2.31 LABOR RELATIONS AND PREVAILING WAGE: Detailed in Exhibit A

2.32 JOB SITE WORK HOURS: Normal working hours shall be eight (8) hours per day, Monday through Friday. Subcontractor shall work the hours established by the Contractor. Subcontractors shall not be permitted to establish their own work hours (such as 10 hours per day, four days a week) except upon the prior written consent of the Contractor and Architect. An authorized representative of the Contractor must be present at the job site during all working hours. In the event that the Subcontractor needs to work non-standard hours (e.g. overtime, night or weekend days) a representative of the Contractor must be scheduled to oversee the work. The Subcontractor must provide three (3) day written notice to Contractor and Architect that Subcontractor needs to work non-standard hours and Subcontractor will be responsible for all costs, including Contractor's Supervision for that time period. The responsibility may be waived or apportioned if the Contractor's representative is scheduled to be on site for Contractor's benefit, or at the request of other subcontractors; however, Subcontractor shall not be entitled to any additional compensation for non-standard work hours.

2.33 LIENS: Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's sureties and Owner from any lien or claim filed or made by any third-party person or firm on account of alleged non-payment for labor, materials, or services furnished or performed as a part of the Subcontract Work, including any damage (direct, indirect or consequential), loss (including economic loss), fine or expense (including attorneys' fees) incurred by Contractor, its surety, or Owner incurred in satisfying, discharging or defending against any such lien, claim or obligation, including any action brought or judgment recovered. Subcontractor, within fifteen (15) days of the receipt of written notice from Contractor of a lien or claim, shall promptly discharge or remove any such lien or claim of lien by bonding payment or otherwise, and shall also be liable to Contractor for any delay and delay-related expenses attendant to the filing of such subcontractor lien claim.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

3.1 CONTRACTOR'S REPRESENTATIVE: The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders or directions, except in an emergency. The Contractor's Representative is the Project Superintendent.

3.2 OWNER'S ABILITY TO PAY:

3.2.1 Subcontractor acknowledges and confirms that the payment by the Owner to the contractor for any and all work performed by Subcontractor or materials provided to the project by Subcontractor as part of its work on the project is a condition precedent to any obligation on the part of Contractor to pay Subcontractor for such. Subcontractor further acknowledges and confirms that the provisions herein, stating when progress and final payments are due and the amount thereof are subject to the express condition that the Contractor receive from the Owner the progress and final payments in at least the amounts payable to the Subcontractor on account of the work performed and materials supplied by the Subcontractor on the project. Subcontractor expressly understands and expects that payments to Subcontractor are contingent upon the payment of such to the Contractor by the Owner and Subcontractor hereby accepts the risk that Subcontractor will not be paid for materials provided to and work performed on the project by Subcontractor in the event that Contractor is not paid by the Owner for such work. Subcontractor acknowledges and represents that Subcontractor, while entering into this agreement and performing its work, has relied solely and strictly upon creditworthiness and ability of the Owner to pay and not that of the Contractor. Finally, Subcontractor confirms and acknowledges that the liability of Contractor's surety on any payment bond, if any is issued as part of the Agreement between the Owner and Contractor, for the payment to the Subcontractor is subject to the same limitations and conditions precedent as are applicable to Contractor's liability to Subcontractor stated herein.

3.3 INFORMATION OR SERVICES: The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner. To the extent the Owner provides any warranty of Owner provided information, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor, pursuant to Subparagraph 4.3.2.

3.4 STORAGE AREAS: The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Contractor shall reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Contractor.

3.5 TIMELY COMMUNICATIONS: The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, materialmen and suppliers shall be through the Subcontractor.

3.6 USE OF SUBCONTRACTOR'S EQUIPMENT: The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall indemnify and be liable to the Subcontractor as provided in Article 8 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 4 PROGRESS SCHEDULE

4.1 TIME IS OF THE ESSENCE: Time is of the essence for both Parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule as set forth in Exhibit "G".

4.2 SCHEDULE OBLIGATIONS: The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. To the extent such changes increase Subcontractor's time and costs, the Subcontract Amount and Subcontract Time shall be equitably adjusted.

4.2.1 PRIORITY OF WORK: Consistent with the requirements set forth in Paragraph 4.2, within fifteen (15) days of the execution of this agreement, Subcontractor shall prepare and submit a detailed schedule identifying in ample detail, as required by Contractor, the activities which comprise Subcontractor's schedule of Work required under this Agreement. Subcontractor shall identify all manpower requirements required to support the activity durations of Subcontractor's Work and other information as requested by Contractor. The Contractor shall have the right, but not the obligation, to coordinate the Subcontractor's schedule with the schedules of the Contractor and the other Subcontractors. Subcontractor agrees to

abide by and perform its obligations in accordance with the Project Schedule. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Subcontractor shall commence its work within two (2) days after the receipt of written notice from Contractor to begin work and if such work is interrupted for any reason the Subcontractor shall resume such work within two (2) days after the receipt from the Contractor of written notice to do so. The Subcontractor agrees to diligently and continuously prosecute its Work and to coordinate its Work with other work being performed on the Project, so that the Contractor shall not incur any time impact to its planned performance by any act or omission of the Subcontractor in the completion of the Project.

4.2.2 TIMELY PERFORMANCE: The Subcontractor acknowledges that performance of the Work and Substantial Completion of the Project, within the Subcontract Time is an essential condition to this Agreement. Following commencement, the Subcontractor shall carry the Work forward with competent, adequate, properly skilled forces to maintain progress in accordance with the Project Schedule. The Work shall not be suspended or shut down, but shall progress continuously and expeditiously, unless otherwise approved by the Contractor. When it becomes apparent from the weekly progress meeting that any activity completion date may not be met as a result of delays or disruption caused directly or indirectly by this Subcontractor, then this Subcontractor shall take some or all of the following actions at no additional cost to the Owner, the Architect/Engineer, or the Contractor.

- a. Increase construction manpower in such quantities as will eliminate the backing of Subcontractor's work and put the Project back on schedule.
- b. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing as will substantially eliminate the backing of subcontractor's work and put the Project back on schedule. Subcontractor will be responsible for additional Contractor supervision costs as set forth in Paragraph 2.33.
- c. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities and put the Project back on schedule.

4.2.3 FAILURE TO TAKE ACTION: If Subcontractor fails to take any of the above actions within 48 hours after receiving written notice to do so, the Contractor may take action to attempt to put the Project back on schedule. All costs of such action, including but not limited to cost of supplemental forces, professional fees, attorneys' fees, and reasonable overhead and profit shall be deducted from any monies due or to become due the Subcontractor from this or any other Subcontract Agreement. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.

4.2.4 SCHEDULE IMPACT: In addition to the costs identified in Paragraph 4.2.3., if the Subcontractor is responsible for any impact in the timely performance or sequence of the schedule, the Subcontractor shall pay the Contractor for all costs and damages suffered by the Contractor as a result of such time impacts.

4.3 DELAYS AND EXTENSIONS OF TIME:

4.3.1 OWNER CAUSED DELAY: Subject to Subparagraph 4.3.2, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order and the Subcontract Price equitably adjusted to the extent obtained by the Contractor from the Owner under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

4.3.2 CLAIMS RELATING TO OWNER: The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner. Subcontractor agrees to accept and be bound by whatever amounts, if any, Contractor recovers from Owner whether by settlement, mediation or judgment.

4.3.3 CONTRACTOR CAUSED DELAY: Nothing in this Article shall preclude the Subcontractor's recovery of delay damages caused by the Contractor to the extent not otherwise precluded by this Agreement. For delays to the Work attributable to the Contractor, Subcontractor's sole remedy against the Contractor shall be an extension of the Contract Time.

4.3.4 CLAIMS RELATING TO CONTRACTOR: The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 4.3.2 or 4.3.3 within seven (7) days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) days after giving notice, unless the Parties agree upon a longer period of time. The Contractor shall respond in writing denying or approving, in whole or in part the Subcontractor's claim no later than fourteen (14) days after receipt of the Subcontractor's documentation of claim. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 4.3.2 or 4.3.3 shall be resolved in the manner provided in Article 10.

4.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES:

4.4.1 Except for damages provided for by the Subcontract Documents as liquidated damages and excluding losses covered by insurance required by the Subcontract Documents, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, to the same extent the Owner-Contractor agreement furnished to the Subcontractor in accordance with Paragraph 1.3 provides for a mutual waiver of consequential damages by the Owner and Contractor, including to the extent provided in the Owner-Contractor agreement, damages for loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its Sub-Subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor agreement. The provisions of this Article shall also apply to and survive termination of this Agreement.

4.5 LIQUIDATED DAMAGES:

4.5.1 If the Subcontract Documents furnished to the Subcontractor in accordance with Paragraph 1.3 provide for liquidated damages or other damages for delay beyond the completion date set forth in the Subcontract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual damages caused by the Subcontractor.

4.5.2 To the extent the Owner-Contractor Agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Paragraph 8.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-Sub-Subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 5 SUBCONTRACT AMOUNT

As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of the Subcontract:

- (a) the fixed-price detailed in the subcontract summary page subject to additions and deductions as provided for in the Subcontract Documents; or
- (b) alternates and unit prices detailed in the subcontract summary page; or
- (c) time and material rates and prices detailed in the subcontract summary page.

The fixed-price, unit prices or time and material rates and prices are referred to as the Subcontract Amount.

ARTICLE 6 CHANGES IN THE SUBCONTRACT WORK

6.1 SUBCONTRACT CHANGE ORDERS: When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.

6.2 CONSTRUCTION CHANGE DIRECTIVES: To the extent that the Subcontract Documents provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

6.3 UNKNOWN CONDITIONS: If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement and provided the Subcontractor has given the Contractor written notice of such concealed or subsurface physical conditions within two (2) days of their discovery, the Subcontract Amount or the Progress Schedule shall be equitably adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustment which the Subcontractor may receive shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 4.3.2.

6.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT: If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

6.4.1 mutual acceptance of an itemized lump sum;

6.4.2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the Parties; or

6.4.3 costs determined in a manner acceptable to the Parties and a mutually acceptable fixed or percentage fee; or

6.4.4 another method provided in the Subcontract Documents.

6.5 SUBSTANTIATION OF ADJUSTMENT: If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 6.6, or if none is provided as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

6.5.1 labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;

6.5.2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

6.5.3 costs of renting machinery and equipment other than hand tools;

6.5.4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and

6.5.5 costs of additional supervision and field office personnel services necessitated by the change.

6.6 Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit as detailed in the subcontract summary page.

6.7 NO OBLIGATION TO PERFORM: The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 6.2 and 6.9.

6.8 EMERGENCIES: In an emergency affecting the immanent safety of persons or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

6.9 INCIDENTAL CHANGES: The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by giving Subcontractor a two (2) day written notice to begin such incidental work. Such written notice shall be carried out promptly and are binding on the Parties.

ARTICLE 7 PAYMENT

7.1 SCHEDULE OF VALUES: As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than ten (10) Days from the date of this Agreement.

7.2 PROGRESS PAYMENTS

7.2.1 APPLICATIONS: The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 2.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application, if allowed under the Subcontract Documents, may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 7.2.2, 7.2.3, and 7.2.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall promptly notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

7.2.2 RETAINAGE: The rate of retainage (detailed in Exhibit A) which is equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

7.2.3 TIME OF APPLICATION: The Subcontractor shall submit progress payment applications to the Contractor as

detailed in Exhibit "E" for the Subcontract Work performed up to and including the last day of the payment period indicating work completed and, to the extent allowed under Subparagraph 7.2.4, materials suitably stored during the preceding payment period. Further Billing Instructions are set forth in Exhibit "E".

7.2.4 STORED MATERIALS: Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and required insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

7.2.5 TIME OF PAYMENT: Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for the Subcontract Work. The obligation of Contractor to make a payment under this Agreement, whether a progress or final payment, or for extras, or change orders or delays to the Work, is subject to the express condition precedent of payment therefore by the Owner. If Contractor has provided payment or performance bonds or combination payment and performance bond, the obligation of Contractor and its Surety under any of such bonds to make any payment (whether a progress payment or final payment) to a Subcontractor/claimant on such bond is similarly subject to the express condition precedent of payment therefore to Contractor by the Owner. For projects located in South Carolina, the requirements of S.C. CODE ANN. § 29-6-30 and § 29-6-50 are waived by Contractor and Subcontractor.

7.2.6 PAYMENT DELAY: If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after the date such payment is due, as defined in Subparagraph 7.2.5, the Subcontractor, upon giving seven (7) days' written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

7.2.7 PAYMENTS WITHHELD: The Contractor may reject a Subcontractor payment application in whole or in part or withhold amounts from a previously approved Subcontractor payment application, from this or any other Subcontract Agreement, as may reasonably be necessary to protect the Contractor from loss or damage for which the Contractor may be liable and without incurring an obligation for late payment interest based upon:

- 7.2.7.1 the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;
- 7.2.7.2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
- 7.2.7.3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
- 7.2.7.4 rejected, nonconforming or defective Subcontract Work which has not been corrected in a timely fashion;
- 7.2.7.5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor;
- 7.2.7.6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;
- 7.2.7.7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

No later than fourteen (14) Days after receipt of an application for payment, the Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Subcontractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

7.3 FINAL PAYMENT:

7.3.1 APPLICATION: Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 7.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the

reasons therefore.

7.3.2 REQUIREMENTS: Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:

7.3.2.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;

7.3.2.2 consent of surety to final payment, if required;

7.3.2.3 satisfaction of required closeout procedures;

7.3.2.4 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be required by the Contractor;

7.3.2.5 written warranties, equipment manuals, startup and testing required in Paragraph 2.28; and

7.3.2.6 as-built drawings if required by the Subcontract Documents.

7.3.3 TIME OF PAYMENT: Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor within seven (7) days after receipt by the Contractor of final payment from the Owner for such Subcontract Work. The obligation of Contractor to make a payment under this Agreement, whether a progress or final payment, or for extras or change orders or delays to the Work, is subject to the express condition precedent of payment therefore by the Owner. If Contractor has provided payment or performance bonds or a combination payment and performance bond, the obligation of Contractor and its Surety under any of such bonds to make any payment (whether a progress payment or final payment) to a Subcontractor/claimant on such bond is similarly subject to the express condition precedent of payment therefore to Contractor by the Owner. For projects located in South Carolina, the requirements of S.C. CODE ANN. § 29-6-30 and § 29-6-50 are waived by Contractor and Subcontractor.

7.3.4 FINAL PAYMENT DELAY: If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

7.3.5 WAIVER OF CLAIMS: Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under this Agreement, including but not limited to, Paragraphs 2.21 and 2.22, or for faulty or defective work or services discovered after final payment, nor relieve the Contractor for claims made in writing by the Subcontractor as required by the Subcontract Documents prior to its application for final payment as unsettled at the time of such payment.

7.4 LATE PAYMENT INTEREST: Progress payments or final payment due and unpaid under this Agreement, as defined in Subparagraphs 7.2.5, 7.3.3 and 7.3.4, shall bear interest from the date payment is due at the rate of Prime + 1%. prevailing Statutory rate at the place of the Project. However, if the Owner fails to timely pay the Contractor as required under the Owner-Contractor agreement through no fault or neglect of the Contractor, and the Contractor fails to timely pay the Subcontractor as a result of such nonpayment, the Contractor's obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the Contractor promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the Contractor from the Owner on such late payments. For projects located in South Carolina, the requirements of S.C. CODE ANN. § 29-6-30 and § 29-6-50 are waived by Contractor and Subcontractor.

7.5 CONTINUING OBLIGATIONS: Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraph 7.2.5 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

7.6 PAYMENT USE RESTRICTION: Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. In the same manner, payments received by the Contractor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the Parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in

separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Contractor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

7.7 PAYMENT USE VERIFICATION: If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

7.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS: As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

7.9 SUBCONTRACTOR PAYMENT FAILURE: Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled and shall deliver a sworn statement certifying such payment along with its next application for partial or final payment. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

7.9.1 RIGHT TO PAY BY DIRECT OR JOINT CHECKS: Contractor reserves the right, in its sole discretion, to pay all or any of Subcontractor's subcontractors and material suppliers directly or by joint check. The Subcontractor agrees that, if and when requested to do so by Contractor, it shall furnish such information, evidence and substantiations as Contractor may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefore. Additionally, Subcontractor authorizes Contractor at any time to independently confirm the amounts unpaid to any Subcontractor's subcontractors and material suppliers. In the event that Contractor does elect to pay all or any of Subcontractor's subcontractors and material suppliers by direct or joint checks, Contractor will endeavor to insure that payments made to Subcontractor's subcontractors and material suppliers are for the materials delivered to the project and work performed on the project during the appropriate application period, but shall not be liable to Subcontractor for any over or under payments made in good faith. The payment of Subcontractor's subcontractors and material supplier by direct or joint checks shall not act to modify, alter or otherwise affect the duties and responsibilities of the parties hereto. In no event shall Contractor be liable for the payment to Subcontractor's subcontractors and material suppliers of more than Contractor is obligated to pay Subcontractor.

7.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS: The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 8 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

7.11 PAYMENT NOT ACCEPTANCE: Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

ARTICLE 8 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

8.1 INDEMNITY:

8.1.1 INDEMNITY: To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless the Contractor, the Contractor's other subcontractors the Architect/Engineer, the Owner and their agents, consultants and employees (the "Indemnitees") from and against all claims, damages (direct, indirect and consequential), losses (including economic losses), or expenses (including costs and attorneys' fees) (i) which Contractor or Owner incurs as a result of Subcontractor's failure to perform the Subcontract Work in accordance with the Subcontract Documents, or (ii) for damages because of bodily injury or property damage, including the loss of use thereof, arising out of or in consequence of the performance of the Subcontract Work as described herein, provided such injury to persons or damage to property is due or claimed to be due in whole or in part because of the wrongful or negligent act or omission of the Subcontractor, his employees, sub-subcontractors or agents, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Nothing herein shall be construed to require the Subcontractor and to indemnify the Indemnitees for the consequences of their own negligence or wrongful act or omission. In the event of concurrent fault between the Subcontractor and the Indemnitees, Subcontractor's liability under this section shall be limited to that portion of the claim, damage, loss or expense (including cost and attorneys' fees) arising out of the negligent or wrongful act of the Subcontractor. Subcontractor's indemnification obligations shall not be limited in any way by any limitation on the

amount or type of damages, compensation or benefits payable by or for Subcontractor under worker's compensation acts, disability benefits acts, or other employee benefit acts.

8.1.2 NO LIMITATION ON LIABILITY: In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

8.1.3. In addition to the obligations above, Subcontractor agrees to defend, indemnify and save harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their respective agents, consultants and employees from and against: (1) any claims, damages (direct, indirect and consequential), losses (including economic losses) or expenses (including costs and attorneys' fees) arising out of any liens, claims (including claims on payment bonds), security interests or encumbrances filed or served by any of the Subcontractors' subcontractors, suppliers or anyone claiming by, through or under them for items covered by payments made by the Contractor to Subcontractor or, (2) any claims, disputes or legal proceedings asserted against Contractor due to any dispute or controversy arising from any acts, errors or omissions of the Subcontractor.

8.2 INSURANCE:

8.2.1 SUBCONTRACTOR'S INSURANCE: Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase insurance from a company or companies acceptable to Contractor, lawfully authorized to do business in the jurisdiction in which the Work is located and carrying an A.M. Best Rating of no less than A-, Subcontractor shall purchase and such insurance as will protect the Subcontractor from claims which may arise out of or result from the Subcontractor's operations under this Agreement whether such operations are by the Subcontractor or by anyone directly or indirectly employed Subcontractor, or by anyone for whose acts Subcontractor or its sub-Subcontractors may be liable.

8.2.2 MINIMUM LIMITS OF LIABILITY: The Subcontractor shall procure and maintain with insurance companies licensed in a the jurisdiction in which the Project is located and acceptable to the Contractor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit "D".

8.2.3 PROFESSIONAL LIABILITY INSURANCE:

8.2.3.1 PROFESSIONAL LIABILITY INSURANCE: The Subcontractor shall require the Designer(s) to maintain Professional Liability Insurance with a company reasonably satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 2.8, and including coverage for any professional liability caused by any of the Designer's(s') consultants. Said insurance shall have specific minimum limits as set forth below:

Limit of \$1,000,000.00 per claim.

General Aggregate of \$1,000,000.00 for the subcontract services rendered.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Designer. Said insurance shall be continued in effect with an extended period of (10) years following final payment to the Designer. Such insurance shall have a maximum deductible amount of \$10,000.00 per occurrence. The deductible shall be paid by the Subcontractor or Designer.

8.2.3.2 The Subcontractor shall require the Designer to furnish to the Subcontractor and Contractor, before the Designer commences its services, a copy of its professional liability policy evidencing the coverages required in this Paragraph. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Subcontractor and Contractor.

8.2.4 NUMBER OF POLICIES: Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

8.2.5 CANCELLATION, RENEWAL AND MODIFICATION: The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor, which acceptance shall not be unreasonably withheld. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) Days' prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 8.2.2 shall be filed with the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

8.2.6 EVIDENCE OF INSURANCE, CANCELLATION and CONTINUATION OF COVERAGE:

Evidence of insurance, using the ACORD 25 form, shall be provided to the Contractor prior to commencement of the Subcontract Work. The certificate and the insurance policies required by this Section shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice

has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by this Agreement. Notice concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Subcontractor with reasonable promptness in accordance with the Subcontractor's information and belief.

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after either ninety (90) Days following Substantial Completion of the Work or final payment to the Contractor, whichever is earlier. Prior to commencement of the Work, Subcontractor shall furnish the Contractor with certificates evidencing the required coverages. If a term longer than one year is required of the contractor by the subcontract documents, then subcontractor shall continue to carry Complete Operations Liability insurance for the same period.

8.2.7 PROPERTY INSURANCE:

8.2.7.1 If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 7.

8.2.8 WAIVER OF SUBROGATION:

8.2.8.1 WAIVER OF SUBROGATION: The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, Architect/Engineer and any consultants, separate contractors and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss or other losses to the extent covered by property insurance obtained pursuant to this Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

8.2.9 ENDORSEMENT: If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

8.2.10 CONTRACTOR'S LIABILITY INSURANCE: The Contractor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Contractor's errors or omissions.

8.2.11 RISK OF LOSS: Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon the Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

8.2.12 WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE: Worker's Compensation insurance covering claims for damages due to bodily injury, occupational sickness or disease or death of Subcontractor's employees or anyone for whom the Subcontractor may be held liable, shall be provided as required by applicable law or regulation in the state in which the Work is to be performed. Employers' Liability insurance shall also be provided in amounts not less than:

8.2.13 COMMERCIAL GENERAL LIABILITY INSURANCE:

Subcontractor shall carry Commercial General Liability covering all operations by or on behalf of Subcontractor, providing insurance for bodily injury liability and property damage liability including loss of use resulting there from for the limits of liability indicated below and including coverage for:

- a) Premises operations;
- b) Productions and Completed Operations for the duration of Work and including any period beyond final payment, if required by the Contract;
- c) Contractual liability, including the Paragraph 8.1.1 this Agreement;
- d) Broad form property damage (including completed operations);
- e) Explosion, collapse and underground hazards; and
- f) Personal injury liability.

Coverage shall be provided in amounts not less than those shown in Exhibit "D".

Coverage must be on an "occurrence" form. "Claims made" or "modified occurrence" policies are not acceptable. The above limits may be achieved by a combination of primary and umbrella/excess liability policies. All policies, except Workers Compensation, shall include an endorsement (CG 2033 or its equivalent) showing Contractor as an additional insured and all coverage afforded the Contractor shall be primary to and shall not contribute with any other coverage carried by Contractor.

8.2.14 AUTOMOBILE LIABILITY INSURANCE: Subcontractor shall carry Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than those shown on Exhibit "D".

8.2.15 DESIGN BUILDERS ENDORSEMENT: If required by Contractor, Subcontractor shall provide to Contractor a Design Builder's Protective Coverage Endorsement confirming the coverages and requirements of this Agreement.

8.3 BONDS:

8.3.1 The Subcontractor, if required in the DESCRIPTION section of the subcontract summary page, shall furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work. Such bonds shall be issued by a surety admitted in the state of the location of the Project and shall be acceptable to the Contractor. Contractor's acceptance shall not be withheld without reasonable cause. In any case, said bonds shall be issued by a surety listed on US treasury Report 570 or be A.M. Best Rated "-A" or better.

8.3.2 If a performance or payment bond, or both, is required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety acceptable to the Contractor, and in the full amount of the Subcontract Amount, unless otherwise specified. Contractor's acceptance shall not be withheld without reasonable cause.

8.3.3 The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the Subcontractor bonds is detailed in the DESCRIPTION section of the subcontract summary page, which sum is included in the Subcontract Amount. If acceptable to the Contractor, the Subcontractor may in lieu of retainage, furnish a retention bond or other security interest, acceptable to the Contractor, to be held by the Contractor.

8.3.4 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

ARTICLE 9

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

9.1 FAILURE OF PERFORMANCE:

9.1.1 NOTICE TO CURE: If the Subcontractor refuses or fails to supply enough properly qualified workers, proper materials, or maintain the Progress Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within two (2) days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

9.1.1.1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

9.1.1.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 9.1.1.1; or

9.1.1.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

9.1.2 TERMINATION BY CONTRACTOR: If the Subcontractor fails to commence and satisfactorily continue correction of a default within two (2) days after written notification issued under Subparagraph 9.1.1, then the Contractor may, in lieu of or in addition to the remedies provided for in Subparagraph 9.1.1, issue a second written notification, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a

default within two (2) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Subcontractor is terminated. The Contractor may furnish those materials, equipment or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor from this or any other Subcontractor Agreement. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work.

9.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT: If the Contractor performs work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

9.2. BANKRUPTCY:

9.2.1 TERMINATION ABSENT CURE: If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

9.2.2 INTERIM REMEDIES: If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Progress Schedule. The Contractor may offset against any sums due or to become due the Subcontractor from this or any other Subcontract Agreement, all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Amount.

9.3 SUSPENSION BY OWNER FOR CONVENIENCE: Should the Owner suspend the Work or any part which includes the Subcontract Work for the convenience of the Owner the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the Owner-Contractor Agreement and to the extent the Contractor recovers such on the Subcontractor's behalf, the Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

9.4 TERMINATION BY OWNER: Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within two (2) days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents, except as otherwise provided in this Agreement. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

9.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT: The Contractor's contingent assignment of this Agreement to the Owner, as provided in the Owner-Contractor agreement, is effective when the Owner has terminated the Owner-Contractor agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Contractor.

9.6 SUSPENSION BY CONTRACTOR: The Contractor may order the Subcontractor in writing to immediately suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Owner-Contractor agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this Paragraph shall be allowed for any costs incurred more than fourteen (14) days prior to the Subcontractor's written notice to the Contractor of the suspension's

adverse effect to Subcontractor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible could have avoided or should have anticipated. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

9.7 WRONGFUL EXERCISE: If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other reasonable costs incurred by reason of such action.

9.8 TERMINATION BY SUBCONTRACTOR: If the Subcontract Work has been stopped for thirty (30) Days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) Days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, and profit. However, if the Owner has not paid the Contractor for the satisfactory performance of the Subcontract Work through no fault or neglect of the Contractor, and the Subcontractor terminates this Agreement under this Article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the Contractor, within a reasonable period of time following termination, payment for all Work executed and for any proven loss, cost or expense in connection with the Work, including all demobilization costs. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs 9.3 and 9.4 of this Agreement.

9.9 TERMINATION FOR CONVENIENCE: Contractor may order Subcontractor in writing to terminate completely all or any part of Subcontractor's Work without regard to breach or fault. In the event of such termination, Contractor shall pay, as the sole amount due Subcontractor in connection with its Subcontract Work, Subcontractor's demonstrable field costs in connection with the Subcontract Work plus 10% profit.

ARTICLE 10 DISPUTE RESOLUTION

10.1 WORK CONTINUATION AND PAYMENT: Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings or negotiations. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

10.2 NO LIMITATION OF RIGHTS OR REMEDIES: Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

10.3 MULTIPARTY PROCEEDING: The Parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

10.4 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR: In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Paragraph 10.5. Any disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.

10.5 CONTRACTOR-SUBCONTRACTOR DISPUTE RESOLUTION:

10.5.1 DIRECT DISCUSSIONS: If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within fifteen (15) days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within fifteen (15) days to endeavor to reach resolution. If the matter remains unresolved after thirty (30) days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in Article 10.

10.5.2 MEDIATION: If direct discussions pursuant to Subparagraph 10.5.1 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation as provided by N.C. Gen. Stat. § 143-128(f1) as a precondition of further dispute resolution. The dispute resolution process adopted by the State Building Commission pursuant to N.C. Gen. Stat. § 143-135.26(11) is hereby adopted and incorporated by reference for use in conducting the mediation. Statutory, contract, bond, insurance, warranty and all other time periods (including but not limited to applicable statutes of limitations and statutes of repose) shall be tolled (suspended from running) during the mediation process. The costs of the

mediation shall be shared equally by the Parties. Subcontractor agrees to incorporate this term into Subcontractor's agreements with its subcontractors and suppliers.

10.5.3 BINDING DISPUTE: In the event that the parties are unable to resolve the dispute through mediation as set forth above, Subcontractor acknowledges and agrees that all disputes shall be decided, at the sole option of Contractor, by litigation or arbitration. In the event Contractor elects litigation, Subcontractor agrees that the exclusive venue for any civil action brought by Subcontractor against Contractor shall be the Superior Court, Guilford County, North Carolina. In the event Contractor elects to have the dispute resolved by arbitration, Contractor shall so notify Subcontractor in writing, and such arbitration shall be held in Greensboro, North Carolina and conducted pursuant to the Rules of the Revised Uniform Arbitration Act, NCGS § 1-569.0 et seq. Judgment upon the arbitration award may be entered by any court having jurisdiction. Subcontractor consents to the consolidation or joinder, in any arbitration proceeding, and other party necessary to provide complete relief in, or concerning questions of law or fact common to the dispute between Contractor and Subcontractor.

10.6 COST OF DISPUTE RESOLUTION: The costs of any binding dispute resolution procedure shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW: This Agreement shall be governed by the law in effect at the location of the Project.

11.2 SEVERABILITY: The partial or complete invalidity of anyone or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.3 NO WAIVER OF PERFORMANCE: The failure of either Party to insist, in anyone or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition or right with respect to further performance.

11.4 TITLES: The titles given to the Articles and Paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

11.5 OTHER PROVISIONS AND DOCUMENTS: Other provisions and documents applicable to the Subcontract Work are set forth in Exhibit "K"

11.6 JOINT DRAFTING: The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

11.7 NOTICES: Written notice shall be deemed to have been duly served, if delivered in person to the individual or member of the firm or entity for whom it was intended at the address indicated on the first page of this agreement, provided that a signed receipt is obtained at the point of delivery or if delivered or sent by email to the following: 1) If to the Contractor c/o the project manager at his email address with a copy to the Contractor's superintendent for the project at his email address. 2) If to the Subcontractor c/o the party signing this agreement on behalf of Subcontractor at his email address. Notices required herein shall be deemed effective (i) upon delivery, if personally delivered; (ii) upon sending if by email. The parties shall be responsible for updating both the parties to be sent notice and their respective emails. In the event that email notice is returned as having failed for any reason, written notice shall be deemed to have been duly served if delivered at or sent by overnight delivery service or certified mail to the Contractor and Subcontractor at the address indicated of the first page hereof. Notices required herein shall be deemed effective (i) upon delivery, if personally delivered; (ii) upon on the first (1st) day following deposit with a national overnight courier service, fee prepaid; or (iii) upon second (2nd) day following deposit in the United States mail, certified mail, postage prepaid, return receipt requested.

11.8 ANTICIPATED COMPLICATIONS. Contractor and Subcontractor acknowledge that the Subcontract Price was agreed upon based on the Contractor's and Subcontractor's evaluation of the Work and Property and the potential issues and conditions that may arise during the Subcontractor performing the Work and that the Subcontract Price includes amounts for (i) foreseeable delay, including those caused by normal adverse weather conditions for the time of year, (ii) minor changes in the Work, (iii) and changes to the Work that may be necessitated by the acts of the Contractor (such acts shall not, however, include any costs incurred by Contractor arising out of or related to omissions from the drawings or other project information provided by Owner that served as the basis of the Guaranteed Maximum Price), (iv) compliance with social distancing requirements and other COVID-19-related workplace standards in effect at the time the Contract is executed, (v) personal protective equipment consistent with requirements arising the COVID-19 pandemic at the time the Subcontract is executed and (vi) to the extent existing as of the date of this Agreement and known or reasonably should have been known by Subcontractor, all supply chain disruptions, material cost escalations and other presently-known direct or indirect effects of the COVID-19 pandemic (items (i) through (vi) above shall be collectively referred to as the "**Anticipated Complications**"). Subcontractor agrees that it shall not be entitled to a Change Order for any Anticipated Complications unless Owner and Architect approve the same in accordance with the terms of the Contract Documents.

Subcontractor expressly agrees that extension of the Contract Time and adjustments to the Subcontract Price will not be granted for Anticipated Complications. Subcontractor agrees that Anticipated Complications are factored into the Subcontract Price and the Project Schedule and that they shall not constitute the basis of a time extension of the Required Completion Date or a claim for additional compensation of any type. To the extent that delays for which time and compensation are properly allowed elsewhere in

the Contract Documents (if at all), except to the extent provided in the immediately preceding paragraph, Contractor shall not be liable for time-related or delay damages in the following categories: (a) loss of anticipated profits on other projects and (b) consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency.

11.9 The Contractor and Subcontractor agree and acknowledge that the Owner is an intended third-party beneficiary of this Subcontract.

ARTICLE 12 EXISTING SUBCONTRACT DOCUMENTS

12.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS:

12.1.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Subcontractor shall perform the Subcontract Work as though fully described on both consistent with the Subcontract Documents and reasonably inferable from them as being necessary to produce the indicated results.

12.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Subcontractor shall give the Contractor immediate notice, in writing, of such omissions or errors and shall submit the matter to the Contractor for clarification by the Owner. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Subcontract Time or Price pursuant to Articles 4 and 5 or dispute resolution in accordance with Article 10.

12.1.3 Where figures are given, they shall be preferred to scaled dimensions.

12.1.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

12.1.5 In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 12.1.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 3.5; (f) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

As defined in Paragraph 1.3, the following Exhibits are a part of this Agreement.

EXHIBIT A	The general scope of the Subcontract Work
EXHIBIT B	Contractor's Project Statement
EXHIBIT D	Insurance Requirements and Provisions – Defined in Section 8 of this Agreement
EXHIBIT E	Billing Instructions
EXHIBIT F	The Drawings, Specifications, General Conditions, Special Conditions, Supplementary General Conditions and other conditions, addenda and other information.
EXHIBIT G	Project Schedule Information
EXHIBIT H	E-Verify Affidavit
EXHIBIT I	Miles-McClellan Site Specific Safety and Health Program Guidelines
EXHIBIT J	W-9 Request for Taxpayer Number
EXHIBIT K	Secondary Vendors Form
EXHIBIT L	MBWE/Local Reporting Form

This Agreement is entered into as of the date in the subcontract summary page.

006900 WARRANTY

Town of Badin Waterfront Park

Badin, North Carolina

The undersigned Contractor hereby warrants, in accordance with the applicable provisions and terms set forth in the Contract Documents, all materials and workmanship incorporated in the new **Town of Badin Waterfront Park** against any and all defects due to faulty materials or workmanship or negligence for a period of 12 months, or such longer periods as set forth in the Contract Documents, from the effective date of this warranty.

This Warranty shall be binding where defects occur due to normal usage conditions and does not cover willful or malicious damage, damages caused by acts of God or other casualty beyond the control of the Contractor.

This Warranty shall be in addition to other warranties and guarantees set forth in the Contract Documents, and shall not act to constitute a waiver of additional protection of the Owner afforded, where applicable, by consumer protection and product liability provisions of law, and these stipulations shall not constitute waiver of any additional rights or remedies available to the owner under law.

Signed: _____

Name: _____

Title: _____

Date: _____

Subscribed and sworn before me this

_____ day of _____, 20_____.

(Notary Public)

END OF SECTION 006900

DIVISION 01 – GENERAL REQUIREMENTS

011000 PROJECT SUMMARY

PART 1 – General

1.1 Related Documents

- A. The Subcontractor and/or suppliers providing goods and services referenced in or related to this section shall be bound by the documents and general provisions of the Contract, including the General Supplementary Conditions and Division 01 General Requirements in their entirety.

1.2 SUMMARY

- A. Section Includes:
 - a. Project information.
 - b. Work Covered by Contract Documents.
 - c. Future work not part of this Project.
 - d. Contractor's use of site and premises.
 - e. Coordination with occupants.
 - f. Work restrictions.

1.3 PROJECT INFORMATION

- A. Project Identification: Town of Badin Waterfront Park
 - a. Project Location: Walnut Street Badin North Carolina 28009
- B. Owner: Town of Badin
 - a. Owner Representation: Jay Almond, Town Manager
- C. Construction Manager: Miles-McClellan Construction Company Inc., 7504 East Independence Blvd. Suite 100 Charlotte NC 28227
 - a. Construction Managers Representation: Grey London, Project Manager
- D. Architect: Becker Morgan Group, INC. CLT
 - a. Architect Representation: Chris Coleman, Project Manager

1.4 Work Covered by Contract Documents

- A. The Project consists, but is not limited to, the following:

- a. The new Town of Badin Waterfront Park shall consist of a new Multi use Amphitheater and Restroom Facility. Project to include new Parking, Roadway, Walking Paths and Landscaping. New Utilities such as Storm, Water, Sewer and a Fire Hydrant will be installed during the process of construction. New Building Structure will consist of Decorative Masonry, Heavy Timber Structures, Siding, Standing Seam Metal Roofing, along with interior Restroom Finishes.

1.5 Access To Site

- A. General: Contract shall have limited use of the Project Site for construction operations during construction period.
- B. Use of Site: Limit use of premises to areas predetermined by the Owner. Areas beyond the designated areas for Work shall not be disturbed.
 - a. Confine parking of construction vehicles, storage of construction materials, and staging areas to the designated work areas.
 - b. Driveways, Entrances, and Roadways shall not remained blocked
- C. Contractors will adhere to all local Laws and Ordinances

1.6 Work Restrictions

- A. Comply with restrictions on Construction operations
 - a. Comply with limitations on use of public streets, work on public streets, rights of way, and other requirements of authorities having jurisdiction
- B. On-Site Work Hours
 - a. Weekend Hours: Coordinate with Owner and Authorities Having Jurisdiction
 - b. Early Morning Hours: Coordinate with Owner and Authorities Having Jurisdiction. Only During the afterhours
 - c. Hours for noisy construction activities: Coordinate with Miles-McClellan Representative
- C. Noise, Vibration, Dust, and Odors: Coordinate operations that may result in high levels of noise, vibration, dust, odors, or other disruption.
 - a. Notify Miles-McClellan Prior to the Work Occurring
 - b. Obtain Written permission to perform activities
 - c. Work will not be allowed to occur outside of normal business hours.
- D. Smoking is Prohibited
- E. Fire Arms are Prohibited

012300 ALTERNATES

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013300 SUBMITTAL PROCEDURES

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SECTION 013300 - SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. The Contractor, Subcontractors, and/or suppliers providing goods and services referenced in or related to this section shall be bound by the documents and general provisions of the Contract, including the General and Supplementary Conditions, Division 00 Procurement and Contracting Requirements and Division 01 General Requirements in their entirety.

1.2 SUMMARY

- A. Section Includes:

- 1. Submittal schedule requirements.
- 2. Administrative and procedural requirements for submittals.

- B. Related Requirements:

- 1. Section 012900 "Payment Procedures" for submitting Applications for Payment and the schedule of values.
- 2. Section 013100 "Project Management and Coordination" for submitting coordination drawings and subcontract list and for requirements for web-based Project software.
- 3. Section 013200 "Construction Progress Documentation" for submitting schedules and reports, including Contractor's construction schedule.
- 4. Section 014000 "Quality Requirements" for submitting test and inspection reports, and schedule of tests and inspections.
- 5. Section 017700 "Closeout Procedures" for submitting closeout submittals and maintenance material submittals.
- 6. Section 017823 "Operation and Maintenance Data" for submitting operation and maintenance manuals.
- 7. Section 017839 "Project Record Documents" for submitting record Drawings, record Specifications, and record Product Data.
- 8. Section 017900 "Demonstration and Training" for submitting video recordings of demonstration of equipment and training of Owner's personnel.

1.3 DEFINITIONS

- A. Action Submittals: Written and graphic information and physical samples that require Architect's responsive action. Action submittals are those submittals indicated in individual Specification Sections as "action submittals."
- B. Informational Submittals: Written and graphic information and physical samples that do not require Architect's responsive action. Submittals may be rejected for not complying with requirements. Informational submittals are those submittals indicated in individual Specification Sections as "informational submittals."

- C. Portable Document Format (PDF): An open standard file format licensed by Adobe Systems used for representing documents in a device – independent and display resolution – independent fixed – layout document format.

1.4 SUBMITTAL SCHEDULE

- A. Submittal Schedule: Submit, as an action submittal, a list of submittals, arranged in chronological order by dates required by construction schedule. Include time required for review, ordering, manufacturing, fabrication, and delivery when establishing dates. Include additional time required for making corrections or revisions to submittals noted by Architect and additional time for handling and reviewing submittals required by those corrections.
 - 1. Coordinate submittal schedule with list of subcontracts, the schedule of values, and Contractor's construction schedule.
 - 2. Initial Submittal Schedule: Submit concurrently with startup construction schedule. Include submittals required during the first 60 days of construction. List those submittals required to maintain orderly progress of the Work and those required early because of long lead time for manufacture or fabrication and supply chain shortages.
 - 3. Final Submittal Schedule: Submit concurrently with the first complete submittal of Contractor's construction schedule.
 - a. Submit revised submittal schedule as required to reflect changes in current status and timing for submittals.
 - 4. Format: Arrange the following information in a tabular format:
 - a. Scheduled date for first submittal.
 - b. Specification Section number and title.
 - c. Submittal Category: Action; informational.
 - d. Name of subcontractor.
 - e. Description of the Work covered.
 - f. Scheduled date for Architect's final release or approval.
 - g. Scheduled dates for purchasing.
 - h. Scheduled date of fabrication.
 - i. Scheduled dates for installation.
 - j. Activity or event number.
 - k. Lead times.
 - l. Priority level: (High, Normal and Low).

1.5 SUBMITTAL FORMATS

- A. Submittal Information: Include the following information in each submittal:
 - 1. Project name.
 - 2. Date.
 - 3. Name of Owner.
 - 4. Name of Architect.
 - 5. Name of Contractor.
 - 6. Name of firm or entity that prepared submittal.
 - 7. Names of subcontractor, manufacturer, and supplier.

8. Unique submittal number, including revision identifier. Include Specification Section number with sequential alphanumeric identifier and alphanumeric suffix for resubmittals.
 - a. Submittal number shall include the Specification Section number followed by a hyphen and the sequence number for that Specification Section, followed by a hyphen and the review number (i.e. the fourth item submitted under Section 06 10 53 which is being resubmitted after an initial review by the Architect would be numbered as 06 10 53 – 004 - Rev 02).
 - b. Submittals that are required by Specification Sections included in Division 01 shall include the Division 01 Section number, followed by a hyphen and the construction Specification Section number, followed by a hyphen and the sequence number for that Specification Section, followed by a hyphen and the review number. (i.e. If the Maintenance Manual for the Hydraulic Elevator were the first item being submitted as a closeout document in Section 14 24 00, it would be numbered as 01 78 23 - 14 24 00 – 01 – Rev 01).
 9. Category and type of submittal.
 10. Submittal purpose and description.
 11. Number and title of Specification Section, with paragraph number and generic name for each of multiple items.
 12. Drawing number and detail references, as appropriate.
 13. Indication of full or partial submittal.
 14. Location(s) where product is to be installed, as appropriate.
 15. Related physical samples submitted directly.
 16. Transmittal number, numbered to match specification section and subsection being submitted for review.
 17. Submittal and transmittal distribution record.
 18. Other necessary identification.
 19. Priority Level (High, Normal and Low).
 20. Remarks.
 21. Signature of transmitter.
- B. Options: Identify options requiring selection by Architect.
- C. Deviations and Additional Information: On each submittal, clearly indicate deviations from requirements in the Contract Documents, including minor variations and limitations; include relevant additional information and revisions, other than those requested by Architect on previous submittals. Indicate by highlighting on each submittal or noting on attached separate sheet.
- D. Electronic Submittals: Prepare submittals as PDF package, incorporating complete information into each PDF file. Name PDF file with submittal number.
 1. Multiple submittals in a division are discouraged. Contractor is required to submit complete packages. In the event of an incomplete submittal submission the Architect will return with No Action Taken.
- E. Submittals Utilizing Web-Based Project Software: Prepare submittals as PDF files or other format indicated by Project management software.
- 1.6 SUBMITTAL PROCEDURES
- A. Prepare and submit submittals required by individual Specification Sections. Types of submittals are indicated in individual Specification Sections.
 1. Email: Prepare submittals as PDF package and transmit to Architect by sending via email. Include PDF transmittal form. Include information in email subject line as requested by Architect.

2. Web-Based Project Management Software: Prepare submittals in PDF form, and upload to web-based Project management software website. Enter required data in web-based software site to fully identify submittal.
 3. Paper: Prepare submittals in paper form and deliver to Architect.
- B. Coordination: Coordinate preparation and processing of submittals with performance of construction activities.
1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
 2. Submit all submittal items required for each Specification Section concurrently unless partial submittals for portions of the Work are indicated on approved submittal schedule.
 3. Submit action submittals and informational submittals required by the same Specification Section as separate packages under separate transmittals.
 4. Coordinate transmittal of submittals for related parts of the Work specified in different Sections, so processing will not be delayed because of need to review submittals concurrently for coordination.
 - a. **Architect reserves** the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- C. Processing Time: Allow time for submittal review, including time for resubmittals, as follows. Time for review shall commence on **Architect's** receipt of submittal. No extension of the Contract Time will be authorized because of failure to transmit submittals enough in advance of the Work to permit processing, including resubmittals.
1. Initial Review: Allow **15** days for initial review of each submittal. Allow additional time if coordination with subsequent submittals is required. **Architect** will advise Contractor when a submittal being processed must be delayed for coordination.
 2. Intermediate Review: If intermediate submittal is necessary, process it in same manner as initial submittal.
 3. Resubmittal Review: Allow **15** days for review of each resubmittal.
 4. Sequential Review: Where sequential review of submittals by Architect's consultants, Owner, or other parties is indicated, allow **21** days for initial review of each submittal.
 5. Concurrent Consultant Review: Where the Contract Documents indicate that submittals may be transmitted simultaneously to Architect and to Architect's consultants, allow **15** days for review of each submittal. Submittal will be returned to **Architect** before being returned to Contractor.
 6. Owner Selection Review: Allow adequate time for product data to be reviewed and approved in accordance with this section then for presentation to the Owner's design committee for all finishes both interior and exterior. The contractor is advised to submit the products as soon as possible.
- D. Resubmittals: Make resubmittals in same form and number of copies as initial submittal.
1. Note date and content of previous submittal.
 2. Note date and content of revision in label or title block, and clearly indicate extent of revision.
 3. Resubmit submittals until they are marked with approval notation from Architect's action stamp.
- E. Distribution: Furnish copies of final submittals to manufacturers, subcontractors, suppliers, fabricators, installers, authorities having jurisdiction, and others as necessary for performance of construction activities. Show distribution on transmittal forms.

- F. Transmittal: Package each submittal individually and appropriately for transmittal and handling. Transmit each submittal using a transmittal form. Architect will discard submittals received from sources other than Contractor.
1. Transmittal Form: Use [AIA Document G810] or [CSI Form 12.1A].
 2. Transmittal Form: Provide locations on form for the following information:
 - a. Project name.
 - b. Date.
 - c. Destination (To:).
 - d. Source (From:).
 - e. Names of subcontractor, manufacturer, and supplier.
 - f. Category and type of submittal.
 - g. Submittal purpose and description.
 - h. Specification Section number and title.
 - i. Drawing number and detail references, as appropriate.
 - j. Transmittal number, numbered consecutively.
 - k. Submittal and transmittal distribution record.
 - l. Remarks.
 - m. Signature of transmitter.
- G. Use for Construction: Retain complete copies of submittals on Project site. Use only final action submittals that are marked with approval notation from Architect's action stamp.

1.7 SUBMITTAL REQUIREMENTS

- A. Product Data: Collect information into a single submittal for each element of construction and type of product or equipment.
1. If information must be specially prepared for submittal because standard published data are unsuitable for use, submit as Shop Drawings, not as Product Data.
 2. Mark each copy of each submittal to show which products and options are applicable.
 3. Include the following information, as applicable:
 - a. Manufacturer's catalog cuts.
 - b. Manufacturer's product specifications.
 - c. Standard color charts.
 - d. Statement of compliance with specified referenced standards.
 - e. Testing by recognized testing agency.
 - f. Application of testing agency labels and seals.
 - g. Notation of coordination requirements.
 - h. Availability and delivery time information.
 4. For equipment, include the following in addition to the above, as applicable:
 - a. Wiring diagrams that show factory-installed wiring.
 - b. Printed performance curves.
 - c. Operational range diagrams.
 - d. Clearances required to other construction, if not indicated on accompanying Shop Drawings.
 5. Submit Product Data before Shop Drawings, and before or concurrently with Samples.

- B. Shop Drawings: Prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data. Shop drawings are considered the a final checks and balances procedure.
1. Preparation: Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:
 - a. Dimensions.
 - b. Identification of products.
 - c. Fabrication and installation drawings.
 - d. Roughing-in and setting diagrams.
 - e. Wiring diagrams showing field-installed wiring, including power, signal, and control wiring.
 - f. Shopwork manufacturing instructions.
 - g. Templates and patterns.
 - h. Schedules.
 - i. Design calculations.
 - j. Compliance with specified standards.
 - k. Notation of coordination requirements.
 - l. Notation of dimensions established by field measurement.
 - m. Relationship to adjoining construction clearly indicated.
 - n. Seal and signature of professional engineer if specified.
 - o. Wiring Diagrams: Differentiate between manufacturer-installed and field-installed wiring.
 2. Submit Shop Drawings in the following format:
 - a. PDF electronic file unless otherwise indicated.
- C. Samples: Submit Samples for review of type, color, pattern, and texture for a check of these characteristics with other materials.
1. Transmit Samples that contain multiple, related components, such as accessories together in one submittal package.
 2. Identification: Permanently attach label on unexposed side of Samples that includes the following:
 - a. Project name and submittal number.
 - b. Generic description of Sample.
 - c. Product name and name of manufacturer.
 - d. Sample source.
 - e. Number and title of applicable Specification Section.
 - f. Specification paragraph number and generic name of each item.
 3. Email Transmittal: Provide PDF transmittal. Include digital image file illustrating Sample characteristics and identification information for record.
 4. Web-Based Project Management Software: Prepare submittals in PDF form, and upload to web-based Project software website. Enter required data in web-based software site to fully identify submittal.
 5. Paper Transmittal: Include paper transmittal, including complete submittal information indicated.
 6. Disposition: Maintain sets of approved Samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set.

- a. Samples that may be incorporated into the Work are indicated in individual Specification Sections. Such Samples must be in an undamaged condition at time of use.
 - b. Samples not incorporated into the Work, or otherwise designated as Owner's property, are the property of Contractor.

- 7. Samples for Initial Selection: Submit manufacturer's color charts consisting of units or sections of units, showing the full range of colors, textures, and patterns available.
 - a. Number of Samples: Submit two full set(s) of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. Architect will return submittal with options selected.

- 8. Samples for Verification: Submit full-size units or Samples of size indicated, prepared from same material to be used for the Work, cured and finished in manner specified, and physically identical with material or product proposed for use, and that show full range of color and texture variations expected. Samples include, but are not limited to, the following: partial sections of manufactured or fabricated components; small cuts or containers of materials; complete units of repetitively used materials; swatches showing color, texture, and pattern; color range sets; and components used for independent testing and inspection.
 - a. Number of Samples: Submit **three** sets of Samples. Architect will retain one Sample set; remainder will be returned.
 - 1) Submit a single Sample where assembly details, workmanship, fabrication techniques, connections, operation, and other similar characteristics are to be demonstrated.
 - 2) If variation in color, pattern, texture, or other characteristic is inherent in material or product represented by a Sample, submit at least **three** sets of paired units that show approximate limits of variations.

- D. Product Schedule: As required in individual Specification Sections, prepare a written summary indicating types of products required for the Work and their intended location. Include the following information in tabular form:
 - 1. Type of product. Include unique identifier for each product indicated in the Contract Documents or assigned by Contractor if none is indicated.
 - 2. Manufacturer and product name, and model number if applicable.
 - 3. Number and name of room or space.
 - 4. Location within room or space.

- E. Coordination Drawing Submittals: Comply with requirements specified in Section 013100 "Project Management and Coordination."

- F. Contractor's Construction Schedule: Comply with requirements specified in Division 01 Section "Construction Progress Documentation" for Construction Manager's action.

- G. Submittals Schedule: Comply with requirements specified in Division 01 Section "Administration Requirements".

- H. Application for Payment: Comply with requirements specified in Division 01 Section "Price and Payment Procedures."

- I. Schedule of Values: Comply with requirements specified in Division 01 Section "Price and Payment Procedures."
- J. Coordination Drawings: Comply with requirements specified in Division 01 Section "Project Management and Coordination."
- K. Contractor's Construction Schedule: Comply with requirements specified in Division 01 Section "Construction Progress Documentation."
- L. Qualification Data: Prepare written information that demonstrates capabilities and experience of firm or person. Include lists of completed projects with project names and addresses, contact information of architects and owners, and other information specified.
- M. Design Data: Prepare and submit written and graphic information indicating compliance with indicated performance and design criteria in individual Specification Sections. Include list of assumptions and summary of loads. Include load diagrams if applicable. Provide name and version of software, if any, used for calculations. Number each page of submittal.
- N. Maintenance Data: Prepare written and graphic instructions and procedures for operation and normal maintenance of products and equipment. Comply with requirements specified in Division 01 Section "Operation and Maintenance Data."
- O. Certificates:
 - 1. Certificates and Certifications Submittals: Submit a statement that includes signature of entity responsible for preparing certification. Certificates and certifications shall be signed by an officer or other individual authorized to sign documents on behalf of that entity. Provide a notarized signature where indicated.
 - 2. Installer Certificates: Submit written statements on manufacturer's letterhead, certifying that Installer complies with requirements in the Contract Documents and, where required, is authorized by manufacturer for this specific Project.
 - 3. Manufacturer Certificates: Submit written statements on manufacturer's letterhead, certifying that manufacturer complies with requirements in the Contract Documents. Include evidence of manufacturing experience where required.
 - 4. Material Certificates: Submit written statements on manufacturer's letterhead, certifying that material complies with requirements in the Contract Documents.
 - 5. Product Certificates: Submit written statements on manufacturer's letterhead, certifying that product complies with requirements in the Contract Documents.
 - 6. Welding Certificates: Prepare written certification that welding procedures and personnel comply with requirements in the Contract Documents. Submit record of AWS B2.1/B2.1M on AWS forms. Include names of firms and personnel certified.
- P. Test and Research Reports:
 - 1. Compatibility Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting results of compatibility tests performed before installation of product. Include written recommendations for substrate preparation and primers required.
 - 2. Field Test Reports: Submit written reports indicating and interpreting results of field tests performed either during installation of product or after product is installed in its final location, for compliance with requirements in the Contract Documents.

3. Material Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting test results of material for compliance with requirements in the Contract Documents.
 4. Preconstruction Test Reports: Submit reports written by a qualified testing agency, on testing agency's standard form, indicating and interpreting results of tests performed before installation of product, for compliance with performance requirements in the Contract Documents.
 5. Product Test Reports: Submit written reports indicating that current product produced by manufacturer complies with requirements in the Contract Documents. Base reports on evaluation of tests performed by manufacturer and witnessed by a qualified testing agency, or on comprehensive tests performed by a qualified testing agency.
 6. Research Reports: Submit written evidence, from a model code organization acceptable to authorities having jurisdiction, that product complies with building code in effect for Project. Include the following information:
 - a. Name of evaluation organization.
 - b. Date of evaluation.
 - c. Time period when report is in effect.
 - d. Product and manufacturers' names.
 - e. Description of product.
 - f. Test procedures and results.
 - g. Limitations of use.
 7. Manufacturer's Field Reports: Prepare written information documenting factory-authorized service representative's tests and inspections. Include the following, as applicable:
 - a. Name, address, and telephone number of factory-authorized service representative making report.
 - b. Statement on condition of substrates and their acceptability for installation of product.
 - c. Statement that products at Project site comply with requirements.
 - d. Summary of installation procedures being followed, whether they comply with requirements and, if not, what corrective action was taken.
 - e. Results of operational and other tests and a statement of whether observed performance complies with requirements.
 - f. Statement whether conditions, products, and installation will affect warranty.
 - g. Other required items indicated in individual Specification Sections.
- Q. Manufacturer's Instructions: Prepare written or published information that documents manufacturer's recommendations, guidelines, and procedures for installing or operating a product or equipment. Include name of product and name, address, and telephone number of manufacturer. Include the following, as applicable:
1. Preparation of substrates.
 2. Required substrate tolerances.
 3. Sequence of installation or erection.
 4. Required installation tolerances.
 5. Required adjustments.
 6. Recommendations for cleaning and protection.
- R. Insurance Certificates and Bonds: Prepare written information indicating current status of insurance or bonding coverage. Include name of entity covered by insurance or bond, limits of coverage, amounts of deductibles, if any, and term of the coverage.
- S. Material Safety Data Sheets (MSDSs): Submit information directly to Owner; do not submit to Architect.

1. Architect will not review submittals that include MSDSs and will return the entire submittal for resubmittal.

1.8 DELEGATED DESIGN SERVICES

- A. Performance and Design Criteria: Where professional design services or certifications by a design professional are specifically required of Contractor by the Contract Documents, provide products and systems complying with specific performance and design criteria indicated.
 1. If criteria indicated are insufficient to perform services or certification required, submit a written request for additional information to Architect.
- B. Delegated Design Services Certification: In addition to Shop Drawings, Product Data, and other required submittals, submit **digitally signed PDF file** signed and sealed by the responsible design professional, for each product and system specifically assigned to Contractor to be designed or certified by a design professional.
 1. Indicate that products and systems comply with performance and design criteria in the Contract Documents. Include list of codes, loads, and other factors used in performing these services.

1.9 CONTRACTOR'S REVIEW

- A. Action Submittals and Informational Submittals: Review each submittal and check for coordination with other Work of the Contract and for compliance with the Contract Documents. Note corrections and field dimensions. Mark with approval stamp before submitting to Architect.
- B. Contractor's Approval: Indicate Contractor's approval for each submittal with **a uniform approval stamp indication in web-based Project management software**. Include name of reviewer, date of Contractor's approval, and statement certifying that submittal has been reviewed, checked, and approved for compliance with the Contract Documents.
 1. Architect will not review submittals received from Contractor that do not have Contractor's review and approval.

1.10 ARCHITECT'S REVIEW

- A. General: Architect will not review submittals that do not bear Contractor's approval stamp and will return them without action.
- B. Action Submittals: Architect will review each submittal, indicate corrections or revisions required, **and return**.
 1. PDF Submittals and Submittals by Web-Based Project Management Software: Architect will indicate, via markup on each submittal, the appropriate action **as follows**:
 - a. "Approved": The portion of work covered by the submittal may proceed provided it complies with the contract documents.
 - b. "Approved as Corrected": The portion of work covered by the submittal may progress provided it complies with notations or corrections on the submittal, and with the contract documents.

- c. "Approved as Corrected and Revise and Resubmit Record Copy": The portion of work covered by the submittal may progress provided it complies with notations or corrections on the submittal and contract documents. The information submitted is to be Revised and Resubmitted for record.
 - d. "Revise and Resubmit" or "Rejected": Revise or prepare a new submittal in accordance notations: Resubmit; do not proceed with that portion of the work covered by the submittal.

- C. Informational Submittals: Architect will review each submittal and will not return it or will return it if it does not comply with requirements. Architect will forward each submittal to appropriate party.

- D. Partial submittals prepared for a portion of the Work will be reviewed when use of partial submittals has received prior approval from Architect.

- E. Incomplete submittals are unacceptable, will be considered nonresponsive, and will be returned for resubmittal without review.

- F. Architect will **return without review** or **discard** submittals received from sources other than Contractor.

- G. Submittals not required by the Contract Documents will be returned by Architect without action or discarded.

- H. Finish Submittals: All finishes for both interior and exterior upon approval require coordination and presentation to the Owner for final approval. The contractor is advised to submit these products as soon as possible to allow for the Architect's review and approval in accordance with this section. Colors samples of approved products shall then be submitted and held by the architect until all interior and exterior finishes have been approved. The architect shall then coordinate a final color scheme pallet for the interior and exterior of the project. The Architect shall then present the schemes to the Owner for the final approval of colors. The Architect will then notify the contractor of the selections and then the contractor shall proceed with the ordering of the materials.
 - 1. Any materials ordered prior to final approval and selection will be at the sole risk of the contractor.
 - 2. The Architect and Owner shall be indemnified from any delays as a result of the Contractor not scheduling appropriately to allow for the approval process.

014200 **REFERENCES**

1.1 General

- A. Upon receipt of bid packages for the project the owner reserves the right to request references to demonstrate capability to perform scope of work related to the bid package.
- B. Upon receipt of bid packages for the project the owner reserves the right to request proof of past job experience. This will consist of **(5)** previous jobs completed of similar size and scope to demonstrate capability to perform the scope of work and quality of work related to the bid package.

017700 CLOSEOUT PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. The Contractor, Subcontractors, and/or suppliers providing goods and services referenced in or related to this section shall be bound by the documents and general provisions of the Contract, including the General and Supplementary Conditions, Division 00 Procurement and Contracting Requirements and Division 01 General Requirements in their entirety.

1.2 SUMMARY

A. Section includes administrative and procedural requirements for Contract closeout, including, but not limited to, the following:

1. Substantial Completion procedures.
2. Final completion procedures.
3. Warranties.
4. Final cleaning.

B. Related Requirements:

1. Section 012900 "Payment Procedures" for requirements for Applications for Payment for Substantial Completion and Final Completion.
2. Section 013233 "Photographic Documentation" for submitting Final Completion construction photographic documentation.
3. Section 017823 "Operation and Maintenance Data" for additional operation and maintenance manual requirements.
4. Section 017839 "Project Record Documents" for submitting Record Drawings, Record Specifications, and Record Product Data.
5. Section 017900 "Demonstration and Training" for requirements to train the Owner's maintenance personnel to adjust, operate, and maintain products, equipment, and systems.

1.3 DEFINITIONS

A. List of Incomplete Items: Contractor-prepared list of items to be completed or corrected, prepared for the Architect's use prior to Architect's inspection, to determine if the Work is substantially complete.

1.4 ACTION SUBMITTALS

- A. Product Data: For each type of cleaning agent.
- B. Contractor's List of Incomplete Items: Initial submittal at Substantial Completion.
- C. Certified List of Incomplete Items: Final submittal at Final Completion.