

DESIGN BUILD CONSTRUCTION AGREEMENT

CONTRACTOR-OWNER

STIPULATED SUM

(Infrastructure and Small Projects)

Project Description: Design/Build services for athletic field lighting for a soccer field at Echols County Elementary and Middle School, located at 229 US Hwy 129 South, Statenville, GA 31648

Project No: RFP 24-001

Owner: Echols County School District
Attn: Superintendent
216 US Hwy 129 North
Statenville, GA 31648

Contractor:
Email:
Address:
City, State, Zip Code:

This Design Build Construction Agreement (the Agreement or Contract) is effective ____, 20__ by and between Echols County School District, (the Owner) and _____ (the Contractor). Owner intends to develop and construct **athletic field lighting for a soccer field at Echols County Elementary and Middle School, located at 229 US Hwy 129 South, Statenville, GA 31648** (the Project) and to retain Contractor to design/build services and to construct the Project for a stipulated sum.

1. Contract Documents:

The Contract Documents consist of: (i) this Agreement, together with all Exhibits hereto all of which are incorporated herein by reference; (ii) any modifications issued after execution of this Agreement in accordance herewith (including Change Orders, as hereafter defined) Contractor's RFP Proposal as amended by Contractor's BAFO, if any (including without limitation Contractor's stipulated sum price proposal), the Request for Proposals, Request for Qualifications, and all Design Work approved by Owner.

- 1.1 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2 Modifications to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to the Contract Documents. All modifications should be read together with the portions of the Contract Documents to which they relate.
- 1.3 A typical or representative detail indicated on the Contract Documents shall constitute the standard for workmanship and materials throughout corresponding parts of the Work, unless otherwise shown.

SCOPE OF WORK; PAYMENTS TO OTHERS

2. Scope of Work:

- 2.1. "Design Work" is comprised of any and all design services required for proper design, construction and completion of the Project or otherwise required by the Contract Documents.
- 2.2. The "Work" includes all Design Work, labor, services, supervisions, materials, equipment, facilities, skills, instrumentalities and costs required, reasonably inferable from or necessary for the proper, complete, prompt and efficient performance the Scope of Work established by **Exhibit A** in accordance with the Contract Documents. The total Work under **Exhibit A** and this Agreement shall be the "Project" and the location of such Work shall be the "Site".
- 2.3. Contractor shall cause or otherwise guaranty to be performed and provided through Subcontractors, or its own forces with respect to general conditions and general requirements work, all labor, material, equipment, tools and services required for the complete construction of the Project in accordance with the terms of the Contract Documents and laws, statutes and regulations applicable to the work to be performed by Contractor.

- 2.4. The Contractor agrees to furnish all labor, services, competent supervision, materials, equipment, facilities, skill, and instrumentalities used in, or in connection with, the full performance of all Work in accordance with the terms of this Contract, all Laws and the plans and specifications set forth in Exhibit A and otherwise in the Contract Documents. The Contractor agrees to prosecute the Work diligently and continuously; and agrees to achieve Substantial Completion (as defined in Section 4.3 of this Contract) of the Work no later than **December 30, 2023** ("Contract Time"). TIME IS OF THE ESSENCE FOR CONTRACTOR'S PERFORMANCE WITH RESPECT TO EACH AND EVERY TIME LIMIT ESTABLISHED BY THIS CONTRACT.
- 2.5. Contractor shall use diligent, good-faith efforts, skill and judgment in performing its duties under this Agreement. All material and equipment furnished or installed into the Project by Contractor shall be new unless otherwise specified in the Contract Documents.
- 2.6. Contractor shall commence the Work on the date set forth in the notice to proceed or purchase order issued by Owner ("the "Commencement Date").
- 2.7. Contractor shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Contractor, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Contractor to complete the Work consistent with the Contract Documents.
- 2.8. Within ten (10) days of execution of the Contract, Contractor shall prepare and provide to Owner a critical path schedule establishing the most efficient and effective path for sequencing the Work (the "Schedule") in accordance with the Contract Documents. This Schedule shall provide for coordination of all trades for each and every portion of the Work, including all submittals relating to the Work. Contractor shall continuously monitor the Schedule and update Owner on the status and progress of the Work according to the Schedule on a regular basis as may be reasonably required by Owner and/or otherwise required in the Contract Documents, showing the amount of Work constructed and comparing the Work in place to the progress required on the Schedule. Contractor shall inform Owner in writing if, at any time, the progress of the Work is such that the Contractor will not be able to complete the Work within the Contract Time. In such case, Contractor shall also present a recovery Schedule and plan for such overtime work or other measures that may be required to recover the Schedule and complete the Work within the Contract Time.
- 2.9. Contractor shall remain solely and exclusively responsible for initiating, maintaining and supervising all necessary safety precautions and programs in connection with all Work. The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, regulations, orders, and other legal requirements (collectively, "**Laws**") of public authorities related to the Work or the safety of persons or properties for protection of such persons or properties.
- 2.10. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give

specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner.

2.11. The Contractor agrees that it is an independent contractor and that its employees are not employees of the Owner.

3. Payments to Others:

The Contractor agrees to:

3.1 Pay for all expenses, including, but not limited to, materials, skills, labor, services, supervisions, facilities, equipment and instrumentalities used in, or in connection with, the performance of the Work and any other claims arising out of the Work, when and as bills or claims therefor properly become due, and to save and protect the property and the Owner from all manner of claims, including without limitation, mechanics' liens on account thereof that arise out of or result from the Work, and to furnish satisfactory evidence to the Owner, when and if required, that it has complied with the above requirements; Contractor is required to furnish a performance bond ("Performance Bond") and a payment bond (the "Payment Bond") in the form attached as **Exhibit C** (the Performance Bond and Payment Bond are collectively hereinafter referred to as , the "Bonds") issued by a surety company licensed by the Commissioner of Insurance for the State of Georgia, to do business as an insurance company in the State of Georgia. The Bonds must be in an amount equal to one hundred percent (100%) of the Stipulated Sum. The Bonds will be furnished as security for the faithful performance of the Work included in the Contract, including stipulations and agreements of the Contract, the payment of all bills and obligations arising out of the performance of the Contract, which bills and obligations might or would in any manner become a claim against Owner, and guaranteeing the Work included in the Contract against faulty materials or poor workmanship, or both, for one (1) year after final acceptance of the Work by Owner. All Bonds provided by Contractor must be accompanied by an affidavit from Contractor that an investigation has been made and that the surety is licensed by the Commissioner of Insurance to do business as an insurance company in Georgia and is further authorized to serve as a surety. The Performance Bond satisfactory to Owner in an amount equal to one hundred percent (100%) of the Stipulated Sum, and the Payment Bond satisfactory to Owner in an amount equal to one hundred percent (100%) of the Stipulated Sum, shall be required of Contractor to guarantee completion of the Work under contract and payment for all labor and materials. The Bonds shall be written on forms approved by Owner's attorney, copies of which are included in the Contract, with appropriate Powers of Attorney attached to the Bonds when submitted. The Bonds shall be executed by an agent of the surety residing in the State of Georgia. The date of the Bonds shall be the same as the date of the Award Letter. The surety shall appoint an agent for service in Statenville, Georgia, upon whom all notices shall be shown on each Bond. The person executing the Bonds on behalf of the surety shall file with the Bonds a General Power of Attorney, unlimited as to amount and type of bonds covered by such Power of Attorney, and certified by an official of said surety. If, at any time after the execution of the Contract, the surety has been determined to be unsatisfactory by Owner, Owner shall have the right to require new Bonds by issuing a notice to Contractor that the surety on the Bonds is unsatisfactory to Owner. Failure of

the Contractor to provide replacement Bonds issued by a surety that is found to be satisfactory to Owner shall constitute a default under this Contract. Consent of surety shall be required prior to any reduction of retainage or payment of final invoice.

- 3.2. Keep the Project and the lands upon which it is situated free from all mechanics' liens and all other liens and claims by reason of the Work or any labor, materials or other things used therein. Contractor agrees to satisfy and discharge any claims, or transfer to bond with good and sufficient surety reasonably acceptable to Owner, any liens filed (prior to or after Final Payment) by its subcontractors, suppliers, sub-subcontractors, or their materialmen of any tier against the Project or the Site or any funds related thereto within ten (10) days of such claim having been made or lien noticed, filed or recorded. If within such ten (10) day period, Contractor shall not have removed, satisfied, or discharged any lien claim as Owner may reasonably request, Owner may, at its option, pay such claims or remove or bond such lien and then set off and deduct from any payments due or to become due to Contractor all reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, of removing, bonding, or satisfying such liens or other claims. If the balance due on this Contract or any agreement between the Owner and Contractor is not sufficient to cover such costs and fees, Contractor shall pay such outstanding amount to Owner within five (5) days of a request by Owner for such payment; and
- 3.3. Indemnify, defend, and hold harmless the Indemnified Parties (as defined in Section 14.1) for any reasonable costs, including attorneys' fees, incurred as a result of liens or claims against Owner or otherwise in connection with the Project filed by its subcontractors, suppliers, sub-subcontractors, or their materialmen. Nothing in this Section 3 is intended to be or shall be construed as a waiver by any party of the right to claim a valid lien under applicable Laws.

PAYMENTS

4. Partial Payments - Final Payment - Release:

4.1. Stipulated Sum:

The price to be paid to Contractor by the Owner as full consideration for complete, timely, proper performance of the Work accepted by the Owner under this Contract is _____ dollars and _____ (\$_____) (the "Stipulated Sum"). The Stipulated Sum, which is not to be exceeded without prior written authorization from Owner in accordance with this Contract, includes (i) all materials, equipment, labor, delivery, installation, overhead, costs of insurance, and profit, (ii) taxes, insurance premiums, licenses and permits (except as otherwise specifically set forth in the Contract Documents) required in connection with performance and (iii) any other costs or expenses in connection with, or incidental to, the performance of the Work.

4.2. Conditions Precedent to Payment:

In addition to any other terms for payment set forth in the Contract Documents, as a condition precedent to Contractor's right to receive any payment:

- 4.2.1. Together with its Application for Payment, Contractor shall deliver to Owner from Contractor and its subcontractors, materialmen, laborers and suppliers (i) fully executed, notarized conditional lien releases or certifications, in a form

acceptable to Owner covering all wages, materials, and equipment for which a lien could be filed, corresponding with the Work for which payment is sought and in the amount of the payment sought and (ii) fully executed notarized unconditional lien releases covering all wages, materials, and equipment for which a lien could be filed.

4.2.1.1 The truthful and complete preparation of lien releases duly executed and notarized by Contractor in the form acceptable to Owner shall be an express condition precedent to Owner's duty to make any payments to Contractor under this Contract. Contractor agrees that Owner has the right to disclosure of the information requested in any lien release and that Owner has the right to withhold payments to the extent the Owner reasonably determines it is necessary to protect the interests of Owner if Contractor fails to submit any lien release or if any information contained in any lien release is determined to be false. The submission of any information in a lien release that is in any way false or misleading shall constitute a material breach under this Contract and entitle Owner to withhold payments due under this Contract to the extent the Owner reasonably determines it is necessary to protect the interests of Owner until Contractor cures such breach, or to pursue any other remedies.

4.2.1.2 Contractor further agrees to payments being made under this Contract by way of check being made jointly payable to Contractor and any person or entity being owed funds in connection with the Work. In the event Contractor refuses or is unavailable to endorse a joint check, Owner may also make direct payments to any person or Contractor owed funds in connection with the Work. For any such joint or direct payments, Owner shall be entitled to deduct payment from the Stipulated Sum. However, payment by joint or direct check shall be at the sole discretion of Owner, and Owner shall have no duty to issue joint checks or to make any further payment to or for the benefit of any subcontractor or supplier of any tier.

4.2.2. Contractor shall have provided proof of insurance of Contractor and its subcontractors, evidencing coverage in effect and that the same is compliant with the requirements of **Exhibit B** hereto.

4.2.3. Contractor shall have obtained all necessary approvals of the completed portion of the Work for which payment is sought from the Owner, all municipal and regulatory authorities, as well as anyone else whose approval therefor is required under the Contract Documents or applicable Laws.

4.3. Substantial Completion:

4.3.1. "Substantial Completion" shall be the time at which the Work has reached a state of progress where, in Owner's opinion, the Work is sufficiently complete, in accordance with the Contract Documents, to be suitable for use for the purposes for which it is intended. When Contractor considers the entire Work to be nearing Substantial Completion, Contractor shall inform the Owner in writing and shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to Substantial Completion ("Punch List").

4.3.2. In addition to any other requirements provided for in the Contract Documents, the Work shall not be Substantially Complete or eligible for consideration therefor unless:

- .1 Contractor has obtained approval of all applicable governmental authorities and submitted an affidavit to Owner stating that all of the Work requiring inspection by governmental authorities or third party utility companies has been appropriately and fully approved and accepted by such governmental authorities. In the event that Contractor cannot obtain an acceptance from the appropriate governmental authorities due to acts or omissions which are the responsibility of the Owner, then Contractor shall provide Owner with documentation from the appropriate governmental authority setting forth all unapproved items or such other documentation as may be acceptable to Owner, copies of which shall be submitted with its Final Application for Payment;
- .2 Contractor shall have completed the Work to Owner's satisfaction and any and all other Work in accordance with the Contract Documents and obtained the approval and acceptance of the Work by Owner and such other representatives and/or consultants of Owner as Owner may designate for such purposes;
- .3 Contractor has delivered to Owner satisfactory evidence that all claims, including taxes incurred with respect to the Work, and all labor and material account incurred by Contractor in connection with the Work, have either been paid in full or satisfactory provision has been made for payment in full upon receipt by Contractor of final payment;
- .4 Contractor has furnished to Owner a complete and final release of all liens and claims in a form acceptable to Owner from all persons, firms and corporations who have performed Work or supplied materials in connection with a Project. Such lien releases may be conditional on receipt of final payment, in which case a notarized unconditional lien release shall be delivered contemporaneously with receipt of final payment (all lien releases shall be in a form reasonable acceptable to Owner);
- .5 Contractor has delivered to Owner proof of insurance, evidencing coverage in effect and that the same is compliant with the requirements of **Exhibit B** hereto; and
- .6 Contractor has delivered to Owner the consent of the surety, if any, to final payment; and
- .7 Contractor has delivered to Owner all supporting documentation as may be otherwise reasonably requested by Owner.

4.3.3. All Work performed and all materials and workmanship furnished by Contractor shall be subject to final inspection, tests and acceptance by Owner and any authorities having jurisdiction. Failure to include an item on the Punch List shall not alter the responsibility of the Contractor to complete all Work in accordance

with the Contract Documents. All Punch List items shall be finished within 30 calendar days.

4.4. Liquidated Damages. The timely completion of the Work is critical to the Owner and time is of the essence with respect to the Work and every deadline in the Contract Documents. In the event that Contractor does not achieve Substantial Completion of the Work within the Contract Time as established by this Agreement, Contractor shall pay Owner liquidated damages. If the Contractor is more than one (1) business day late in achieving Substantial Completion of the Work, the Contractor shall pay Owner as liquidated damages of ___[TBD]___ per day for each day thereafter that Contractor fails to achieve Substantial Completion of the Work. Contractor acknowledges that these liquidated damages are fair and equitable and do not constitute a penalty in light of the difficulty of accurately determining the full extent of Owner's damages if this Project is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that Contractor shall pay Owner liquidated damages as set forth above for delays related to Substantial Completion of the Work.

4.5. Final Payment:

Once Contractor has Substantially Completed the Work as provided in Section above. Contractor shall submit a Final Application for Payment to Owner for the outstanding balance of the Stipulated Sum and approved Change Orders; provided, however, that Final Payment shall not become due unless and until the conditions precedents outlined in Section above and elsewhere in the Contract Documents have been satisfied. Once satisfied, Final Payment will be due within thirty (30) days of approval by Owner.

- 4.6. In no event shall the Work be deemed accepted until it has been actually accepted by Owner.
- 4.7. No payment shall be a representation that the Owner has made exhaustive or continuous on-site inspections to check the quality of the Work and no payment to Contractor, whether a progress or final, shall be deemed to constitute, or be construed as, acceptance of Contractor's Work or any portion thereof.
- 4.8. Final Payment to the Contractor shall in no way relieve the Contractor of liability for any obligations assumed under this Contract, or for faulty or defective work discovered before or after Final Payment.
- 4.9. Acceptance of Final Payment by Contractor shall constitute a full waiver and release by Contractor of all claims, of any nature whatsoever, against Owner arising out of or relating to this Contract.

5. Deductions in General:

In addition to the rights enumerated elsewhere herein:

- 5.1. The Owner may withhold from any amounts due or to become due to Contractor sums equal to indebtedness owed by Contractor to Owner, or regarding matters for which Owner has received notice and for which Owner is or may possibly become liable due to the acts or omissions of Contractor or any of its subcontractors or suppliers of any tier, or on account of which Owner has incurred any indebtedness due to the acts or

omissions of Contractor or any of its subcontractors or suppliers of any tier, including without limitation failure of Contractor to make payments properly to its subcontractors, suppliers, materialmen or laborers, a reasonable doubt that the required Work hereunder can be completed for the balance then unpaid, damage to Owner or the Owner's separate contractors, defective work not remedied, failure to otherwise carry out the Work in accordance with the Contract Documents, or non-compliance with insurance requirements. In the event of any breach by Contractor of any provision or obligation of this Contract, Owner shall have the right to retain out of and deduct from any payments due or to become due to Contractor an amount sufficient to completely protect Owner from any and all loss, damage, or expenses therefrom until the breach, cause, or claim which prompted the withholding has been satisfactorily remedied or adjusted by Contractor. If the payments due or to become due to Contractor are not sufficient to cover such amounts, Owner shall be entitled to payment of such amounts from Contractor. The rights of the Owner under this Section shall not be exclusive of any other rights of the Owner herein or provided by Laws.

Changes in the Work

6. Change Orders:

The Work to be performed under this Contract may be modified by changes authorized by Owner in writing ("Change Order") provided that the Stipulated Sum or Contract Time set forth in this Contract may only be adjusted by written Change Order issued and executed in accordance with the terms of this Contract. Change Orders and Construction Change Directives that do not increase costs or scope, and those involving minor changes to scope, may be authorized and documented in a Change Order executed by Owner's Chief Operations officer or Senior Executive Director of Facilities.

- 6.1.** Contractor shall not make any change in the Work, deviate from the Contract Documents or seek compensation for extra work unless Contractor receives a written Change Order signed by the Owner in accordance with this Section 6 and the Contract Documents prior to performing such Work. Every Change Order initiated by Contractor shall be preceded by a written Change Order proposal from the Contractor which shall describe the physical nature of the proposed change and the proposed amount of the adjustment to the, if any, in the Stipulated Sum and/or Contract Time (any adjustment to Stipulated Sum shall be itemized). When the Owner requests a proposal for a Change Order, the Contractor shall submit such a proposal within five (5) days of Owner's request. The Owner will then, within ten (10) days of receiving the Change Order proposal, either approve, deny or approve with conditions the Change Order proposal submitted by the Contractor. If Contractor performs any change in the Work without following the requirements of this paragraph, then Contractor waives the right to seek or receive any additional compensation or time related to such Work.
- 6.2.** Contractor specifically acknowledges and agrees that Owner has a strict policy with respect to the payment for extra work, which requires that to be eligible for payment there must be a valid and effective Change Order signed by Owner.
- 6.3.** In the event that the Owner issues a Change Order to Contractor as provided above, Contractor shall perform such extra work, which shall be deemed to be part of the Work and carried out promptly and expeditiously. If the Change Order is issued or is to be issued on a basis other than a mutually agreed upon lump sum or unit price, or if a Construction Change Directive is issued by Owner, the price for the Work authorized or

to be authorized thereby shall be, to the extent applicable, determined by the lump sum or unit prices stipulated in the Contract Documents, if any, and deemed to include (i) all materials, equipment, labor, delivery, installation, overhead, and profit, and (ii) any other costs or expenses in connection with, or incidental to, the performance of the Work. If no such lump sums or unit prices are available, the Change Order or Construction Change Directive shall be issued on a time and materials basis, and to the extent applicable the rates and fees shall be those listed in the Rate Schedule included in Contractor's RFP Proposal as amended by Contractor's BAFO, if any, which rates and fees represent the maximum respective rates and fees allowed under this Contract unless otherwise agreed upon in writing. Charges for time and materials must be supported by records checked and approved by Owner.

- 6.4.** Contractor shall promptly provide the Owner with any information reasonably requested by the Owner to substantiate the cost of any change in the Work.
- 6.5.** No changes in the Work shall affect the Contract Time unless the Contract Time is specifically extended pursuant to the terms of the applicable Change Order. In the case of such an extension pursuant to a Change Order, all costs associated with such extension must be included as part of the cost of the Change Order; any costs not included in the Change Order shall not be subject to reimbursement.
- 6.6.** Owner reserves the right to delete any portion of the Work, which deletion shall be effected by written notice from Owner to Contractor. Upon such notice, Owner shall issue deductive Change Order for the value of the portion of the Work deleted, including any profit and overhead applicable to such deleted portion of the Work accounted for in the original pricing thereof.

PERFORMANCE

7. Prosecution of Work:

- 7.1.** Contractor shall comply with written instructions given by Owner to suspend, delay or accelerate the Work, provided that Contractor may be eligible to receive an appropriate adjustment, if any, of the Stipulated Sum and/or Contract Time as otherwise provided herein. Such instructions shall not relieve the Contractor of any of its obligations under the Contract Documents.
- 7.2.** Contractor shall reasonably cooperate with the Owner and other contractors and shall participate in the preparation of coordinated work schedules as reasonably required by Owner, specifically noting and advising the Owner of any interference or potential interference by others.
- 7.3.** Except as otherwise provided in the Contract Documents, Contractor shall give adequate notices pertaining to the Work to the proper authorities, and shall secure and pay for all necessary licenses and permits as part of the cost of the Work to carry on the Work, a copy to be provided to Owner by Contractor prior to the start of the Work.
- 7.4.** Contractor shall review the Contract Documents, including all applicable construction documents, drawings, specifications, reports, studies and standards, including without limitation, subsurface, soils and geological reports, before commencement of the Work

and shall inform Owner in writing of any Work, material or design it considers unsuitable for the Project.

- 7.5. Contractor represents that Contractor has itself visited the Site, become familiar with all existing conditions under which the Work is to be performed. Such conditions include without limitation equipment transportation routes, site access, mobilization area, staging area, appurtenances, sub-surface conditions or any other site related conditions that might affect the Work. Prior to the commencement of the Work, Contractor shall be responsible to check all areas that might be impacted by the Work and to bring to the attention of Owner any matter related to the Work that conflicts with or might affect Contractor's performance of the Work. By commencing performance of Work in an area, Contractor shall be deemed to have determined that such area(s) are in suitable condition to perform the Work.
- 7.6. Should the Contractor fall behind in its progress of the Work (taking into account extensions of the Contract Time approved in accordance with the Contract) or otherwise fail to timely progress the Work to meet Owner's reasonable expectations, Contractor shall, without being entitled to any additional compensation or extension of the Contract Time, work overtime, increase its forces, or take other such action as may be necessary or appropriate to complete the activity within the Contract Time, provided that such lack of progress is caused by Contractor or its subcontractors or material suppliers and such lack of progress is not caused by Owner, its employees, agents, or any licensed design professionals hired by Owner.
- 7.7. Unless otherwise stated in the Contract Documents, Contractor, as soon as practicable after signing the Contract, shall furnish in writing to Owner the names of all subcontractors and material suppliers proposed for each portion of the Work. Each subcontractor and material supplier shall be competent, qualified, able, legally authorized and properly licensed or registered, if necessary, to perform its portion of the Work, and shall carry insurance as required under the Contract Documents. Contractor shall not contract with or otherwise engage a subcontractor or material supplier that does not satisfy the foregoing requirements, or to whom Owner has made a reasonable and timely objection. Contractor shall not substitute a subcontractor or material supplier listed in connection with the Work without Owner's prior written approval. Contractor shall furnish to Owner copies of all agreements with subcontractors and material suppliers as requested by Owner. Contractor shall be responsible to Owner for acts and omissions of Contractor's subcontractors, material suppliers, and all other persons or entities performing portions of the Work at any tier and neither use of the foregoing nor Owner's consent thereto shall release Contractor of its obligations under this Contract.
 - 7.7.1. Compliance with Law: Contractor warrants that the goods and Work provided hereunder shall comply with all applicable laws, standards and regulations, whether governmental or industrial, in effect on the date of delivery or known in the industry to become effective after such date.
- 7.8. Contractor represents and warrants to Owner that Contractor has complied with all terms of this Contract in connection with any Work that may have been performed prior to the date of this Contract and that such Work shall be governed thereby.
- 7.9. In addition to all other obligations specified herein or otherwise in the Contract Documents concerning performance of the Work, Contractor shall be obligated to perform the Work

in a good and workmanlike manner and with the degree of care and skill required for the Work being performed; provided that, if the Contract Documents specify a higher level of workmanship or standard of care, then Contractor shall perform the Work in accordance therewith.

7.10. Relationship to Owner. Contractor accepts the relationship established between it and Owner by this Agreement. Contractor shall coordinate, manage and cause the Work to be performed in the most expeditious and economical manner consistent with the interests of safety, Owner, and the terms of this Agreement. Contractor shall cooperate with Owner in furthering the interests of Owner and the Project. Contractor understands that Owner is looking to Contractor to complete the Project on time, for the Stipulated Sum, and in accordance with the Contract Documents. Accordingly, Contractor will devote its best efforts toward: (i) managing the Project at the most cost-effective level possible consistent with good construction practices, (ii) carrying out Owner's intent and the Contract Documents, and (iii) achieving the most rapid and efficient construction and completion of the Project. Contractor will notify Owner of known possibilities for time or money savings that may present themselves during the course of Contractor's performance under this Agreement and will confer with Owner periodically in order to determine whether there are any areas where, by design change or otherwise, costs may be reduced.

7.11. Contractor's Representative. Contractor designates [REDACTED] as its representative who shall be fully acquainted with the scope of the Work and Contractor's obligations and responsibilities, and who has full authority to render decisions promptly, furnish information expeditiously and act on behalf of and bind Contractor in connection with all aspects of this Agreement and the Project.

7.12. Subcontractor Work. Portions of the Work may be performed and material and equipment supplied under contracts with Subcontractors ("Subcontracts") who also may retain sub-tier subcontractors, suppliers or vendors (referred to collectively as Subcontractors). All Subcontractors retained by Contractor shall be subject to Owner's prior, written approval. Contractor shall be solely responsible for coordination of all Subcontractor work, means and methods, and any acts, errors or omissions arising out of all Subcontracts for Work on the Project. Contractor shall supervise the performance of the Work by Subcontractors and shall properly coordinate/schedule the Work of all Subcontractors on the Project.

7.12.1. It is the policy of the Owner to promote the utilization of women, minorities and small business enterprises in all phases of the design, development, construction and maintenance of the Project. While the Owner does not impose any quotas regarding their utilization, Contractor shall take all steps established by the Contract Documents or otherwise reasonably requested by Owner to satisfy the Owner that they have made their "best efforts" to involve in the Work as many companies or firms owned by women, minorities and small business enterprises as practicable, provided they are qualified to conduct the Work.

7.12.2. Each Subcontract to be entered into by Contractor in connection with the Work shall contain a provision providing that, if this Agreement is terminated by Owner for cause, at the option of Owner in its sole discretion, the Subcontract shall be assigned by Contractor to Owner or to such other entity as Owner may direct. In such event, Owner, or its designee, as of the date of assignment shall assume all of Contractor's post-assignment obligations thereunder provided, however, that nothing shall be

deemed to release Contractor from liability to such Subcontractor, or to Owner or Owner's designees, with respect to claims arising from events occurring prior to the effective date of such assignment.

7.13. Design Work. As part of the Design Work, Contractor shall:

7.13.1.1.1. meet and consult with Owner, the engineers and consultants with respect to the Work and development of the Drawings and Specifications for the Project, including, without limitation, geotechnical considerations and related site work, all building systems (e.g. MEP, structural, utilities, IT), and all governmental or other permits and approvals required in connection with the Project;

7.13.1.1.2. make recommendations to Owner with respect to the availability and cost of materials (including recommending to Owner the advance ordering / purchase of long lead time items and, when authorized by Owner, ordering such long lead time items), equipment and labor; the selection of materials; the selection of building systems and equipment, costs of construction (including the use of and estimates of unit pricing, and costs of alternative designs or materials), construction feasibility and alternative methods of construction, necessary temporary and support facilities;

7.13.1.1.3. provide and at appropriate intervals as reasonably required by Owner refine Project budget estimates for the Work, including monthly cost projections or forecasts once the major requirements of the Project have been identified;

7.13.1.1.4. review the Contract Documents and make recommendations to Owner with respect to constructability, material availability and cost, and value engineering,

7.13.1.1.5. develop and pursue programs to encourage interest in the Project with Subcontractors and material suppliers with a particular focus on minority, veteran and women owned businesses.

7.13.1.1.6. consistent with its obligations as a general contractor, Contractor shall investigate and become familiar with existing field conditions revealed by information furnished by Owner or that are apparent from a visual inspection of the Site. Contractor shall compare and report to Owner any visible or otherwise known inconsistencies presented by the existing field conditions with respect to the Drawings and Specifications.

7.14. Project Communications and Records. Contractor shall prepare, update, maintain and make available to Owner an on-site or digital record of: i) the Drawings, the Specifications and all associated addenda, bulletins, post approval amendments, sketches, and other agency approved drawings (ii) Change Order and potential Change Order logs and records of all changes in the Work necessitated by Change Orders and Construction Change Directives; (iii) the Construction Schedule, (iv) Submittal log and RFI log; (v) material lists; (vi) records of all pertinent communications with Owners and Subcontractors and all responses; (vii) daily/weekly and monthly reports, which shall record manpower breakdowns on a Subcontractor-by-Subcontractor basis with a description of the Work being performed each

working day by each Subcontractor, equipment and material deliveries, visitors, special occurrences, accidents, weather conditions, and other Work-related information; and (viii) quality control log.

7.15. Project Data. Any Drawings, Specifications and copies furnished by Owner, are solely for Contractor's reference with respect to the Project, and shall be used for no other or different purpose. Contractor has no ownership interest in the Drawings and/or Specifications.

7.16. Inspection of Subcontractor Work. Contractor shall inspect the Work performed by each Subcontractor to determine whether the Work has progressed to the point indicated on its Application for Payment and that it is being performed in accordance with the Contract Documents in order to guard Owner against defects and deficiencies in the Work. If at any time before acceptance of the Work, Owner or Contractor has reasonable cause to believe that any part of the Work is not in accordance with the Contract Documents, Owner may direct Contractor to require the responsible Subcontractor to remove or uncover, at Subcontractor's own cost and expense, any portion of the completed Work. If defective, Contractor shall require Subcontractor, at its own cost and expense, to correct the Work within seven (7) days or if such defect cannot be cured within seven (7) days then within thirty (30) days. If such Work is not defective, Owner shall bear the cost of uncovering the Work. Notwithstanding the foregoing, to the extent that any Work shall be covered contrary to the requirements of a Contract Document or prior written direction of Owner or Contractor, Contractor or the responsible Subcontractor shall bear all costs in connection with removal, uncovering and replacement regardless of whether the Work in fact complies with the requirements of the Contract Documents.

7.17. Procurement. Contractor shall, as part of Design Work and as part of the Work, arrange for and monitor the early procurement and expediting of long-lead materials and equipment required in connection with the Work, and provide to Owner a schedule showing the dates when Owner-supplied materials (if any) should be available.

7.18. Project Reports. Every thirty (30) days or in connection with the submittal of any Application for Payment (whichever is earlier), Contractor shall submit to the Owner the monthly reports which shall include the following:

- a description of the Work activity on the Project during the immediately preceding month;
- a description of the Work activity anticipated for the current month for each of the major trades;
- a cash flow forecast with respect to the performance of the Construction Phase Work anticipated for each of the next succeeding three (3) months;
- a list of outstanding RFIs;
- an updated log indicating the status of Change Orders and anticipated Change Orders;
- Project photographs;
- an anticipated cost report;
- an updated Construction Schedule (in both PDF and native formats, including all required sub-schedules);
- the Submittal log;
- the current Project directory of Key Personnel;
- a detailed summary of Contingency use and balance.

- 7.18.1. Project Meetings/Logs.** Contractor shall schedule and regularly conduct job meetings and keep logs of all relevant activity at the Site. Contractor shall schedule meetings with Owner when necessary and when otherwise reasonably required by Owner, and coordinate meetings with the appropriate parties as necessary; within seven (7) days of each meeting, prepare and furnish to all attendees and Owner reasonably detailed minutes of such meetings. Contractor shall incorporate all comments issued by Owner in response to such meetings and re-issue updated meeting minutes as requested by Owner. Contractor shall maintain detailed logs of all inspections conducted and/or monitored, with legible copies sent to Owner within seven (7) days of each inspection. All inspections, tests, etc. not expressly mandated by applicable law as being required by Owner to perform or contract for directly shall be Contractor's responsibility.
- 7.19. Permits.** Contractor shall promptly obtain all necessary licenses and permits, for the Work unless otherwise required by the Contract Documents.
- 7.20. Other Assistance.** Contractor shall provide reasonable assistance to and cooperation with Owner in any legal actions or proceedings that may arise out of or relate to the Work (other than those arising from disputes between Owner and Contractor), including appearances, for three (3) years after issuance of the certificate of occupancy for the Project in connection with such actions or proceedings. Minimum clerical assistance, such as the provision of documents in Contractor's possession (i.e. Subcontracts, invoices, Change Orders, etc.), relating to any dispute resolution shall be provided as part of Contractor's obligations under this Agreement and at no extra cost or expense.
- 7.21. Submittals.** Contractor shall assess the adequacy of all shop drawings, samples, Substitutions and other submittals (collectively "Submittals") from Subcontractors for transmittal to Owner for review. Contractor shall also (i) establish a shop drawing, sample and Submittals submission schedule for the flow of required information among Subcontractors to assure the orderly and timely exchange and approval of required information (the Submittal schedule shall allow Owner absent unusual circumstances, at least twenty (20) days after receipt of Submittals requiring review by Owner to review and reject or approve a Submittal; (ii) coordinate (and monitor through the shop drawing, sample and Submittal submission schedule) the submission by Subcontractors and approval by Owner of all required shop drawings, samples, catalog cuts and other submissions; (iii) maintain a log of all such submissions and promptly advise Owner of any potential problems pertaining to the timeliness of such submissions and approvals; (iv) enforce Subcontractor's submission obligations, including ensuring timely revisions to shop drawings; (v) advise Owner periodically as to the status of such submissions; (vi) advise Owner of any errors in such submissions that are discovered by Contractor; and (vii) coordinate the various disciplines after Owner's approval of the respective submissions and before action. By reviewing and submitting the Submittals, Contractor represents that it has checked and coordinated the information contained within such submissions with the requirements of the Contract Documents, and it (or its Subcontractors) has verified material, field measurements and field construction criteria related thereto. Contractor's review shall be for conformance with the Contract Documents, and Contractor shall be responsible for the errors and omissions of all such Submittals circulated to Owner regardless of whether the Submittals are subsequently approved by Owner.

7.22. As-Built Drawings. Construction Drawings, shall be updated by Contractor and/or Subcontractors in a manner and in a form approved by Owner to show changes in the Drawings and Specifications made during construction, accurately reflecting as-built conditions of the Project, particularly the location and detail of concealed, embedded, or buried Work. Contractor shall provide such as-built Drawings to Owner no later than the date of final payment to Contractor. Subcontractors who are required to maintain and provide as-built Drawings of their Work, under the terms of their respective Subcontracts, are to do so and deliver the same to Owner prior to final payment to each such Subcontractor, or earlier as directed by Owner.

7.23. Substitutions. The Contractor may make Substitutions only with the written consent of the Owner through a Change Order. Contractor shall support any request for a Substitution with sufficient evidence to permit Owner to make a fair and informed determination on the merits of the proposal. Any item by a manufacturer other than those identified in the Contract Documents, or of brand name or model number or size or generic species other than those cited in the Contract Documents, shall be considered a Substitution.

By making requests for a Substitution, Contractor: (i) represents that the Contractor has investigated the proposed substitute product and reasonably believes it to be equal or superior in all respects to that specified and suitable for Owner's review as a Substitution; (ii) represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for that specified; (iii) certifies that the cost data presented is complete and includes all related costs under this Contract and waives all Claims for additional costs related to this Substitution which subsequently become apparent; and (iv) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

Acceptance by Owner of a proposed Substitution shall not relieve Contractor of responsibility for compliance with the requirements of the Contract Documents. In addition, there shall be no increase in the Cost of the Work related to a Substitution, unless Contractor has notified Owner as required that the cost of the Substitution will cause an increase in the value of the substituted item, and Owner has approved such increase by issuance of a Change Order. If changes in other parts of the Work are required by reason of an approved Substitution, the costs of any such changes shall likewise be confirmed by Change Order submitted contemporaneously with Substitution, and included in the Cost of the Work.

7.24. Key Personnel. Contractor and Owner agree that any Project personnel acting in an executive or supervisory capacity shall be identified as "Key Personnel" within Contractor's list of Project Personnel. No Key Personnel shall be changed or removed, or their responsibilities and involvement with the Project materially changed, without the written consent of Owner, in its sole discretion, unless the individual shall die, become disabled or ceases to be in the employ of Contractor, or until the Project achieves Substantial Completion. Such Key Personnel shall be promptly replaced as required by Owner. The parties expressly acknowledge that the removal of any Key Personnel as described will cause harm to Owner, including a loss of continuity to the Owner's ability to rely on the accumulated knowledge of the individual, the loss of a valuable resource with unique familiarity with the intricacies of the Project and will disrupt the workings of the Key Personnel.

8. Coordination with Others:

- 8.1. Contractor agrees to perform and coordinate its Work with that of the Owner and other contractors, if any, in the best interests of the Project as a whole, as reasonably determined by the Owner.

9. Protection of Work:

- 9.1. Contractor agrees to adequately and properly protect the Work (including all staking and surveying work with regard to the Project) and the safety of the public, including by erecting and maintaining suitable and sufficient lights, barricades, barriers, supports, signs, guards, and any other necessary devices or means, so as to avoid injury or damage to persons or property. Traffic lanes closed to traffic shall be protected by effective barricades which shall be lighted during hours of darkness, and suitable warning signs shall be provided to control and direct traffic and to warn pedestrians. Upon completion of the Work (or, if applicable, portion of the Work), all barricades, signs, and the like shall be removed by Contractor. Contractor agrees to be directly responsible for damages to persons and property occasioned by its failure to comply with the foregoing requirements and for any negligence in the performance of the Work, that it shall be responsible for the repair costs of others' work which Contractor damages or fails to protect, and that it shall indemnify and hold harmless the Indemnified Parties from all losses, costs, and expenses as set forth more fully in Section 14.1 arising from or relating to Contractor's failure to comply with this Section 9.1.
- 9.2. Contractor acknowledges that utility conflicts or interferences might not be shown in the plans and specifications or might not be complete, and the existence and location of underground utilities will be investigated and verified in the field by the Contractor before starting the Work. Contractor is responsible for coordinating with the utility companies any relocation, adjustment, or replacement of utility facilities. Excavation in the vicinity of existing structures and utilities shall be carefully done by hand. Contractor shall take all necessary precautions to protect in place all overhead, underground and surface improvements, including but not necessarily limited to pole lines, pipe lines, conduits, cabling, subsurface facilities, sewer lines, water lines, service and meters, valves, hydrants, irrigation facilities and any other improvements located within or adjacent to the Project. Contractor shall be responsible for any damage to and for maintenance and protection of existing utilities and structures.

10. Claims:

- 10.1. Contractor shall provide prompt, written notice to Owner of any claims, including claims for additional time or compensation for which the Owner is or may be liable within five (5) days of the occurrence of the event for which such claim is to be made or Contractor's first knowledge of the event. Failure to strictly comply with the notice requirements set forth herein shall constitute a waiver of any and all claims for additional time or compensation related to such event.
- 10.2. Contractor hereby waives any and all claims for consequential damages against the Owner, including damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except profit on Work actually and properly performed by Contractor in accordance with this Contract and included in the Stipulated Sum.

10.3. If the Contractor is materially delayed in the progress of the Work solely by an act or neglect of the Owner, or of an employee, authorized representative or agent of Owner, then the Contract Time shall be reasonably extended by Change Order to the extent such delay extended the critical path of a Project, and the Stipulated Sum shall be adjusted by Change Order for any additional costs actually incurred and directly resulting from the delay to the critical path of the Project; provided that adequate supporting documentation is provided by the Contractor. If the Contractor is delayed at any time in the commencement or progress of the Work, for any other reason beyond its or Owner's control, including, but not limited to, labor disputes beyond Contractor's control, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, casualties requiring reconstruction or repair to the Work or Project or any parts thereof, sabotage, vandalism, concealed conditions, hazardous materials, or shortage/unavailability of materials, supplies, labor, equipment and systems, then the Contract Time shall be extended by Change Order for each day of resultant delay to the critical path of a Project. However, the Stipulated Sum shall not be adjusted by Change Order for additional costs or expenses due to such delay, and Contractor waives any right to pursue or recover all such costs, expenses and other delay-related damages from Owner. Notwithstanding the foregoing, in no event shall the Contractor be entitled to receive an extension of the Contract Time or a positive adjustment to the Stipulated Sum to the extent any event or condition was caused by the negligence or other fault of, or could have been reasonably avoided by, Contractor or any subcontractor or supplier of any tier under Contractor.

10.4. As a precondition to Contractor making a claim for an extension of the Contract Time arising out of abnormal weather conditions ("Weather Delay Claim"), Contractor shall submit data from the National Oceanic Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the claim is made along with daily weather logs which must be kept at the job site and which must indicate that adverse weather or site conditions precluded Work. Contractor agrees that a comparison of (1) the number of days of precipitation for the month or months in question during the Project (the "On-Site Precipitation Days"), and (2) the average number of days where precipitation for the month or months in question during the previous five years exceeded .5 inches (the "Five Year Average"), is a proper comparison by which to determine Contractor's potential entitlement for extension of time for Weather Delay Claims, and that no Weather Delay Claim shall be made unless – and then, only to the extent that – the On-Site Precipitation Days exceed the Five Year Average ("Abnormal Weather Days"). Contractor acknowledges that it has taken weather conditions into account in agreeing to meet the Contract Time under this Contract and that Contractor shall only be allowed an extension of time based upon the comparison set forth in this Section. If Contractor experiences a rain event on site in excess of one inch in a 24 hour period, Contractor may also claim additional days of precipitation for the month as outlined above if Contractor establishes that site conditions remained too wet to allow work to proceed the following day(s). Notwithstanding anything else to the contrary, Contractor shall not be entitled to an extension of the Contract Time for abnormal weather unless it can show that the abnormal weather specifically affected the critical path for the Work in such a manner as to cause the Work to extend beyond the Contract Time.

11. Testing:

- 11.1.** Testing required for the Work shall be provided for by the Contractor, although Owner shall be permitted to have additional testing done at its discretion at any time. Costs associated with additional Owner-initiated testing will be the Owner's responsibility unless testing reveals sub-standard performance of the Work or Work otherwise not in conformance with the Contract Documents. In this case, such Work shall be deemed rejected and Contractor shall be notified accordingly. Contractor shall, at its sole cost and expense, promptly and efficiently correct such Work and be responsible for reimbursement of all Owner's any and all other or additional costs related to the correction of the sub-standard work or otherwise non-conforming or defective, including without limitation the costs of any additional testing or inspections that may be required as result thereof. The failure of Owner or Owner's consultants or inspectors to conduct inspections or tests or to discover defective work, workmanship or materials through the same, shall not prejudice the right of Owner on final inspection and testing. All test reports shall be submitted to owner.
- 11.2.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or its consultants or designated representative's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

12. Warranty:

- 12.1.** Neither the final payment nor any provision or modification of this Contract, nor any review or approval of the Work by the Owner or its consultants shall relieve Contractor of responsibility for faulty materials or workmanship. Contractor is solely responsible for the accuracy, completeness and sufficiency all Work. In addition to the specific guarantees required by the Contract Documents, the Contractor warrants to the Owner that materials and equipment furnished under this Contract will be of good quality and new, unless otherwise required or permitted by the Contract or in writing by Owner; that the Work will be free from defects; and that the Work will conform with the requirements of the Contract Documents and all Laws. In addition, Contractor further agrees that it will repair or replace any Work performed or materials furnished pursuant to this Contract against defects in material or workmanship, at its own expense and without cost to the Owner, for a period beginning at Substantial Completion of the Project (or an identified and independent portion of the Project, if applicable), and continuing until one (1) year after Substantial Completion of the Work for the Project or portion thereof. Such one year repair and replacement obligation shall not reduce the duration of any other warranties herein or any applicable common law, state or federal statutory warranties or statutes of limitation or repose related to claims for improper work or materials. Accordingly, Contractor shall, if possible, complete, or commence to complete, all correction, repair and replacement items within five (5) working days from receipt of the original notice. In the event of an emergency, Contractor agrees to respond and repair or replace any defective Work or materials within twenty-four (24) hours from receipt of such notice, if possible.
- 12.2.** In the event Contractor fails to repair or replace any Work or materials after receiving reasonable notice of the Owner's request to repair or replace the same, the Owner may, at its sole option and discretion, elect to repair or replace such Work or materials and hold Contractor liable for such repair or replacement (including any administrative costs incurred by the Owner), and may back-charge or withhold the cost of such repair or replacement from any account then payable to Contractor. Nothing in the foregoing

provision shall, in any manner, diminish or defeat any legal right Owner may have to proceed against Contractor, including, but not limited to the right to recover for latent defects.

INSURANCE AND INDEMNITY

13. Insurance: Before commencing any Work and as a condition precedent to any payment hereunder, the Contractor shall purchase and maintain, at its sole expense, insurance as set forth in **Exhibit B** attached hereto and incorporated herein to protect Owner from claims in connection with performance of the Work under this Contract whether such Work is provided by the Contractor, its subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall cause its subcontractors to do the same. Contractor shall maintain said insurance in force at all times during the performance of any Work and thereafter so as to cover claims asserted for the longer of the periods set forth in **Exhibit B** or otherwise in the Contract Documents.

14. Hold Harmless - Indemnity:

14.1. To the fullest extent permitted by law, Contractor shall indemnify, defend (through legal counsel reasonably acceptable to Owner), protect and hold harmless the Owner, all parent, subsidiary and affiliated companies of the Owner and all of such parties' and Owner's respective representatives, members, partners, stockholders, designees, officers, directors, agents, and employees and their respective heirs, executors, administrators, successors, and assigns, and the Owner's lender(s) (collectively the "Indemnified Parties"), from and against any and all losses, costs, expenses, reasonable attorneys' fees (and other costs of defense incurred in defending against any claim(s) or in enforcing this indemnity and defense obligation), liabilities, claims, court costs, demands, debts, causes of action, fines, judgments and penalties (collectively, "Liability") which arise from or relate to: (a) death or injury to people or damage or injury to property arising out of or in connection with the performance of the Work; (b) the negligent acts, errors or omissions of Contractor its agents, employees, suppliers, subconsultants, subcontractors and sub-subcontractors (including those employed directly or indirectly by such agents, employees, suppliers, subconsultants, subcontractors and sub-subcontractors) (collectively, the "Contractor Representatives") in connection with the performance or nonperformance of the Work; (c) any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the Site, any facility owned or operated by Owner or any portion thereof, or the Indemnified Parties (except when such liens or stop notices are caused by the Owner's default in its obligation to pay Contractor pursuant to the provisions of this Contract) in connection with performance or nonperformance of the Work; (d) any claim(s) under workers' compensation acts, disability benefits acts, and other employee benefit acts, (provided, however, the indemnity and defense obligation hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under such acts); (e) Contractor's or any Contractor's Representative's failure to fulfill its obligations under this Contract in strict accordance with its terms, including Contractor's breach of any representations or covenants given in this Contract or elsewhere by Contractor or any Contractor Representative; (f) violation of any local, state or federal law, regulation or code; or (g) infringement of any

patent, trademark or copyright, or violation of trade secret or other proprietary right, arising out of or in connection with performance of the Work. Notwithstanding the foregoing, Contractor shall not be obligated to indemnify the Indemnified Parties to the extent such Liability is caused by the negligence or willful misconduct of one or more Indemnified Parties. In the event an Indemnified Party incurs Liability by reason of strict liability, or a similar legal theory, Contractor shall, nonetheless, indemnify, protect and hold each Indemnified Party harmless from such portion of such Liability that, directly or indirectly, relates to or was caused by Contractor or one or more Contractor Representatives or others for whose negligent acts they may be liable for. Payment to Contractor by any Indemnified Party shall not be a condition precedent to enforcing such party's rights to indemnification. The obligations under this Section 14 shall survive expiration or termination of this Contract. Nothing in this Section 14 shall be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity (including, without limitation, equitable indemnity) which would otherwise exist as to the Indemnified Parties.

- 14.2.** Notwithstanding any language to the contrary in this Agreement, this Section 14 does nor any other obligations under this Agreement require nor shall be interpreted as requiring Contractor to indemnify or hold harmless Owner from liability for damages arising out of bodily injury to persons (including death) or damage to property proximately caused by or resulting from the sole negligence of the Owner or any of Owner's independent contractors, agents, employees, or indemnitees.

DISPUTES

15. Governing Law:

- 15.1** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to its conflict of laws provisions. Jurisdiction and venue for the resolution of any dispute or action arising out of or related to this Agreement shall be proper only in the Superior or State Courts of Echols County, or in the U.S. District Court, Middle District, Valdosta Division. Contractor consents to the exclusive jurisdiction of the state and/or federal courts of the State of Georgia, in Echols County and to the personal jurisdiction of such courts and waives any objections Contractor may now or hereafter have based on venue or forum non conveniens.

MISCELLANEOUS

16. Compliance With Laws and Other Requirements:

- 16.1. Laws.** The Contractor represents and warrants that it is in compliance with and shall continue to comply with all federal, state and local Laws effective where the Work is to be performed under this Contract, and agrees to pay all fees, permits, taxes, including sales and use taxes, and expenses connected with such compliance, and also to pay all taxes imposed by any federal, state or local Laws for any employment insurance, pensions, old age retirement funds, or any similar purpose. Contractor also represents that it is appropriately licensed and trained and shall maintain all qualifications and professional certifications necessary or appropriate to perform the Work, and shall ensure that each of its employees, subcontractors and any other person on the premises of Owner at the direction of Contractor are appropriately licensed and trained and shall

maintain all qualifications and professional certifications necessary or appropriate to perform the Work.

16.1.1. If any of the provisions under this Contract are in conflict with any of the above Laws, then such Laws shall control over this Contract. In such case, the Contractor is obligated to inform the Owner in writing of such non-compliance with such Law(s) within three (3) days of the discovery of such non-compliance.

16.1.2. Any and all provisions of Laws and clauses required by Laws to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then the parties hereby agree to immediately amend the Contract to make such insertion. To the extent that any term or provision of this Contract may be deemed void or not in compliance with any applicable Laws or public policy, that term or provision will be void, and where possible, void language shall be modified to the minimum extent necessary to conform to such Law(s). All other terms and provisions of this Contract shall remain in full force and effect.

16.2. Cleaning. Contractor shall keep the Project area clean and sanitary, and shall arrange, no less frequently than daily, for the removal from the site and legal disposal of all rubbish, packing materials, scrap, rubble and other waste material. Flammable materials and chemicals and other Hazardous Materials will be properly removed from the site by the Contractor at the end of each day. The Contractor shall provide such additional clean-up services, as may be required to meet the Owner's standards for cleanliness and safety.

16.3. Start-Up. Contractor shall coordinate, cooperate and conduct with Owner's maintenance or operational personnel all start-up and testing of utilities, equipment and all systems. Contractor shall provide training to Owner with respect to all such systems.

16.4. Conduct of Work Force. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees and Subcontractors and their respective agents and employees, and other persons performing services or work on the Project. The Contractor and all Subcontractors and all other persons performing portions of the Work shall comply with all applicable codes, laws, rules, regulations, writs, and orders of governmental authorities, including the most recent version of Owner's Contractor Code of Conduct and all applicable rules and regulations related to nondiscriminatory practices, employment and affirmative action.

16.4.1. Contractor's personnel, all contractors, consultants, subcontractors and vendors shall also be fingerprinted and have a criminal record check initiated through Owner **prior to providing services to Owner** as specified in regulations approved by the Superintendent. The associated fee shall be paid by the Contractor, contractor, consultant, subcontractor, vendor or the employing company.

16.4.2. The Contractor shall maintain the good order and discipline of its employees and other persons under its direction or control or present at, or in vicinity of, the Project site, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances

and other activities that may constitute a danger to life, health or property. The Contractor shall also comply with the Owner's "zero tolerance" policy with regard to any harassment-related incidents. Contractor shall comply, and shall cause each of its employees, subcontractors and any other person on the premises of Owner at the direction of Contractor, to comply with all policies, standards, rules, regulations and procedures relating to the operation of Owner's facilities that presently exist or as may from time to time be established by Owner and communicated to Contractor and shall complete and submit to Owner forms and comply with other requirements as Owner may reasonably request.

16.4.3. At the Owner's instruction, the Contractor shall promptly remove from the site any employee or worker who, in the Owner's opinion, represents a threat to the safety or progress of the Project or persons on the site or who have engaged in any improper conduct, specifically including conduct which the Owner perceives as constituting harassment of students or other persons.

16.5. Quality Control. Contractor shall establish and implement in a consistent and conscientious manner a quality control system to prevent, identify, track and ensure correction of incomplete and/or deficient items.

16.6. Financial Records. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be in accordance with generally accepted accounting practices.

16.7. Project Records. Contractor shall maintain accurate daily logs of all on-site operations, staffing and correspondence, as well as minutes of meetings, schedules, invoices and requisitions which shall be maintained at the Project office; and shall promptly be made available upon request for inspection and copying by Owner. All electronic documents shall be available to Owner, with unrestricted access, at all times.

16.8. Audit Rights. On seven (7) days' notice from Owner to Contractor or in connection with Contractor's final Application for Payment, Owner and its authorized representatives shall be afforded full access to all of Contractor's Project-related records, financial records, timesheets, correspondence, instructions, Drawings, Specifications, receipts, Subcontracts, Change Orders, purchase orders, vouchers, memoranda and other data, and shall have the right to audit and photocopy such books and records. All books, records and other documents shall be in such form as Owner shall approve and in accordance with generally accepted industry accounting procedures. Such books and records to the extent that they relate to the Project shall be maintained by Contractor for six (6) years after Substantial Completion, and shall not be destroyed or disposed of unless Owner refuses to take possession upon notice from Contractor. This section shall survive termination of the Agreement.

16.9. Use of Site.

16.9.1. The Contractor shall confine operations at the Project site to areas authorized by Owner and permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

16.9.2. Only materials and equipment that are to be used directly in the Project shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Project, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Project, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Project and all adjacent areas. The Project shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Project shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

16.9.3. The Contractor shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

16.9.4. Contractor shall use best efforts to minimize interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Project and (ii) the building in the event of partial occupancy. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

17. Safety:

17.1. Safety. Contractor, as part of the Work, shall be responsible for all aspects of site safety and logistics. The Contractor shall provide and maintain all safety devices or measures required by any applicable law, regulation, ordinance, code, or rule, or by the Owner's insurer, or by Project conditions, for the protection of the health and safety of all persons and the protection of property from damage due to the Work. Among other things, the Contractor shall ensure daily compliance with 29 Code of Federal Regulations (CFR) 1926, commonly known as OSHA Standards for the Construction Industry and, depending on the activities being performed, 29 CFR 1910, commonly known as OSHA Standards for General Industry. These measures shall include, without limitation, appropriate worksite and other barriers, firm pedestrian access surfaces to affected facilities, safety nets, scaffolding, shoring and sheeting, devices/measures associated to working in confined areas, barricades, fences, flagmen, fire prevention equipment and other measures, temporary or supplemental lighting, and posting danger signs and other warnings against hazards, and the promulgation and enforcement of safety regulations. The Contractor shall determine and inform the Owner when it would be appropriate to notify owners and users of adjacent utilities and properties of conditions arising from the Work. The Contractor shall prepare a program of supervision and shall initiate, maintain, and supervise safety precautions and programs to assure that the Subcontractors comply with all legal, regulatory, and accrediting requirements, all safety and insurance requirements and other standards and requirements applicable to construction of the Project. When required by law or for the safety of the Work or adjoining property, the Contractor shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work.

17.1.1. Contractor shall establish and administer a safety and loss prevention program, including a fire prevention program, in compliance with the requirements of all

concerned insurance carriers and those governmental agencies having jurisdiction over the Project. The Contractor shall designate a safety and loss prevention supervisor and shall give him or her responsibility and authority to enforce the program and to coordinate the Contractor's safety program with those of the insurance carriers and other contractors.

- .1 The Contractor shall report, in writing and with an attesting signature of the Contractor or its designated person, to the Owner and any other persons the Owner designates, any accident occurring on or off the site that relates to the Work. Such reports must be made promptly, but in any event no later than twenty-four (24) hours after the accident occurs. In addition, the Contractor shall immediately notify the Owner by telephone or messenger of any accident resulting in death or serious personal injury or material property damage. The Contractor's reports of accidents shall include all known details of the circumstances of the accident, the nature and extent of any injuries or property damage, the names of all witnesses and other persons having knowledge of the circumstances of the accident, and such other details as the Owner or the Owner's insurers may require. The Contractor shall cooperate fully with the Owner and the Owner's insurers in dealing with any claim resulting from an accident.

17.1.2. Notwithstanding any other record keeping with respect to accidents, Contractor shall create and maintain a complete accident file in such form and containing such information as the Owner, the Owner's insurers, and OSHA may require.

18. Termination or Suspension:

18.1. The Owner may terminate this Contract in whole or in part at any time, if the Contractor shall breach the Contract by one or more of the following:

- 18.1.1.** Refusing or neglecting to supply sufficient, properly skilled workmen or materials or equipment of the proper quality and quantity;
- 18.1.2.** Failing to prosecute the Work with promptness and diligence;
- 18.1.3.** Causing the stoppage or interference with the work of Owner or others unless such action is approved in advance by Owner in writing;
- 18.1.4.** Failing to properly remedy defective Work;
- 18.1.5.** Failing in the performance of any other material covenant or condition in this Contract, including the Contractor's obligation to meet its debts as they mature and/or pay its subcontractors or material suppliers.

18.2. Upon the occurrence of any event outlined in Section 18.1, Owner may, at its option, terminate this Contract by delivering written notice of termination to Contractor.

18.3. Without limiting the foregoing, upon the failure of Contractor within seven (7) days of written notice from Owner to cure a breach (including without limitation Contractor's default or neglect to carry out the Work in accordance with the Contract Documents) or commence and diligently pursue such cure to the reasonable satisfaction of the Owner, Owner may, at its option, without prejudice to any other rights available to Owner hereunder or otherwise at law or in equity, take possession of the Work or portion

thereof, and through itself or others provide labor, equipment, and materials to prosecute Contractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of Contractor's failure to perform or other breach, from any money then due or thereafter to become due to Contractor.

- 18.4.** If Owner terminates this Contract for one of the reasons stated in Section 18.1, Contractor shall not be entitled to any further payments under this Contract until the Work has been completed and accepted by Owner. In the event that the unpaid balance due to Contractor exceeds Owner's cost of completion, the difference shall be paid to Contractor; but if Owner's cost of completion exceeds the balance due to Contractor, Contractor agrees to pay the difference to Owner within ten (10) days of written notice from Owner. Termination of this Contract, or portion thereof, shall not relieve the Contractor of its responsibilities for the completed Work, nor shall it relieve its surety (if any) and indemnity obligation for and concerning any claim arising out of the Work performed. In addition, any termination for cause by Owner that is subsequently found to be without adequate cause, shall be treated as a termination for convenience in accordance with Section 18.5.
- 18.5.** By written notice, without Contractor being at fault and for the Owner's convenience, Owner may require Contractor to immediately stop Work and/or may terminate this Contract for any or no reason and without cause. In such event, Owner shall pay Contractor, as Contractor's sole and exclusive remedy for termination, for that portion of the Work actually performed in compliance with this Contract an amount proportionate to the fixed price set forth in this Contract,. Under no circumstances shall the Owner be liable to Contractor for any other costs, expenses or damages, including any consequential damages or lost or prospective profits.
- 18.6.** If the Owner fails to make payment for a period of thirty (30) days after such payment is due and owing in accordance with this Contract through no fault of the Contractor, or if the Work is stopped for ninety (90) consecutive days through no fault of Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and Owners failure to cure or commence and diligently pursue a cure within such ten (10) days, as Contractor's sole and exclusive remedy for termination, terminate this Contract and recover from the Owner payment for Work executed and for proven direct, out-of-pocket loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on the completed portion of the Work, as well as reasonable cancellation and demobilization costs
- 18.7.** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that assignment is effective only after (1) termination of the Contract by the Owner for cause and (2) the Owner accepts the applicable subcontract by notifying the subcontractor and Contractor in writing of its intent to accept assignment of such Subcontract. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract as of the date of the assignment. Contractor shall incorporate the foregoing requirements into all subcontracts for the Project.
- 18.8.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents and any other provisions in the Contract

Documents that would logically survive this Contract, shall survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

19. Entire Agreement:

It is agreed that the terms and conditions of this Contract are fully covered in the Contract Documents and any verbal statements made by either party, or agents claiming to represent either party, are to be considered of no effect whatsoever. The failure of the Owner or Contractor to enforce at any time or for any period of time, any one or more of the provisions of this Contract shall not be construed to be and shall not be a waiver of such provision or provisions or of its right thereafter to enforce each and every such provision.

20. Severability:

If any provision contained in this Contract is held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

21. As-Built Drawings:

If as-built drawings are requested by Owner, then Contractor shall provide such as-built Drawings to Owner no later than the date of final payment to Contractor. Subcontractors who are required to maintain and provide as-built Drawings of their Project, under the terms of their respective Subcontracts, are to do so and deliver the same to Owner prior to final payment to each such Subcontractor, or earlier as directed by Owner.

22. Construction of this Contract:

It is agreed that the terms and conditions of the Contract shall not be construed in favor of or against either party and that both parties have legal counsel available to review this Contract in connection with this arm's length transaction.

23. Notices:

Except as otherwise provided in this Contract, all communications required or permitted hereunder must be in writing and will be effective only when actually received by the parties. All notices shall be sent to the Owner and Contractor at the addresses set out on p.1, Preamble.

24. Hazardous Materials:

24.1. For purposes of this Contract, the term "Hazardous Material" shall mean any substance which is defined under any environmental laws of the state, county or locality where the site of the Project is located or under any federal statutes, regulations, rules or ordinance as a "hazardous waste", "hazardous substance", "hazardous material" or "toxic substance or material."

24.2. In the performance of the Work, Contractor shall comply, and cause all of its sub-contractors and suppliers to comply, with all applicable environmental laws. Without limitation of the foregoing, the Contractor shall not cause: (1) any Hazardous Materials to be brought onto the Project site or incorporated into the Work, except in full

compliance with applicable Law, (2) any asbestos-containing materials or lead-based paint to be brought onto the Project site or incorporated into the Work, or (3) without the Owner's prior written consent, any underground or above-ground storage tanks to be placed on the Project site. Contractor shall take all possible precautions to prevent the spilling, leaking or dumping of any Hazardous Material (collectively, a "Spill") on the Project site or in the performance of the Work. Contractor shall immediately stop Work to the extent necessary or required by reason of any Spill and immediately notify the Owner thereof. Upon Owner's approval, Contractor shall promptly execute, at its sole cost and expense, a course of action to remedy the Spill in compliance with and to comply with the requirements of all governmental agencies having jurisdiction. To the fullest extent permitted by Law, the Contractor shall defend, indemnify and hold the Indemnified Parties harmless from and against any and all liability, claims, damages, losses and expenses, including reasonable attorneys' fees and expenses, arising out of the Spill or other introduction of any Hazardous Materials to the site of the Project arising from the performance of the Work by Contractor or by any of the Contractor Representatives.

24.3. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor and which were not introduced by or known to Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. If permitted hereunder, the Contract Time shall be extended appropriately and the Stipulated Sum shall be increased as otherwise provided in this Contract.

25. Georgia Department Of Education Requirements. To the extent that Owner must comply with any Georgia Department of Education requirements or submit any Georgia Department of Education forms or records in connection with the Work, Contractor shall comply with all such requirements and/or provide all such forms and/or records at the times and in the manner required by the Georgia Department of Education as it relates to Contractor's Work or its obligations pursuant to the Agreement

26. Compliance with the Georgia Security and Immigration Compliance Act. Contractor acknowledges and agrees that it is subject to and will abide by the limitations and requirements of the Georgia Security and Immigration Compliance Act, O.C.G.A. 13-10-91 *et seq.* as amended, and Georgia Department of Labor Rule 300-10-1 *et seq.* (the "**Immigration Act**") by registering and participating in a federal work authorization program to verify information on all of its new employees.

26.1.1. Contractor is required to affirm its compliance with the Immigration Act by executing and delivering to Owner for inclusion in the Contract the Contractor's Affidavit and Agreement which is attached as **Exhibit D**.

26.1.2. Pursuant to O.C.G.A. § 13-10-91 no Contractor or Subcontractor may propose a contract or enter into a contract with a public employer for the services with a cost in excess of \$2,499.99 unless the Contractor or Subcontractor is registered with and participates in the federal work authorization program to verify information of all newly hired employees, and

provides certain required affidavits. Any Contractor, Subcontractor, or sub-subcontractor of such Contractor or Subcontractor, shall also be required to satisfy the requirements set forth herein.

26.1.3. The Contractor agrees that it will require each Subcontractor to evidence its compliance with the Immigration Act by securing from each Subcontractor and delivering to the Owner for inclusion in this Agreement the Subcontractor's Affidavit and Agreement which is attached hereto as **Exhibit E**.

27. Open Records Act. Contractor acknowledges and agrees that Owner is obligated to timely comply with requests for information pursuant to state and federal law and regulation. Contractor agrees to comply with all provisions of the Georgia Open Records Act ("ORA") (O.C.G.A. § 50-18-70 *et. seq.*), and to make records pertaining to performance of services, provision of goods or other functions under this Agreement available for public inspection upon request, unless otherwise exempt under other provisions of the ORA. Contractor shall provide Owner with immediate notice should Contractor receive an Open Records Request. If Contractor asserts that any information in its response or in any information provided to the Owner with respect to the services or products under this Agreement are a protectable trade secret, as that term is defined in O.C.G.A. § 10-1-761, then the Contractor **must** follow the requirements of the ORA set forth at O.C.G.A. § 50-18-72(a)(34).

28. Other Conditions and Provisions:

28.1. Nothing contained in this Contract shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against Contractor or Owner.

28.2. Contractor shall not assign the Contract without the prior, written consent of the Owner. Owner may freely assign this Contract. Contractor recognizes that, in connection with entering into this Contract, or at any time thereafter, Owner may be required to collaterally assign to a construction lender for, or equity investor, in the Project its right and interests under this Contract, without their assuming Owner's rights and obligations hereunder and hereby consents to any such collateral assignment and agrees, upon Owner's request, to execute and deliver to Owner the Contractor's consent to such collateral assignment in a form reasonably required by such construction lender or equity investor. Contractor further hereby consents to the assignment of Owner's rights under this Contract, including without limitation, the right to enforce Contractor's covenants and warranties hereunder, to any purchaser of the Project or a portion thereof from Owner.

28.3. All Contract Documents are the property of their respective owners, who shall retain all common law, statutory and other reserved rights, including copyrights, therein. Neither Contractor nor the Contractor Representatives shall own or claim a copyright in any of the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyrights or other reserved rights in the Contract Documents. Contractor and the Contractor Representatives are authorized to use and reproduce the Contract Documents solely and exclusively for performance of the Work. All copies of the Contract Documents made under this authorization shall bear the copyright notice, if any, shown on thereon. Neither Contractor nor the Contractor Representatives may use the Contract Documents other than in connection with the Work without the specific written consent of Owner and the owner of such documents.

To the fullest extent permitted by applicable Laws, Contractor shall defend, indemnify and hold Owner harmless from and against any unauthorized use of the Contract Documents by Contractor or any of the Contractor Representatives.

28.4. In the event that the Work is damaged and/or destroyed by terrorist acts, then the Contractor shall not be liable for such damages and shall not be obligated to correct the Work that has been damaged by such acts and/or to complete or rebuild the Work if destroyed by such acts, unless the Owner and Contractor execute a mutually acceptable change in Scope Addendum that adjusts the Stipulated Sum and Contract Time accordingly.

28.5. Owner and Contractor agree that the following exhibits are a part of the Contract Documents, are hereby agreed to by Owner and Contractor, and are hereby incorporated herein by this reference:

Exhibit "A"	Scope of Work
Exhibit "B"	Insurance Requirements
Exhibit "C"	Form of Payment and Performance Bonds
Exhibit "D"	Contractor Affidavit and Agreement
Exhibit "E"	Subcontractor Affidavit and Agreement

In the event of a discrepancy or conflict within or between any of the Contract Documents, the following Contract Documents shall take precedence and apply in the following order:

- .1 the Contract, including properly executed Change Orders, shall govern over all other Contract Documents;
- .2 unless otherwise specifically stated in the specifications or drawings, the drawings (including any notes therein) shall govern over specifications;
- .3 the specifications shall govern the Supplementary Conditions;
- .4 the Supplementary Conditions shall govern over the General Conditions;
- .5 drawings of larger scale shall govern over those of smaller scale;
- .6 figured dimensions shown on a drawing shall govern even though they differ from dimensions scaled on the drawing;
- .7 descriptive writings shall govern over legends indicating material or conditions;
- .8 Project-specific specifications shall govern over general specifications from any authority or agency having jurisdiction over the Project; and
- .9 the provision or interpretation that results in the greater quantity and quality of Work or materials shall prevail.

IN WITNESS WHEREOF, the Owner and Contractor have hereunto set their hands and seals in duplicate the day and year written below.

OWNER

Echols County School District

Date: _____ By: _____

Dr. Vince Hamm, Superintendent

CONTRACTOR

Date: _____ By: _____

Printed Name: _____

Title _____

EXHIBIT A

SCOPE OF WORK

Design/Build services for athletic field lighting for a soccer field at Echols County Elementary and Middle School, located at 229 US Hwy 129 South, Statenville, GA 31648 (the "Project").

Summary Scope of Work

1-Install new contractor panel with key switch at existing service

4-50' Concrete poles

8- 5 Position crossarms

40- 500W LED sports lights

Approximately 1500' - #2 AL direct buried cable from new contractor panel to new poles

Approximately 1500' - #6 AL direct buried cable from existing panel to new poles for security lighting

8- 71 W LED care take fixates (2 per pole) with photocell for dusk to dawn operation

Minimum one (1) year warranty following completion.

EXHIBIT B

MINIMUM INSURANCE REQUIREMENTS

1. Contractor's Liability Insurance

The **Contractor** will provide and maintain the following types and amounts of insurance:

1.1 Commercial General Liability Insurance

Contractor must provide Commercial General Liability insurance (2013 ISO **Occurrence Form** or its equivalent). The Commercial General Liability insurance must include coverage for "Premises-Operations", "Independent Contractors", "Products-Completed Operations", Personal Injury" and "Contractual Liability". The "Contractual Liability" must include coverage for liability assumed under the Contract and the tort liability of another assumed in a business contract. Such coverage shall not exclude or limit coverage for explosion, collapse, or underground (formerly known as the "XCU"). This insurance shall be maintained throughout the performance of the Work and for a minimum of one year after **FINAL PAYMENT**. Limits shall be as follows:

Each Occurrence Limit

Bodily Injury/Property Damage Liability	\$1,000,000
Personal Injury Liability	\$1,000,000
General Aggregate Limit	\$3,000,000
Products/Completed Operations Aggregate Limit	\$3,000,000

The General Aggregate Limit is to be written on a "per project" basis using Contractor's "Per Project" endorsement: **Amendment-Aggregate Limits of Insurance (CG 2503)**. The "**Products/Completed Operations**" **Aggregate Limit** must be at least **\$3,000,000**, or written confirmation provided that the Commercial Umbrella coverage affirmatively "follows form" and includes liability coverage arising out of the insured's "Completed Operations". Such coverage shall not exclude or limit coverage for explosion, collapse and underground (f/k/a "XCU") wherever work involving these exposures is undertaken.

Owner, and its Board, officers, employees, as well as authorized agents, and affiliates, are to be named as additional insureds in the Contractor's commercial general liability policy. Verification of additional insured status shall be furnished to Owner by providing a copy of the endorsement or Certificate of Insurance.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance that Owner may have or elect to carry with respect to this Project.

1.2 Business Automobile Liability Insurance

Contractor must provide and maintain business automobile liability insurance for all "owned", "non-owned" and "hired" vehicles on ISO form CA 00 01 12/90 or equivalent coverage form with the following limits:

Combined Single Limit **\$1,000,000** per accident

Owner, its Board, officers, employees, as well as authorized agents, and affiliates, are to be named as additional insureds on the Business Automobile Liability policy. Verification of additional insured status shall be furnished to Owner by providing a copy of the endorsement or Certificate of Insurance.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance that Owner may have or elect to carry with respect to this Project.

1.3 Workers Compensation

Contractor shall provide and maintain Workers Compensation and Employers Liability insurance providing coverage in the state (or states) in which the project is performed. Limits and coverage shall be as follows:

Workers Compensation Insurance	Statutory Benefits
Employers Liability Insurance	\$1,000,000 each accident
	\$1,000,000 policy limit
	\$1,000,000 each employee

The "Worker's Compensation" policy must allow a Waiver of Subrogation and the policy must be endorsed accordingly if the Waiver of Subrogation is not permitted without the insurance company's express consent in writing.

1.4 Umbrella Excess Liability

Contractor shall provide umbrella and/or excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

Each Occurrence Limit	\$5,000,000
Aggregate Limit	\$5,000,000

Owner, and its Board, officers, employees, as well as authorized agents, and affiliates, are to be named as additional insureds on the Umbrella/Excess Liability policy. Verification of additional insured status shall be furnished to Owner by providing a Certificate of Insurance.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance that Owner may have or elect to carry with respect to this Project.

1.5 Waiver of Subrogation

Contractor waives all rights of subrogation or recovery of damages against Owner (and Owner's agents, officers, directors, and employees) to the extent such damages are covered by the insurance carried or required to be carried under the Contract. Contractor (and its consultants and subcontractors, or anyone directly or indirectly employed by any of them) shall cause each policy required hereunder to contain provisions allowing waiver of rights of recovery prior to a loss and waivers of rights of subrogation against Owner on the part of the insurer. Contractor shall cause its consultants, subcontractors and sub-subcontractors, agents and employees to execute similar waivers of subrogation in favor of Owner for all insurance coverage except Worker's Compensation. 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 damage.

1.6 Evidence of Insurance

Contractor shall furnish Certificates of Insurance to Owner prior to commencement of the Work. The certificate holder (and additional insured) should read as follows:

**Echols County School District
Attn: Superintendent
216 US Hwy 129 North
Statenville, GA 31648**

The Certificate(s) of Insurance shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth herein. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the Contractor or his agent will make every reasonable effort to notify Owner at least ten (10) days prior to such change by written notice.

- 1.7 The insurance companies providing coverage must be rated "A-" or better by A. M. Best's and be licensed or otherwise approved in the state where the Project is located. Any exceptions to the requirement of (1) being licensed or approved by the State, or (2) having a Best's "A-" rating or better, must be referred to Owner for prior approval.
- 1.8 If Contractor fails to maintain the required insurance as outlined above, Owner shall have the right, but not the obligation, to purchase said insurance at the Contractor's sole expense. Contractor's failure to maintain insurance as required may result in termination of this contract at Owner's option. However, the failure of Owner to demand Certificates of Insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the Contractor's obligation to maintain such insurance.
- 1.9 Contractor agrees to insure (or self-insure) all loss to owned or leased tools and equipment, and further agrees that Owner shall have no responsibility for lost or damaged tools or equipment.

1.10 Pollution Liability Insurance

Contractor shall obtain and maintain pollution liability insurance covering bodily injury, property damage and environmental damage resulting from sudden or gradual accidental pollution and related cleanup costs arising out of the work or services to be performed under this Contract, with the following limits:

Combined Single Limit	\$1,000,000 per claim
Annual Aggregate Limit	\$3,000,000

Owner and its Board, officers, employees, as well as authorized agents, and affiliates, are to be named as additional insureds in the Contractor's policy with respect to this Project.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance that Owner may have or elect to carry.

1.11 Professional Liability Insurance

Contractor must obtain and maintain professional liability insurance covering any damages caused by an error, omission or any negligent acts of Contractor, its design consultants, sub-contractors, agents, officers, or employees with the following limits:

Combined Single Limit	\$1,000,000 per claim
Annual Aggregate Limit	\$2,000,000

This insurance will apply as primary insurance with respect to any other insurance or self-insurance that Owner may have or elect to carry with respect to this Project.

1.12 Subcontractors

Contractor shall be responsible for ensuring that Subcontractors maintain insurance in accordance with the typical requirements of the industry for projects of similar size and scope.

EXHIBIT C

FORM OF PAYMENT AND PERFORMANCE BONDS

FORM OF PERFORMANCE BOND:

Performance Bond _____ **Contract No** _____

KNOW ALL MEN BY THESE PRESENTS:

That _____, as principal
(hereinafter referred to either as “Principal” or “ Contractor”), and, _____

as surety (hereinafter referred to as “Surety”), do hereby acknowledge ourselves indebted and firmly bound and held unto the **Echols County School District** as Obligee (hereinafter referred to as “Owner”) in the amount of _____ DOLLARS AND NO CENTS (\$) _____) to which payment Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above Principal has entered into a Contract with Owner bearing date of _____, 20__ for construction of _____ (the “Project”) in accordance with Contract Documents prepared by _____ Architects, which said Contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the “Contract”).

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform and comply with the terms and conditions of said Contract; and shall indemnify and save harmless Owner against and from all costs, expenses, damages, attorneys’ fees, injury or loss to which said Owner may be subjected by reason of any want of care or skill, default or failure of performance, wrongdoing, including patent infringement, or other misconduct on the part of said Contractor, its agents, sub-contractors or employees, in the execution or performance of said Contract, and shall fully reimburse and repay the said Owner any and all outlay, costs, and expenses which it may incur in making good any such default and shall guarantee all products and workmanship against defects, as defined in said Contract Documents, for a period of one year and shall replace all defective work and products for such period of one year then this obligation shall be null and void,; otherwise it shall remain in full force and effect.

- 1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the Contract or to the work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the Contract or to the work or to the specifications or drawings.

- 2) It is expressly agreed that the penal sum of the bond shall be amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing, in the aggregate, the Price/Stipulated Sum more than twenty percent (20%) in excess of the original Price/Stipulated Sum, so as to bind the Principal and Surety to the full and faithful performance of the Contract as so amended. The term **“amendment”** shall include any alteration, addition, extension, or modification of any character whatsoever.
- 3) If, pursuant to the Contract Documents, Contractor shall be declared in default and terminated by Owner under the aforesaid Contract, Owner may take possession of the Project and finish the work by whatever method Owner may deem expedient, in accordance the Contract, and Surety shall remain obligated on this Bond. Surety agrees that said Surety shall, if required in writing to do so by the Owner, take such action as is necessary to complete said Contract.
- 4) Supplementary to and in addition to the foregoing, whenever Owner shall notify Surety that Owner has notice that Contractor has failed to pay any sub-contractor, materialman, or laborer for labor or materials certified by Contractor as having been paid for by Contractor, Surety shall, within thirty (30) days of receipt of such notice, cause to be paid any unpaid amount for such labor or materials.
- 5) It is expressly agreed by Principal and Surety that Owner, if it desires to do so, is at liberty to make inquiries at any time of sub-contractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the work.
- 6) Surety agrees that other than as is provided in this bond it may not demand of Owner that Owner shall (a) perform any thing or act, (b) give any notice, (c) furnish any clerical assistance, (d) render any service, (e) furnish any papers or documents, of (f) take any action of any nature or description which is not required of Owner to be done under the Contract Documents.
- 7) No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner named herein or the legal successors of Owner.

This bond is given pursuant to and in accordance with the provisions of Article 4 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereafter enacted and these are hereby made a part hereof to the same extent as if set out in full herein.

Signed and sealed as of _____, 20 ____

Signed, sealed and delivered _____

in the presence of:

(Insert Name of Contractor)

1. _____

By: _____

(signature)

2. _____

Print: _____

(CORPORATE SEAL)

Attest: _____

Signed, sealed and delivered
in the presence of:

(Insert Name of Surety)

1. _____

By: _____
(signature)

2. _____

Print: _____

(CORPORATE SEAL)

Attest: _____

[END OF FORM]

FORM OF PAYMENT BOND

Payment Bond

Bond No. _____

THIS BOND IS EXECUTED WITH ANOTHER BOND IN FAVOR OF THE OWNER AS OBLIGEE
CONDITIONED UPON PERFORMANCE OF THE CONTRACT.

KNOW ALL MEN BY THESE PRESENTS:

That _____, as principal
(hereinafter referred to either as “Principal” or “ Contractor”), and, _____
_____, as surety (hereinafter
referred to as “Surety”), do hereby acknowledge ourselves indebted and firmly bound and held
unto the **Echols County School District** as Obligee (hereinafter referred to as “Owner”) in the
amount of _____ DOLLARS AND NO CENTS (\$_____) to
which payment Contractor and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a Contract with Owner bearing date of
_____, 20____ for construction of _____ (the “Project”)
in accordance with Contract Documents prepared by _____
Architects, which said Contract is incorporated herein by reference and made a part hereof, and is
hereinafter referred to as the “Contract”).

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall
promptly make payment to all claimants as hereinafter defined, for all labor and material supplied
in the prosecution of the work provided for in said Contract Documents, then this obligation shall
be void; otherwise it shall remain in full force and effect, subject, however, to the following
conditions:

- 1) The said Surety to this bond, for value received, hereby stipulates and agrees that no
change or changes, extension of time or extensions of time, alteration or alterations or
addition or additions to the terms of the Contract or to the work to be performed thereunder,
or the specifications or drawings accompanying same shall in any wise affect its
obligations on this bond, and it does hereby waive notice of any such change or changes,
extension of time or extensions of time, alteration or alterations or addition or additions to
the terms of the Contract or to the work or to the specifications of drawings.
- 2) It is expressly agreed that this bond shall be amended automatically and immediately,
without formal and separate amendments hereto, upon amendment to the Contract
Documents not increasing the Price/Stipulated Sum more than twenty percent (20%) in
excess of the original Price/Stipulated Sum, so as to bind Contractor and Surety to the full

and faithful performance of the Contract as so amended. The term “**amendment**” shall include any alteration, addition, extension, or modification of any character whatsoever.

- 3) A Claimant is defined as any subcontractor and any person supplying labor, materials, machinery, or equipment in the prosecution of the work provided for in said Contract.
- 4) Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the work referred to in said bond before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him, or materials or equipment or machinery was furnished or supplied by him for which such claim is made, or when he has completed his subcontract for which claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him; provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with Contractor, shall have the right of action upon the said payment bond upon giving written notice to said Contractor within ninety (90) days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was performed or done; provided further that nothing contained herein shall limit the right of action to said 90-day period. Notice may be served by depositing a notice, registered mail, postage prepaid, duly addressed to Contractor at any place it maintains an office or conducts its business, or its residence, in any post office or branch post office or any letter box under the control of the United States Postal Service, or notice may be served in any manner in which the sheriffs of Georgia are authorized by law to serve summons or process.
- 5) Every suit instituted under this section shall be brought in the name of the claimant without Owner being made a party thereto. The official who has the custody of said bond is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or material for such work and payment therefor has not been made, or that he is being sued on any such bond, a copy of such bond and the Contract for which it was given, certified by the official who has custody of said bond; this copy shall be primary evidence of said bond and the Contract and shall be admitted as evidence without further proof. Applicants shall pay for such certified copies and such certified statements such as fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fee exceed the fees which the clerks of the superior courts are permitted to charge for similar copies.
- 6) No action can be instituted on this bond after one year from the date of the final acceptance of Owner.

This bond is given pursuant to and in accordance with the provisions of Article 5 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated, and all the provisions of the law referring to this character of bond as set forth in said sections or as may be hereafter enacted and these are hereby made a part hereof to the same extent as if set out in full herein.

Signed and sealed as of _____, 20 ____

Signed, sealed and delivered
in the presence of:

1. _____

2. _____

(CORPORATE SEAL)

(Insert Name of Contractor)

By: _____
(signature)

Print: _____

Attest: _____

Signed, sealed and delivered
in the presence of:

1. _____

2. _____

(CORPORATE SEAL)

(Insert Name of Surety)

By: _____
(signature)

Print: _____

Attest: _____

[END OF FORM]

EXHIBIT D

**CONTRACTOR AFFIDAVIT AND AGREEMENT
Georgia Security and Immigration Compliance**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, and attests **under oath** that:

(1) the individual, firm, or corporation (“Contractor”) which is contracting with the Echols County School District has registered with, is authorized to use, uses, and will continue throughout the contract term to use and participate in, a federal work authorization program [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91, as amended. As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the “EEV/Basic Pilot Program” operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

(2) Contractor’s correct user identification number and date of authorization is set forth herein below.

(3) Contractor agrees that the Contractor will not employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the Echols County School District, unless at the time of the contract said subcontractor:

(a) is registered with and participates in the federal work authorization program;

(b) provides Contractor with a duly executed, notarized affidavit with the same affirmations, agreements, and information as contained herein and in such form as required under applicable law; and

(c) agrees to provide Contractor with notice of receipt and a copy of every sub-subcontractor Affidavit or other applicable verification procured by subcontractor at the time of contract with the sub-subcontractor(s) within five (5) business days after receiving the said Affidavit or verification.

Contractor agrees to maintain records of such compliance and to provide notice of receipt and a copy of each such subcontractor Affidavit or other permissible verification to the Echols County School District within five (5) business days after receiving the said Affidavit or verification.

(4) Contractor further agrees to and shall provide Echols County School District with copies of all other affidavits or other applicable verification received by Contractor (i.e.: sub-subcontractor affidavits and all other lower tiered affidavits) within five (5) business days of receipt.

[signatures begin on next page]

EEV/Basic Pilot Program User Identification Number

Date of Authorization

Company Name / Contractor Name

Date

BY: Signature of Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

____ DAY OF _____, 20 ____

Notary Public

My Commission Expires: _____

EXHIBIT E

**E-VERIFY AFFIDAVIT
Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)**

By executing this affidavit, the undersigned subcontractor (hereinafter the “Subcontractor”), which is engaged in the physical performance of services under a contract with (name of Contractor) on behalf of Echols County School District, verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the Subcontractor has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the Subcontractor will continue to use the federal work authorization program throughout the contract period, and the Subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub- subcontractors who present an affidavit to the Subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the Subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the Contractor within five business days of receipt. If the Subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the Subcontractor must forward, within five business days of receipt, a copy of the notice to the Contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number: _____
Date of Authorization: _____
Name of Contractor: _____

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE ____ DAY OF _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

