

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

RFQ 25-009

**Request for Qualifications (RFQ 25-009)
Design Services for Tennis Court
Replacements
Hopewell High School and West Mecklenburg High School**

Sealed Proposals subject to the conditions made a part hereof will be received until **November 19 @ 1:00 p.m., EST** .

Proposals should be received by mail or hand delivered only to 3301 Stafford Drive, Charlotte, NC **Attention: Yolanda Fergerson**

IMPORTANT NOTE: Indicate firm, and description on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning RFQ 25-009 to:

Yolanda Fergerson
Contract Administration
Manager
3301 Stafford Drive
Charlotte, NC 28208
yolandas.fergerson@cmsk12.nc.us

NOTE: Questions concerning the specifications in this Request for Qualifications will be received until **1:00 P.M. November 11, 2024**, by e-mailing Yolanda Fergerson (yolandas.fergerson@cms.k12.nc.us), CMS Contract Administrator. When appropriate, responses will be posted at: <https://www.cmsk12.org/Page/9577> located under the RFQs.

It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

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Section 1 – INTRODUCTION AND SCOPE

CMS is soliciting proposals from qualified firms interested in providing architectural and engineering services related to tennis court designing, improvements, and replacement at Hopewell High School and West Mecklenburg High Schools. The firm will be responsible for properly evaluating and designing tennis courts with specifications for installation and permitting requirements. The designer will be responsible for surveying, scheduling and, construction administration and supervision.

Section 2 - GENERAL INFORMATION

The procurement of the design contract will be based on the RFQ and the Proposer's response. A selection committee will review and evaluate the RFQ responses and may select firms to be interviewed.

Addenda and Supplements to RFQ

If a Proposer who is contemplating submitting a response is in doubt as to the true meaning of any part of this RFQ or other requirements, they may submit a written request for clarification to CMS's representative no later than 7 days prior to the deadline for submission of the RFQ. Any clarification or revisions of the RFQ will be made only by an addendum which will be posted on the CMS website no later than five days from the due date.

[Operations / Formal Bid Documents \(cmsk12.org\)](https://www.cmsk12.org/Operations/Formal%20Bid%20Documents)

The Proposer is required to acknowledge receipt of any/all addendum. Oral explanations will not be binding.

Request for Explanation and Information

Email questions regarding the response process to

Yolanda Fergerson
Contract Administration Manager
yolandas.fergerson@cms.k12.nc.us Charlotte-Mecklenburg
Schools
3301 Stafford Drive
Charlotte, NC 28208

Schedule of Events

- | | |
|----------------------------------|---------------------|
| • RFQ Issued | November 4, 2024 |
| • Written Questions Due | November 11, 2024 |
| • Responses to Written Questions | November 13, 2024 |
| • RFQ Due | November 18, 2024 |
| • Evaluation Period | December 2-6, 2024 |
| • Notification to Selected Firm | December 9-13, 2024 |

CMS has sole discretion and reserves the right to reject any and all responses received with respect to this RFQ and to cancel the RFQ process at any time prior to entering into a formal agreement. CMS reserves the right to request additional information or clarification of information provided in the response without changing the terms.

Section 3 - SUBMISSION REQUIREMENTS

Responses should be prepared and submitted as described in this section.

Proposers bear the responsibility of examining all parts of this RFQ and furnishing the information required by this RFQ. The Proposer shall prepare his/her response and submit one (1) electronic copy and one (1) original signature set clearly marked original. All costs incurred in the preparation and submission of proposals shall be covered by the Proposer. All blank spaces on the Proposal Execution Page and all requirements outlined in this RFQ must be filled in and completed. Firms should include Firm Number on the outside of their sealed envelope.

Submittals shall be made on 8.5" x 11" paper, side bound with Table of Contents and reference tabs for key sections. Response is limited to 20 pages double sided excluding engineer qualification information. All pages are to be consecutively numbered. Responders shall submit their RFQ Response **to include firm number on the outside of their sealed envelope.**

Each Proposer must answer all questions and provide all requested information, where applicable. If the answer to any questions is "none" or if the question is not applicable, please state in writing. Any Proposer failing to do so may be deemed to be non-responsive with respect to this qualification at the sole discretion of CMS.

A selection committee will make reasonable investigations as deemed proper to determine the ability of each proposer to perform the work. The Proposer shall be responsible to furnish all information and data requested by the RFQ. CMS reserves the right to reject any proposal if the information submitted by or investigations of the Proposer fail to satisfy CMS that the Proposer is qualified.

Where proposals are sent by mail, the Proposer shall be responsible for their delivery before the advertised date and hour for the receipt of the proposals. If the mail is delayed beyond the date and hour set for the response receipt, submittals thus delayed will not be considered and will be returned unopened. **Submittals must include, at a minimum, the following:**

1. Executive Summary limited to one (1) page including the name of the Proposer, location of Proposer's principal place of business, a brief narrative description including the age of the business, type of business organization and services offered. Summary should describe the Proposer's approach to providing design services for a project as described in the Introduction and identify the Proposer's strengths and any special qualifications your firm and proposed sub-consultant firms may possess related to the program described. Describe your firm's and proposed sub-consultant firms approach to pre-design, design and construction administration phases of a project.
2. Insurance Requirements – Proposers must show proof of insurance coverage meeting the requirements identified in Section 5 (submit a copy of insurance certificate)
3. Completed response to Section 5 – Qualifications/Proposer Information
4. Completed Section 6 - Proposal Execution Acknowledgement Form
5. Complete required documents included with MWSBE Information
6. Completed Engineer's prequalification information (if engineer being used is from a different firm)

Section 4 - QUALIFICATIONS/PROPOSER INFORMATION

Please organize your responses to questions below in the same order and numbering given, restating the question first, then your responses. A separate Engineer's pre-qualification questionnaire and submittal is provided and will be required from each consulting firm(s) proposed as sub-consultants.

1. Company history, size and background
 - a. Provide current organizational structure information, date of company formation and the number of years providing design services for educational facility projects.
 - b. Provide the name, position, percentage ownership and years with the organization for each officer or partner.
 - c. Provide names and professional background of other company principals intended to be used on the proposed CMS work.
 - d. Provide the total number of staff directly employed by the firm. Identify the number of registered Architects and all other disciplines contained in this group of personnel. Only include the staff/office that will directly participate in this CMS work. Provide an organizational chart that represents this staffing and their relationship to the organizational management structure.
 - e. Provide your annual revenue for design work over the last five (5) years (2019 – 2024) including the number of projects per year.
 - f. Provide a list of the public projects your firm is currently committed to in North Carolina including:
 - i. Name of project
 - ii. Location
 - iii. Value
 - iv. Completion date
2. Financial Information - CMS reserves the right to request financial data. If requested provide a copy of audited financial statements for the three (3) previous fiscal years and the last quarterly report. Statements must include auditor's letter of opinion, auditor's noted balance sheet, statement of income/loss.
3. Provide information on no less than three (3) K-12 athletic improvement or similar projects for which your firm has provided services during the past five years. Information should include:
 - a. Name and address of project
 - b. Names of staff (Senior Executive, Project Architect, Project Manager, Construction Administrator)
 - c. Name, address and phone number for Owner's Representative
 - d. Type and size of project
 - e. Original Budget
 - f. Actual Cost

4. Describe your firm's knowledge of and experience in integrating the following items into the design along with examples how they have been implemented on past projects:
 - a. Tracks
 - c. Drainage and PCCO requirements
5. Provide experience and background information on key individuals proposed for the project
 - a. Name 5 similar athletic improvement projects completed by your proposed project key individuals in the last 5 years. Describe their role in these projects.
6. List the consulting member firms you propose to use should you be selected including the project designer for each who will be responsible for the close supervision of this design work. If performed in-house, please indicate and include resumes. Indicate which of your consultants are MWSBE owned business firms.

Note: Consulting firms presented in the proposal should not be changed without good cause. It shall be the owner's understanding that the consultant firms are integral to the proposal and shall not be changed subsequent to contract negotiations. The Prime Designer shall provide the prequalification documents to the consulting firms and retrieve them in time to incorporate them into their RFQ submission. Failure to include this will render the submission non-responsive.

7. Client References
 - a. Provide a minimum of four (4) client references. Two (2) of the client references should be from Owners similar in function to CMS. Information should include contact name, address, phone number, email and a description of services provided.
8. In the past five (5) years has your firm ever paid a client due to errors or omissions found in the work?
9. Indicate any project(s) where your firm has been terminated and the reasons for termination.
10. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit, found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity, or been convicted of a crime involving any federal, state or local law?

If YES, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

11. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
12. Indicate any prior or current design contracts between your firm and Charlotte-Mecklenburg Schools.
13. Respondents shall comply with CMS's MWSBE Program by making a good faith effort to utilize MWSBE firms in the professional service contract.
 - a. Describe how your firm will address the MWSBE objectives. This includes the forms listed below and a commitment to obtain a certain percentage.
14. Respondents shall include in their proposals the form "Identification of Minority Participation" and "Affidavit A" or the form "Identification of Minority Participation" and "Affidavit B". Also include

an Appendix III signed by each MWSBE firm you plan to utilize. This is the MWSBE's acknowledgment that they are to be used on this project. The forms ask for the scope of work and the dollar amount. Respondents may not be able to give a specific dollar amount until your firm is selected for a specific project. However, you may list a percentage based on the scope of work intended to be performed by your MWSBE consultants and subcontractors.

15. Does your firm or any associate consultant own any business or financial interest that would place the firm in a conflict of interest in either the design or procurement phase of the capital improvement plan?

Selection Criteria

- 45- points Qualification of Firm
 - Project Understanding/Experience
- 50-Points Project Management
 - Experience on Similar Projects
 - Projects on time and in budget
 - Professional Training/Qualifications
 - Workload and Availability
 - Cost Control/Scheduling
 - Relevant Licensees
- 5pts- References Past and Existing Performance

Section 5 - PROPOSAL EXECUTION ACKNOWLEDGEMENT FORM

The undersigned hereby acknowledges having received and completed a proposal package.

FOR A SOLE PROPRIETOR OR PARTNERSHIP: If a sole proprietorship, the sole proprietor must sign this proposal. If a partnership, the proposal must be signed by a general partner and indicate authority of partner’s signatory by attaching a copy of partnership agreement or other authorizing document.

FOR A CORPORATION: If signed by any person other than the President of the Corporation, a certified copy of resolution or by-laws authorizing such person to sign must accompany this proposal/response. The signature of the corporation signer must be attested to by the Secretary of the Corporation.

The undersigned warrants that they are duly authorized to bind the Proposer to fully perform all duties and deliver all services in accordance with the terms and conditions set forth herein. The undersigned declares under penalty of perjury that all the information submitted is true and correct, that the Proposer fully understands this information is being considered for this RFQ only and that being declared non-qualified for this project excludes the Proposer from award of this project.

The undersigned acknowledges receipt of addenda: _____

The undersigned agrees to be bound by and comply with the provisions of CMS’s Minority, Women and Small Business Enterprise Program.

I, the undersigned, certify and declare that I have read all the foregoing responses to this RFQ and know their contents. The responses are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of North Carolina, that the foregoing is correct.

All signatures to be sworn to before a Notary Public

Signed _____

Firm Name _____

Title _____

Address _____

Telephone _____

City _____

State _____ Zip _____

Corporate Seal – (requested, not required)
this

SUBSCRIBED AND SWORN to before me

_____ Day of _____ 19

Notary Public Signature
COUNTY OF _____

STATE OF _____

Section 6 – CMS Minority, Women, Small Business Enterprise Program

Request for Qualifications M/W/SBE Participation Guidelines for Architecture & Engineering

In accordance with G.S. 143-64.31, it shall be the policy of the Charlotte-Mecklenburg Board of Education to promote full and equal access to business opportunities with Charlotte-Mecklenburg Schools. Minority-owned, women-owned, and small business enterprises (collectively “M/W/SBE”) as well as other responsible vendors shall have a fair and reasonable opportunity to participate in CMS business opportunities.

The Superintendent shall implement an M/W/SBE Program which includes aspirational goals for M/W/SBE utilization in proportion to the availability of qualified vendors in particular areas of procurement. An annual report shall be made to the Board of Education regarding M/W/SBE utilization in comparison to the aspirational goals.

Policy Adopted: 01/12/93
Policy Amended: 07/09/96
Policy Amended: 02/22/05

Requirements

The fundamental requirement of the policy is that all contractors, vendors and consultants, who contact with the Board of Education, will: (i) not discriminate against any person in regard to race, color, religion, age, national origin, sex, or disability; and (ii) provide a full and fair opportunity for participation of M/W/SBEs in contracts.

Participation shall be measured in terms of the actual dollars received by M/W/SBEs.

“Minority” as used in this policy means African American (all persons having origins in any of the African racial groups); Hispanic/Latino American (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin); Asian American (all subcontinent, or the Pacific Islands); and Native American (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

“Woman” as used in this policy means a non-minority woman who has 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business

“Small” as used in this policy means a business enterprise owned, operated, and controlled by one (1) or more eligible owners who have 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business, and is 25% or less of the applicable size standards established by the Small Business Administration.

“Socially and Economically Disadvantaged” as used in this policy means a minority, woman, or small business enterprise owned, operated, and controlled by one (1) or more eligible owners who have 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business, and is 25% or less of the applicable size standards established by the Small Business Administration.

Responders responding to this solicitation shall comply with the M/W/SBE Program by making a Good Faith Efforts to utilize the following aspirational goals for M/W/SBE participation under this contract for professional service and construction contracts:

Category	MBE Goal	WBE Goal	SBE Goal	Total M/W/SBE Goal
Construction	10%	6%	5%	21%
Architecture & Engineering	4%	7%	5%	16%
Professional Services (other than Architecture & Engineering)	9%	9%	5%	23%
Contracted Services (other than Architecture, Engineering, and other Professional Services)	5%	4%	5%	14%
Goods	3%	3%	5%	11%

Responders will describe how your firm will address the M/W/SBE Objectives. This may include the forms listed below and a commitment to obtain a certain overall percentage.

Responders shall include in their proposals, the following documentation:

- **Minority, Women, and Small Business Enterprise Identification Form** (including suppliers)
- **Affidavit A** (if subcontracting)
- OR
- **Minority, Women, and Small Business Enterprise Identification Form** (including suppliers)
- **Affidavit B** (if self-performing all work with own workforce and upon request, provide sufficient information for Charlotte-Mecklenburg Schools to determine that the Proposer does not customarily subcontract work on this type of project)

The forms ask for the scope of work and the dollar amount. Respondents may not be able to give specific dollar amounts until you know the project scope assigned. However, you may list an overall percentage based on the scopes of work intended to be performed by M/W/SBE consultants and subcontractors.

The overall participation committed for the school is based upon all activities associated with the project including design sub-consultants, lower tier subcontractors, printing, courier services, suppliers and other services.

Upon receipt of notice of award, the proposer who is subcontracting anything must provide the following information:

- Appendix I, II and/or III

With each pay request the prime will submit Appendix IV listing payments made to all subcontractors. Failure to submit these and all documents as requested is grounds for rejection of the bid.

Compliance Documentation

All written statements, affidavits or intentions made by Respondents shall become a part of the agreement between the Consultant and Charlotte-Mecklenburg Schools for performance on this contract. Failure to comply with any of these statements, affidavits or intentions or with the M/W/SBE Program Guidelines shall constitute a breach of contract. A finding by Charlotte-Mecklenburg Schools that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option Charlotte-Mecklenburg Schools whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, Charlotte-Mecklenburg Schools will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

Good Faith Effort Documentation – The Proposer’s documentation to meet the goals set forth in these provisions shall include the following evidence:

1. Copies of solicitations to at least three (3) M/W/SBE firms for each sub consultant to be let under this contract. Each solicitation shall contain a specific description of the work, representative to contact, and location, date and time when responses must be received.
2. Copies of responses received from each firm responding to the solicitation.
3. A telephone log of follow-up calls to each firm sent a solicitation.
4. Documentation of any contacts, correspondence or conversation with M/W/SBE firms made in an attempt to meet the aspirational goals.
5. The successful Proposer shall maintain records relating to all commitments for a period of at least one year following acceptance of final payment.

Note: Additional Good Faith Efforts are identified in Affidavit A

After review of the Respondent’s Good Faith Efforts, the Respondent may request and be granted a Waiver of the M/W/SBE aspirational goals that have not been met for that particular project. A Waiver may be granted upon review of the Respondent’s documentation and determination that, in fact, a Good Faith Effort has been put forth. The Respondent’s M/W/SBE Utilization Commitment shall be incorporated into the contract.

NOTE: Charlotte-Mecklenburg Schools reserves the right to waive any irregularities in M/W/SBE documentation if they can be resolved prior to award of the contract, and Charlotte-Mecklenburg Schools finds it to be in its best interest to do so and award the contract.

**Charlotte-Mecklenburg
Schools M/W/SBE
Documentation Overview**

Form	Submission Requirements	Required Form
<p>Subcontractor / Supplier Identification Form Lists the total dollar amount of such participation by MBEs, WBEs, and SBE subcontractors and suppliers the Proposer <u>will use</u> on the project.</p>	Due with bid/proposal	Minority, Women, and Small Business Enterprise Identification Form
<p>Listing of Good Faith Efforts (GFE) Indicates the actions you undertook to recruit and solicit minority vendors, subcontractors, vendors, or suppliers for this project.</p>	Due with bid/proposal (if subcontracting)	Affidavit A
<p>Intent to Perform Contract with Own Workforce Indicates that the Proposer does not customarily subcontract elements of this type project, normally performs all elements of work on this project with his/her own current work force AND will not purchase any materials or supplies in the performance of the contract.</p>	Due with bid/proposal (self-performing)	Affidavit B
<p>Portion of Work to be Performed by M/WBE Firms Identifies minority participation that is equal to or greater than the M/W/SBE total goal for construction 21%, Other Services 14%, and/or Goods 11% of the Proposers total contract price. Appendix I is signed by the M/W/SBE.</p>	Within three (3) business days after notification of award.	Affidavit C and Appendix I
<p>Documentation of Good Faith Efforts (GFE) Indicates GFEs of Proposers who <u>do not</u> achieve the overall M/WBE goal for construction 21%, Other Services 14%, and/or Goods 11% participation by M/W/SBEs. Documentation provided should correspond with the items checked on Affidavit A. Appendix I is signed by the M/W/SBE.</p>	Within three (3) business days after notification of award.	Affidavit D and Appendix I
<p>Professional Services Indicates the minimum percent of the total dollar amount of the contract with M/W/SBEs. Appendix I is signed by the M/W/SBE.</p>	Within three (3) business days after receiving Letter of Commitment	Appendix I, II and/or III
<p>Documentation for All Contract Payments Contractor shall provide with each pay request to CMS all payments to contractors, subcontractors, supplies and service providers.</p>	Must submit with each pay request and final payment	Appendix IV

Minority, Women, and Small Business Enterprise Identification Form

I, _____
 (Name of Proposer)

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

Firm Name, Address and Phone #	Work Type	*M/W/SBE Category

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**)
 American Indian (**I**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged
 (**D**)

The total value of M/W/SBE contracting will be (\$)_____.

State of North Carolina AFFIDAVIT A – Listing of the Good Faith Effort

County of _____

Affidavit of _____
(Name of Proposer)

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

Proposer must earn at least 50 points from the Good Faith Efforts list to be considered responsive.

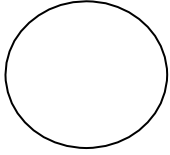
- 1 – (10 Points)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to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

In accordance with GS143-128.2(d) and Board of Education Policy the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority, Women, and Small Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Minority, Women, and Small Business Enterprise commitment and is authorized to bind the Proposer to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____



Title: _____

State of _____, **County of** _____

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

Notary Public: _____

My commission expires: _____

Attach AFFIDAVIT A or AFFIDAVIT B to the Bid

**DO NOT USE AFFIDAVIT 'B' UNLESS YOU ARE ONLY PROVIDING
LABOR AND NOT PURCHASING ANY MATERIALS OR SUPPLIES**

State of North Carolina

**--AFFIDAVIT B-- Intent to Perform Contract
with Own Workforce.**

County of _____

Affidavit of _____

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
- _____ contra
ct.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all **elements of the work** on this project with his/her own current work forces; **AND** the bidder **will not purchase any materials or supplies in the performance of the contract**

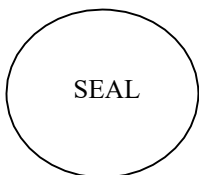
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

*Subscribed and sworn to before me this _____ day of _____ 20____ Notary _____
My commission expires _____*

**APPENDIX I
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR OR
SUBCONSULTANT
(PROVIDE MATERIALS OR/ & SERVICES)**

PROJECT: _____
(Project Name)

TO: _____
(Name of Proposer/Architect)

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

_____ Minority Business Enterprise _____ Women's Business Enterprise

_____ Small Business Enterprise

The M/W/SBE status of the undersigned is/is not certified by the City of Charlotte or the Carolinas Minority Suppliers Development Council or other governmental entities. Our M/W/SBE certification number is _____.

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials or services to be performed or provided) at the following price: _____.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date

Subcontracting at any tier must be reported and is subject to all M/W/SBE compliance requirements. This form shall be used for M/W/SBE subcontracting at any level.

Date: _____

(Name & Phone No. of

M/W/SBE Company) (Name

& Title of Authorized Office)

(Signature)

THE PRIME CONTRACTOR OR ARCHITECT MUST GET THIS FORM COMPLETED BY THE SUBCONTRACTORS/SUPPLIERS

**APPENDIX II
M/W/SBE UTILIZATION COMMITMENT FORM FOR PROFESSIONAL SERVICES**

We, _____ do certify that on the
(Architect)

(Project Name)

(Project

If the Proposer intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

I will expend a minimum of _____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

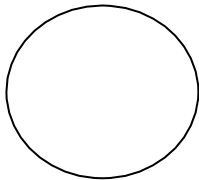
Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (**N**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte- Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ **Name of Authorized Officer:** _____



Signature: _____

Title: _____

State of _____, **County of** _____

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

Notary Public: _____

My commission expires: _____

APPENDIX III
M/W/SBE UTILIZATION COMMITMENT FORM FOR PURCHASES OF GOODS & OTHER SERVICES

We, _____ do certify that on the _____
 (Proposer)

 (Project Name)

If the Proposer intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

I will expend a minimum of _____% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

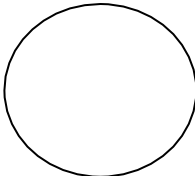
Name and Address	*M/W/SBE Category	Work description	Dollar Value

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (**N**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ **Name of Authorized Officer:** _____



Signature: _____

Title: _____

State of _____, **County of** _____

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

Notary Public: _ **My commission expires:** _____

DOCUMENTATION FOR ALL PAYMENTS TO CONTRACTORS, SUBCONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

Current Requested Payment Amount: _____

The following is a list of payments to be made to all contractors/suppliers & other providers on this project for the above-mentioned period.

Firm Name and Address	*M/W/SBE Category	Amount to be Paid form this pay Request	Total Payments to date	Total Amount Committed
Totals				

*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (**N**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

Date: _____

Approved/Certified By: _____

Name

Title

Sign

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****

WAIVER REQUEST FOR GOOD FAITH EFFORTS

PROJECT: _____

COMPANY: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

CONTACT PERSON: _____ **PHONE NO:** _____

TITLE: _____

The said company request a Full () or Partial () waiver for the M/W/SBE aspirational goals for this particular project for the following reasons:

Signature: _____

Date: _____

CMS USE ONLY

Good Faith Efforts Verified: _____

Request of Waiver Granted: YES (_____) NO (___)

Comments: _____

M/WBE Administrator: _____

Date: __

Section 8 – ENGINEERS QUALIFICATIONS/PROPOSER INFORMATION

Please organize your responses to questions below in the same order and numbering given, restating the question first, then your response.

1. Company General Information

a. Firm

1. Name
2. Address and contact information (name, phone, email) for principal office
3. Address and contact information (name, phone, email) for North Carolina office providing services
4. Provide appropriate current organizational structure information, date of company formation and the number of years under the present business name
 - (i) Corporation type, date of incorporation, state of incorporation, President, Secretary, NC registration #
 - (ii) Partnership, date of organization, names of partners, % of ownership
 - (iii) Sole Proprietorship, date of organization, name of Owner
5. Provide any other names the business has operated under and the number of years operated in that name
6. Is firm a Hub or MWSBE firm? Is firm certified with the City of Charlotte?

b. Staff

1. Identify engineering disciplines provided by firm and intended for this project.
2. Provide the total number of staff directly employed by the principal firm regularly engaged in Educational facility design work. Provide the total number of staff directly employed by the North Carolina office of the firm regularly engaged in Educational facility design work. Provide names and professional background & North Carolina license/registrations information of staff intended to be used on the proposed CMS work.

2. Previous Experience

- a. Provide information on no less than three (3) K-12 athletic improvement or similar projects for which your firm has provided design and construction administration services during the past five years. Information should include:
 1. Name and address of project
 2. Names of Engineers staff (Senior Executive, Project Designer, Project Manager, Construction Administrator)
 3. Name, address and phone number for Owner's Representative
 4. Type and size of project
 - b. Provide experience and background information on key individuals proposed for the project including the Principal in Charge of the project (Project Executive), proposed project manager (the person who will be directly responsible for the design and production of working drawings), Engineer and Construction Administrator (person who will be directly responsible for the construction phase administration).
3. Name 5 projects similar to the projects identified in the RFQ completed by your proposed project key individuals in the last 5 years. Describe their role in these projects.

- a. Describe your firm's experience working with and expediting permits through Mecklenburg County LUESA, Charlotte City Engineering, NCDPI, NCDOI, CDOT, NCDOT and other local and state approval agencies.
 - b. Client References
 1. Provide a minimum of four (4) client references. Two (2) of the client references should be from Owners similar in function to CMS. Information should include contact name, address, phone number, email and a description of services provided.
4. Describe your firm's knowledge of and experience in integrating the following items into the design along with examples how they have been implemented on past projects:
- (i) Tracks
 - (ii) Drainage and PCCO requirements
5. Legal Information
- a. Identify any judgments, claims, and suits pending or outstanding against your firm or its officers.
 - b. Describe previous litigation, mediation or arbitration pertaining to your design services in which your firm has been involved with during the past five (5) years.
 - c. In the past five (5) years has your firm ever paid a client due to errors or omissions found in the work?
 - d. Indicate any project(s) where your firm has been terminated and the reasons for termination.
 - e. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit, found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity, or been convicted of a crime involving any federal, state or local law related to construction?
 - f. If YES, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.
 - g. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
6. Insurance Information
- a. Does your firm carry professional liability insurance?
 - b. Indicate current practice limits
 - c. Can you provide separate project liability insurance coverage?
 - d. Has your firm provided project liability insurance in the past?
 - e. What was the highest insurance limit provided?
 - f. Provide name of liability insurance company
 - g. Provide Policy Number
 - h. Provide principal insurance company address
 - i. Provide name & address of local agent

it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's

control and without Seller's fault or negligence.

10. Risk of Loss. Seller shall have the risk of loss and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.

11. Rejection. All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

12. Compliance with All Laws. Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.

13. Registered Sex Offenders. Contractor acknowledges that CMBE Policy O-RSO, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off CMBE Property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMBE Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. "CMBE Property" includes all property owned or operated by the Charlotte-Mecklenburg Board of Education, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by CMS.

If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMBE Property.

14. Warranties. Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.

15. Indemnification. Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or

liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

16. Insurance. Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management (“DIRM”), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract.

This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than

\$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

18. Termination for Convenience. In addition to all of the other rights which CMBE may have to cancel this Order, CMBE shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from CMBE to Seller. If the Contract is terminated by CMBE in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CMBE will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.

19. Termination for Default. CMBE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CMBE law or equity, CMBE may procure upon such terms as CMBE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CMBE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

20. Contract Funding. It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

a. Accounting Procedures. Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

21. Improper Payments. Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.

22. Contract Transfer. Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.

23. Contract Personnel. Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

24.Key Personnel. Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).

25.Contract Modifications. The Contract may be amended only by written amendment duly executed by both CMBE and Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

24. Relationship of Parties. Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.
25. Advertisement. The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.
26. Nondiscrimination. During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person based on sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
27. Conflict of Interest. Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
28. Gratuities to CMBE. The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.
29. Kickbacks to Seller. Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.
30. Monitoring and Evaluation. Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE Property and from performing services under the Contract following provision of notice to Seller of the reasons for CMBE's dissatisfaction with the services of Seller's employee.
32. Financial Responsibility. Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
33. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
34. Inspection at Seller's Site. CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and

during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

35. Confidential Information. Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of student's records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.
36. Intellectual Property. Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
37. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.
38. Background Checks. At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.
39. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
40. No Third-Party Benefits. The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.

41. Force Majeure. If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.
42. Ownership of Documents. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.
43. Strict Compliance. CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
44. General Provisions. CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.
45. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.

Protest Procedures

When an offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within (10) Ten consecutive calendar days from the date of the contract award and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those awarded contracts, and not to every person or firm responding to this solicitation. Offerors may call the Procurement Official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within ten consecutive calendar days of the receipt of the protest letter. If not, The Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within thirty consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within thirty consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.

Charlotte Mecklenburg Board of Education

Contract Insurance Guidelines

As of 3/31/2011

INSURANCE: Throughout the term of this contract, the contractor and any of his subcontractors will comply with the insurance requirements described in this section. In the event that the contractor fails to maintain required insurance, Charlotte Mecklenburg Board of Education (herein referred to as CMBE) shall be entitled to terminate or suspend the contract immediately.

The contractor agrees to purchase and maintain the following insurance coverage during the life of the contract:

A) Automobile Liability

Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.

B) Commercial General Liability

Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.

C) Workers' Compensation

Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

CMBE shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this agreement.

The Certificate Holder's Address should read:

The Charlotte Mecklenburg Board of Education P.O. Box 30035, Charlotte, NC 28230-0035

CMBE shall be a designated insured under the auto liability

The contractor shall not commence any work in connection with the resulting contract until it has obtained all the types of insurance set forth in this section and furnished the project manager with proof of insurance coverage by certificates of insurance accompanying the contract. The contractor shall be responsible for notifying CMBE of any material changes (including renewals) to or cancellation of the insurance coverages required above. Notice to CMBE must be completed in writing within 48 hours of the changes.

The contractor shall not allow any subcontractor to commence work until all such subcontractors have obtained the same insurance coverages as described above.

All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the contractor must submit evidence of the right to self-insure as provided by the State of North Carolina.

CMBE shall be exempt from, and in no way liable for any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of the deductible/retention shall be the sole responsibility of the contractor and/or subcontractor.

The contractor's insurance shall be primary of any self-funding and/or insurance otherwise carried by CMBE for all loss or damages arising from the contractor's operations under this agreement. The contractor and each of its subcontractors shall and does waive all rights of subrogation against CMBE and each of the Indemnitees.

Contract #
Lawson Requisition #

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION
CONTRACT FOR SERVICES
(Design/Engineering Services, Small Project)

This Contract for Services ("Contract") is made and entered into DATE between **The Charlotte-Mecklenburg Board of Education**, located in Charlotte, North Carolina ("CMBE") and **FIRM.** ("Designer" or "Contractor" also referenced as "Seller" in the Standard Terms and Conditions).

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of Designer/Engineer.

Designer shall furnish all necessary or required professional architectural, engineering, technical and/or administrative services, labor, materials and supplies ("Services" or "Design Services") to fully, timely, and properly complete the design and related services for **Architectural and Engineering Design Services for Facilities Condition Assessment (FCA) Reconstruction and Renovations a the following Facilities: Lake Wylie Elementary School, Mallard Creek Elementary School, Oaklawn Language Academy, Sedgfield Middle School and Thomasboro Academy** (the "Project") as more particularly described in the proposal dated and a copy is on file with the Designer and the CMBE (the "Proposal").

Individual task will be assigned in writing on a project-by-project basis by an authorized representative of the CMBE. Such writing shall be in the form of a standard purchase order ("Purchase Order"), such Purchase Order to specify the specific services desired by the CMBE (the "Services"), the dates, times and locations that the Contractor shall provide the requested Services; and the compensation that the Contractor will be paid for providing the requested services.

Unless otherwise terminated as set forth herein, the term of this Contract shall be **through**.

The Designer agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Designer represents and warrants that (i) it is duly qualified to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by others practicing under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, and (iv) it shall perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

Designer acknowledges that the Contract Time under which Services to be provided include CMBE and other governing agencies review time, must be strictly adhered to by Designer, and that each milestone phase must be met by Designer, as well as the final completion date.

Designer shall file all applicable permits, plans, specifications, and other documents required and coordinate with all local, state or federal agencies having jurisdiction over any part of the project. The Designer shall submit bid documents to local permitting authorities in advance of construction contract award and arrange for the building permit review and approval subject only to adding the contractor's names, license number, and Contract amounts once the bids are received, and an award recommendation made.

It is the responsibility of the Designer to maintain the Design Schedule. No deviation from the Schedule shall be allowed without written approval for a change in the Schedule. If for any reason it appears any phase of the Project will be delayed, the Designer agrees to immediately notify the CMBE, in writing, and provide an explanation of the delay and a plan to bring the design services into line with the Design Schedule. Should CMBE determine that the Designer is behind schedule, the Designer shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the CMBE. In the event Designer is delayed in the progress of providing the Services, through no fault of Designer, then Designer may be entitled to an extension of the Contract Time. If a delay in the Design Schedule is approved by the CMBE, the Design Schedule will be amended, and the Designer will complete the work within the amended schedule at no additional cost to the CMBE.

INSURANCE. In addition to the insurance required pursuant to Section 16 of the Standard Terms and Conditions, the Designer certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the CMBE and authorized to do business in the State of North Carolina: Professional liability insurance in commercially reasonable amounts as reasonably determined by the CMBE.

PROFESSIONAL CONSULTANTS. The Designer agrees that the names of persons or entities with which the Designer intends to contract for the performance of specialized portions of the services described in this Contract are set forth below. The CMBE and/or Owner’s representatives shall promptly inform the Designer whether there is reasonable objection to any person or entity described therein. The Designer shall not contract with a proposed person or entity to whom a reasonable and prompt objection has been raised.

If there is an objection to a person or entity proposed by the Designer, the Designer shall furnish in writing the name of an alternate to whom there is no objection.

If the Designer desires to change such persons or entities during the term of this Contract, the Designer shall notify the CMBE in writing of any proposed changes, and the CMBE shall promptly inform the Designer whether there are reasonable objections to such change. If there is no prompt objection to the change, then this Contract shall be modified to reflect such change.

FINAL CERTIFICATION. Upon completion of the provision of Services, Designer agrees to certify to the CMBE and to any governmental entity or subdivision, partner designated by the CMBE, that to the Designer’s best knowledge, information and belief, the Services have been provided and the content of the design is in compliance with all Laws, including but not limited to all local, state and federal laws, rules, ordinances and regulations and all environmental laws and regulations imposed by any governmental agency having jurisdiction over the Project. The Designer certification shall contain a statement that no products originally specified or subsequently substituted with the approval of the Designer contain asbestos.

2. Obligations of CMBE. CMBE agrees to pay the Contractor for services as follows:

		Budget Account No. :
(i) Contractor’s Fee	\$ See Exhibit 1	_____
(ii) Travel Not to Exceed	\$ _____	_____
(iii) Lodging/Food Not to Exceed	\$ _____	_____
(iv) Other	\$ _____	_____
(v) Total Not to Exceed	_____	_____

3. Project Coordinator. is designated as the Project Coordinator for CMBE. The Project Coordinator shall be CMBE's representative in connection with the Designer's performance under this Contract. CMBE has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Designer Supervisor. is designated as the Designer Supervisor for the Designer. The Designer Supervisor is fully authorized to act on behalf of the Designer in connection with this Contract.
5. Terms and Methods of Payment. The CMBE will make payment after invoices are approved on a net 30-day basis. The CMBE will not pay for services or materials in advance without the prior approval of the Finance Officer. Designer to submit invoices on the following schedule: **Invoices shall be submitted and paid with the approval of the Project Coordinator.**
6. Additional Provisions.
 - a. Standard Terms and Conditions: Designer agrees to the Standard Terms and Conditions set forth as Attachment A attached hereto and incorporated herein by reference.
 - b. Iran Divestment Act: Designer certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Designer shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
 - c. E-Verification: Designer shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
 - d. Federal Uniform Guidance: Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200)." Include the prohibitions outlined in (2 C.F.R. 200.216) Additional information can be found at: <https://www.cmsk12.org/Page/8947>
7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

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[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, CMBE and the Designer have executed this Contract on the day and year first written above.

FIRM

Contractor Name

Signature of Authorized Representative

Date

Contractor's Federal Identification #

[if Contract is with Organization or Social Security Number if individual]

Originator/Fund Owner Date

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

Executive Director of Building Services Date

Finance Officer Date

REVIEWED BY:

APPROVED AS TO FORM:

Procurement Lead

School Board Attorney Date

REVIEWED BY:

Division of Insurance and Risk Management

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Chief Operations Officer Date

Superintendent (if applicable) Date

Board Chair (if applicable) Date

Attachment A
Standard Terms and Conditions

1. Acceptance. Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and The Charlotte-Mecklenburg Board of Education ("CMBE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CMBE with respect to the purchase by CMBE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CMBE shall control. This Order constitutes an offer by CMBE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to CMBE shall be deemed accepted by or binding on CMBE. CMBE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CMBE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CMBE are subject to correction.
2. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by CMBE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. Prices. If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CMBE the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CMBE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
4. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to CMBE's accounts payable department with a copy to the CMBE Project Coordinator.
5. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
6. Taxes. Applicable taxes shall be invoiced as a separate item.
7. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
8. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

10. Risk of Loss. Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.

11. Rejection. All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

12. Compliance with All Laws. Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.

13. Registered Sex Offenders. Contractor acknowledges that CMBE Policy O-RSO, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMBE Property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMBE Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. "CMBE Property" includes all property owned or operated by the Charlotte-Mecklenburg Board of Education, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by CMS

If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMBE Property.

14. Warranties. Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.

15. Indemnification. Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the

performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

16. Insurance. Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management ("DIRM"), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

17. Termination for Convenience. In addition to all the other rights which CMBE may have to cancel this Order, CMBE shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from CMBE to Seller. If the Contract is terminated by CMBE in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CMBE will not be liable to Seller for any costs for completed Goods, goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.

18. Termination for Default. CMBE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CMBE law or equity, CMBE may procure upon such terms as CMBE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CMBE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

19. Contract Funding. It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

20. Accounting Procedures. Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

21. Improper Payments. Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.

22. Contract Transfer. Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.

23. Contract Personnel. Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

24. Key Personnel. Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).

25. Contract Modifications. The Contract may be amended only by written amendment duly executed by both CMBE and Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

26. Relationship of Parties. Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.

27. Advertisement. The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.

28. Nondiscrimination. During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.

29. Conflict of Interest. Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

30. Gratuities to CMBE. The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.

31. Kickbacks to Seller. Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or

rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.

32. Monitoring and Evaluation. Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE Property and from performing services under the Contract following provision of notice to Seller of the reasons for CMBE's dissatisfaction with the services of Seller's employee.

33. Financial Responsibility. Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.

34. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

35. Inspection at Seller's Site. CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

36. Confidential Information. Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information;

nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

37. Intellectual Property. Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.

38. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

39. Background Checks. At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.

40. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.

41. No Third-Party Benefits. The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.

42. Force Majeure. If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.

43. Ownership of Documents. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

44. Strict Compliance. CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

45. General Provisions. CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber

Seller's rights under this Order or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.

46. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.