

**FORM OF DESIGN BUILD CONSTRUCTION CONTRACT**

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ in the year of 20\_\_ by \_\_\_\_\_ and \_\_\_\_\_ between \_\_\_\_\_

hereinafter called the Party of the First Part (Design-Builder) and the State of North Carolina, through the \_\_\_\_\_

\_\_\_\_\_ hereinafter called the Party of the Second Part (Owner).

**WITNESSETH:**

That the Party of the First Part and the Party of the Second Part for the consideration herein named agree as follows:

1. Scope of Work:

- a. Preconstruction Phase: The Party of the First Part, in consultation direction and/or acceptance from the Party of the Second Part as stated in the General Conditions and from the defined scope of work of the project below, shall determine programmatic needs of the Party of the Second Part, furnish and deliver a complete design for the project including but not limited to architectural and engineering specifications and drawings. Design shall be reviewed and approved by all parties as outlined in the State Construction Manual but at a minimum the reviews shall consist of those of the State Construction Office and the Party of the Second Part. The Party of the First Part shall comply with all design guidelines and criteria of the State Construction Office and those of the Party of the Second Part. The Party of the First Part shall provide all required testing and exploration required for the project. The Party of the First Part shall provide a detailed cost estimate to the Party of the Second Part at each phase of design.

Project Name: \_\_\_\_\_  
 Interscope ID: \_\_\_\_\_  
 Project Scope: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- b. Construction Phase: The Party of the First Part shall furnish and deliver all materials, and perform all of the work in the manner and form as provided by the approved design drawings and specifications from the Preconstruction Phase, and those items not on the approved design to ensure the project is functional and complete. These plans, specifications and documents to be titled \_\_\_\_\_, are attached hereto and made a part thereof as if fully contained herein: advertisement; Instructions to Bidders; General Conditions; Supplementary General Conditions; specifications; accepted proposal; contract; performance bond; payment bond; power of attorney; workmen's compensation; public liability; property damage

and builder's risk insurance certificates; approval of attorney general; certificate by the Office of State Budget and Management.

- 2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within \_\_\_\_\_ consecutive calendar days from said date. For each day in excess thereof, liquidated damages shall be as stated in General and Supplementary General Conditions. The Party of the First Part, as one of the considerations for the awarding of this contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days as outlined in Article 14 of the General Conditions of the Contract.
- 3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

Preconstruction Phase:

\_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_).

Construction Phase: to be determined after completion of the Preconstruction Phase or at an earlier time at the Party of the Second Part's discretion. This cost will amended by change order to this contract.

Summary of Project Costs:

Total Project Budget:	\$ _____
Owner's Expenses/Reserves:	\$ _____
Preconstruction/Design Phase:	\$ _____
Construction Phase:	\$ <u>TBD by Change Order</u>

- 4. In accordance with Article 31 and Article 32 of the General Conditions of the Contract, the Party of the Second Part shall review, and if approved, process the Party of the First Party's pay request within 30 days upon receipt. The Party of the Second Part, after reviewing and approving said pay request, shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.
- 5. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.
- 6. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful

performance, the Second Party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.

7. The Party of the First Part attest that it and all of its subcontractors have fully complied with all requirements of NCGS 64 Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written in \_\_\_\_\_ counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Witness: \_\_\_\_\_  
(Proprietorship or Partnership)

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

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

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

Attest: (Corporation)

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

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

(CORPORATE SEAL)

The State of North Carolina through

\_\_\_\_\_  
(Agency, Department or Institution)

Witness: \_\_\_\_\_

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

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

**FORM OF PERFORMANCE BOND**

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

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

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

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

Name of Contracting  
Body: \_\_\_\_\_

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

Project

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

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

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

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

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

Witness: \_\_\_\_\_

Contractor: (Trade or Corporate Name)

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

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

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

Attest: (Corporation)

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

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

(Corporate Seal)

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

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

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

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

(Surety Corporate Seal)

**FORM OF PAYMENT BOND**

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

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

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

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

Name of Contracting  
Body: \_\_\_\_\_

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

Project \_\_\_\_\_

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

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

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

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

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

Witness:

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

Attest: (Corporation)

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

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

(Corporate Seal)

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

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

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

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

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

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

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

(Surety Corporate Seal)

# Sheet for Attaching Power of Attorney

# Sheet for Attaching Insurance Certificates

APPROVAL OF THE ATTORNEY GENERAL

DRAFT

**CERTIFICATION BY THE OFFICE OF STATE  
BUDGET AND MANAGEMENT**

Provision for the payment of money to fall due and payable by the

\_\_\_\_\_

under this agreement has been provided for by allocation made and is available for the purpose of carrying out this agreement.

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Signed \_\_\_\_\_  
Budget Officer

DRAFT