

**GENERAL CONDITIONS OF THE CONTRACT**

**STANDARD FORM FOR DESIGN-BUILD AND DESIGN-BUILD-BRIDGING PROJECTS**

**NORTH CAROLINA  
DEPARTMENT OF ADMINISTRATION  
STATE CONSTRUCTION OFFICE**

**Form OC-15DB**

**This document is intended for use on State capital construction projects and shall not be used on any project that is not reviewed and approved by the State Construction Office. Extensive modification to the General Conditions by means of “Supplementary General Conditions” is strongly discouraged. State agencies and institutions may include special requirements in “Division 1 – General Requirements” of the specifications, where they do not conflict with the General Conditions.**

**First Edition – March 1, 2018**

## GENERAL CONDITIONS OF THE CONTRACT

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## ARTICLE 1 - DEFINITIONS

- a. The **contract documents** consist of the General Conditions of the Contract; special conditions if applicable; bridging documents if applicable; Supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates; the approval of the attorney general; and the certificate of the Office of State Budget and Management. All of these items together form the contract.
- b. The **Owner** (Governmental Entity) is the State of North Carolina or Owner's designated representative by and through the agency or institution named on the cover sheet, where the project is being built and shall include every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.
- c. The **design professional** or **project designer** means any firm or firms of architects or engineers or both (and their consultants) professional licensed under Chapters 83A, 89A, or 89C of the General Statutes which have undertaken to design the project pursuant to a contract as part of the Design-Builder
- d. **Design-builder.** - An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and/or general, mechanical, electrical, plumbing and/or sprinkler contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of contracting are performed by a licensed general, mechanical, electrical, plumbing, and/or sprinkler contractor.
- e. **Bridging Architect** shall be the design professional contracted by the Governmental Entity separately from the Design Builder for the purpose of developing the bridging documents or Design Criteria services under a Design-Build Bridging contract
- f. **Design Criteria**, also referred to herein as Bridging Documents, shall be the requirements for a public project as expressed drawings and specifications to allow the Design-Builder to make a responsive bid proposal
- g. A **subcontractor** shall be in the case of a principal trade contractor, a general, mechanical, electrical or plumbing contractor or in the case of a specialty contractor, a trade contractor who is not a principal trade contractor, who has entered into a direct contract with the Design-Builder, and includes one who furnishes materials worked to a special or delegated design in accordance with plans and specifications covered by the contract documents.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor or subcontractor as supervised or performed by or on behalf of the Design Builder.
- h. The **project** is the total design and construction work to be performed under the contract documents.

- i. **The Total Lump Sum Value of the Design Builder's work** is comprised of four parts:
  - 1) **Design Services.** A lump sum amount for providing professional services as detailed in Article 15, inclusive of additional services for Construction Phase and Post Construction Phase services
  - 2) **Design Builders General conditions.** A lump sum amount for providing all project site and project related cost for management and administration the construction of the Work inclusive of preconstruction services.
  - 3) **Cost of Work.** A lump sum amount as used herein shall mean the cost for the labor, material, and equipment including subcontractor's cost of work required for the execution of the Project, but exclusive of the Design Builder's Fee for General Construction Services, Design Builder's Fee for Design Services, and Design Builder's cost for General Conditions.
  - 4) **Design Builder's Fee.** A fee for providing Design Services, General Conditions, and Cost of Work which includes all of the Design-Builder's home office costs including all of the Design-Builder's overhead costs and profit.
  
- j. **Change Order**, as used herein, shall mean a written order to the Design-Builder from owner subsequent to the signing of the contract authorizing a change in the design fees and/or contract amount relating to the costs of construction as defined in the contract. The change order shall be signed by the Design-Builder, and the Owner, and approved by the State Construction Office, in that order per Article 19 herein.
  
- k. **Field Order**, as used herein, shall mean a written approval for the Design-Builder to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the Design-Builder, Owner, and State Construction Office (SCO).
  
- l. **Field Change**, as used herein shall mean a written approval from the Owner for the Design-Builder to proceed with work requested by the Owner to be paid for from the Design-Builder Contingency or Owner's Project Reserve within the GMP.
  
- m. **Liquidated damages**, is an amount reasonably estimated in advance to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the CM to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, penalties and violations with environmental laws and regulations, etc.), such other damages directly resulting from delays caused solely by the CM, or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the CM (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
  
- n. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the Design-Builder, and which engages to be responsible for the Design-Builder and his acceptable performance of the work.
  
- o. **Routine written communications between the Design-Builder and the Owner** are any communication other than a "request for owner information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for owner information".

- p. **Clarification or Request for Owner Information (RFOI)** is a request from the Design-Builder seeking an interpretation or clarification by the Project Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Design-Builder's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- q. **Clarification or Request for information (RFI)** is a request from the Design-Builder seeking an interpretation or clarification by the Project Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Design-Builder's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- r. **Inspection** shall mean examination of work completed or in progress to determine its compliance with contract documents.
- s. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents.
- t. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation.

## ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The Design Builder shall execute each copy of the response to RFQ/RFP, contract, performance bond and payment bond as follows:
  - 1. If the documents are executed by a sole Owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
  - 2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.

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

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

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The Design-Builder and the Designer shall prepare clarifications in accordance with progress of the work.
- c. The Designer shall submit and obtain approval from the Authority Having Jurisdiction (AHJ) any clarifications pertaining to Life Safety systems. Life safety items include but not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.

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

- a) In addition to any other requirements of the Owner, the Design-Builder shall furnish as many as required sets of clean black line prints plus an electronic copy of each set at each design milestone for reviewing agencies as well as a final set of Contract Documents to SCO and owner.

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

- a. Within thirty (30) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the Design-Builder and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.
- b. The Design-Builder will be responsible for logging, review, and approval of all shop drawings/submittals prior to submission to the Owner. The Design-Builder is to insure that shop drawings/submittal packages are submitted in an appropriate manner and, if not, return them to the Principal Trade or Specialty Contractor for proper submission.
- c. The Design-Builder shall develop and implement a system for the processing of all shop drawings/submittals and shall be responsible for tracking and monitoring all shop drawings/submittals until all have been approved by the Owner.

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

- a. The Design-Builder shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the Owner or his authorized representative.
- b. The Design-Builder may incorporate some shop drawings into the contract documents during the design of the project
- c. The Design-Builder shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the Design-Builder and submitted to the Owner upon project completion and no later than ninety (90) days after acceptance of the project.
- d. The Design-Builder shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

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

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

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

- a. The Design-Builder shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water and shall require the Principal Trade and Specialty Contractors to, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The Design-Builder shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.

- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the Design-Builder shall require the Principal Trade and Specialty Contractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Design-Builder through the Principal Trade or Specialty Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Design-Builder through the Principal Trade or Specialty Contractor has the option of using any product and manufacturer combination listed. However, the Design-Builder through the Principal Trade or Specialty Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The Design-Builder will be responsible for reviewing all substitution requests from Principal Trade or Specialty Contractors prior to submission to the Owner and shall track & monitor all such requests.
- e. The Design-Builder shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer, in consultation and approval of the owner, is the judge of equality for proposed substitution of products, materials or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Design-Builder, or if any workman be considered detrimental to the work, the Design-Builder shall order such parties removed immediately from grounds.

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

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

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

- a. The Design-Builder shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the Design-Builder performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without

such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.

- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the Design-Builder unless otherwise specified.
- c. Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The Design-Builder shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.
- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The Design-Builder shall pay the cost of these permits and inspections unless otherwise specified.

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

- a. The Design-Builder shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner, and by laws or ordinances governing such conditions. The Design-Builder shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The Design-Builder shall be responsible for and pay for any damages caused to the Owner. The Design-Builder shall have access to the project at all times.
- b. The Design-Builder shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Owner.
- d. The Design-Builder shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The Design-Builder shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. The Design-Builder shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The Design-Builder shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f. The Design-Builder shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the

Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.

- g. The Design-Builder shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.
- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the Design-Builder is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the Design-Builder on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

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

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

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

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designated official representatives of the Owner, State Construction Office and those persons required by state law to test special work for official approval. The

Design-Builder shall therefore provide all equipment necessary and safe access to the work at all times for such inspections.

- b. All instructions to the Design-Builder will be made only by or through the designated project representative. Observations made by official representatives of the Owner shall be conveyed to the Design-Builder in writing.
- c. The Design-Builder shall perform quality control inspections on the work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the work. The Design-Builder shall advise the Project Designer and owner of any apparent variation and/or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the Design-Builder shall give adequate notice to the Project Designer and owner of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Designer and/or owner, or his authorized representative, and it shall be the Design-Builder's responsibility to serve ample notice of such tests.
- e. All laboratory tests shall be paid by the Design-Builder including but not limited to laboratory tests for hazardous materials and to establish design mix for concrete and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- f. Should any work be covered up or concealed prior to inspection and approval by the Project Designer, owner and/or (SCO) such work shall be uncovered or exposed for inspection, Inspection of the work will be made promptly upon notice from the Design-Builder. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the Design-Builder.

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

- a. On-site representatives of the Design-Builder shall manage the work of the Principal Trade and Specialty Contractors and coordinate the work with the activities of the Owner to complete the project with the Owner's objectives of cost, time and quality. Throughout the progress of the work, the Design-Builder shall maintain a competent and adequate full-time staff approved by the Owner. It is understood that the designated and approved on-site representatives of the Design-Builder will remain on the job and in responsible charge as long as those persons remain employed by the Design-Builder unless otherwise requested or agreed to by the Owner. The Design-Builder shall establish an on-site organization with appropriate lines of authority to act on behalf of the Design-Builder. Instructions, directions or notices given to the designated on-site authority shall be as binding as if given to the Design-Builder. However, directions, instructions, and notices shall be confirmed in writing.
- b. {NOT USED}
- c. {NOT USED}
- d. The Design-Builder shall call and preside over monthly job site progress conferences. All Principal Trade and Specialty Contractors, as well as Designer and all subconsultants, shall be represented at these job progress conferences by both home office and project personnel. The Design-Builder shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose

of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. The Design-Builder shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate.

- e. The Design-Builder shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. {NOT USED}
- g. Prior to bidding, it shall be the responsibility of the Design-Builder to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the owner for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages. After contract award but prior to thirty (30) days from the date of the notice to proceed, the Design-Builder shall obtain from the Principal Trade and Specialty Contractors their respective work activities and integrate them into a project construction schedule in CPM form. The resulting CPM schedule shall show all salient features of the work required for construction of the project from start to finish within the time allotted by the contract. The time in days between the Design-Builder's early completion date and the contractual completion date is project float time and shall be used as such by the Design-Builder unless amended by change order. The Design-Builder shall submit to the owner an electronic and paper copy of the final CPM schedule after contracts are executed but within fifteen (15) days prior to the written notice to proceed. The owner after reviewing and commenting on the project CPM schedule shall submit it to the Design-Builder for incorporation of comments. No application for payment will be processed until the project CPM schedule is approved by the Owner. No monthly application for payment will be processed without the submission of an electronic and paper copy of the CPM schedule attached.
- h. The CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- i. The Design-Builder shall distribute to the principal trade and specialty contractors the approved project CPM schedule and shall display same at the job site.
- j. The Design-Builder shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the project within the time allotted by the contract. In doing so, the Design-Builder shall keep the designer as well as all Principal Trade and Specialty Contractors fully informed as to all changes and updates to the schedule. The Design-Builder shall submit to the owner a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the Design-Builder must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the Design-Builder shall prepare and submit to the owner a recovery schedule for review and approval. Failure of the Design-Builder to abide by the directives in

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

#### **ARTICLE 15 – {NOT USED}**

#### **ARTICLE 16 - PRINCIPAL TRADE AND SPECIALTY CONTRACTS AND CONTRACTORS**

- a. Where the Design-Builder has provided a list of licensed contractor and/or subcontractors in the Design-Builder's formal response to the Request for Proposal whom the design-builder proposes to use for the project's design and construction, the Design-Builder shall award contracts to those licensed contractors and/or subcontractors based on their fixed price proposal and taking into consideration the quality, performance, time specified in the proposal, compliance with N.C.G.S. 143-128.2 and other factors deemed appropriate by the Owner. Any Principal Trade and Specialty Contracts that are not listed in the Design-Builder's formal response to the Request for Proposal, or that will not be self-performed, shall be publicly advertised and shall be opened publically in a public venue, and once opened, shall be public records under N.C.G.S. 132. The Design-Builder shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. 143-128.2, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. 143-128(f1). Once Principal Trade and Specialty Contractors are in place, the Design-Builder shall provide copies of the contracts to the owner and also provide a list of equipment and material suppliers.
- b. The Design-Builder will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the Design-Builder on account of the work of the Principal Trade or Specialty Contractor.
- c. The Design-Builder is and remains fully responsible for his own acts or omissions as well as those of any Principal Trade or Specialty Contractor or of any employee of either. The Design-Builder agrees that no contractual relationship exists between the Principal Trade and Specialty Contractors and the Owner in regard to the contract, and that the Principal Trade and Specialty Contractors act on this work as an agent or employee of the Design-Builder.

#### **ARTICLE 17 – DESIGN-BUILDER AND SUBCONTRACTOR RELATIONSHIPS**

The Design-Builder agrees that the terms of these contract documents shall apply equally to each Principal Trade and Specialty Contractor as to the Design-Builder, and the Design-Builder agrees to take such action as may be necessary to bind each Principal Trade and Specialty Contractor to these terms. The Design-Builder further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to Design-Builder-subcontractor relationships, and that payments to Principal Trade and Specialty Contractors shall be made in accordance with the provisions of N.C.G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

- a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to N.C.G.S. 136-28.1, the balance due the Design-Builder shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the Owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the Owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that

whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the Design-Builder, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. Should final payment to the Design-Builder beyond the date such contracts have been certified to be completed by the Project Design-Builder, accepted by the Owner, or occupied by the Owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said Design-Builder shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the Design-Builder during construction shall be paid in accordance with the payment provisions of the contract documents or said Design-Builder shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

- b. Within seven days of receipt by the Design-Builder of each periodic or final payment, the Design-Builder shall pay the Principal Trade and Specialty Contractors based on work completed or service provided under their contract with the Design-Builder. Should any periodic or final payment to a Principal Trade or Specialty Contractor be delayed by more than seven days after receipt of periodic or final payment by the Design-Builder, the Design-Builder shall pay the Principal Trade or Specialty Contractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
- c. The percentage of retainage on payments made by the Design-Builder to the Principal Trade and Specialty Contractors shall not exceed the percentage of retainage on payments made by the Owner to the Design-Builder. Any percentage of retainage on payments made by the Design-Builder to the Principal Trade or Specialty Contractors that exceeds the percentage of retainage on payments made by the Owner to the Design-Builder shall be subject to interest to be paid by the Design-Builder to the Principal Trade or Specialty Contractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent the Design-Builder at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Principal Trade or Specialty Contractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of the Principal Trade or Specialty Contractor to make timely payments for labor, equipment and materials; damage to Design-Builder or another subcontractor; reasonable evidence that a Principal Trade or Specialty Contract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

## **ARTICLE 18 - DESIGNER'S STATUS**

- a. The Design-Builder shall contract with a licensed design professional to perform professional engineering or architectural services and this licensed design professional shall serve as the Project Designer. The Project Designer shall provide necessary inspection of the work to ensure compliance with plans and specifications. He has authority to notify the Design-

Builder and the Owner of work that needs to be removed, corrections to faulty work or other such actions that may be necessary to assure successful completion of the work.

- b. The Project Designer even while contracted for services with the Design builder shall maintain a position of an impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the Design-Builder, taking sides with neither.
- c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Design-Builder shall employ a competent replacement, approved by the owner, who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The Design-Builder shall provide facilities for such access so the Designer and Owner may perform his functions under the contract documents.
- f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the Owner in the administration of the project. The Owner's decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The Design-Builder's decisions, however, relating to means and methods, and administration of the contracts the Design-Builder holds are final.

## **ARTICLE 19 - CHANGES IN THE WORK**

- a. The Owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the Design-Builder from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change in the GMP contract shall be made by the Design-builder except upon receipt of approved change order or written field order from the Design Builder , countersigned by the owner and the State Construction Office authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A Field Order, transmitted by fax, digitally, or hand delivered may be used where the change involved impacts the critical path\_of the work. A formal Change Order shall be issued within the time stated on the field order.

The Design-Builder may be requested to make a change to the work by the Owner where such work is to be funded by the Design-Builder Contingency or Project Reserve that is part of the GMP contract. Such a change must be documented in the same manner as a Change Order and must be authorized in writing by the Owner by a Field Change document.

In the event of emergency endangering life or property, the Design-Builder may be directed to proceed on a time and material basis whereupon the Design-Builder shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper

invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, the Design-Builder and Principal Trade and Specialty Contractors are restricted to the use of the following methods:
  1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
  2. Otherwise, the contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined the allowances for overhead and profit combined shall be as follows: all contractors (the single contracting entity (Design Builder), his subcontractors (1st tier subs), or their sub-subcontractors (2nd tier subs, 3rd tier subs, etc)) shall be allowed a maximum of 10% on work they each self-perform; the Design Builder shall be allowed a maximum of 5% on contracted work of his 1st tier sub; 1st tier, 2nd tier, 3rd tier, etc contractors shall be allowed a maximum of 2.5% on the contracted work of their subs. No additional allowances for overhead and profit shall be allowed. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
  1. The actual costs of materials and supplies incorporated or consumed as part of the project;
  2. The actual costs of labor expended on the project site;
  3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent(30%) of the actual costs of labor;
  4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;
  5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner.

- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days

after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

All change orders shall be supported by a breakdown showing method of arriving at net cost as defined above.

- g. In all change orders, the procedure will be for the Design-Builder or the Owner to request proposals for the change order work in writing. The Design-Builder will require the Principal Trade and Specialty Contractors to provide such proposals and supporting data in suitable format and will review and approve such change orders prior to submission to the Owner. The Designer shall verify correctness and make a recommendation to the Owner. If the Owner agrees with the Designer's recommendation, they shall execute the change order and forward to the State Construction Office for final approval, within fourteen (14) days of receipt or forward a response to the Design Builder within the same time period. The State Construction Office shall act on the change order within seven (7) days. Upon approval by the State Construction Office, the State Construction Office shall distribute to the Owner for distribution to the Design-Builder and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the Design-Builder shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- j. If, during the progress of the work, the Owner requests a change order and the Design-Builder's terms are unacceptable, the Owner, with the approval of the State Construction Office, may require the Design-Builder to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

## **ARTICLE 20 - CLAIMS FOR EXTRA COST**

- a. Should the Design-Builder consider that as a result of any instructions given in any form by the Owner, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the Owner within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The Design-Builder shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The Owner shall render a written decision within fourteen (14) days of receipt of claim.
- b. The Design-Builder shall not act on instructions received by him from persons other than the Owner, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Owner will not be responsible for misunderstandings

claimed by the Design-Builder of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

- c. Should a claim for extra compensation by the Design-Builder be denied by the Owner, and cannot be resolved by a representative of the State Construction Office, the Design-Builder may request a mediation in connection with N.C.G.S. 143-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the Design-Builder is unable to resolve its claims as a result of mediation, then the Design-Builder may pursue his claim in accordance with the provisions of N.C.G.S. 143-135.3 and the following:
  1. A Design-Builder who has not completed a contract with a state agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the Design-Builder claims is due. The Director may deny, allow or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under N.C.G.S. Chapter 150B.
  2. (a) A Design-Builder who has completed a contract with a State agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the Design-Builder claims is due. The claim shall be submitted within sixty (60) days after the Design-Builder receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.
    - (b) The Director shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the Director and the Design-Builder agree. The Design-Builder may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny or compromise the claim, in whole or in part. The Director shall give the Design-Builder a written statement of the Director's decision on the Design-Builder's claim.
    - (c) A Design-Builder who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within sixty (60) days of receiving the Director's written statement of the decision.
    - (d) As to any portion of a claim that is denied by the Director, the Design-Builder may, in lieu of the procedures set forth in the preceding subsection of this section, within six (6) months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

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

The Owner will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract

documents. Such changes shall be effected by written order, copied to the State Construction Office, and shall be binding on the Owner and the Design-Builder.

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

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

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

- a. The final completion date will be as determined by the Owner and Design-Builder during the pre-construction phase of the project and will be incorporated into the contract for construction services between the Owner and the Design-Builder.
- b. The Design-Builder shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the Owner and shall fully complete all work hereunder within the time of completion specified. For each day in excess of the above number of days, the Design-Builder shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the Design-Builder to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. {NOT USED}
- d. If the Design-Builder is delayed at any time in the progress of his work by any act or negligence of the Owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the Owner determine may justify the delay, then the contract time may be extended by change order for the time which Owner may determine is reasonable and is supported by schedule analysis from the Design-Builder demonstrating delays/impacts to completing critical path activities in the schedule submitted under Article 14 (including but not limited to delayed starts, finishes and/or extended durations, etc.).

Time extensions will not be granted for rain, wind, snow or other natural phenomena of **normal intensity** for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the Design-Builder reflecting the effect of the weather on progress of the work and initialed by the designer's representative. Time extensions for weather delays do not entitle the Design-Builder to "extended overhead" recovery. No weather delays will be considered after the building is dried in unless work claimed to be delayed is on the critical path of the approved baseline schedule or approved updated schedule. Time extensions for acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle the Design-Builder compensable damages for delays. Any claim for compensable damages for delays is limited to delays solely by the Owner. In the case of concurrent delays, Design-Builder caused delays shall be accounted for before Owner caused delays.

- e. Request for extension of time shall be made in writing within twenty (20) days following cause of delay and shall include supporting schedule analysis referenced in paragraph (d) above and/or as required in supplemental general conditions and/or specifications. In case of continuing cause for delay, the Design-Builder shall notify the Owner of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- f. The Design-Builder shall notify his surety in writing of extension of time granted.

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

- a. The Owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Prior to the final payment, the Owner, with the approval of the State Construction Office, may request the Design-Builder in writing, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the Design-Builder agrees, the Owner will schedule a beneficial occupancy inspection, with the approval of the State Construction Office, after which the Design Builder will prepare a certificate of substantial completion. The certificate shall include the following documentation:
  - 1. Date of beneficial occupancy.
  - 2. A tentative list of items to be completed or corrected before final payment.
  - 3. Establishing responsibility between the Design-Builder and Owner for maintenance, heat, utilities and insurance.
  - 4. Establishing the date for guarantees and warranties under terms of the contract.
  - 5. Consent of surety.
  - 6. Endorsement from insurance company permitting occupancy.
- c. The Owner shall have the right to exclude the Design-Builder from any part of the project which the Project Designer has so certified to be substantially complete, but the Owner will allow the Design-Builder reasonable access to complete or correct work to bring it into compliance with the contract.
- d. Occupancy by the Owner under this article will in no way relieve the Design-Builder from his contractual requirement to complete the project within the specified time.

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

- a. Upon notification from the Design-Builder that the project is complete and ready for inspection, the Project Designer shall make a preliminary final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the Design-Builder shall ensure that all items requiring corrective measures noted at the preliminary inspection are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner, the Design-Builder and the State Construction Office.
- b. {NOT USED}

- c. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the Project Designer and State Construction Office representative shall make the following determinations:
  - 1. That the project is completed and accepted.
  - 2. That the project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the Owner may invoke Article 28, Owner's Right to Do Work.
  - 3. That the project is not complete and another date for a final inspection will be established.
- d. Within fourteen (14) days of acceptance per Paragraph c1 or within fourteen (14) days after completion of punch list per Paragraph c2 above, the Project Designer shall certify the work and issue applicable certificate(s) of compliance.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs c1 or c2 above shall be handled in accordance with Article 42.
- f. The date of acceptance will establish the following:
  - 1. The beginning of guarantees and warranties period.
  - 2. The date on which the Design-Builder's insurance coverage for public liability, property damage and builder's risk may be terminated.
  - 3. That no liquidated damages (if applicable) shall be assessed after this date.
  - 4. The termination date of utility cost to the Design-Builder (if applicable).

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

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

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

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, shall relieve the Design-Builder from responsibility for negligence, or faulty material or workmanship, or failure to comply with the

drawings and specifications. The Design-Builder shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the Design-Builder and establish a time limit for completion of corrections by the Design-Builder. The Owner will be the judge as to the responsibility for correction of defects.

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

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

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

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

## **ARTICLE 30 – DESIGN-BUILDER’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the Design-Builder, or if the Owner should fail or refuse to make payment on account of a certificate issued within thirty (30) days after receipt of same, then the Design-Builder, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner, may suspend operations on the work or terminate the contract.
- b. The Owner shall be liable to the Design-Builder for the cost of all materials delivered and work performed on this contract plus 10 percent overhead and profit and shall make such payment.

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

- a. Based on applications for payment submitted to the Project Designer by the Design-Builder and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the Design-Builder as provided below and elsewhere in the contract documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Provided an application for payment is received by the Project Designer not later than the 5<sup>th</sup> day of the month, the Owner shall make payment to the Design-Builder not later than the 20<sup>th</sup> day of the following month. If an application for payment is received by the Project Designer after the application date fixed above, payment shall be made by the Owner not later than forty-five days after the Project Designer receives the application for payment.
- c. Prior to submitting the first payment request, the Design-Builder shall prepare a schedule showing a breakdown of the contract price into values of the various parts of the GMP contract. The Cost of the Work breakdown will be arranged so as to facilitate payments to the Principal Trade and Specialty Contractors in accordance with Article 17. The combined Design-Builder Construction Management Fee, Bonds & Insurance, Design-Builder Contingency, and Project Reserve (if any) will be shown on the Schedule of values as separate lines. The values for the Design-Builder Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require.
- d. Applications for payment shall be in a form agreed upon by the Design-Builder, and Owner and shall prepared and supported by such data to substantiate the accuracy of the request as the Owner may require.
- e. Subject to other provisions of the contract documents, the amount of each progress payment shall be computed as follows:
  1. Take that portion of the GMP properly allocable to completed work as determined by multiplying the percentage completion of each portion Cost of the Work by the share of the GMP allocated to that portion of the work in the schedule of values.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
  3. Subtract the aggregate of previous payments made by the Owner.
  4. Subtract the amount, in any, by which the Design-Builder has been previously overpaid, as evidenced by the Owner's review of the Design-Builder's documentation.
  5. Subtract amounts, if any, for which the Owner has withheld or nullified a certificate of payment.
  6. Subtract retainage as per paragraph (h) below.
  7. Add the amount due for the Design-Builder Fee calculated on the basis the percentage completion of the project or on a schedule of payment negotiated with the Owner less fifteen percent (15%) and less previous payments for Design-Builder Fee.
- f. Payment allocated to Principal Trade and Specialty Contractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and the State Construction Office and with written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule. The balance of the Design-Builder Fee shall be held by the Owner until satisfactory completion and close out of the project. Satisfactory completion and close out of the project means that the Owner and Project Design-Builder are satisfied that the project has been completed in accordance with the plans and specifications and within the GMP, all general conditions of the contract pertaining to close out have been satisfied, and all Principal Trade and Specialty Contractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance
- g. Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the site.
- h. The Project Designer shall take action on the Design-Builder's application for payment in accordance with the Agreement between the Design Builder and Project Designer. The Project Designer's certification for payment shall be based upon the Project Designer's on-site inspection and the documentation submitted by the Design-Builder with the application for payment.

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

- a. Within five (5) days from receipt of request for payment from the Design-Builder, the Project Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the Project Designer. If the certificate is not approved by the Project Designer, he shall state in writing to the Design-Builder and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
  1. Claims arising from unsettled liens or claims against the Design-Builder.

2. Faulty work or materials appearing after final payment.
  3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
  4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the Design-Builder except those claims previously made and remaining unsettled (Article 20(c)).
  - d. Prior to submitting request for final payment to the Project Designer for approval, the Design-Builder shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but not limited to the following:
    1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The Project Designer must approve the Manuals prior to delivery to the Owner).
    2. Transfer of required attic stock material and all keys in an organized manner.
    3. Record of Owner's training.
    4. Resolution of any final inspection discrepancies.
  - e. The Design-Builder shall forward to the Project Designer, the final application for payment along with the following documents:
    1. List of minority business subcontractors and material suppliers showing breakdown of contracts amount.
    2. Affidavit of Release of Liens.
    3. Affidavit from Design-Builder of payment to material suppliers and subcontractors. (See Article 36).
    4. Consent of Surety to Final Payment.
    5. Certificates of state agencies required by state law.
  - f. The Project Designer will not authorize final payment until the work under contract has been certified by Project Designer, certificates of compliance issued, and the Design-Builder has complied with the closeout requirements. The Project Designer shall forward the Design-Builder's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

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

- a. The Owner with the approval of the State Construction Office may withhold payment for the following reasons:
  1. Faulty work not corrected.

2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the Design-Builder.
- b. The Secretary of the Department of Administration may authorize the withholding of payment for the following reasons:
1. Claims filed against the Design-Builder or evidence that a claim will be filed.
  2. Evidence that Principal Trade or Specialty Contractors have not been paid.
- c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the Design-Builder without cause will make Owner liable for payment of interest to the contractor as provided in N.C.G.S. 143-134.1.

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

The work under this contract shall not commence until the Design-Builder has verified to the Owner that all required insurance and verifying certificates of insurance have been obtained and approved in writing by the Owner. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled, reduced in amount or coverage's eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Owner of such alteration or cancellation.

**a. Worker's Compensation and Employer's Liability**

The Design-Builder shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of the contract, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

**b. Public Liability and Property Damage**

The Design-Builder shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of the contract, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury Liability: \$1,000,000 for each person and \$1,000,000 for each accident  
 Property Damage Liability: \$1,000,000 for each accident and \$3,000,000 for the aggregate of operations

In lieu of limits listed above, a \$3,000,000 combined single limit shall satisfy both conditions.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the work performed under the contract.

**c. Property Insurance (Builder's Risk/Installation Floater)**

The Design-Builder shall ensure that it and all Principal Trade and Specialty Contractors shall purchase and maintain property insurance during the life of this contract, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Design-Builder, and subcontractors in the work and shall insure against the perils of fire, extended coverage, and vandalism and malicious mischief. If the Owner is damaged by failure of the Design-Builder to purchase or maintain such insurance, then the Design-Builder shall bear all reasonable costs properly attributable thereto; the Design-Builder shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

**d. Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Design-Builder.

**e. Other Insurance**

The Design-Builder shall ensure that it and all Principal Trade and Specialty Contractors shall obtain such additional insurance as may be required by the Owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

**f. Proof of Carriage**

The Design-Builder shall ensure that it and all Principal Trade and Specialty Contractors shall furnish the Owner with satisfactory proof of carriage of the insurance required before written approval is granted by the Owner.

**g. Professional Liability**

The Project Designer, which includes the prime designer and all his consultants on the Design-Build team, shall each carry a minimum of \$3,000,000 of professional liability.

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

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

**ARTICLE 36 - CONTRACTOR'S AFFIDAVIT**

The final payment of retained amount due the Design-Builder on account of the contract shall not become due until the Design-Builder has furnished to the Owner through the Project Designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work to Principal Trade and Specialty Contractors in connection with his contract have been satisfied, and that no claims or liens exist against the Design-Builder in connection with this contract. In the event that the Design-Builder cannot obtain similar affidavits from the Principal Trade and Specialty Contractors to protect the Design-Builder and the Owner from

possible liens or claims against the subcontractor, the Design-Builder shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the Design-Builder's) knowledge, and if any appear afterward, the Design-Builder shall save the Owner harmless.

#### **ARTICLE 37 - ASSIGNMENTS**

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

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

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

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

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

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

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

- c. {NOT USED}
- d. Prior to the operation of permanent systems, the Design-Builder will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. The Design-Builder shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the Design-Builder and the owner. Use of the equipment in this manner shall in no way affect the warranty requirements of the Design-Builder.
- f. The Design-Builder shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- g. The Design-Builder shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. The Design-Builder shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
  - 1. Prior to acceptance of work by the Owner, the Design-Builder shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
  - 2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.
  - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.
  - 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
  - 5. The Design-Builder shall ensure that all lamps are in proper working condition at the time of final project acceptance.
- i. The Design-Builder shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate

sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.

- j. The Design-Builder shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- k. On multi-story construction projects, the Design-Builder shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included as part of the work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
- l. The Design-Builder will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the Design-Builder's name, and the name of the Project Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

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

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

#### **ARTICLE 42 - GUARANTEE**

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

beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

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

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

#### **ARTICLE 44 - INDEMNIFICATION**

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

#### **ARTICLE 45 - TAXES**

- a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).
- b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the bid proposal and contract sum.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the bid proposal and contract sum.
- e. Accounting Procedures for Refund of County Sales & Use Tax

Amount of county sales and use tax paid per Design-Builder's statements:

Design-Builder's performing contracts for state agencies shall ensure that the Principal Trade and Specialty Contractors provide information to allow the Design-Builder to give the state agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C.G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor

setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

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

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

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

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

Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

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

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

#### **ARTICLE 47 - EMPLOYMENT OF THE HANDICAPPED**

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

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

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. Construction Managers are reminded of the requirements of instructions under General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* from the State Construction Office is to be incorporated in all asbestos abatement projects for the Capital Improvement Program. Design-Builder shall be responsible to have all areas that will be impacted by the construction tested for ACM and removed per federal and state laws, criteria and guidelines.

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

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

The Owner shall require the Design-Builder to submit a plan for compliance with N.C.G.S.143-128.2 by approval by the Owner prior to soliciting bids for the Principal Trade and Specialty Contracts. The Design-Builder and Principal Trade and Specialty Contractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to N.C.G.S. 143-128.2.

## **ARTICLE 50 – CONTRACTOR EVALUATION**

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

## **ARTICLE 51 – GIFTS**

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any state employee of any gift from anyone with a contract with the state, or from any person seeking to do business with the State. By execution of any response in this contract, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

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

## ARTICLE 53 – NORTH CAROLINA FALSE CLAIMS ACT

The North Carolina False Claims Act (“NCFCA”), N.C Gen. Stat. § 1-605 through 1-618, applies to this contract. The Design-Builder should familiarize itself with the entire NCFCA and should seek the assistance of an attorney if it has any questions regarding the NCFCA and its applicability to any requests, demands and/or claims for payment its submits to the State through the contracting state agency, institution, university or community college. The purpose of the NCFCA “is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim.” (Section 1-605(b).) A Design-Builder’s liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for loss productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, documentation used to support any of the foregoing requests or claims, and/or any other request for payment from the State through the contracting state agency, institution, university or community college. The parts of the NCFCA that are most likely to be enforced with respect to this type of contract are as follows:

A “claim” is “[a]ny request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor ... if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government: (a) provides or has provided any portion of the money or property that is requested or demanded; or (b) will reimburse such contractor ... for any portion of the money or property which is requested or demanded.” (Section 1-606(2).)

"Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following: (a) Has actual knowledge of the information; (b) Acts in deliberate ignorance of the truth or falsity of the information; and/or (c) Acts in reckless disregard of the truth or falsity of the information. (Section 1-606(4).) Proof of specific intent to defraud is not required. (Section 1-606(4).)

"Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. (Section 1-606(4).)

Liability. – “Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person[:] ... (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. (3) Conspires to commit a violation of subdivision (1), (2) ...” (Section 1-607(a)(1), (2).)

The NCFCA shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act. (Section 1-616(c).)

Finally, the contracting state agency, institution, university or community college may refer any suspected violation of the NCFCA by the Design-Builder to the Attorney General's Office for investigation. Under Section 1-608(a), the Attorney General is responsible for investigating any violation of NCFCA, and may bring a civil action against the Design-Builder under the NCFCA. The Attorney General's investigation and any civil action relating thereto are independent and not subject to any dispute resolution provision set forth in this contract. (See Section 1-608(a).)

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

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

#### **ARTICLE 55 – DESIGN REQUIREMENTS OF DESIGN-BUILDER**

##### Schematic Design

- 1-1 The Designer shall consult with the Owner to ascertain the requirements of the project and shall confirm such requirements to the Owner.
- 1-2 He shall prepare schematic design studies (see State Construction Manual), leading to a recommended solution together with a general description of the project for approval by the Owner.
- 1-3 Design-Builder shall submit to the Owner a statement of probable construction cost based on the area, volume or other current unit costs. (See State Construction Manual.)

##### Design Development

- 1-4 The Designer shall prepare from the approved schematic design studies, for approval by the Owner, the design development documents which shall include site and floor plans, elevations and other drawings, and outline specifications as are necessary to fix and illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, and such other work as may be required, including site and utility requirements.

- 1-5 Design-Builder shall submit to the Owner a further statement of probable construction cost. (See State Construction Manual.)

#### Construction Document

- 1-6 The Designer shall prepare from the approved design development documents, working drawings and specifications setting forth in detail and prescribing the work to be done and the materials, workmanship, finishes and equipment required for the engineering, architectural, structural, mechanical, electrical and the site work, and for service-connected equipment; and assemble the necessary bidding information, proposal and contract forms, and conditions of the contract, for approval by the Owner. (See State Construction Manual.)
- 1-7 Design-Builder shall submit to the Owner a further statement of probable construction cost as indicated by fully developed requirements and current market conditions. (See State Construction Manual.)
- 1-8 The Design-Builder shall prepare and file the required documents for the approval of governmental authorities having jurisdiction over the project.

#### Construction

- 1-9 The designer's responsibilities during Construction shall be as described in State Construction Manual, and as set forth hereinafter. His responsibilities shall include the following:
- a) Process and approve, or take other appropriate action in respect of, progress schedules, shop drawings and other required submissions of contractors promptly;
  - b) Process contractors' applications for payment promptly for authorized work and issue certificates of payment;
  - c) Review "MBE Documentation for Contract Payment" – (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the Owner and forward copies to the State Construction Office.
  - d) Provide general administration of the performance of construction contracts, including inspection and continuous liaison of the work to ensure compliance with plans and specifications, which inspection shall be by qualified and mutually agreed upon representatives of the designer's firm not less than once per week while work is in progress, and as often as necessary to ensure compliance with plans and specifications;
  - e) Require all in-house consultants and contract consultants participating in the design of the project, and as named in Article 13 of this contract, to provide liaison and inspection services with respect to their portion of the design not less than once per week while work related to their design is in progress and as often as necessary to ensure compliance with plans and specifications;

- f) Schedule and conduct final inspection of the project, coordinating the date for such inspection with the Owner and with the State Construction Office;
  - g) Assemble written guarantees, affidavits, manuals of instruction for operation, and other required and closing papers of the contractors; issue certificates of final completion, certificates of compliance from various in-house and contract consultants as required by G.S. 133-1.1, final certificates for payment; and set date for beginning of the guarantee period, forwarding all closing papers to the Owner;
- 1-10 The Designer agrees that his representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of plans and specifications, and shall be empowered by the Designer to do so; such decisions and interpretations shall be binding upon the Designer as if made by him; all such decisions shall be confirmed in writing at the earliest reasonable date, with copies to the Owner and the State Construction Office, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents; the designer's representatives shall be replaced promptly and without protest at the request of the Owner, if in the opinion of the Owner and the State Construction Office, such representatives are either negligent or unqualified to perform their duties; and all of the above in this paragraph shall be applicable to consultants referred to in Paragraph 1-14(h) above.

#### Post-Construction Phase

- 1-11 Upon completion of the project, the Designer shall correct the drawings to conform to the project as finally constructed, and shall deliver to the Owner and to the State Construction Office corrected record drawings.
- 1-12 Prior to final payment to the Designer, he shall prepare and deliver to the Owner and to the State Construction Office a final report. (See State Construction Manual.)
- 1-13 Five percent (5%) of the total fee of the Designer shall be retained until approval of the record drawings and final report by the State Construction Office and the Owner. Final payment can be made after letter of approval is received by the Owner from the State Construction Office.

#### Additional Services

- 1-14 In the event the Owner, with the approval of the State Construction Office, requests in writing that the Designer perform services over, above and beyond the basic services described in Article 1 hereof, then the Designer may be paid for such additional services as herein before provided. Additional services, for which additional compensation may be allowed, are as described hereinafter.

- a) Revising previously approved design development or working drawings or specifications to accomplish changes ordered by the Owner, except where required to get the cost within the total project budget;
- b) Preparing drawings and specifications for alternate bids for work beyond the scope of that originally contemplated in this Agreement; (when alternates are used to assure keeping project within the total project budget, no additional fee shall apply);
- c) Making an inspection of the project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contracts;
- d) Other services as may be required will be negotiated.

#### Cost Limitations

- 1-15 The total project cost, as indicated in the contract, is derived from a specific appropriation or funds specifically provided for the particular project. Accordingly, the Designer shall conform his plans to a design, the construction cost of which together with the addition of design fees, shall not exceed the total project cost.
- 1-16 In the event that during the several stages of development of his plans the Design-Builder's Statement of Probable Construction Cost together with design fees exceeds the limitations set forth, the Owner shall have the right to require the Designer, without any additional cost to the Owner, to modify his plans and specifications or redesign the project as may be necessary to bring the construction cost plus design fees within the Total Project Cost.

#### Ownership of Plans and Specifications

- 1-17 All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the sole property of the State of North Carolina and may be used on any other design or construction without additional compensation to the Designer. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the project, shall be at the full risk of such person or entity and the Designer shall be relieved of any liability whatsoever, including claims for personal injury, property damage, or death as a result of such other use.