GENERAL CONDITIONS
TO
CONTRACT

TABLE OF CONTENTS

Article 1 - Definitions 1
Article 2 - Intent and Execution of Documents 3
Article 3 - Clarifications, Detail Drawings, and Investigations 4
Article 4 - Copies of Drawings and Specifications 6
Article 5 - Shop Drawings, Submittals, Samples, Product Data 6
Article 6 - Working Drawings and Specifications at the Job Site; as Built Drawings 8
Article 7 - Ownership of Drawings and Specifications 9
Article 8 - Materials, Equipment, Workmanship 9
Article 9 - Royalties, Licenses and Patents 10
Article 10 - Permits, Inspections, Fees, Regulations, Town as Regulator 10
Article 11 - Protection of Work, Property and the Public 11
Article 12 - Sedimentation Pollution Control Act of 1973 14
Article 13 - Inspection of the Work; Testing 15
Article 14 - Construction Supervision and Scheduling 17
Article 15 - Separate Contracts and Contractor Relationships 19
Article 16 - Subcontracts and Subcontractors 20
Article 17 - Contractor and Subcontractor Relationships 20
Article 18 - Designer's Status 22
Article 19 - Changes in the Work 23
Article 20 - Claims for Extra Cost 27
Article 21 - Minor Changes in the Work 28
Article 22 - Uncorrected Nonconforming Work 28
Article 23 - Time of Completion, Delays, Extension of Time 29
Article 24 - Partial Utilization and Beneficial Occupancy 32
Article 25 - Final Inspection and Acceptance 33

Article 26 - Correction of Work Before Final Payment 34
Article 27 - Owner's Right to Do Work 37
Article 28 - Termination of Contract 37
Article 29 - Contractor's Right to Stop Work or Terminate the Contract 38
Article 30 - Request for Payment 38
Article 31 - Certificates of Payment and Final Payment 39
Article 32 - Payments Withheld 41
Article 33 - Minimum Insurance Requirements 41
Article 34 - Performance Bond and Payment Bond 46
Article 35 - Contractor's Affidavit 46
Article 36 - Assignments 47
Article 37 - Use of Premises 47
Article 38 - Cutting, Patching and Digging 47
Article 39 - Utilities, Structures, Signs 47
Article 40 - Cleaning up 49
Article 41 - Guarantee 49
Article 42 - Codes and Standards 50
Article 43 - Indemnification 50
Article 44 - Equal Opportunity Clause 51
Article 45 - Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms 52
Article 46 - Resolution of Disputes 52
Article 47 - Lead Based Paint 53
Article 48 - Examination and Retention of Contractor's Records 53
Article 49 - Labor Standards - Davis-Bacon and Related Acts for Federal Projects Only 53

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 - DEFINITIONS

a. **Change Order**, as used herein, shall mean a written order to the Contractor subsequent to the signing of the contract authorizing a change in the contract. The Change Order shall be signed by the Contractor, Designer and the Owner, including the Town Manager, and Town Finance Director (consistent with Section 10 of the Contract).

b. The **Contract Documents** consist of the agreement between Owner and Contractor (hereinafter the Contract), conditions of the contract (general, supplementary and other conditions) Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the agreement and modifications issued after execution of the contract. A modification is (1) a written amendment to the Contract signed by both parties, (2) a change order, (3) a construction change directive or (4) a written order for a minor change in the work issued by the architect. The contract documents form the contract for construction. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The contract may be amended or modified only by a modification. The contract documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor

c. The **Contractor** is the party who is awarded the Contract for the Work. The term "Contractor" includes the Contractor or the Contractor's authorized representative.

d. **Contract Sum** is the amount stated in the Contract as the Contractor's compensation for the completion of the Work, as modified by Change Order.

e. The **Designer(s)**, as referred to herein, shall mean the architect, landscape architect, and/or engineer and their authorized representatives, including subcontractors and subconsultants.

f. The **Drawings** are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

g. **Liquidated damages**, as stated in the Contract Documents, is an amount reasonably estimated in advance to cover the losses incurred by the Owner by

reason of failure of the Contractor to complete the Work within the specified Time of Completion.

h. **OWASA** is the Orange Water and Sewer Authority, an independent utility provider.

i. The **Owner** is the Town of Chapel Hill.

j. The **Project** is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Contractors.

k. **Project Expediter**, as used herein, shall be the Contractor. In multi-prime situations, the General Contractor shall be the Project Expediter. The Project Expediter shall have the following responsibilities:

1. Prepare and maintain the project progress schedule in accordance with Article 14.

2. Collect, review and submit shop drawings, product data, samples and other such items and submit them to the Designer in accordance with the Contract Documents.

3. Give adequate notice to all Contractors to ensure efficient continuity of all phases of the work.

4. Notify the Designer of any actual or anticipated changes in the project progress schedule.

5. Coordinate the work among the various Contractors and Subcontractors, utilities, and regulatory authorities so that the Work is completed without delay and within the Contract time.

l. **Project Site**. The term Project Site is defined as the space available to the Contractor for performance of the Work, either exclusively or in conjunction with others performing other work as part of the project. The extent of the Project Site is shown on the Drawings.

m. The **Specifications** are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

n. A **Subcontractor**, as the term is used herein, is one who has entered into a direct contract with a Contractor, and includes one who furnishes labor and materials worked to a special design in accordance with the Contract Documents, but does not include one who only sells or furnishes materials not requiring Work so

described or detailed. In general, a Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project Site. The term "Subcontractor" does not include a separate Contractor or Subcontractors of a separate Contractor.

o. **Substantial Completion** is the stage in the progress of the Work, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or use the Work for its intended use.

p. **Surety** shall mean the bonding company or corporate body which is bound with and for the Contractor, and which engages to be responsible for the Contractor and his acceptable performance of the Work and payment of subcontractors and suppliers.

q. **Time of Completion, or Contract Time,** as stated in the Contract Documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, as modified by Change Order, or such other date as may be established herein.

r. The **Town** means The Town of Chapel Hill in its capacity as a regulatory body or agency, as opposed to its capacity as Owner of the project.

s. **Written notice** shall be defined as notice in writing delivered in person to the Contractor, 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 or certified mail, return receipt requested.

t. **Work**, as used herein as a noun, is intended to include materials, services, labor and workmanship of the appropriate Contractor in connection with the construction of the Project. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations and labor, materials, equipment and services provided or to be provided by a Subcontractor, sub-Subcontractor, material supplier or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents. The Work shall include such materials whether or not located on the Project Site. The Work may constitute the whole or a part of the Project.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

a. The Contract Documents shall be signed by authorized representatives of the Owner and Contractor.

b. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The intent of 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 Project. The Drawings shall be accurately followed, preference being given to figured dimensions over scaled, and to large scale drawings over small scale drawings. If sufficient detail is lacking in the Contract Documents or if discrepancies appear among the Contract Documents, then the Contractor shall request clarification or interpretation from the Designer. The order of precedence and priority of the Contract Documents shall be as follows: The Contract; the General and Supplemental Conditions; and the Drawings and Specifications. In the case of an inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided.

c. Unless otherwise stated in the Contract Documents, words that have well- known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

d. Any material specified in the Specifications by reference to the number, symbol or title of specific standards, such as commercial standards, federal specifications, trade association standards, or similar standards, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Contract, except as limited to type, class or grade, or modified in such reference by a given date. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards have not been furnished to the Contractor as the Contractor and its manufacturers and Subcontractors are assumed to be familiar with their requirements.

ARTICLE 3 - CLARIFICATIONS, DETAIL DRAWINGS, AND INVESTIGATIONS

Clarifications

a. Where the nature of the Work requires clarification by the Designer, such clarification shall be furnished by the Designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of the Contract Documents, and shall become a part thereof.

b. The Contractor, if deemed necessary, shall include in the project progress schedule dates upon which foreseeable clarifications will be required. The Designer shall furnish drawings or clarifications in accordance with that schedule. The Contractor shall not proceed with the Work without such detail drawings and/or written clarifications.

Contractor's Investigation.

a. By executing the Contract, the Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during Work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the Owner, as well as from the Drawings and Specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

b. The Contractor shall examine and study the Contract Documents, including the Drawings and Specifications, and fully understand the project design, and shall provide constant and efficient supervision to the Work. Should it discover any discrepancies of any sort in the Drawings or Specifications, it shall report them to the Designer without delay. Contractor will not be held responsible for discrepancies in the Drawings and/or Specifications, unless it recognized such discrepancy and knowingly failed to report it to the Designer, but shall be held responsible to report discrepancies should they become known. If the Contractor performs any construction activity knowing it involves a recognized error, variance, inconsistency or omission in the Contract Documents without such notice to the Designer, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable cost for correction. Notwithstanding anything to the contrary in the foregoing, the Contractor represents that it has carefully examined the Drawings and Specifications, and that, except as the Contractor may have advised the Owner in a written notice delivered prior to the execution of the contract, the Drawings and Specifications are sufficient in content and detail to complete the Work and to enable the Contractor to deliver, within the contract sum and the contract time, a fully completed project with all pertinent improvements without the need for any change to the contract sum or contract time.

c. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. The Owner assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents

before the execution of the Contract, unless that understanding or representation is expressly stated in the Contract.

d. Information furnished by the Owner relating to surveys, subsurface investigations, soil borings, utility line locations and other similar information is for general information only and is not part of the Contract Documents. The Owner does not guarantee the completeness or accuracy of such information unless specifically noted otherwise. The furnishing of such information by the Owner shall not excuse the Contractor from responsibility for verifying existing grade elevations, conditions and dimensions of existing structures and features at the Project Site. The Contractor shall report to the Designer and Owner any errors or inconsistencies found in such information.

e. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors**,** inconsistencies or omissions discovered shall be reported to Designer at once.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed, the Owner shall furnish free of charge to the Contractor such copies of the Drawings and Specifications as are reasonably necessary for execution of the Work.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, PRODUCT DATA

a. The **Shop Drawings** are drawings, diagrams, schedules and other data especially prepared for the work by the Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work. **Samples** are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. **Product data** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the work. The purpose of the submittal of shop drawings, samples, product data and similar submittals is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

b. The Contractor shall submit to the Designer all shop drawings, product or data samples, color charts, etc., required for the Work. All such submittals shall be reviewed and approved by the Contractor and shall bear the Contractor's stamp of approval before being forwarded to the Designer. Shop drawings shall be submitted in quadruplicate and shall be made with reasonable promptness and in such sequence as to cause no delay of the Work or any part thereof and in no case less than six (6) weeks prior to the date on which the submittal must be returned

to the Contractor to avoid delays in the Work. On all submittals the Contractor shall: (1) indicate the date the Contractor received or created each submittal, (2) stamp each submittal with a "reviewed by Contractor" stamp, (3) number each submittal sequentially, and (4) indicate the date it was transmitted to the party responsible for reviewing it. Any transmittal of any submittal by the Contractor constitutes a representation that the Contractor has reviewed and approved the submittal whether or not such dating procedures are followed. When delivering any submittal, the Contractor shall advise the party receiving it in writing of the date the submittal must be returned to the Contractor to avoid delays in the Work. The Contractor shall promptly notify the Owner if any submittal is not returned by the date designated by the Contractor.

c. The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or similar submittals until the Designer has advised the Contractor that such submittal has been approved. Such work shall be in accordance with approved submittals. By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and the Contract Documents and that the Contractor has, or immediately will, notify the Designer of any discrepancies or deviations found. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by any approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the party reviewing them in writing of such deviation at the time of submittal and such party has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors and omissions in shop drawings, product data, samples or similar materials by the approval thereof by the party reviewing them. The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples or similar submittals, to revisions other than those requested by the party reviewing them on previous submittals. The Designer shall review the shop drawings promptly, noting desired corrections, if any, and shall return two copies to the Contractor within twenty (20) calendar days after receipt from the Contractor. The Contractor shall furnish corrected drawings in triplicate to the Designer. Two copies of approved drawings shall be returned to the Contractor.

d. Contractor shall prepare and keep current, for Designer's approval, a schedule of submittals that is coordinated with the Contractor's construction schedule. The Contractor shall submit a schedule of initial submittals for the early stages of the Work within thirty (30) days after the Contract is awarded. A complete schedule of submittals for the entirety of the Work shall thereafter be submitted by Contractor in a reasonable time so as to allow for orderly contract administration.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE; AS BUILT DRAWINGS

a. The Contractor shall maintain, in readable condition at his job office on the Project Site, one complete record set of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction, along with approved shop drawings, product data, samples and similar required submittals. Such drawings and specifications shall be available for use by the Designer or his authorized representative.

b. The Contractor shall maintain at the job office on the project site a day-to-day record of work-in-place that is at variance with the Contract Documents. Such record is to be provided in full to the Designer upon completion and acceptance of the project.

c. "As-built drawings," as used in this clause, means drawings submitted by the Contractor or Subcontractor at any tier to show the construction of a particular structure or Work as actually completed under the contract. "As-built" drawings shall be synonymous with "Record drawings." Final as-built Drawings shall be provided to the Designer by all Contractors, unless the Designer excuses the provision of as-builts. Contractors are also responsible for providing as-built Drawings to the applicable utilities, such as OWASA, if such utilities require as-built Drawings.

d. The Contractor shall provide the Designer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

e. This article shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by Subcontractors are submitted to the Designer in connection with the Contractor's final application for payment.

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, WORKMANSHIP

a. The Contractor shall supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of its Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, and shall 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, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the Drawings, stated in the Specifications, or reasonably implied there from, all in accordance with the Contract Documents.

b. All materials shall be new and of the quality specified, except where reclaimed material is authorized and approved for use. Workmanship shall be free of defects and 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. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be, at the election of the Owner, considered defective and may be rejected.

c. Upon request by the Owner, the Contractor shall 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 Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the 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. Substitution of materials, items or equipment of

equal or equivalent design shall be submitted to the Designer for approval or disapproval.

e. Each Contractor shall obtain written approval from the Designer for the use of substitute products, materials or equipment claimed as equal to those specified. Such approvals must be obtained as soon after contract award as possible and before any materials are ordered. Written applications for approvals of substitutes shall be made by the Contractor and not by Subcontractors or material suppliers.

f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.

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 Contractor shall protect, indemnify and save harmless the Owner against suit on account of alleged or actual infringement. The Contractor 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, TOWN AS REGULATOR

a. The Contractor shall give all notices and comply with all laws, ordinances, codes, rules, regulations and lawful orders of public authorities bearing on the conduct of the Work. If the Contractor observes that the Drawings and Specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by Change Order in accordance with Article 19. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Designer, it shall bear all costs arising there from.

b. All Work under this contract shall conform to the Contract Documents, Drawings and Specifications, the North Carolina State Building Code and other state, local and national codes as are applicable. Except as otherwise provided herein, the cost of all required inspections and permits shall be the responsibility of the Contractor, except that the fees for Town-issued building permits are waived.

c. If the Contractor performs any Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prompt notice to the Designer and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable damages, losses, costs and expenses.

d. Contractor acknowledges that it has reviewed the requirements and specifications of the various utilities having jurisdiction affecting the Work including, but not

limited to, OWASA, Duke Power Company, Public Service Gas Company, Southern Bell, and other such utilities. Contractor shall comply with the requirements and specifications imposed by such utilities, and shall coordinate the Work, including the Work of other Contractors and Subcontractors, with such utilities. If Contractor becomes aware of any discrepancy between the requirements of a utility and the Contract Documents, it shall immediately report such discrepancy to the Designer. Contractor acknowledges that such utilities are independent entities, and are not agents, subcontractors, or separate Contractors of the Owner.

e. Contractor acknowledges that the Town, in its role as regulatory body, has the inspection and regulatory duties imposed by applicable law, including, but not limited to, inspection of streets, roadways, and clearing limit lines, issuance of permits and certificates of occupancy, and other such duties. Contractor acknowledges the role of the Town as Owner under this Contract, and that any delays, disruptions, extra costs or other items caused or allegedly caused by the Town in its role as regulatory body are not attributable to the Owner, nor is the Owner responsible for such delays, disruptions, or extra costs, unless otherwise provided in the Contract Documents.

f. Contractor shall pay sales, consumer use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded whether or not yet effective or merely scheduled to go into effect.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

a. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

b. The Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. Employees and other persons performing the Work and other persons who may be affected thereby;

2. The work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of the Contractor or of the Contractor's Subcontractors or sub-Subcontractors; and

3. Other property at the Project Site or adjacent thereto, such as, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

4. The Contractor shall properly remedy damage and loss to the property referred to above caused in whole or in part by the Contractor, a Subcontractor, a sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible.

c. The Contractor shall provide cover and protect all portions of the Work when the Work is not in progress, provide and set all temporary roofs, covers for doorways, sashes and windows, and all other materials necessary to protect all the Work whether set by him, or any of the Subcontractors. 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.

d. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.

e. The Contractor shall protect all trees and shrubs designated to remain in the vicinity of the Work. It shall comply with local ordinances, including, without limitation, the Tree Protection Ordinance as in effect at the time of construction, and with the Drawings and Specifications as they relate to the protection of trees and shrubs. It shall barricade all walks, roads, etc., as directed by the Designer to protect persons on the site and 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.

f. The Contractor shall, as part of the Work, provide all earth retention systems, shoring, lateral and subjacent support necessary to prevent any damage to adjacent or nearby property owners and shall, if such shoring or support is insufficient, be solely responsible to pay for any damage incurred by such property owners by reason of excavations and execution of the Work. If entry on or encroachment upon adjoining property or public right-of-way is necessary to perform the Work, the Owner shall obtain any necessary permissions, permits or licenses and pay all costs and fees therefore. However, it is the Contractor's responsibility to investigate alternative construction methods that could avoid such encroachments and to provide evidence to the Owner that such encroachments are necessary and unavoidable.

g. The Contractor shall provide 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, including the Occupational Safety and Health Act ("OSHA") as adopted in North Carolina, to prevent accident or injury to persons on or about the location of the Work. It shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, floor penetrations, elevator shafts, stairwells and similar

hazards. It shall protect against damage or injury resulting from falling materials and it shall maintain all protective devices and signs throughout the progress of the Work. All trenching work shall be accomplished in strict compliance with OSHA regulations and other applicable regulations, laws and codes.

h. The Contractor shall designate a responsible member of its organization as safety inspector, whose duties shall include accident prevention on the Work. Unless otherwise agreed, that person shall be the Contractor's superintendent. The name of the safety inspector shall be made known to the Designer at the time the Work is started. Any safety violation shall be reported to the Owner and Designer and corrected immediately.

i. In the event the Contractor encounters on the Project Site material reasonably believed to be hazardous material including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (pcb) or other toxic substances which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Designer in writing. The suspected hazardous material shall be examined by a qualified specialist at the Owner's expense. Should the examination confirm the presence of previously unidentified hazardous material, the Owner shall be responsible for conducting clean up or abatement by separate Contractor to remove the potential hazard. If the Contractor caused the hazardous material to exist on the Project Site without the Owner's prior consent, the Contractor shall promptly reimburse the Owner for the cost of said clean up or abatement. The qualified specialist shall certify that no hazardous material exists or that abatement has been satisfactorily completed. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is hazardous material and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of a hazardous material, or when it has been rendered harmless, as certified by the qualified specialist. Any losses suffered by the Contractor relating to the performance of the Work and not attributable to a wrongful act or omission of the Contractor and which are due to the hazardous material on the Project Site shall be compensated by the Owner and reflected in a Change Order.

j. When use or storage of hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner ten days' notice in advance of such use, storage or unusual methods. All hazardous or toxic materials or waste used, stored, or generated at the Project Site shall be used, stored, transported and disposed of in strict conformity with applicable laws, codes, rules, regulations and orders of governmental authorities having jurisdiction. This includes, but is not limited to, the provision of appropriate material safety data sheets ("MSDS") and compliance with applicable "right to know" laws. The Contractor shall not include asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials. The Contractor shall be responsible for the removal and clean up of all hazardous and toxic materials and waste brought to the Project Site

or generated at the Project Site by the Contractor or any Subcontractor. The Contractor shall indemnify, defend and hold harmless the Owner from and against all claims, suits, damages, losses, fines, penalties, costs and expenses, including reasonable attorney's fees, arising from or in connection or otherwise relating to the use, generation, storage, release, transporting and disposal of any hazardous or toxic materials or waste in the performance of the work.

k. In the event of emergency affecting the safety of life, the protection of Work, or the safety of adjoining properties, the Contractor is hereby authorized to act at its own discretion to prevent such threatened injury or damage. Any compensation claimed by the Contractor on account of such action shall be determined as provided for under Article 19.

l. The Contractor shall promptly report in writing to the Owner and Designer all accidents arising out of or in connection with the work which caused death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death or serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Designer.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

a. Any land-disturbing activity performed by the 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 laws, regulations and ordinances then in effect, including but not limited to the Sedimentation Pollution Control Act of 1973 ("S.P.C.A."), 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). The Town, as regulator, reserves the option to impose standards more rigorous than those contained in the S.P.C.A., as included in the Specifications.

b. Upon receipt of notice that a land-disturbing activity is in violation of the S.P.C.A. or other erosion control measures or regulations, the Contractor shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with such act or measures are promptly taken.

c. The Contractor shall be responsible for defending any legal actions instituted pursuant to N.C. Gen. Stat. 113A-64 or other erosion control laws or regulations against any party or persons described in this article.

d. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Designer and the agents, consultants and employees of the Owner and Designer, 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 S.P.C.A. or other erosion control measures, laws, or regulations. 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 persons described in this article.

ARTICLE 13 - INSPECTION OF THE WORK; TESTING

a. The Work shall be subject to inspection during normal working hours by the Designer, designated representatives of the Owner, and those persons required by state or local law or ordinance to test special work for official approval, including representatives of the Town, as regulator. The Contractor shall therefore provide safe access to the Work at all times for such inspections.

b. All instructions to the Contractor will be made only by or through the Designer or his designated project representative. Observations made by representatives of the Owner and of regulatory authorities shall be conveyed to the Designer for review and coordination prior to issuance to the Contractor.

c. Where special inspection or testing is required by virtue of any state or local laws, instructions of the Designer, specifications or codes, the Contractor shall give adequate notice to the Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Designer. Such special tests or inspections will be made in the presence of the Designer, or his authorized representative, and it shall be the Contractor's responsibility to serve ample notice of such tests.

d. All laboratory tests shall be paid by the Owner unless provided otherwise in the Contract Documents except the general Contractor shall pay for laboratory tests to establish design mix for concrete and asphalt, and for additional tests to prove compliance with Contract Documents where materials have tested deficient.

e. Should any work required to be inspected by the Contract Documents, direction of the Designer or provisions of law be covered up or concealed prior to inspection and approval by the Designer, such work shall be uncovered or exposed for inspection, if so requested by the Designer in writing. Inspection of the work will be made promptly upon notice from the Contractor. All costs involved in uncovering, repairing, replacing, recovering and restoring the work to design condition will be paid by the Contractor involved.

f. If any other portion of the Work not required to be inspected or which the Designer has not specifically requested to observe prior to being covered, has been covered, the Designer may request to see such work and it shall be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change

Order, be charged to the Owner. If such work is found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate Contractor, in which event the Owner or the separate Contractor shall be responsible for the payment of such costs.

g. The Owner may (but shall not be obligated to) from time to time, at its own cost and expense, perform or cause to be performed such additional tests and inspections of the work as the Owner may determine to be necessary or appropriate, and the Contractor shall, upon receipt of reasonable prior written notice identifying any such tests and inspections, coordinate the Work so as to accommodate the performance of such tests and inspections. Copies of any results of such Owner initiated test and inspection shall be made available to the Contractor if the Contractor so requests, provided, the Contractor shall not be entitled to rely upon such results (and the Owner makes no representation or warranty as to the accuracy or completeness thereof) and the Owner's performance of any test and inspection shall not serve to relieve the Contractor of its obligation to perform the work in accordance with the requirements set forth in the Contract Documents.

h. If the Designer, Owner or public authorities having jurisdiction determine that portions of the work will require additional testing, inspection or approval not included under the preceding subparagraphs of this article, the Designer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Designer and the Owner of when and where tests and inspections are to be made so the Designer and Owner may observe such procedures. The Owner shall bear such cost except as otherwise provided in this Article.

i. If such procedures for testing, inspection or approval under subparagraphs f, g and h reveal failure of the portions of the work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Designer's services and expenses.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULING

Supervision

a. Throughout the progress of the Work, each Contractor shall keep on the job a competent superintendent or supervisory staff satisfactory to the Designer. The superintendent shall not be changed without the consent of the Designer and Owner unless the superintendent ceases to be employed by the Contractor or ceases to be competent. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to initially approve the

superintendent and the right to require Contractor to replace any superintendent whose performance is not satisfactory to the Owner. The superintendent shall have authority to act on behalf of the Contractor, and instructions, directions or notices given to him shall be as binding as if given to the Contractor.

Scheduling and Coordination

The Contractor shall cooperate and consult with all other Contractors during the construction of this project. The Contractor shall lay out and execute his Work so as to cause the least delay to other Contractors. The Contractor shall be responsible for any damage to other Contractor's work, and each Contractor shall be financially responsible to other Contractors for undue delay caused to other Contractors on the project.

a. The Contractor shall coordinate its work with each other separate Contractor within the total time frame established by the project progress schedule that is made a part of the Contract Documents. This time frame shall be as called for in the progress schedule, which requires the participation and agreement of all Contractors in its preparation and acceptance. Should any separate Contractor allege that the Contractor has caused a delay in the work of the separate Contractor, then the Contractor shall defend, indemnify and hold harmless the Owner and the Designer from any claim, demand, suit, or cause of action arising in whole or in part out of the alleged delay or delays, and the Contractor shall bear all costs and expenses, including all attorneys' fees and court costs, which the Owner, and/or Designer may incur in connection with any such claims.

The Contractor is required to attend monthly job site progress conferences as called by the Designer. The Contractor's representatives shall have authority to act on behalf of the Contractor. These meetings shall be open to Subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. Subcontractors, whose work is on the critical path of the work for the thirty days following the monthly meeting, or any part thereof, shall attend the meeting unless excused by the Designer. It shall be the principal purpose of these meetings 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 Contractor shall be prepared to assess progress of the Work as required in his particular contract and to recommend remedial measures for correction of progress as may be appropriate. The Designer or his authorized representative shall be the coordinator of the conferences and shall preside as chairman, and shall produce written minutes of the meeting.

It shall be the responsibility of the project expediter to cooperate with and obtain from the several Contractors on the job their respective schedules and to integrate them into a project progress schedule that will show graphically, by a detailed bar chart, critical path method (CPM) or other acceptable and approved methods, the projected progress of the job from start to finish and within the allotted time frame. The Contractor along with other Contractors, shall review the proposed progress schedule, and all amended schedules and updates, and approve them in

writing to the Designer and the Project Expediter. Such written approval shall be indicated by each Contractor's signature on the graphic schedule.

The progress schedule shall be presented to the Designer no later than ten (10) days after written notice to proceed. All prime Contractors shall initial or sign the initial graphic progress schedule. No application for payment will be processed until this signed progress schedule is received and approved by the Designer and Owner.

The Project Expediter shall distribute the progress schedule to all the Contractors and display it at the job site.

The several Contractors shall be responsible for the progress schedule and must notify the Project Expediter of any changes or adjustments to their schedules. The Project Expediter shall maintain the progress schedule, making monthly adjustments, updates, corrections, etc. On a monthly basis, the Project Expeditor shall prepare and present at the monthly meeting a progress report in a form in sufficient detail, and of a character approved by the Owner. The progress report shall specify, among other things, the estimated percentage of completion, whether the Project is on schedule and, if not, the reasons therefore. Accompanying the progress report shall be an updated progress schedule, and a listing and the status of all Change Orders, modifications, bulletins and other relevant documents that are necessary, keeping all Contractors and the Designer fully informed. Failure to provide a progress report or updated schedule may be grounds for withholding payment as set forth in Article 31.

The Project Expediter shall notify each Contractor of such events or time frames that are critical to the progress of the job. Such notice shall be timely and reasonable. Should the progress be delayed due to the Work of any of the several Contractors, it shall be the duty of the Project Expediter to immediately notify the Contractor(s) responsible for such delay, the Designer and other prime Contractors.

Designation as Project Expediter entails an additional project control responsibility and does not alter in any way the responsibility of the Contractor so designated, or the responsibility of the other Contractors involved in the project.

ARTICLE 15 - SEPARATE CONTRACTS AND CONTRACTOR RELATIONSHIPS

a. In some instances, the North Carolina General Statutes require separate contracts to be awarded for the general construction, heating and ventilating and air conditioning, plumbing, and electrical installations. In such case, the Owner reserves the right to prepare separate specifications, receive separate bids, and award separate contracts for such other major items of work as may be in the Owner's best interest.

b. All Contractors shall cooperate with each other in the execution of their work, and shall plan their work in such manner as to avoid conflicting schedules or delay of the work.

c. If any part of Contractor's work depends upon the work of another Contractor, defects which may affect that Work shall be reported to the Designer in order that prompt inspection may be made and the defects corrected. Commencement of work by a Contractor where such condition exists will constitute acceptance of the other Contractor's work as satisfactory in all respects to receive the work commenced, except as to defects which may later develop. The Designer shall be the judge as to the quality of work and shall settle all disputes on the matter between Contractors.

d. Any mechanical or electrical work such as sleeves, inserts, chases, etc., which is located in the work of the general Contractor shall be built in by the general Contractor. The respective mechanical and electrical Contractors shall set all sleeves, inserts and other devices built into the structure in cooperation and under the supervision of the general contractor. The responsibility for the exact location of such items shall be that of the mechanical and/or electrical contractor.

e. Should a Contractor cause damage to the work or property of another Contractor, it shall be directly responsible, and upon notice, shall promptly settle the claim or otherwise resolve the dispute.

f. The Contractor agrees to coordinate construction activities with the activities of regulatory authorities, utilities, and the Owner's maintenance personnel; to isolate construction work areas from interior areas with dust isolating partitions; and to schedule construction activities and to locate materials, equipment, and supplies on the Project Site in a manner that facilitates the Owner's regular operations in and around the Project with the least interference practicable.

g. If at any time during the construction and completion of the Work covered by these Contract Documents, the conduct of any worker of the various crafts should be adjudged a nuisance to the Owner or Designer, or if any worker should be

considered unfit or detrimental to the Work, the Contractor shall order such parties removed immediately from the grounds.

ARTICLE 16 - SUBCONTRACTS AND SUBCONTRACTORS

a. Within fourteen (14) days after award of the contract, the Contractor shall submit to the Designer a list giving the names and addresses of Subcontractors and equipment and material suppliers it proposes to use, together with the scope of their respective parts of the work. Should any subcontractor be disapproved by the Designer, the Designer shall submit his reasons for disapproval in writing to the Owner. No portion of the work shall be awarded to any Subcontractor not approved by the Designer and Owner. The Designer shall act promptly in the approval of subcontractors, and when approval of the list is given, no changes of subcontractors will be permitted except for cause or reason considered justifiable by the Designer.

b. The Contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The Contractor agrees that no contractual relationship exists between the subcontractor and the Owner in regard to the Contract.

c. The Owner reserves the right to limit the amount of portions of work to be subcontracted.

ARTICLE 17 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

a. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities that the Contractor, by these documents, assumes toward the Owner and Designer. Such assumption by the Subcontractor shall not relieve the Contractor of any of its obligations under the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the Owner and Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract agreement, copies of the Contract Documents applicable to the portion of the Work to be performed by such Subcontractor.

b. Any part of the work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor, which shall be prepared on a master form of subcontract which the Contractor has, prior to the execution of any subcontract, submitted to the Owner to insure that each such subcontract contains provisions that:

1. Require that such portion of the work be performed in accordance with the requirements of the Contract Documents;

2. Require timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the Contract Documents;

3. Waive all rights the subcontracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance required in the Contract Documents, except for such rights as they have to the proceeds of such insurance held by the Owner;

4. Recognize the rights of the Owner pursuant to the contingent assignment of subcontracts and require the Subcontractor (upon notice by the Owner that the Owner has terminated the agreement with the Contractor pursuant to the terms of the Contract Documents, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its subcontract with the Contractor) to complete the unperformed obligations under such subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under his subcontract in the manner in which he has been bound to the Contractor;

5. Require the Subcontractor to carry and maintain the appropriate insurance, unless otherwise approved by Owner, and to deliver certificates of insurance prior to the commencement of its portion of the Work and certified copies of the policies of insurance upon request of the Owner.

c. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. This assignment is effective only after termination of the Contract by the Owner for cause and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

2. This assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.

If the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted.

Upon the Owner's reasonable request, the Contractor shall promptly execute further documentation conditionally assigning each subcontract agreement to the Owner (and the Contractor shall cause the

Subcontractor to acknowledge said assignment). Copies of the executed subcontract agreement shall promptly be delivered to the Owner upon the Owner's request.

d. The Contractor shall promptly advise the Owner in writing of any claim or demand by a Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

ARTICLE 18 - DESIGNER'S STATUS

a. The Designer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the Work to ensure compliance with Drawings and Specifications. He is the agent of the Owner only for the purpose of constructing this work and to the extent stipulated in the Contract Documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.

b. Should the Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Designer.

c. The Designer will visit the Project Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed work and to determine if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the Contract Documents. On the basis of on-site observations, the Designer will keep the Owner informed of the progress of the work, and will endeavor to guard the Owner against defects and deficiencies in the work.

d. The Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The Contractor shall provide facilities for such access so the Designer may perform his functions under the Contract Documents.

e. The Designer will recommend to the Owner rejection of work which does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Designer will recommend to the Owner additional inspection or testing of the work, whether or not such work is fabricated, installed or completed.

f. Based on the Designer's observations and evaluations of the Contractor's applications for payment, the Designer will review and certify the amounts due the Contractor and will issue certificates for payment in such amounts.

g. The Designer will prepare any Drawings required for Change Orders.

h. The Designer will conduct inspections to determine the date or dates of substantial completion and completion of each building and of the entirety of the work and the date of final completion of the entirety of the work, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final certificate for payment upon compliance with the requirements of the Contract Documents.

i. Interpretations and recommendations of the Designer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing. When making such interpretations and recommendations, the Designer will endeavor to secure faithful performance by both Owner and Contractor and will not show partiality to either.

ARTICLE 19 - CHANGES IN THE WORK

a. Changes in the Work may be accomplished after execution of the Contract by Change Order, Construction Change Directive, or by order for a minor change in the Work. These changes will not invalidate and will not relieve or release the Contractor from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the performance or payment bonds and will not relieve the surety or sureties of said bonds. All extra work shall be executed under conditions of the original contract.

b. Except in an emergency endangering life or property, NO CHANGE SHALL BE MADE BY THE CONTRACTOR EXCEPT UPON WRITTEN ORDER FROM THE DESIGNER, COUNTERSIGNED BY THE OWNER, INCLUDING THE TOWN MANAGER AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE CONTRACT PRICE OR TIME SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.

Change Order and Construction Change Directives

A **Change Order** is a written instrument prepared by the Designer and signed by the Owner and Contractor stating their agreement upon all of the following:

a. A change in the Work;

b. The amount of the adjustment in the Contract Sum, if any; and

c. The extent of the adjustment in the Contract Time, if any.

Methods used in determining adjustments to the Contract Sum may include those listed in subparagraph d.3.

Construction Change Directives

a. A Construction Change Directive is a written order prepared by the Owner or the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and/or Contract Time being adjusted accordingly.

b. A Construction Change Directive shall be used by the Owner in the absence of total agreement on terms of a Change Order.

c. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. By estimating and acceptance in a lump sum. The Contractor shall submit change proposals which include a complete itemization of quantities of materials, unit cost of materials when applicable, unit labor cost for each item of Work or total labor hours and applicable hourly rates for each classification of labor, as stated in the [contract] between Owner and Contractor relating to the Work, if any, and the number of calendar days (if any) required to complete the extra Work in addition to the Contract Time or the reduction in calendar days (if any) in the Contract Time for omitted Work. Daily operational costs of temporary facilities may be included only when an extension of time is agreed upon.

2. By unit prices stated in the Contract, if any, or subsequently agreed upon. The Contractor shall submit an estimate itemizing the number of unit quantities of each part of the Work which is changed, multiplying such unit quantities by the applicable unit prices. The change in Contract Time shall be as described in Sub-Subparagraph c.3. above.

3. By cost and percentage or by cost and fixed fee. The Contractor shall keep correct records of materials, labor, equipment, transportation, and other items used or expended to effect the required change. Such records shall be kept on forms acceptable to the Owner and submitted to the Owner for review each day that such Work is performed. Only acceptable documents will be considered in establishing the cost of the change. The change in Contract Time shall be as described in Sub-subparagraph d.3. (a) above.

4. As provided in Subparagraph c.1.

d. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the

Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum and/or Contract Time.

e. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the Contract Sum and/or Contract Time or the method for determining them. Upon execution, such agreement shall be considered as a Change Order.

f. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. Overhead shall include costs of engineering, shop drawing and change order review, labor of managers, superintendents, technical engineers, timekeepers, clerks, and other office personnel, small tools, and home office expenses. In such case, and also under subparagraph 3. d. above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this subparagraph shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;

2. Costs of materials, supplies and equipment, including costs of transportation, whether incorporated or consumed;

3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

5. Additional costs of supervision and field personnel directly attributable to the change.

g. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. Unless otherwise provided, in the Agreement, the amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitution are involved in a change, the allowance for

overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

h. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the Owner may elect to refer the matter to the Designer for initial determination, provided such determination by the Designer shall not be binding on the parties if either or both parties disagree in good faith with such determination.

i. When the Owner and Contractor agree with any determination made by the Designer concerning the adjustments in the Contract Sum and/or Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective upon execution of an appropriate Change Order.

j. Measurements for Work in a unit price basis, if applicable, shall be made in accordance with United States Standard measures. When specified by weight, measurement shall be computed from weight slips. Measurement for area and linear quantities shall be taken on a horizontal plane. Measurement for volume of excavation and embankment shall be computed from cross-sections by the method of average end areas. Volume of other materials shall be computed by multiplication of the surface area on a horizontal plan times the specified depth or thickness. If materials are specified to be placed in a structure, the actual volume within the neat lines of the structure, as shown on the Drawings, shall be the basis for computing the Work.

ALL CHANGE ORDERS SHALL BE SUPPORTED BY A BREAKDOWN SHOWING METHOD OF ARRIVING AT NET COST AS DEFINED ABOVE.

In all change orders, the Contractor shall obtain quotations and supporting data, and verify correctness. The Designer shall prepare the change order, secure the Contractor's signature, certify the change order by his signature, and forward the change order and all supporting data to the Owner for the Owner's signature. The Owner will forward the change order to the Owner for final approval.

At the time of signing a change order, the Contractor 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 and that, in the case of an increase in the Contract Sum of more than 5% of the original contract, the penal sum of the bonds will be increased in an amount corresponding to the increase in the Contract Sum."

A change order, when issued, shall be full compensation, or credit, for the extra 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. The Contractor's signature on the Change Order constitutes a release of any claim for additional cost or time relative to the Change Order Work.

Concealed Conditions

a. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Designer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the contract.

b. The Designer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Designer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the Owner within ten days after receipt of such instructions and, in any event, before proceeding with the Work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

c. No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews, and pre-construction services for the Project, or (2) inspections, tests, reviews, and pre-construction services which the Contractor had the opportunity to make or should have performed in connection with the Project. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

ARTICLE 20 - CLAIMS FOR EXTRA COST

a. Should the Contractor consider that, for any reason, it is entitled to an increase in the Contract Sum, not authorized by Change Order, Construction Change Directive, or by an order for a minor change in the Work, it shall give written notice thereof to the Designer within seven (7) days without delay, and shall not proceed with the Work affected until further advised, except in an emergency involving the safety of life or property. Failure to provide such notice constitutes a waiver of such claim, and no claims for extra cost will be considered unless the notice is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.

b. THE CONTRACTOR SHALL NOT ACT ON INSTRUCTIONS RECEIVED BY HIM FROM PERSONS OTHER THAN THE DESIGNER, AND ANY CLAIMS

FOR EXTRA COST OR EXTENSION OF TIME ON ACCOUNT OF SUCH INSTRUCTION WILL NOT BE HONORED. The Designer will not be responsible for misunderstandings claimed by the Contractor of oral instructions that 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. The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes:

1. Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2. Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the contract documents. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 21 - MINOR CHANGES IN THE WORK

The Designer has 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, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 22 - UNCORRECTED NONCONFORMING WORK

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, which acceptance must be in writing and signed by the Owner, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

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

a. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, the Contractor agrees that the Contract Time is a reasonable period for performing the work. The Project Expediter, upon notice of award of contract, shall confer with other Contractors, prepare a construction

progress schedule based on the allowed time, and submit such a progress schedule to the other Contractors for approval and coordination with a copy to the Designer and Owner for comment. When the schedule has been approved by all Contractors, the Project Expediter shall distribute a copy to the Designer and Owner for approval. All Contractors shall maintain progress in accordance with the progress schedule and with the terms of the Contract Documents. The progress schedule shall be revised as required by the Project Expediter in cooperation with other Contractors, the Designer and the Owner.

b. The Contractor shall commence the Work on the date specified in the written notice to proceed and shall fully complete all Work within the number of consecutive calendar days stated. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project Site or elsewhere prior to the effective date of the insurance required by the Contract Documents. For each day in excess of the above number of days stated, the Contractor 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 said Contractor to complete the Work within the time specified, such time being of the essence of this contract and a material consideration thereof.

c. The Contractor covenants and agrees to exert all reasonable best efforts to avoid the occurrence of any cause for delay and to avoid any extension of performance dates. Any claim for extension of time shall be made by the Contractor to the Owner in writing and shall be received not more than five (5) working days after the commencement of the alleged cause for delay and within five (5) working days after the cessation of such alleged cause for delay, Contractor shall notify the Owner of such cessation and the total amount of delay, if any, in performance dates which Contractor claims by reason of any such occurrence. Immediately following the commencement of any such cause for delay representatives of the Contractor and Owner shall confer for the purpose of endeavoring to determine a course of action which would terminate or eliminate the occurrence or event which is causing delay. Failure of Contractor to timely assert any alleged claim for extension shall constitute a waiver of the particular claim. Notwithstanding anything to the contrary in the foregoing, the Contractor shall not be entitled to an extension of time unless the event or circumstance giving rise to a delay constitutes an Excusable Event of Delay and the Contractor can demonstrate to the reasonable satisfaction of the Owner that the activity delayed will result in a delay of the Scheduled Completion Date for a building or any other improvements comprising a part of the Work. "Excusable Events of Delay" mean (i) strikes, lockouts or picketing (legal or illegal) which are not limited to the Project Site or projects with which only the Contractor or any of its Subcontractors are involved; (ii) governmental action and condemnation, (iii) riot, civil commotion, insurrection, and war; (iii) fire or other casualty, accident, acts of God or the enemy; (iv) unusual adverse weather conditions not reasonably expected for the location of the Project and the time of the year in question; (v) the passage or unanticipated first time

interpretation or application of any statute, law, regulation or moratorium of any governmental authority; (vi) delays caused by an act or neglect of the Owner or any separate contractor, by delay authorized by the Owner in writing, or by Change Order or Construction Change Directives; or (viii) causes beyond the reasonable control of the Contractor, provided neither the acts or omissions of Subcontractors or suppliers nor (so long as the Owner makes payments in accordance with the requirements of the Contract Documents) the Contractor's or any Subcontractor's insufficiency of funds, bankruptcy or insolvency shall be deemed an Excusable Event of Delay.

Should the Contractor, in the absence of the notification described in the preceding paragraph, fail, refuse or neglect to supply sufficient workmen or to deliver the materials with such promptness as to prevent the delay in the progress of the Work, or fail in any respect diligently to commence and prosecute the Work and proceed to the point to which the Contractor should have proceeded under the construction schedule, and such failure is not cured within seven (7) days after receipt of written notice from the Owner, the Owner shall have the right to direct the Contractor to furnish upon three (3) days' notice, additional labor and, at the Contractor's cost and expense, to expedite deliveries of materials (or the Owner may expedite such deliveries at the cost of the Contractor), which labor shall, in the owner's opinion, be sufficient to speed up and achieve Completion (as defined in the agreement) of the Work by the Scheduled Completion Date. If such additional labor shall not be available, the Owner shall have the right to direct the Contractor, at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, to speed up and complete the Work as herein provided. In addition, on direction of the Owner, the Contractor shall, without additional charge to the Owner, require its employees to work on such days as may be declared holidays by the trades employed by the Contractor, provided such days are not recognized as holidays by other branches of the building trades working on the project.

d. Contractor's sole remedy for delay, hindrances in the performance of work, loss of productivity, impact damages, other consequential damages and similar damages, shall be an extension of the contract time or other adjustment to the construction schedule, unless caused by acts constituting intentional interference by the Owner with the Contractor's performance of the work, but only if, and to the extent, such acts continue after Contractor's written notice to the Owner of such interference, or unless caused by the Owner's suspension of the work (if the work is suspended, the Contractor shall be entitled to an equitable adjustment to the contract sub). The Owner's exercise of any of its rights and remedies under the contract documents, and the performance by the Town of its duties and its role as regulator, shall not under any circumstances be construed as intentional interference by the Owner with the Contractor's performance of the work. If the Contractor, but for a delay not within its control, would have completed the work prior to the expiration of the contract time, the Contractor shall not be entitled to recovery of damages

arising out of any event or delay which prevented such early completion of the work.

e. 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, Contractor agrees that it may expect inclement weather for the number of calendar days in accordance with the following table:

	.1 in. Precipitation, or more	32 Degrees F., or less
Jan	10	3
Feb	10	1
Mar	10	0
Apr	9	0
May	10	0
Jun	9	0
Jul	11	0
Aug	10	0
Sep	8	0
Oct	7	0
Nov	8	0
Dec	9	0

The Contractor agrees that the measure of extreme weather during the period covered by this Contract shall be the number of days in excess of those shown for each month in the table above, in which precipitation exceeded .10 inch, or in which the highest temperature was 32 Degrees F. or less from RDU Airport, NC-NSW Station, over the same period of time, which is the same source of data used to determine normal weather losses. If a total number of accumulated calendar days lost to inclimate weather, from the start of Work until the building is enclosed, exceeds the total accumulated number to be expected for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days loss. No extension of time will be made for days due to weather occurring after the building is enclosed. For the purposes of this Contract, the term “enclosed” is defined to mean when the building is sufficiently roofed and sealed, either temporarily or permanently, to permit the structure to be heated and the plastering and drywall trades to work. The Designer shall determine when the structure is “enclosed”.

f. The Contractor shall notify its surety in writing of any extension of time granted.

g. No claim shall be allowed on account of failure of the Designer to furnish drawings or instructions until two (2) weeks after written demand for such drawings and/or instructions.

ARTICLE 24 - PARTIAL UTILIZATION AND BENEFICIAL OCCUPANCY

a. The Owner may occupy all or a portion of the project when the work is substantially complete. Unless otherwise agreed, partial occupancy or use of a portion or portions of the work shall not constitute acceptance of work not complying with the requirements of the Contract Documents.

b. Prior to the final payment, the Owner may request the Contractor in writing, through the Designer if applicable, to permit the Owner to use a specified part of the project which it believes it may use without significant interference with construction of the other parts of the project. If the Contractor agrees, the Designer will schedule a beneficial occupancy inspection after which the Designer may issue a partial certificate of substantial completion. The certificate shall include the following documentation:

1. Date of substantial completion.

2. Description of the portion of the project excluded and included.

3. Authorization of the public authorities having jurisdiction over the project for such use.

4. A tentative list of items to be completed or corrected before final payment.

5. Establishing responsibility between Contractor and Owner for maintenance, heat, utilities and insurance.

6. Establishing the date for guarantees and warranties under terms of the contract.

7. Consent of surety.

8. Endorsement from insurance company permitting occupancy.

c. The Owner shall have the right to exclude the Contractor from any part of the project which the Designer has so certified to be substantially complete, but the Owner will allow the Contractor 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 Contractor from the contractual requirement to fully complete the project within the specified time. The Contractor will not be relieved of liquidated damages because of beneficial occupancy. The Designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 - FINAL INSPECTION AND ACCEPTANCE

a. The Contractor shall determine when the work is completed and ready for final inspection and shall schedule a final inspection at a time and date acceptable to the Owner and Designer.

b. At the final inspection, the Designer and the Owner shall 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 Designer shall make the following determinations:

1. That the project is fully and finally completed and accepted, or

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 with the exception of landscaping which, if directed by the Designer, shall be planted subsequently, or

3. That the project is not complete and another date for a final inspection will be established.

c. The date of acceptance will establish the following:

1. The beginning of guarantees and warranties period.

2. The date on which the Contractor'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 Contractor.

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

a. The Contractor shall promptly correct Work rejected by the Designer or the Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs, risks and expenses of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's and the Designer's services and expenses made necessary thereof.

b. If, within one year after the date of acceptance of the entire Work, or after the date for commencement of warranties (provided except with respect to warranties on equipment within a building, which one-year period will commence on the date of Substantial Completion of the portion of the Work comprising such building, such one-year period shall in no event be less than one year after Substantial Completion of the entire Work), or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at the Contractor's sole cost, risk and expense after receipt of written notice from the owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Contractor agrees that with respect to any corrective work which affects the habitability of a unit, as reasonably determined by the Owner, the Contractor shall respond to the Owner's notice and commence the corrective work as quickly as is possible, but in any event within 24 hours. All other corrective work will be commenced within 72 hours after receipt of notice from the Owner. If the Contractor fails to undertake required corrective work within the applicable foregoing period of time or fails to complete corrective work after such work has been initiated, then in either such event, the Owner shall have the right but not the obligation, to complete such corrective work. In such event, the Contractor shall reimburse the Owner upon demand for all costs and expenses incurred by the Owner in completing the subject corrective work together with an administrative fee equal to 10% of the costs and expenses so incurred by the Owner. The Contractor shall diligently and continuously proceed with the completion of all corrective work, and all such work shall be performed so as to minimize, to the extent reasonable, practicable, disruption of the Owner's operations. This period of one year shall be extended with respect to portions of Work first performed after acceptance by the period of time between acceptance and the actual performance of the Work. This obligation under this subparagraph b. shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

c. The Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

d. If the Contractor fails to correct nonconforming Work within a reasonable time or, if applicable, the time frames provided in Paragraph 26 b. above, the owner may correct it. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner or Designer, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Designer's services and expenses made necessary thereby and attorneys' fees and expenses. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner immediately upon demand.

e. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

f. Nothing contained in this Article 26 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in subparagraph 26.b. relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

g. All Contractors, Subcontractors and Sub-subcontractors shall execute and deliver to the Owner the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

Warranty Acknowledgment.

(Name of Contractor, Subcontractor or Sub-subcontractor) ("Contractor") hereby agrees and warrants that all of its Work complies with the requirements of the Contract Documents. If, within one year after the date of Substantial Completion of the entire Work or after the date for commencement of warranties (provided, except with respect to

warranties on equipment within a building, which one-year period shall commence on the date of Substantial Completion of the Work comprising such building, such one-year period shall in no event be less than one year following Substantial Completion of the entire Work, any of the Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner to do so unless the Owner has previously given Contractor a written acceptance of such condition. The Contractor agrees that with respect to any corrective work which affects the habitability of a unit, as reasonably determined by the Owner, the Contractor shall respond to the Owner's notice and commence the corrective work as quickly as is possible, but in any event within 24 hours. All other corrective work will be commenced within seventy-two hours after receipt of notice from the Owner. If the Contractor fails to undertake required corrective work within the applicable foregoing period of time or fails to complete corrective work after such work has been initiated, then in either such event, the Owner shall have the right but not the obligation, to complete such corrective work. In such event, the Contractor shall reimburse the Owner upon demand for all costs and expenses incurred by the Owner in completed the subject corrective work together with an administrative fee equal to 10% of the costs and expenses so incurred by the Owner. The Contractor shall diligently and continuously proceed with the completion of all corrective work, and all such work shall be performed so as to minimize, to the extent reasonable practicable, disruption of the Owner's operations. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work. These obligations shall survive acceptance of the Work under the Contract and termination of the Contract.

This warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or any proceeding commenced.

The Warranty Acknowledgment shall be set forth on each Contractor's, Subcontractor's or Sub-subcontractor's letterhead (which shall include, at a minimum, the name, address, telephone number and facsimile number of such entity or person) and shall include the original signature of a person authorized to sign such an instrument on behalf of such Contractor, Subcontractor or Sub-subcontractor.

ARTICLE 27 - OWNER'S RIGHT TO DO WORK

If during the progress of the work or during the period of guarantee, the Contractor fails to prosecute the work properly or to perform any provision of the contract, the Owner, after fifteen (15) days' written notice, or on such shorter notice as is stated in the General Conditions, to the Contractor from the Designer of such failure, 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 Contractor, such action and cost of same having been first approved by the Designer. Should the cost of such action of the Owner exceed the amount due or to become due the Contractor, then the Contractor shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 28 - TERMINATION OF CONTRACT

If the Contractor fails to begin the work under the contract within the time specified, or the progress of the Work is not maintained in keeping with the progress schedule, or the Work is not completed within the time specified, or the Contractor fails to perform the work with sufficient workers 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 Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or if it submits an Application for Payment, sworn statement, waiver of lien, affidavit, or document of any nature which is intentionally falsified, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing to the Contractor and his surety of such delay, neglect or default, specifying the same, and if the Contractor within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall declare this contract in default due to the Contractor(s) material breach of the contract. 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 Contractor, to accept the contingent assignment of subcontractors, if allowed to do so by law, 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 the Owner's 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 Contractor. Unless otherwise provided in the Contract Documents, such costs shall include (but not be limited to) the cost of any reasonable additional design, administrative, and managerial services required, any costs incurred in retaining another contractor or subcontractor, attorneys' fees and expenses, and any other costs and expenses incurred by Owner. 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 Contractor, then the said Contractor 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 Contractor shall be liable and shall pay to the Owner the amount of said excess.

ARTICLE 29 - CONTRACTOR'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 Contractor, or if the Owner should fail or refuse to make payment on account of a certificate issued by the Designer within thirty (30) days after receipt of same, then the Contractor, after fifteen (15) days' written notice to the Owner and the Designer, may suspend operations on the work or terminate the contract.

b. In the event of such a termination by the Contractor, the Contractor may recover for the cost of all materials delivered and work performed on this Contract plus no more than 20 percent overhead and profit and shall make such payment. The Designer shall be the judge as to the correctness of such payment.

ARTICLE 30 - REQUEST FOR PAYMENT

a. Not later than the fifth day of the month, the Contractor shall submit to the Designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the Contractor and the Designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall include the following information:

1. Total of contract sum including approved change orders.

2. Value of work completed to date.

3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the work has been satisfactorily completed on schedule, with approval of the Owner and written consent of the surety, retainage may be reduced to zero percent (0%) if the Work continues to be completed satisfactorily and on schedule. Owner retains the right to reinstate retainage should Work become unsatisfactory in accordance with Section 143-134.1 of the General Statute of North Carolina.

4. Less previous payments.

5. Current amount due.

b. The Contractor, upon request of the Designer, shall substantiate the request for payment with invoices, vouchers, payrolls, or other evidence, including, but not limited to, invoices demonstrating payments for materials and labor, and certificates or other evidence demonstrating payment to subcontractors.

c. Prior to submitting the first request, the Contractor shall prepare for the Designer a schedule of values in a format acceptable to Designer showing a breakdown of the contract price into values of the various parts of the Work, so arranged as to facilitate payments to subcontractors.

d. When payment is made on account of stored materials and equipment, such materials must be stored on the Owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the Owner's title to such materials and equipment. Responsibility for such stored materials and equipment shall remain with the Contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the Owner's property. Should the space for storage on-site be limited, the Contractor, at its option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the Contractor desire to include any such materials or equipment in his application for payment, they must be stored in the name of the Owner in a commercial warehouse approved by the Designer and located as close to the site as possible. The warehouse selected must be approved by the Contractor's bonding and insurance companies; the material to be paid for shall be assigned to the Owner and shall be inspected by the Designer. Upon approval by the Designer of the storage facilities and materials and equipment, payment therefore will be certified. Such stored materials and equipment shall not be moved except for transportation to the Project Site.

e. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payment to the Contractor on account of such Subcontractor’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

ARTICLE 31 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

a. Within five (5) days from receipt of request for payment from the Contractor, the Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested by the Contractor as approved by the Designer. If the request for payment is not certified by the Designer, he shall, within five (5) days of receipt of the request, state in writing to the Contractor 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.

c. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those claims previously made in writing and identified by the payee as unsettled at the time of final Application for Payment.

d. The Designer shall not authorize final payment until the work under contract has been certified as fully and finally complete by Designer, and that the entire balance found to be due to the Contractor and noted in the final Certificate as due and payable. .

e. Final certificate of payment shall be accompanied by the following:

1. Warranties and guarantees required by the contract, including warranties, Owner's and Operator's manuals relating to all equipment installed.

2. Releases and waivers of claim for contractors and subcontractors.

3. Affidavit of Contractors of payment to material and labor suppliers and subcontractors. (See Article 36.)

4. Certificates of state and local agencies required by law.

5. Certificate of final completion by Designer.

6. Consent of surety to final payment.

7. Complete set of "as-built" drawings.

f. Should the Contractor fail to substantially complete the Work on or before the date stipulated for substantial completion (or such later date as may result from extension of time granted by the Owner), it shall pay the Owner, as liquidated damages, the sum of $_____for each consecutive calendar day that the terms of the Contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages that the Owner will sustain per day by failure of the Contractor to complete the Work within the time as stipulated; it being recognized by the Owner and the Contractor that the injury to the Owner which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs or liquidated damages be construed as a penalty on the Contractor. For each consecutive calendar day that the Work remains incomplete after the date established for final completion, the Owner will retain from the compensation otherwise to be paid to the Contractor the sum of $_____. This amount is the minimum measure of damages the Owner will sustain by failure of the Contractor to complete all remedial work, correct deficient work, clean up the project and other miscellaneous tasks as required to complete all work specified. This amount is in addition to the liquidated damages prescribed for substantial completion. The amounts of liquidated damages set forth in this paragraph shall be assessed cumulatively. Items of costs included in the assessment of liquidated damages are not defined in the General Conditions. This provision for liquidated

damages does not bar Owner's right to enforce other rights and remedies against Contractor, including, but not limited to, specific performance or injunctive relief.

ARTICLE 32 - PAYMENTS WITHHELD

a. The Designer may refuse to certify applications for payment for the following reasons:

1. Defective Work not corrected.

2. Absence of a timely and properly approved project progress schedule, with required updates.

3. Reasonable evidence that the unpaid balance of the contract sum is insufficient to complete the Work.

4. Reasonable evidence that the Work cannot be completed in the Contract Time, and that the contract balance is not sufficient to cover actual or liquidated damages for anticipated delays in completion.

5. Claims filed against the Contractor or evidence that a claim will be filed.

6. Evidence that subcontractors have not been paid.

b. When grounds for withholding payments have been removed, payment will be released. The Owner shall not be deemed in default by reason of withholding payments while any of the above grounds remain uncured.

ARTICLE 33 - MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until the Contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the Owner. All insurance shall be provided by companies licensed to do business in North Carolina. These certificates of insurance shall contain a provision that coverage's afforded under the policies will not be canceled, 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.

Contractor's Liability Insurance.

a. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in North Carolina such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or

by a Subcontractor or by anyone directly or indirectly employed by any of them, or by any one for whose acts any of them may be liable:

1. Claims under worker's compensation, disability, benefit and other similar employee benefit acts that are applicable to the work to be performed;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

4. Claims for damages insured by usual personal injury liability coverage;

5. Claims for damages, other than to the work itself; because of injury to or destruction of tangible property, including loss of use resulting there from;

6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

7. Claims for bodily injury or property damage arising out of completed operations; and

8. Claims involving contractual liability insurance applicable to the Contractor's obligations under the indemnity article of this Contract.

b. The insurance required shall be written for not less than limits of liability specified in the contract documents or required by law, whichever coverage is greater. Coverage [whether] written on an occurrence [or] claims made basis, shall be maintained without interruptions from the date of commencement of the work until date final payment and determination of any coverage required to be maintained after final payment.

c. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to the commencement of the work. These certificates and the insurance policies required by this article shall contain a provision that coverage is afforded under the policies will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Owner. If any of the foregoing insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required by the Contract Documents. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

d. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

e. Optionally, the Owner may require the Contractor to purchase and maintain project management protective liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Designer's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased for such coverage shall be equal to the aggregate of the limits required for Contractor's liability insurance under subparagraphs 2 through 5 above.

f. To the extent damages are covered by project management protective liability insurance, the Owner, Contractor and Designer waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

Property Insurance

a. The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents or otherwise in writing by all persons and entitled who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this paragraph to be covered, whichever is later. This insurance shall include interest of the owner, the Contractor, Subcontractors and Sub-subcontractors in the project.

1. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover

reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

2. If the property insurance required deductibles, the Owner shall pay costs not covered because of such deductibles.

3. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

b. Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. If the Owner intends to occupy premises before Certificate of Occupancy is received, insurance company will be contacted to endorse policy.

Boiler and Machinery Insurance

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interest of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured.

Loss of Use Insurance

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

a. If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

b. If during the project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the project, or if after final payment property insurance is to be provided on the completed project through a policy or policies other than those insuring the project during the construction period, the Owner shall waive all rights in accordance with the terms of subparagraphs g.7. for damages caused by fire or other causes of loss covered by this separate

insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

c. Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverage's required. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

Waivers of Subrogation.

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-contractors, agents and employees, each of the other, and (2) the Architect, Architect's consultant, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this paragraph or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

a. A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insured's, as their interest may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

b. If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a change in the Work.

c. The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power. If such objection is made, the dispute shall be resolved as provided in Article 46 below. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

ARTICLE 34 - PERFORMANCE BOND AND PAYMENT BOND

Each Contractor 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 sum, as increased by Change Order or Construction Change Directive. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina. The Contractor shall obtain a Performance Bond and a Payment Bond, in a form acceptable to the Owner. The bonds shall guarantee the Contractor's faithful performance of the contract and the payment of all obligations arising there under. The bonds shall remain in force until (1) all work has been fully and finally completed and accepted by the Owner, (2) the provisions of all guarantees or warranties required by these Contract Documents have been fulfilled, and the time limitation for all guarantees or warranties has expired, or (3) until the time for the filing of all mechanics liens has expired, whichever is longer, after which it shall become void. The Contractor shall pay all charges in connection with the bonds as a part of the contract. One original executed and sealed copy of the bonds, together with an original and sealed power of attorney shall be attached to each copy of the contract before they are returned for the Owner's signature.

Unless otherwise, agreed, the bonds shall be written on AIA Document A-311, latest edition. Copies of AIA Document A-311 may be obtained from the local office supply or stationery store or may be ordered from the American Institute of Architects, 1735 New York Avenue, N.W., Washington, DC 20006. A current Power-of-Attorney shall be attached to this bond. Notarized originals are required.

ARTICLE 35 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the Contractor on account of the contract shall not become due until the Contractor has furnished to the Owner through the Designer an affidavit signed, sworn and notarized to the effect that all payments for materials, labor, services or subcontracted Work in connection with his contract have been satisfied, and that no claims or liens exist against the Contractor in connection with this contact.

ARTICLE 36 - ASSIGNMENTS

Except as otherwise provided herein, the Contractor shall not assign any portion of this contract or 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 Contractor under the contract may be assigned.

ARTICLE 37 - USE OF PREMISES

a. The Contractor shall confine its apparatus, equipment, the storage of materials and the operations of its workers to limits indicated by law, ordinances, permits or directions of the Designer and shall not exceed those established limits in his operations.

b. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

c. The Contractor shall enforce the Designer's instructions regarding signs, advertisements, fires, smoking, firearms, and use of alcohol or other controlled substances.

ARTICLE 38 - CUTTING, PATCHING AND DIGGING

a. The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit 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 Designer may direct.

b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefore.

c. No Contractor shall endanger any work of another Contractor by cutting, digging or other means. No Contractor shall cut or alter the work of any other Contractor without the consent of the Designer and the affected Contractor.

ARTICLE 39 - UTILITIES, STRUCTURES, SIGNS

a. The Contractor shall provide necessary and adequate facilities and pay all costs for water, electricity, gas, oil, sewer and other utility services which may be necessary and required for completion of the project according to the Contract Documents. Any permanent meters installed shall be listed in the Contractor's name until its work is fully accepted by the Owner.

b. Meters shall be relisted in the Owner's name on the day following completion and acceptance of the Contractor’s work and the Owner shall pay for services used after that date.

c. The Owner shall be reimbursed for all metered utility service charges paid by or attributed to the Owner after the meter is relisted in the Owner's name and prior to

completion and acceptance of the work of all Contractors. Reimbursement shall be made by the Contractor whose work has not been completed and accepted. If the work of two or more Contractors has not been completed and accepted, reimbursement to the Owner shall be paid by the Contractors involved on the basis of assessments by the Designer.

d. All Contractors shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed. 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 when it has windows installed and when doorways and other openings have protection which will provide reasonable climatic control. The appropriate climatic condition shall be jointly determined by the Contractor(s) and the Designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the Contractor(s).

e. Adequate security locks shall be provided by Contractor.

f. The electrical contractor shall have the building's permanent power wiring distribution system in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.

g. The electrical contractor shall have the building's permanent lighting system ready at the time the general contractor begins interior painting and shall provide adequate lighting in those areas where interior painting and finishing is being performed.

h. Each prime Contractor 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, each Contractor shall remove and replace any parts of the permanent building systems damaged through its use during construction.

2. Temporary filters shall be installed in each of the heating and air conditioning units 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 clean and under no circumstances shall air systems be operated if finishing operations are creating dust in excess of what would be considered normal if the building were occupied. The Designer may require that return grilles in the habitable space also be covered with filter media. The intent is to present the duct system in a clean condition at final inspection.

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 electrical Contractor shall have all lamps in proper working condition at the time of final project acceptance.

i. The Contractor 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 Contractor shall 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. The Contractor will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered. The sign shall bear the name of the project, and the names of prime Contractors on the project, and the name of the Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner.

ARTICLE 40 - CLEANING UP

The Contractor shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site from time to time or when directed to do so by the Designer or general Contractor. Before final inspection and acceptance of the building, each Contractor shall clean his portion of the Work, 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 41 - GUARANTEE

a. 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 Contractor shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.

b. The Contractor 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 final acceptance of

the Work and shall replace such defective materials or workmanship without cost to the Owner.

c. Additionally, the Contractor shall guarantee materials and workmanship against latent defects arising from faulty materials, faulty workmanship or negligence which is hidden or not readily apparent to the Owner at the time of final acceptance and which is discovered by the Owner within six (6) years following final acceptance of the work. The guarantee for latent defects related to the structural System shall be ten (10) years. The Contractor shall replace such defective materials or workmanship without cost to the Owner.

d. Roof guarantees are stipulated in the roofing specification.

ARTICLE 42 - 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 43 - INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Designer and the agents, consultants and employees of the Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from 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 there from, and (2) is proximately caused in whole or in part by any negligent act or omission of the Contractor, the Contractor's subcontractor, or the agents of either the Contractor or the Contractor's subcontractor. 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.

"WHEN A PROJECT IS FEDERALLY FUNDED, EITHER IN WHOLE OR IN PART, THE APPLICABLE THIRD PARTY CONTRACT CLAUSES WILL BE MADE A PART OF THE PROJECT SOLICITATION AS WELL AS THE CONTRACT DOCUMENT"

ARTICLE 44 - 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.

a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

b. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

d. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Designer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Owner for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

ARTICLE 45 - SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS

The Contractor shall make a good faith effort to ensure that, whenever possible, subcontracts are awarded to minority and women's business enterprises in accordance with Town policy.

ARTICLE 46 - RESOLUTION OF DISPUTES

Subject to the provisions of the North Carolina General Statutes regarding a dispute resolution process, the following procedure shall be used to resolve any disputed issues, where the amount in controversy exceeds $10,000, arising out of a contract or the construction process thereunder.

1. At the request of any party with a substantial interest in the dispute, all other parties shall, in good faith, participate in the dispute resolution process set out in paragraph 2 below, and make good faith efforts to resolve the matter in dispute through such process.
2. The parties to the dispute shall participate in a mediated dispute settlement conference.

   2.1 If the parties to the dispute are able to agree on a mediator or a process for selection of a mediator for the conference, they shall also scheduled a date for the mediation, which shall be conducted within 45 days of the request for mediation.

   2.2 If the parties to the dispute are unable to agree on a mediator for the conference the mediator shall be selected according to the following procedure:

      a. The name of a certified mediator in the North Carolina Judicial District 15-B shall be selected at random from among a list of all mediators certified in District 15-B according to the local rules for Civil Superior Court, Judicial District 15-B.

      b. In the event the mediator selected is unable to serve, the random selection process shall continue until a mediator is selected who can serve.

      c. Upon selection of a mediator by this method, the mediator shall schedule a date for mediation which shall be conducted within 45 days of the selection.

3. In the event the dispute resolution process set out in paragraph 2, above, does not lead to a full resolution of the matters in dispute, all parties may use any other legally available procedures to seek resolution of the disputed matters.

4. The cost of the dispute resolution process provided above shall be borne as follows: "The costs shall be divided evenly among the parties involved in the dispute except that the Town, if a party to the dispute, shall be responsible for a minimum of one-third of the cost of the process".

ARTICLE 47 - LEAD BASED PAINT

The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

ARTICLE 48 - EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

a. The Owner shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

c. The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the ***Resolution of Disputes*** clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ARTICLE 49 - LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS

This Article shall apply only to projects which are funded (fully or in part) by Federal Funds. If the total amount of a contract exceeds $2,000, the Federal labor standards set forth in the clauses below shall apply to the construction Work to be performed under the contract.

a. **Minimum Wages.**

1. All laborers and mechanics employed or working upon the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

2. (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.

   (ii) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2)(ii) or (iii) of this clause shall be paid to all workers performing Work in the classification under this contract from the first day on which Work is performed in the classification.

3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

b. **Withholding of funds.** The Owner upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project), all or part of the wages required by the contract, the Owner may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. The Owner may, after written notice to the

Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

c. **Payrolls and basic records**.

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or, under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Owner. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c) (1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

   (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or sub-Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

3. The Contractor or subcontractor shall make the records required under subparagraph (d)(1) available for inspection, copying, or transcription by authorized representatives of the Owner and shall permit such representatives of HUD to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Owner may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. **Compliance with Davis-Bacon and related Act requirements**.

All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.