

**GENERAL CONDITIONS OF THE CONTRACT**

**STANDARD FORM FOR DESIGN-BUILD PROJECTS**

**NORTH CAROLINA**

**DEPARTMENT OF ADMINISTRATION**

**STATE CONSTRUCTION OFFICE**

**Form OC-15DB**

**This document is a public document, but it is intended for use in State capital construction projects. It shall not be binding on the State Construction Office if used on any project that is not reviewed and approved by the State Construction Office.**

**Extensive modification to the General Conditions by means of “Supplementary General Conditions” is strongly discouraged. State agencies and institutions may include special requirements in “Division 1 – General Requirements” of the specifications, where they do not conflict with the General Conditions.**

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## GENERAL CONDITIONS OF THE CONTRACT

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## ARTICLE 1 – DEFINITIONS

- a. **Approval** means written or imprinted acknowledgement that materials, equipment, or methods of construction are acceptable for use in the work.
- b. **Authority Having Jurisdiction (AHJ)** shall mean the agency or office responsible for approving layout drawings, enforcing the requirements of the North Carolina Building Code and its referenced standards, and issuing building permits. The State Construction Office is the AHJ for State agencies and universities projects. The city or county building department is the AHJ for community college projects.
- c. **Beneficial Occupancy** may be requested by the Owner and is occupancy or partial occupancy of the building in a Project after all life safety items have been completed as determined by the State Construction Office. Life safety items include but are not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths, and security.
- d. **Change Order**, as used herein, shall mean a written order to the Design-Builder from the Owner subsequent to the signing of the contract authorizing a change in the design fees, contract time, and/or contract amount relating to the costs of construction as defined in the contract. The change order shall be signed by the Design-Builder, and the Owner, and approved by the State Construction Office, in that order per Article 19 herein.
- e. **Clarification or Request for Information (RFI)** is a request from the Design-Builder seeking an interpretation or clarification by the Design Professional relative to the Contract Documents. The RFI shall be labeled RFI and shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Design-Builder's interpretation or understanding of the Contract Documents requirements in question, along with reasons for such an understanding.
- f. **Clarification or Request for Owner Information (RFOI)** is a request from the Design-Builder seeking an interpretation or clarification by the Owner relative to the Contract Documents. The RFOI, which shall be labeled RFOI, shall clearly and concisely set forth the issue or item requiring clarification or interpretation, and why the response is needed. The RFOI must set forth the Design-Builder's interpretation or understanding of the Contract Documents requirements in question, along with reasons for such an understanding.
- g. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance with the owner's Project requirements and the Project design documents.
- h. **Construction Change Directive**, as used herein, a written order prepared by the Design-Builder and signed by the Design-Builder, Owner, and State Construction Office directing a change in the Work prior to agreement on adjustment, if any, in the Contact Sum or Contract Time, or both. All Construction Change Directives shall be followed by a Change Order.
- i. The **Construction Contract and Contract Documents** consists of the General Conditions of the Contract; the State Construction Manual, the General Provisions of

the Design-Build Contract, special conditions if applicable; the request for qualifications document and the Design-Builder's response; Supplementary General Conditions; the drawings and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates; the approval of the attorney general; and the certificate of the Office of State Budget and Management. All of these items together form the contract.

- j. **Design-Builder** - An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design and construction services, which includes general, mechanical, electrical, plumbing and/or sprinkler contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of contracting are performed by a licensed general, mechanical, electrical, plumbing, and/or sprinkler contractor.
- k. **Design-Builder Construction Fee** shall be an all-inclusive lump sum fee which includes all the Design-Builder's home office, general conditions, overhead costs, and profit. The Design-Builder Construction Fee does not include the Design Professional's construction phase fee.
- l. The **Design Professional** means any firm or firms of architects or engineers or both, and their consultants, professionally licensed under Chapters 83A, 89A, or 89C of the North Carolina General Statutes which have undertaken to design the Project pursuant to a contract as part of the Design-Builder. A **Design Professional** may be an employee of the Design-Builder only if the Design-Build firm itself is properly licensed by the appropriate board to provide architectural, engineering, landscape architecture, or land surveying services as required by Chapters 83A, 89A, or 89C of the North Carolina General Statutes.
- m. **Design Professional Final Inspection** is the inspection performed by the Design Professional to determine the completeness of the Project in accordance with approved plans and specifications. This inspection occurs prior to SCO final inspection.
- n. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the Design-Builder in all characteristics (physical, functional, and aesthetic) to those specified in the Contract Documents.
- o. **Field Change**, as used herein shall mean a written approval from the Owner for the Design-Builder to proceed with work requested by the Owner to be paid for from the Design-Builder Contingency or Owner's Project Reserve within the GMP.
- p. **Final Acceptance** is the date the State Construction Office accepts the construction as totally complete. This includes the SCO Final Inspection and certification by the design professional that all punch lists are completed.
- q. **First-tier Subcontractor** – A subcontractor who contracts directly with the design-builder, excluding design professionals.

- r. **Guaranteed Maximum Price (GMP)** is the highest amount the Owner will pay to the Design-Builder for the completion of the Project. The GMP consists of all construction costs, all design costs, and all other projected costs including without limitation the Design-Builder fee and Contingency but does not include the Owner's Construction Contingency.
- s. **Indicated** and **Shown** shall mean provide as detailed, or called for, and reasonably implied in the Contract Documents.
- t. **Inspection** shall mean examination of work completed or in progress to determine its compliance with Contract Documents.
- u. **Licensed Subcontractor** - A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the Project requires that it be licensed in accordance with Article 1, Article 2, or Article 4 of Chapter 87 of the North Carolina General Statutes.
- v. **Liquidated Damages** is an amount reasonably estimated in advance to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the Design-Builder to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, penalties and violations with environmental laws and regulations, etc.) or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the Design-Builder (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
- w. The **Owner** (Governmental Entity) is the State of North Carolina by and through the agency or institution named on the cover sheet of the Construction Contract, where the Project is being built, and shall include every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.
- x. The **Project** is the total design and construction work to be performed under the Contract Documents.
- y. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
- z. **Routine written communications between the Design-Builder and the Owner** are any communication other than a "request for owner information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for owner information".

- aa. **SCO Final Inspection** is the inspection performed by the State Construction Office to determine the completeness of the Project in accordance with NC Building Codes and approved plans and specifications.
- bb. **Special Inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections defined by the Statement of Special Inspections to ensure compliance with the approved construction documents and referenced standards.
- cc. **State Construction** or **SCO** shall mean the North Carolina Department of Administration's State Construction Office.
- dd. A **subcontractor** shall be any licensed or unlicensed subcontractor.
- ee. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the Design-Builder would improve competition and/or enhance the finished installation.
- ff. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the Design-Builder, and which engages to be responsible for the Design-Builder and his acceptable performance of the work.
- gg. **Unlicensed Subcontractor** - A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the Project does not require that it be licensed in accordance with Article 1, Article 2, or Article 4 of Chapter 87 of the North Carolina General Statutes.
- hh. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor or subcontractor as supervised or performed by or on behalf of the Design-Builder.
- ii. **Written notice** shall be defined as notice in writing delivered in person or by verified mail, return receipt requested, to the contractor or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.

## **ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS**

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete Project. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.

- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The Design-Builder shall execute each copy of the response to RFQ, contract, performance bond and payment bond as follows:
  - 1. If the documents are executed by a sole Owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
  - 2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
  - 3. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
  - 4. If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole Owner, partnership or corporation, whichever form is applicable to each member.
  - 5. All signatures shall be properly witnessed.
  - 6. If the Design-Builder's license is held by a person other than an owner, partner, or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.
  - 7. The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.
  - 8. Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear after the signature.
  - 9. The seal of the bonding company shall be impressed on each signature page of the bonds.
  - 10. The Design-Builder's signature on the performance bond and the payment bond shall correspond with that on the contract.

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

- a. In such cases where the nature of the work requires clarification by the Design Professional, such clarification shall be furnished by the Design Professional 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 Design Professional shall submit and obtain approval from the AHJ any clarifications pertaining to life safety systems prior to implementation by the Design-Builder. Life safety items include but are not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths, and security.



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

- a. The Design-Builder shall furnish the reviewing agencies with an electronic copy of design documents for each design milestone. A set of clean black line prints shall be provided upon request.
- b. The Design-Builder shall furnish SCO and the Owner an electronic copy of the final documents that make up the Construction Contract.

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

- a. A schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the Design-Builder and provided to the Design Professional and Owner. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the Design Professional. The Owner in conjunction with the Design-Builder will identify all submittals that will be reviewed by the Owner.
- b. The Design-Builder will be responsible for logging, reviewing, and approval of all shop drawings/submittals prior to submission to the Owner. The Design-Builder shall ensure that the shop drawings/submittal packages are submitted in an appropriate manner and, if not, return them to the subcontractor for proper submission.
- c. The Design Professional shall review required submittals promptly, noting desired corrections if any, for the Design-Builder's use or for corrections and resubmittal as noted by the Design Professional. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- d. Submittals approved by the Design Professional shall be distributed to the Owner when required. The Owner shall return the submittal to the Design Professional within 7 calendar days. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- e. The Design-Builder shall develop and implement a system for processing all shop drawings/submittals and shall be responsible for tracking and monitoring all shop drawings/submittals until all have been approved by the Owner.

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

- a. The Design-Builder shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the Owner or his authorized representative.
- b. The Design-Builder may incorporate some shop drawings into the Contract Documents during the design of the Project
- c. The Design-Builder shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the Contract Documents. All variations must be approved by the Design Professional and the Owner. Approved variations shall be fully noted on project drawings by the Design-Builder and submitted to the Owner

upon Project completion and no later than ninety (90) days after acceptance of the Project.

- d. The Design-Builder shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

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

All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract is the sole property of the State of North Carolina and may be used on any other project, design, or construction without additional compensation to the Design-Builder. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project, shall be at such person or entity's own risk and the Design Professional shall not be liable to such person or entity for any claim arising from the use of the design, tracings, or specifications, including claims for personal injury, property damage, or death as a result of such other use.

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

- a. The Design-Builder shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water, and shall require the subcontractors to supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding, and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The Design-Builder shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the Contract Documents.
- b. All materials shall be new and of quality specified by the contract documents, except where reclaimed material is authorized herein and approved for use. Workmanship shall, at all times, be free from defects and in accordance with the construction documents. If the construction documents do not define the quality of workmanship for a given material, samples, product data sheets, mock-ups, and applicable industry standards will be used to evaluate workmanship.
- c. Upon notice, the Design-Builder shall require the subcontractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Design-Builder through the subcontractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Design-Builder through the subcontractor has the option of using any product and manufacturer combination listed. However, the Design-Builder through the subcontractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character, and quality of product desired; and that equivalent products will be acceptable. The Design-Builder will be responsible for reviewing all substitution

- requests from subcontractors prior to submission to the Design Professional and Owner and shall track & monitor all such requests.
- e. The Design-Builder shall obtain written approval from the Design Professional, in consultation with the Owner, for the use of products, materials, equipment, assemblies, or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
  - f. Substitution materials, products, equipment, assemblies, or installation methods proposed by the Design-Builder shall be approved by the Design Professional, in consultation with and approval by the owner.
  - g. If at any time during the construction and completion of the work covered by these Contract Documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Design-Builder, or if any workman be considered detrimental to the work, the Design-Builder shall order such parties removed immediately from grounds.

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

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

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

- a. The Design-Builder shall give all notices and comply with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the work under this contract. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the Design-Builder performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules, and regulations, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local, and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the Design-Builder unless otherwise specified.
- c. Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The Design-Builder shall, however, cooperate with the county or municipal authorities by obtaining building permits. Any permits pertaining to the project are the responsibility of the Design-Builder.
- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The Design-Builder shall pay the cost of these permits and inspections unless otherwise specified.

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

- a. The Design-Builder shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner, and by laws or ordinances governing such conditions. The Design-Builder shall be responsible for any damage to the Owner or the Owner's property caused by the Design-Builder or others on the job for whom the Design-Builder is responsible, by them, their personnel, or their subcontractors, or any failure by them to secure or protect the Project, and shall pay for or make good any such damages. The Design-Builder shall have access to the Project site at all times.
- b. The Design-Builder shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind are allowed inside or around the construction without special permission from the Owner.
- d. The Design-Builder shall ensure that all trees and shrubs designated to remain in the vicinity of the construction are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded to keep the public away from the construction while maintaining required paths of travel. All trenches, excavations, or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The Design-Builder shall develop and implement a Project safety plan that provides all necessary safety measures for the protection of all persons on the Project, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. The Design-Builder shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells, and similar hazards. The Design-Builder shall ensure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f. The Design-Builder shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C. Gen. Stat. §§ 95-126 through 155.
- g. The Design-Builder shall designate a responsible person of his organization as safety officer/inspector to inspect the Project site for health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the Project, and to provide other safety and health measures on the Project site as required by the terms and conditions of the contract. The Design-Builder shall provide the name of the Project's safety inspector to the Design Professional and Owner at the time of the preconstruction conference and prior to any work starting on the Project.

- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining-properties, the Design-Builder is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the Design-Builder on account of such action shall be determined as provided for under Article 19(b).
- i. All costs associated with correcting damage caused by the Design-Builder, their personnel, or their subcontractors, or their failure to secure or protect the Project, to adjacent properties of the construction site or staging area shall be borne by the Design-Builder. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

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

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

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

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the Owner's designated representatives, Special Inspector, State Construction Office, and those persons required by state law to test special work for official approval. The Design-Builder shall provide all necessary equipment and safe access to the work at all times for such inspections.
- b. The Design Professional shall inspect the work to ensure compliance with the approved plans and specifications.
- c. Observations made by the Owner's designated representatives shall be conveyed to the Design-Builder in writing.

- d. The Design-Builder shall perform quality control inspections on the work of subcontractors to guard the Owner against defects and deficiencies in the work. The Design-Builder shall advise the Design Professional and owner of any apparent variation or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- e. Where special inspection or testing is required by any state laws, instructions of the Design Professional, specifications or codes, the Design-Builder shall give adequate notice to the Design Professional and Owner of the time set for such inspection or test. The Design Professional shall report on special inspections and testing at monthly job site progress conferences.
- f. All laboratory tests shall be paid by the Design-Builder including but not limited to laboratory tests for hazardous materials and to establish design mix for concrete and for additional tests to prove compliance with the Contract Documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures. All laboratory test results shall be approved by the Design Professional. The Design Professional shall report on laboratory tests at monthly job site progress conferences. Approved tests shall be submitted to the Owner and SCO Monitor upon request.
- g. Should any work be covered up or concealed prior to inspection and approval by the Design Professional or State Construction Office, such work shall be uncovered or exposed for inspection. Inspection of the work will be made promptly upon notice from the Design-Builder. All cost involved in uncovering, repairing, replacing, recovering, and restoring to design condition, the work that has been covered or concealed will be paid by the Design-Builder.

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

- a. On-site representatives of the Design-Builder shall manage the work of the subcontractors and coordinate the work with the activities of the Owner to complete the Project with the Owner's objectives of cost, time, and quality. Throughout the progress of the work, the Design-Builder shall maintain a competent and adequate full-time staff approved by the Owner. It is understood that the designated and approved on-site representatives of the Design-Builder will remain assigned to the Project and in responsible charge so long as those persons remain employed by the Design-Builder unless otherwise requested or agreed to by the Owner. The Design-Builder shall establish an on-site organization with appropriate lines of authority to act on behalf of the Design-Builder. Instructions, directions, or notices given to the designated on-site authority shall be as binding as if given to the Design-Builder. However, directions, instructions, and notices shall be confirmed in writing.
- b. The Design-Builder shall call, hold, and preside over monthly Project progress conferences. All subcontractors, as well as the Design Professional and all subconsultants, shall be represented at these progress conferences by both home office and Project personnel. The Design-Builder shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation, and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified contract time. The Design-Builder shall be prepared to assess progress of the

work and to recommend remedial measures for correction of progress as may be appropriate.

- c. The Design-Builder shall, if required, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a benchmark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- d. A final critical path method (CPM) schedule shall be submitted to the Owner for approval with the GMP proposal. The CPM schedule shall show all salient features of the work required for construction of the Project from start to finish within the time allotted by the contract. The time in days between the Design-Builder's early completion date and the contractual completion date is Project float time and shall be used as such by the Design-Builder unless amended by change order. No application for Construction Phase payment will be processed until the Project CPM schedule is approved by the Owner. No monthly application for payment will be processed without the submission of an electronic and paper copy of the CPM schedule attached.
- e. The CPM schedule shall be a complete computer-generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates are required and shall show the estimated completion of each activity.
- f. The Design-Builder shall distribute to the subcontractors the approved Project CPM schedule and shall display the same at the job site.
- g. The Design-Builder shall maintain the Project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the Project within the time allotted by the contract. In doing so, the Design-Builder shall keep the designer as well as all subcontractors fully informed as to all changes and updates to the schedule. The Design-Builder shall submit to the Owner a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the Design-Builder must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the Design-Builder shall prepare and submit to the Owner a recovery schedule for review and approval. Failure of the Design-Builder to abide by the directives in this paragraph will give the Owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

#### **ARTICLE 15 – DESIGN REQUIREMENTS OF THE DESIGN-BUILDER**

- a. The Design Professional shall provide professional services for the Project in accordance with the Contract Documents and the latest edition of the document entitled "State Construction Manual."
- b. The total Project cost, as indicated in the contract, is derived from a specific appropriation or funds specifically provided for the Project. Accordingly, the Design-Builder shall conform his plans to a design, the construction cost of which together

with the addition of design fees and any other associated Project costs, shall not exceed the total Project cost.

- c. The Design Professional agrees that his representatives on the construction Project shall be qualified by training and experience to make decisions and interpretations of plans and specifications, and shall be empowered by the Design Professional to do so; such decisions and interpretations shall be binding upon the Design Professional as if made by him; all such decisions shall be confirmed in writing at the earliest reasonable date, with copies to the Owner and the State Construction Office, conditioned that such decisions and interpretations shall not modify adversely the requirements of the Contract Documents; the Design Professional's representatives shall be replaced promptly and without protest at the request of the Owner, if in the opinion of the Owner and the State Construction Office, such representatives are either negligent or unqualified to perform their duties.
- d. The Design-Builder agrees to begin the Design Phase of the work promptly upon receipt of a fully executed copy of the Form of Design-Build Construction Contract.
- e. The Design-Builder shall provide the following services during the Schematic Design Phase.
  1. The Design Professional shall consult with the Owner to ascertain the requirements of the Project and shall confirm such requirements to the Owner.
  2. The Design Professional shall prepare schematic design studies in accordance with the State Construction Manual, leading to a recommended solution together with a general description of the Project for approval by the Owner.
  3. The Design-Builder shall submit to the Owner a statement of probable construction cost based on the area, volume, or other current unit costs.
  4. The Design-Builder shall submit to the Owner a preliminary schedule and logistics plan.
- f. The Design-Builder shall provide the following services during the Design Development Phase.
  1. The Designer Professional shall prepare from the approved schematic design studies, for approval by the Owner, the design development documents which shall include site and floor plans, elevations and other drawings, and outline specifications as are necessary to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, and such other work as may be required, including site and utility requirements.
  2. The Design-Builder shall submit to the Owner a statement of construction cost establishing a construction phase Guaranteed Maximum Price.
  3. The Design-Builder shall submit to the Owner a CPM schedule and logistics plan.
- g. The Design-Builder shall provide the following services during the Construction Document Phase.



1. The Design Professional shall prepare from the approved design development documents, working drawings and specifications setting forth in detail and prescribing the work to be done and the materials, workmanship, finishes and equipment required for the engineering, architectural, structural, mechanical, electrical and the site work, and for service-connected equipment; and assemble the necessary bidding information, proposal and contract forms, and conditions of the contract, for approval by the Owner.
  2. The Design-Builder shall submit to the Owner a further statement of probable construction cost as indicated by fully developed requirements and current market conditions.
  3. The Design-Builder shall prepare and file the required documents for the approval of governmental authorities having jurisdiction over the Project.
- h. In the event that during the several stages of design, the Design-Builder's Statement of Probable Construction Cost together with design fees exceeds the limitations set forth, the Owner shall have the right to require the Design-Builder, without any additional cost to the Owner, to modify his plans and specifications or redesign the Project as may be necessary to bring the construction cost plus design fees within the Total Project Cost.
- i. The Design-Builder shall provide the following services during the Construction Phase.
1. The Design Professional shall process and approve, or take other appropriate action in respect of, progress schedules, shop drawings and other required submissions of contractors promptly.
  2. The Design Professional shall process the Design-Builder's applications for payment promptly for authorized work and issue certificates of payment.
  3. The Design Professional shall review "MBE Documentation for Contract Payment" – (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the Owner and forward copies to the State Construction Office.
  4. The Design Professional shall provide general administration of the performance of the construction contract, including inspection and continuous liaison of the work to ensure full compliance with plans and specifications. All inspections shall be by qualified and mutually agreed upon representatives of the Design Professionals' firm(s) not less than once per week while work related to their design is in progress, and as often as necessary to ensure compliance with the approved plans and specifications. The Design Professional will inspect the progress, the quality, and the quantity of the work.
  5. The Design Professional shall schedule and conduct final inspection of the Project, coordinating the date for such inspection with the Owner and with the State Construction Office.
  6. The Design-Builder shall assemble written guarantees, affidavits, manuals of instruction for operation, and other required and closing papers of the contractors; issue certificates of final completion, certificates of compliance from various in-house and contract consultants as required by N.C. Gen. Stat. § 133-

- 1.1, final certificates for payment; and set date for beginning of the guarantee period, forwarding all closing papers to the Owner.
- j. The Design Professional shall provide the following services during the Post-Construction Phase.
1. Upon completion of the Project, the Design Professional shall correct the drawings to conform to the Project as finally constructed and shall deliver to the Owner and to the State Construction Office corrected record drawings.
  2. Prior to final payment to the Design-Builder, the Design Professional shall prepare and deliver to the Owner and to the State Construction Office a final report.
  3. The retainage, as defined by Article 31, shall be retained until approval of the record drawings and final report by the State Construction Office and the Owner. Final payment can be made after letter of approval is received by the Owner from the State Construction Office.
- k. It is the responsibility of the Designer-Builder to maintain the design schedule documented by the Form of Design Build Construction Contract. If for any reason it appears any phase of the Project will be delayed, the Design-Builder shall notify the Owner and the State Construction Office, in writing, prior to the due date of that phase with an explanation of the reason for the delay. If the delay is approved by the Owner, in consultation with the State Construction Office, the design schedule may be modified, and the agreement amended. Both failure to give the required notification of delay and failure to meet the production schedule constitute failure to perform in accordance with the terms of this contract and the contract may be terminated in accordance with Article 54.a.
- l. In the event the Owner, with the approval of the State Construction Office, requests in writing that the Design-Builder provide services beyond the basic design services described in the Request for Qualifications document and the Form of Design-Build Construction Contract, then the Design-Builder may be paid for such additional design services as herein before provided. Additional services, for which additional compensation may be allowed, are as described hereinafter.
1. Revising previously approved design development or working drawings or specifications to accomplish changes ordered by the Owner, except where required to get the cost within the total Project budget.
  2. Preparing drawings and specifications for alternate bids for work beyond the scope of that originally contemplated in this Agreement. No additional fee shall apply when alternates are used to ensure the Project is kept within the total Project budget.
  3. Other services as may be required will be negotiated.

## **ARTICLE 16 – DESIGN-BUILD TEAM COMPOSITION**

- a. The Design-Builder, as part of their formal response to the Request for Qualifications, has identified the Design Professional that will design the Project as part of the Design-Build team. The Design-Builder may not change the Design Professional without the

approval of the Owner and the State Construction Office. The Design-Builder shall submit in writing all reasons for changing the Design Professional.

- b. As part of the response to the Request for Qualifications, the Design-Builder has clearly outlined which method they will implement for the procurement of subcontractors as identified in N.C. Gen. Stat. § 143-128.1A(c)(8)(a) (hereby defined as “Option A”) or N.C. Gen. Stat. § 143-128.1A(c)(8)(b) (herby defined as “Option B”). The method may not be changed. Methods shall not be combined.
  1. Option A: Where the Design-Builder, as part of their formal response to the Request for Qualifications, asserts they will complete the Project’s construction in accordance with N.C. Gen. Stat. § 143-128.1A(c)(8)(a), the work shall be prosecuted as follows:
    - i. Using the licensed or unlicensed subcontractors identified in the formal response to the Request of Qualifications. These entities may not change without the approval of the Owner and the State Construction Office. The Design-Builder shall submit in writing all reasons for changing a subcontractor.
    - ii. Using licensed subcontractors not identified by the formal response to the Request for Qualifications.
    - iii. Using unlicensed subcontractors not identified in the formal response to the Request for Qualifications.
    - iv. The Design-Builder may self-perform some or all of the work with employees of the Design-Builder.
    - v. The Design-Builder may enter into negotiated contracts or accept bids for the selection of one or more of its first-tier subcontractors.
  2. Option B: Where the Design-Builder, as part of their formal response to the Request for Qualifications, asserts they will complete the Project’s construction in accordance with N.C. Gen. Stat. § 143-128.1A(c)(8)(b), the work shall be prosecuted as follows:
    - i. The Design-Builder may self-perform some of the work with employees of the Design-Builder.
    - ii. Using subcontractors selected by a method approved by the Owner and the State Construction Office. The approved method must be based upon the outline strategy provided by the Design-Builder as part of their formal response to the Request for Qualifications and shall be based upon the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes. The Design-Builder shall not enter into negotiated contracts with first-tier subcontractors.
- c. When Option A is selected, any negotiated contracts with subcontractors shall be based on their fixed price proposal and taking into consideration the quality, performance, time specified in the proposal, and other factors deemed appropriate by the Owner.
- d. When Option A or Option B is selected, any subcontracts that will be bid must comply with N.C. Gen. Stat. § 143-129 and shall be publicly advertised and opened publicly,

and once opened, shall be public records under N.C. Gen. Stat. § 132. The Design-Builder shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C. Gen. Stat. § 143-128.2, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation.

- e. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C. Gen. Stat. § 143-128(f1). This dispute resolution procedure is available to all parties involved in the construction of the Project.
- f. The Design-Builder will furnish to the Design Professional or any subcontractor, upon request, evidence regarding amounts of money paid to the Design-Builder on account of the work of the Design Professional or subcontractor.
- g. The Design-Builder is and remains fully responsible for his own acts or omissions as well as those of the Design Professional and all subcontractors, or any employee of either. The Design-Builder agrees that no contractual relationship exists between the Design Professional and subcontractors and the Owner in regard to the contract.

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

- a. The Design-Builder agrees that the terms of these Contract Documents shall apply equally to each subcontractor as to the Design-Builder, and the Design-Builder agrees to take such action as may be necessary to bind each subcontractor to these terms. The Design-Builder further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to Design-Builder-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of N.C. Gen. Stat. § 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.
- b. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to N.C. Gen. Stat. § 136-28.1, the balance due the Design-Builder shall be paid in full within forty-five (45) days after respective contracts of the Project have been accepted by the Owner, certified by the Design Professional to be completed in accordance with terms of the plans and specifications, or occupied by the Owner and used for the purpose for which the Project was constructed, whichever occurs first. Provided, however, that whenever the Owner and State Construction Office determine that delay in completion of the Project in accordance with terms of the plans and specifications is the fault of the Design-Builder, the Project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the forty-five (45) day limit. Should final payment to the Design-Builder beyond the date the contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the Project was constructed, be delayed by more than forty-five (45) days, the Design-Builder shall be paid interest, beginning on the forty-sixth (46<sup>th</sup>) day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the Design-Builder during construction shall be paid in accordance with the payment provisions of the Contract Documents or the Design-Builder shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such

- interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.
- c. Within seven (7) days of receipt by the Design-Builder of each periodic or final payment, the Design-Builder shall pay the subcontractors based on work completed or service provided under their contract with the Design-Builder. Should any periodic or final payment to a subcontractor be delayed by more than seven days after receipt of periodic or final payment by the Design-Builder, the Design-Builder shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
  - d. The percentage of retainage on payments made by the Design-Builder to the subcontractors shall not exceed the percentage of retainage on payments made by the Owner to the Design-Builder as outlined by Article 31. Any percentage of retainage on payments made by the Design-Builder to the subcontractor that exceeds the percentage of retainage on payments made by the Owner to the Design-Builder shall be subject to interest to be paid by the Design-Builder to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
  - e. Nothing in this section shall prevent the Design-Builder at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of the subcontractor to make timely payments for labor, equipment and materials; damage to Design-Builder or another subcontractor; reasonable evidence that a subcontractor cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

#### **ARTICLE 18 – DESIGN-BUILDER AND DESIGN PROFESSIONAL RELATIONSHIP**

- a. The Design-Builder shall contract with the licensed Design Professional identified in their formal response to the Request for Qualifications. The Design Professional has authority to notify the Design-Builder and the Owner of work that needs to be removed, corrections to faulty work or other such actions that may be necessary to assure successful completion of the work.
- b. The Design Professional, even while contracted for services with the Design-Builder, shall maintain a position of an impartial interpreter of the Contract Documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the Design-Builder, taking sides with neither.
- c. The Design Professional and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The Design-Builder shall provide facilities for such access so the Design Professional and Owner may perform their functions under the Contract Documents.
- d. Based on inspections and evaluations, the Design Professional shall issue interpretations, directives, and decisions to ensure the full compliance with the Contract Documents.

- e. The Owner's decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The Design-Builder's decisions, however, relating to means and methods, and administration of the contracts the Design-Builder holds are final.

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

- a. The Owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the Design-Builder from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change in the GMP contract shall be made by the Design-Builder except upon receipt of approved change order or written construction change directive generated by the Design-Builder, countersigned by the owner and the State Construction Office authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.
  - 1. A construction change directive, transmitted digitally or hand delivered may be used where the change involved impacts the critical path of the work. A formal Change Order shall be issued within the time stated on the construction change directive.
  - 2. The Design-Builder may be requested to make a change to the work by the Owner where such work is to be funded by the Design-Builder Contingency or Project Reserve that is part of the GMP contract. Such a change must be documented in the same manner as a Change Order and must be authorized in writing by the Owner by a Field Change document.
  - 3. In the event of emergency endangering life or property, the Design-Builder may be directed to proceed on a time and material basis whereupon the Design-Builder shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.
- c. In determining the values of changes, either additive or deductive, the Design-Builder and subcontractors are restricted to the use of the following methods:
  - 1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
  - 2. Otherwise, the contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

- d. Under Paragraph "b" and Method "c(2)" above, the allowances for overhead and profit combined shall be as follows: the Design-Builder, his subcontractors (1st tier subs), or their sub-subcontractors (2nd tier subs, 3rd tier subs, etc.) shall be allowed a maximum of ten percent (10%) on work they each self-perform; the Design-Builder shall be allowed a maximum of five percent (5%) on contracted work of his 1st tier sub; 1st tier, 2nd tier, 3rd tier, etc. contractors shall be allowed a maximum of two and one half percent (2.5%) on the contracted work of their subs. In no instance shall the total payments for overhead and profit on a single change order exceed fifteen percent (15%). No additional allowances for overhead and profit shall be allowed. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
1. The actual costs of materials and supplies incorporated or consumed as part of the Project;
  2. The actual costs of labor expended on the Project site;
  3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;
  4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
  5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the Project.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner. A cost for acceleration shall only be considered in specialty cases and must be approved by the Owner and State Construction Office.

- f. Should reasonably unforeseeable conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

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

- g. In all change orders, the procedure will be for the Design-Builder or the Owner to request proposals for the change order work in writing. The Design-Builder will require the subcontractors to provide such proposals and supporting data in suitable format and will review and approve such change orders prior to submission to the Owner. The Design Professional shall verify correctness and make a recommendation to the Owner. If the Owner agrees with the Design Professional's recommendation, they shall execute the change order and forward to the State Construction Office for final approval, within fourteen (14) days of receipt or forward a response to the

Design-Builder within the same time period. The State Construction Office shall act on the change order within seven (7) days. Upon approval by the State Construction Office, the State Construction Office shall distribute to the Owner for distribution to the Design-Builder and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

- h. At the time of signing a change order, the Design-Builder shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."

- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted, or substituted. It shall show on its face the adjustment in time for completion of the Project as a result of the change in the work.
- j. If, during the progress of the work, the Owner requests a change order and the Design-Builder's terms are unacceptable, the Owner, with the approval of the State Construction Office, may require the Design-Builder to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

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

- a. Should the Design-Builder consider that as a result of any instructions given in any form by the Owner, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the Owner within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The Design-Builder shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19.b and Article 11.h. No claims for extra compensation will be considered unless the claim is so made. The Owner shall render a written decision within fourteen (14) days of receipt of claim.
- b. The Design-Builder shall not act on instructions received from persons other than the Owner, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Owner will not be responsible for misunderstandings claimed by the Design-Builder of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a properly authorized change order.
- c. Should a claim for extra compensation by the Design-Builder be denied by the Owner, the Design-Builder shall request informal mediation by a representative of the State Construction Office. If the claim remains unresolved, the Design-Builder shall request a formal mediation with an independent mediator as provided by N.C. Gen. Stat. § 143-128(f1) and 1 N.C. Admin. Code 30H.0101 *et. seq.*, the dispute resolution rules adopted by the State Building Commission. If the Design-Builder is unable to resolve its claims



as a result of mediation, then the Design-Builder shall pursue his claim in accordance with the provisions of N.C. Gen. Stat. § 143-135.3 and the following:

1. A Design-Builder who has not completed a contract with a state agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the Design-Builder claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under N.C. Gen. Stat. § Chapter 150B.
2. Design-Builder who has completed a contract with a State agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the Design-Builder claims is due. The verified written claim shall be submitted within sixty (60) days after the Design-Builder receives a final statement of the Owner's decision of his claim and shall state the factual basis for the claim.
3. The Design-Builder may appear before the Director, either in person or through counsel, to present facts and arguments in support of the verified written claim. The Director may allow, deny, or compromise the verified written claim, in whole or in part. The Director shall give the contractor a final written decision, allowing or denying those portions of the contractor's claim that have not been previously compromised.
  - i. If the verified written claim was originally for an amount less than one hundred thousand dollars (\$100,000), the Director shall investigate and issue a final written decision allowing or denying the verified written claim, in whole or in part, within 120 days of receipt of the contractor's verified written claim.
  - ii. If the verified written claim was originally for an amount of at least one hundred thousand dollars (\$100,000) but less than five million dollars (\$5,000,000), the Director shall investigate and issue a final written decision allowing or denying the verified claim, in whole or in part, within 180 days of receipt of the contractor's verified written claim.
  - iii. If the verified written claim was originally for an amount of five million dollars (\$5,000,000) or more, the Director shall investigate and issue a final written decision allowing or denying the verified written claim, in whole or in part, within 270 days of receipt of the contractor's verified written claim.

Prior to the expiration of the time periods provided in this section, the Director and Design-Builder may, in writing, extend the time in which the Director shall issue a final written decision. The Director's failure to issue a final written decision as provided in this section, or at the expiration of the agreed-upon extended time, shall be deemed a denial of the portions of the verified written claim not previously compromised.

4. A Design-Builder who is dissatisfied with the Director's final written decision on a verified claim, or any portion of a verified written claim, submitted under this section may commence a contested case on the claim under Chapter 150B of the

North Carolina General Statutes. The contested case shall be commenced within sixty (60) days of receiving the Director's written statement of the decision.

5. As to any portion of a verified claim that is denied by the Director, the Design-Builder may, in lieu of filing a contested case under Chapter 150B of the North Carolina General Statutes, within six (6) months of receipt of the Director's final written decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

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

The Owner will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order, copied to the State Construction Office, and shall be binding on the Owner and the Design-Builder.

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

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

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

- a. The Design-Builder shall commence Design Phase work to be performed under its agreement upon execution of the Design-Build Construction Contract. The Design-Builder shall commence Construction Phase work to be performed upon acceptance of the GMP by the Owner. The Design-Builder may not begin construction efforts until after corresponding construction documents have been approved by the State Construction Office.
- b. The Contract Completion date will be determined by the Owner and Design-Builder and recorded by the Design-Build Construction Contract. If the Project is delayed, for each day in excess of Contract Completion date, the Design-Builder shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the Design-Builder to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. If the Design-Builder is delayed at any time in the progress of his work by any act or negligence of the Owner; by changes ordered in the work; by labor disputes at the Project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the Design-Builder's control; or by any other causes which the Owner determines may justify the delay, then the contract time may be extended by change order for the time which Owner, in consultation with State Construction, may determine is reasonable and is supported by schedule analysis from the Design-Builder demonstrating delays/impacts to completing critical path activities in the schedule submitted under

Article 14 (including but not limited to delayed starts, finishes and/or extended durations, etc.)

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

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

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

- a. The Owner may desire to occupy or utilize all or a portion of the Project when the work is substantially complete.
- b. The Owner, with the approval of the State Construction Office, may request the Design-Builder in writing, to permit him to use a specified part of the Project which may be used without significant interference with construction of the other parts of the Project. If the Design-Builder agrees, and after the Design Professional has confirmed in a written statement to the Owner that the work in the specified area is complete, the Design-Builder will schedule a beneficial occupancy inspection at a time and date acceptable to the Design Professional, Owner, and State Construction. The Design-Builder shall prepare a certificate of partial utilization prior to the beneficial occupancy inspection establishing, among other things, the following:
  - 1. Date of beneficial occupancy.
  - 2. A tentative list of items to be completed or corrected before final payment.
  - 3. Establishing responsibility between the Design-Builder and Owner for maintenance, heat, utilities, and insurance.
  - 4. Establishing the date for guarantees and warranties under terms of the contract.

5. Consent of surety.
6. Endorsement from insurance company permitting occupancy.
- c. The Owner shall have the right to exclude the Design-Builder from any part of the Project which the Project Designer has so certified to be substantially complete, but the Owner will allow the Design-Builder reasonable access to complete or correct work to bring it into compliance with the contract.
- d. Occupancy by the Owner under this article will in no way relieve the Design-Builder from his contractual requirement to complete the Project within the specified time. The Design-Builder will not be relieved of liquidated damages because of beneficial occupancy. The Owner may prorate liquidated damages based on the percentage of Project occupied.

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

- a. Upon notification from the Design-Builder that the Project is complete and ready for inspection, the Design Professional shall make a preliminary final inspection to verify that the Project is complete and ready for final inspection. Prior to final inspection, the Design-Builder shall ensure that all items requiring corrective measures noted at the preliminary inspection are complete. After the Design Professional has confirmed that the work is complete in a written statement to the Owner, the Design-Builder shall schedule a final inspection at a time and date acceptable to the Owner, the Design Professional, and the State Construction Office.
- b. At the final inspection, the Design Professional shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Contract Documents. At the conclusion of the final inspection, the Design Professional and State Construction Office representative shall make the following determinations:
  1. That the Project is completed and accepted.
  2. That the Project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance, or the Owner may invoke Article 28, Owner's Right to Do Work.
  3. That the Project is not complete and another date for a final inspection will be established.
- c. Within fourteen (14) days of acceptance per Paragraph b.1 or within fourteen (14) days after completion of punch list per Paragraph b.2 above, the Design Professional shall certify the work and issue applicable certificate(s) of compliance.
- d. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs b.1 or b.2 above shall be handled in accordance with Article 42.
- e. The date of acceptance will establish the following:
  1. The beginning of guarantees and warranties period.
  2. The date on which the Design-Builder's insurance coverage for public liability, property damage and builder's risk may be terminated.

3. That no liquidated damages (if applicable) shall be assessed after this date.
4. The termination date of utility cost to the Design-Builder (if applicable).

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

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

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

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, shall relieve the Design-Builder from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The Design-Builder shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the Design-Builder and establish a time limit for completion of corrections by the Design-Builder. The Owner will determine the responsibility for correction of defects.

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

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

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

If the Design-Builder fails:

1. to begin the work under the contract within the time specified;

2. to establish a GMP;
3. to obtain bids from or enter into contracts with qualified subcontractors within the GMP;
4. to progress the work or maintain the schedule;
5. to complete the work within the time above specified;
6. to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work;
7. to perform the work suitably;
8. to continue the prosecution of the work; or
9. to carry on the work in an acceptable manner for any other cause whatsoever.

Then the Owner may give notice in writing of its intent to annul the Construction Contract, sent by certified mail, return receipt requested, to the Design-Builder and its surety, due to the delay, neglect, or default of the Design-Builder specified in the notice.

The Design-Builder shall have a period of seven (7) days after such Notice of Intent to resolve, or to propose a plan to resolve, to the satisfaction of the Owner, the delay, neglect, or default identified in the Notice of Intent. If a resolution is not forthcoming from the Design-Builder to the satisfaction of the Owner within the time allowed, then the Owner shall issue a written Notice of Annulment, sent by certified mail, return receipt requested, to the Design-Builder and his surety, declaring the Construction Contract in default and demanding the surety to promptly take over the work within seven (7) days after the Notice of Annulment and complete the performance of this contract, with other forces than that of the Design-Builder, in the manner specified and within a time frame agreed upon by the surety and the Owner.

In the event the surety fails to take over the work to be done within the time provided, fails to notify the Owner in writing, sent by certified mail, return receipt requested, that the surety is taking over the work, and fails to agree upon a timeframe for the completion of the Project, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Design-Builder, to appropriate or use any or all contract materials and equipment on the Project site 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 his opinion shall be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due to said Design-Builder and surety. If the expense so incurred by the Owner is less than the sum which would have been payable under the contract if it had been completed by said Design-Builder, then the said Design-Builder and surety shall be entitled to receive the difference. If the expense exceeds the sum which would have been payable under the contract, then the Design-Builder and the surety shall be liable to the Owner for the excess and shall pay to the Owner the amount of said excess.

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

- a. If the Owner should fail or refuse to make payment on account of a certificate issued within forty-five (45) days after receipt of same, then the Design-Builder, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner, may suspend operations on the work or terminate the contract.

- b. The Owner shall be liable to the Design-Builder for the cost of all materials delivered and work performed on this contract plus ten (10) percent overhead and profit and shall make such payment.

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

- a. Based on applications for payment submitted to the Design Professional by the Design-Builder and certificates for payment issued by the Design Professional, the Owner shall make progress payments on account of the contract sum to the Design-Builder as provided below and elsewhere in the Contract Documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Not later than the fifth (5<sup>th</sup>) day of the month, the Design-Builder shall submit to the Owner a request for payment for work done during the previous month. The Owner shall make payment to the Design-Builder within thirty (30) calendar days.
- c. Prior to submitting the first construction phase payment request, the Design-Builder shall prepare a schedule showing a breakdown of the contract price into values of the various parts of the GMP contract. This schedule of values will be submitted to and approved by the Project Designer and Owner within 30 days. The Cost of the Work breakdown will be arranged to facilitate payments to the subcontractors in accordance with Article 17. The combined Design-Builder Construction Fee, remaining Design Phase fees, Bonds & Insurance, Design-Builder Contingency, and Project Reserve (if any) will be shown on the Schedule of values as separate lines. The values for the Design-Builder Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require.
- d. The Design Professionals certification for payment shall be based upon their on-site inspection and the documentation submitted by the Design-Builder with the application for payment. Applications for payment shall be in a form agreed upon by the Design-Builder, and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the Owner may require.
- e. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - 1. Take that portion of the GMP properly allocable to completed work as determined by multiplying the percentage completion of each portion Cost of the Work by the share of the GMP allocated to that portion of the work in the schedule of values.
  - 2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
  - 3. Subtract the aggregate of previous payments made by the Owner.
  - 4. Subtract the amount, in any, by which the Design-Builder has been previously overpaid, as evidenced by the Owner's review of the Design-Builder's documentation.

5. Subtract amounts, if any, for which the Owner has withheld or nullified a certificate of payment.
  6. Subtract retainage as per paragraph (f) or (g) below.
  7. Add the amount due for the Design-Builder Fees calculated on the basis the percentage completion of the Project or on a schedule of payment negotiated with the Owner less fifteen percent (15%) and less previous payments for Design-Builder Fee.
- f. Payment allocated to subcontractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and the State Construction Office and with written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule. The balance of the Design-Builder Fee, withheld in accordance with Subsection e.7 above, shall be held by the Owner until satisfactory completion and close out of the Project. Satisfactory completion and close out of the Project means that the Owner and Design-Builder are satisfied that the Project has been completed in accordance with the plans and specifications and within the GMP, all general conditions of the contract pertaining to close out have been satisfied, and all subcontractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance.
- g. Notwithstanding Article 31.f, full payment, less authorized deductions, shall be made for subcontractors that have reached one hundred percent (100%) completion of their contract by or before the Project is fifty percent (50%) complete if the contractor has performed satisfactorily as judged by the Design-Builder and Owner. Payment to the early finishing trades is contingent upon the surety's consent and the Owner's receipt of a trade specific Certificate of Compliance from the Design Professional, co-signed by the State Construction Office, documenting that the contractors work is complete, acceptable, and in full compliance with the Contract Documents. At that time, the owner shall reduce the retainage for the trade to five-tenths percent (0.5%) of the contract. Early finishing trades under this subsection shall be identified by the Design-Builder's GMP contract and may include, but are not limited to, structural steel, piling, caisson, aggregate piers, and demolition. The Design-Builder shall provide milestone dates on their schedule identifying when Owner and/or State Construction inspections are required prior to officially accepting the early trade work.
- h. Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the site.

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

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



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

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

- a. The Owner with the approval of the State Construction Office may withhold payment for the following reasons:

1. Faulty work not corrected.
  2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the Owner, in consultation with State Construction.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the Design-Builder.
- b. The Owner may withhold all or a portion of Design-Builder Construction Fee costs set forth in the approved schedule of values, if the Design-Builder has failed to comply with: (1) a request to access its records by Owner's internal auditors pursuant to Article 52; (2) a request for a plan of action and/or recovery schedule under Article 14.g; (3) a request to provide an electronic copies of Design-Builder's baseline schedule, updates with all logic used to create the schedules in the original format of the scheduling software; (4) the Design-Builder's failure to have its Superintendent on the Project full-time; or (5) the Design-Builder changes Project Superintendents and fails to notify the owner in writing of the change.
- c. The Secretary of the Department of Administration may authorize the withholding of payment for the following reasons:
1. Claims files against the Design-Builder or evidence that a claim will be filed.
  2. Evidence that a subcontract has not been paid.
- d. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the Design-Builder without cause will make Owner liable for payment of interest to the contractor as provided in N.C. Gen. Stat. § 143-134.1. As provided in N.C. Gen. Stat. § 143- 134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

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

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

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

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

b. **Public Liability and Property Damage**

The Design-Builder shall ensure that it and all subcontractors shall provide and maintain, during the life of the contract, comprehensive general liability insurance,

including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury Liability: \$1,000,000 for each person and \$1,000,000 for each accident

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

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

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

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

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

**d. Automobile Liability Insurance**

Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Design-Builder with policy limits of not less than One Million (\$1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

**e. Professional Liability**

The Design-Builder, which includes the prime designer and all his consultants on the Design-Build team, shall each carry a minimum of \$1,000,000 of professional liability.

**f. Deductible**

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

**g. Other Insurance**

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

**h. Proof of Carriage**

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

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

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

**ARTICLE 36 – DESIGN-BUILDER’S AFFIDAVIT**

The final payment of retained amount due the Design-Builder on account of the contract shall not become due until the Design-Builder has furnished to the Owner through the Design Professional an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work to subcontractors in connection with his contract have been satisfied, and that no claims or liens exist against the Design-Builder in connection with this contract. In the event that the Design-Builder cannot obtain similar affidavits from the subcontractors to protect the Design-Builder and the Owner from possible liens or claims against the subcontractor, the Design-Builder shall state in his affidavit that no claims or liens exist against any subcontractor to the best of the Design-Builder’s knowledge, and if any appear afterward, the Design-Builder shall save the Owner harmless.

**ARTICLE 37 - ASSIGNMENTS**

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

**ARTICLE 38 - USE OF PREMISES**

- a. The Design-Builder shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Owner and shall not exceed those established limits in his operations per the Owner approved Design-Builder’s logistics plan.
- b. The Design-Builder shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The Design-Builder shall enforce the Owner’s instructions regarding signs, advertisements, fires and smoking.

- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

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

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

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

- a. The Design-Builder shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the Project. If the Owner specifies that the Design-Builder is to pay all utilities, any permanent meters installed shall be listed in the Design-Builder's name until his work is fully accepted by the Owner. The Design-Builder shall pay all utilities cost unless agreed otherwise by the Owner and Design-Builder in writing. The Owner or Design-Builder, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in Project completion.
- b. If applicable, meters shall be relisted in the Owner's name on the day following completion and acceptance of the Design-Builder's work, and the Owner shall pay for services used after that date.
- c. Prior to the operation of permanent systems, the Design-Builder will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- d. The Design-Builder shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the Design-Builder and the owner. Use of the equipment in this manner shall in no way affect the warranty requirements of the Design-Builder.
- e. The Design-Builder shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- f. The Design-Builder shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide

- adequate lighting in those areas where interior painting and finishing is being performed.
- g. The Design-Builder shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
    - 1. Prior to acceptance of work by the Owner, the Design-Builder shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
    - 2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.
    - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.
    - 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
    - 5. The Design-Builder shall ensure that all lamps are in proper working condition at the time of final Project acceptance.
  - h. The Design-Builder shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
  - i. Where directed, the Design-Builder 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 Design Professional so direct.
  - j. On multi-story construction projects, the Design-Builder shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included as part of the work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
  - k. The Design-Builder will erect one sign on the Project if required. The sign shall be of sound construction and shall be neatly lettered with black letters on white background. The sign shall bear the name of the Project, and the Design-Builder's name, and the name of the Design Professional. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

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

- a. The Design-Builder shall ensure that the building and surrounding area is reasonably free from rubbish at all times and shall remove debris from the site on a timely basis or when directed to do so by the Owner. The Design-Builder shall provide an on-site

- refuse container(s) for the use of all subcontractors. The Design-Builder shall ensure that each subcontractor removes their rubbish and debris from the building on a daily basis. The Design-Builder shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The Design-Builder shall provide and maintain suitable all-weather access to the building.
  - c. Before final inspection and acceptance of the building, or partial beneficial acceptance of an identified area within the building, the Design-Builder shall ensure that all portions of the work are clean, including glass, hardware, fixtures, masonry, tile, and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

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

- a. The Design-Builder shall unconditionally guarantee materials and workmanship against any defects arising from faulty materials, faulty workmanship, or negligence for a period of twelve (12) months following the date of final acceptance of the work and shall replace such defective materials or workmanship without cost to the Owner. The Owner and Design-Builder shall conduct a formal walk of the project around the 11-month warranty period dated from Beneficial or Final Completion date(s) to establish an agreeable warranty list to be completed within the warranty period.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material.
- c. The Owner may seek legal and equitable remedies for defects that were hidden or not readily apparent to the Owner (i.e. latent) at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specification sections governing such roof, equipment, materials, or supplies.

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

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

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

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, and the agents, consultants and employees of the Owner, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Design-Builder, the Design-Builder's subcontractor, or the agents of the Design-

Builder . Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

## ARTICLE 45 - TAXES

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

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

Design-Builders performing contracts for state agencies shall ensure that the subcontractors provide information to allow the Design-Builder to give the state agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C. Gen. Stat. § 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

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

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

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

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



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

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

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

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

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

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

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

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

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

When Article 16 requires subcontracts be publicly bid, the Owner shall require the Design-Builder to submit a plan for compliance with N.C. Gen. Stat. § 143-128.2 by approval by the Owner prior to soliciting bids for the subcontractors. The Design-Builder and subcontractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to N.C. Gen. Stat. § 143-128.2.

#### **ARTICLE 50 – DESIGN-BUILDER EVALUATION**

The Design-Builder's overall work performance on the Project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for

determining qualifications to compete for future capital improvement projects for institutions and agencies of the State of North Carolina. In addition to final evaluation, an interim evaluation may be prepared during the progress of the Project. The documents, Contractor Evaluation Procedures and Designer Evaluation Procedures, are hereby incorporated and made a part of this contract. The Owner may request the Design-Builder's comments to evaluate the Design Professional. The Owner may request the Design Professional's comments to evaluate the Design-Builder.

#### **ARTICLE 51 – GIFTS**

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

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

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

#### **ARTICLE 53 – NORTH CAROLINA FALSE CLAIMS ACT**

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

NCFCA that are most likely to be enforced with respect to this type of contract are as follows:

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

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

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

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

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

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

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

- a. The Owner may terminate the Design-Builder's Design Phase services for any reason upon ten (10) calendar days written notice (delivered by certified mail, return receipt requested). In the event of termination, the Design-Builder shall receive payment for services rendered prior to receipt of the written termination notice. Payments may not exceed the Design Phase limits defined by the Form of Design Build Construction Contract. Any work done by the Design-Builder prior to termination shall become the property of the Owner.
- b. The Owner may at any time and for any reason terminate Design-Builder's Construction Phase services and work at Owner's convenience. Upon receipt of such notice, Design-Builder shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities, and supplies in

connection with the performance of this Agreement. Upon such termination, the Design-Builder shall submit a break-down of their costs within forty-five (45) days, failing which those costs may be forfeited. Design-Builder shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Design-Builder as are permitted by the prime contract and approved by Owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Design-Builder prior to the date of the termination of this Agreement. Design-Builder shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

- c. 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 or more, due to cause beyond the fault or control of either party, then this agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by certified mail, return receipt requested) to the other party.
- d. If so terminated during the Design Phase, the Design-Builder shall receive payment for services rendered prior to receipt of the written termination notice. Payments may not exceed the Design Phase limits defined by the Form of Design Build Construction Contract. Any work done by the Design-Builder prior to termination shall become the property of the Owner.
- e. If so terminated during the Construction Phase, the Design-Builder shall submit a break-down of their costs within forty-five (45) days, failing which those costs will be forfeited. Design-Builder shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Design-Builder as are permitted by the prime contract and approved by Owner. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Design-Builder prior to the date of the termination of this Agreement. Design-Builder shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.