

**GENERAL CONDITIONS OF THE CONTRACT**

**STANDARD FORM FOR CONSTRUCTION MANAGER-AT-RISK PROJECTS**

**STATE CONSTRUCTION OFFICE**

**NORTH CAROLINA**

**DEPARTMENT OF ADMINISTRATION**

**Form OC-15**

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

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## GENERAL CONDITIONS OF THE CONTRACT

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## ARTICLE 1 - DEFINITIONS

- a. The **contract documents** consist of the; RFP; Construction Manager's formal response to the RFP; General Conditions of the Contract; special conditions if applicable; Supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates; the approval of the attorney general; and the certificate of the Office of State Budget and Management. All of these items together form the contract.
- b. The **owner** is the State of North Carolina by and through the agency or institution named on the cover sheet, where the project is being built.
- c. The **designer** or **project designer** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the project pursuant to a contract with the owner, (hereinafter, the "design contract").
- d. The **Construction Manager (CM)** is the owner's fiduciary responsible for undertaking all necessary action contemplated under the contract documents to (a) establish during the design phase a Guaranteed Maximum Price (GMP) to construct the project and (b) ensure timely and quality completion of the project at a cost within the GMP. Construction Manager or CM as used in the contract documents means Construction Manager at Risk (CM at Risk).
- e. A **subcontractor**, as the term is used herein, shall be in the case of a principal trade contractor, a general, mechanical, electrical or plumbing contractor or in the case of a specialty contractor, a trade contractor who is not a principal trade contractor, who has entered into a direct contract with a contractor, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor as supervised by the CM.
- h. The **project** is the total construction work to be performed under the contract documents.
- i. **{NOT USED}**.
- j. **Change order**, as used herein, shall mean a written order to the CM subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the CM, designer and the owner, and approved by the State Construction Office, in that order (Article 19).
- k. **Field Order**, as used herein, shall mean a written approval for the CM to proceed with the work requested by owner prior to issuance of a formal Change Order. The field order shall be signed by the CM, designer, owner, and State Construction Office.

- l. **{NOT USED}**.
- m. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the losses incurred by the owner by reason of failure of the CM to complete the work within the time specified.
- n. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the CM, and which engages to be responsible for the CM and his acceptable performance of the work.
- o. **Routine written communications between the Designer and the Construction Manager** are any communication other than a “request for information” provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications can not be identified as “request for information”.
- p. **Clarification or Request for information (RFI)** is a request from the CM seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the CM’s interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- r. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
- s. **“Equal to” or “approved equal”** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents.
- t. **“Substitution” or “substitute”** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation.

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

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The CM shall execute each copy of the response to RFP, contract, performance bond and payment bond as follows:

1. If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
3. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
4. If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable to each particular member.
5. All signatures shall be properly witnessed.
6. If the construction manager'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 CM's signature on the performance bond and the payment bond shall correspond with that on the contract.

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

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The CM and the designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the work. The designer shall furnish drawings or clarifications in accordance with that schedule. The CM shall not proceed with the work without such detail drawings and/or written clarifications.

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

The designer shall furnish free of charge to the contractors copies of plans and specifications as follows: The CM shall receive up to 30 sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the CM shall clearly and legibly record all work-in-place that is at

variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the CM at the request of the CM.

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

- a. Within 30 consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the CM and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.
- b. Approval of shop drawings by the designer shall not be construed as relieving the CM from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the designer in writing by the CM.

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

- a. The CM 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 designer or his authorized representative.
- b. The CM shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the CM and submitted to the designer upon project completion and no later than 30 days after acceptance of the project.

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

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

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

- a. The CM shall, unless otherwise specified require the principal trade and specialty contractors to, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and the CM shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

- c. Upon notice, the CM shall require the principal trade and specialty contractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CM may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CM has the option of using any product and manufacturer combination listed. However, the CM 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. Request for substitution of materials, items, or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids.
- e. The CM shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The designer is the judge of equality for proposed substitution of products, materials or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the owner or designer, or if any workman be considered detrimental to the work, the contractor 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 CM shall protect and save harmless the owner against suit on account of alleged or actual infringement. The CM 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 CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the CM observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the CM performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the CM.

- 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 CM shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.

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

- a. The CM 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 or designer, and by laws or ordinances governing such conditions. The CM shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. The CM shall have access to the project at all times.
- b. The CM 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, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer.
- d. The CM shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The CM shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. The CM 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 General Statutes of North Carolina 95-126 through 155.
- g. The CM shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the work project. The name of the safety inspector shall be made known to the designer at the time the work is started.
- h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the CM 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 CM on account of such action shall be determined as provided for under Article 19(b).

- i. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the CM or its principal trade or specialty contractors, the CM shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the owner and designer in writing. The owner shall take responsibility for remediating the material or substance from the site. If the CM's progress in completing the project is delayed as a result of the owner's having to remediate the site, the owner shall issue a change order to the CM's contract in accordance with Article 19 of the General Conditions.

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

- a. Any land-disturbing activity performed by the CM 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 CM 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 CM shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the CM shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the 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 designer, designated official representatives of the owner, and those persons required by state law to test special work for official approval. The CM shall therefore provide safe access to the work at all times for such inspections.
- b. All instructions to the CM will be made only by or through the designer or his designated project representative. Observations made by official representatives of the owner shall be conveyed to the designer for review and coordination prior to issuance to the CM.
- c. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the CM shall give adequate notice to the designer of the time set for such inspection or test, if the inspection or test will be conducted by a

party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, and it shall be the CM's responsibility to serve ample notice of such tests.

- d. All laboratory tests shall be paid by the owner unless provided otherwise in the contract documents except the CM shall pay for laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- e. Should any work be covered up or concealed prior to inspection and approval by the designer, such work shall be uncovered or exposed for inspection, if so requested by the designer in writing. Inspection of the work will be made promptly upon notice from the contractor. All 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 CM.
- f. If any other portion of the work has been covered which the designer has not specifically requested to observe prior to being covered, the designer may request to see such work and it shall be uncovered by the CM. If such work be found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the owner. If such work be found not in accordance with the contract documents, the CM shall pay such costs.

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

- a. Throughout the progress of the work, the CM shall keep at the job site, a competent superintendent or supervisory staff satisfactory to the designer. The superintendent shall not be changed without the consent of the designer unless said superintendent ceases to be employed by the CM or ceases to be competent. The superintendent shall have authority to act on behalf of the CM, and instructions, directions or notices given to him shall be as binding as if given to the CM. However, directions, instructions, and notices shall be confirmed in writing.
- b. The CM shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. {NOT USED}
- d. The CM shall call and preside over monthly job site progress conferences. All principal trade contractors and specialty contractors shall be represented at these job progress conferences by both home office and project personnel. The CM shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. The CM shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate. The CM with assistance from the designer shall be the coordinator of the conferences and shall preside as chairman.

- e. The CM shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. {NOT USED}.
- g. Prior to bidding, it shall be the responsibility of the CM to prepare a preliminary critical path method (CPM) schedule and submit such schedule to the designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the principal trade and specialty contractors' bid packages. After contract award but prior to thirty (30) days from the date of the notice to proceed, the CM shall obtain from the principal trade and specialty contractors their respective work activities and integrate them into a project construction schedule in CPM form. The resulting CPM schedule shall show all salient features of the work required for construction of the project from start to finish within the time allotted by the contract. The time in days between the CM's early completion date and the contractual completion date is project float time and shall be used as such by the CM unless amended by change order. The CM shall submit to the designer the final CPM schedule after contracts are executed but within fifteen (15) days prior to the written notice to proceed. The designer after reviewing and commenting on the project CPM schedule shall submit it to the owner for approval. No application for payment will be processed until the project CPM schedule is approved by the owner.:
- h. {NOT USED}.
- i. The CM shall distribute to the principal trade and specialty contractors the approved project CPM schedule and shall display same at the job site.
- j. The CM shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., that are necessary to finish the project within the time allotted by the contract. In doing so, the CM shall keep the designer as well as all principal trade and specialty contractors fully informed as to all changes and updates to the schedule. The CM shall submit to the designer 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 CM 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 CM shall prepare and submit to the designer a recovery schedule for review and approval. Failure of the CM to abide by the directives in this paragraph will give the owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

**ARTICLE 15 – {NOT USED}.**

**ARTICLE 16 - SUBCONTRACTS AND SUBCONTRACTORS**

- a. Principal trade contractors and specialty contractors shall be pre-qualified by the CM. The owner and the CM shall determine the prequalification criteria. Only pre-qualified

contractors are allowed to bid to and contract with the CM on a project. Once contractors are in place, the CM shall provide copies of contracts to the designer and also provide a list of equipment and material suppliers. If the designer disapproves of any subcontractor, equipment or material supplier, then he shall submit his reasons for disapproval in writing to the State Construction Office for its consideration with a copy to the CM. If the State Construction Office concurs with the designer's recommendation, the CM shall submit a substitute for approval. The designer shall act promptly in the approval of material and equipment suppliers and when approval is given, no changes will be permitted except for cause or reason considered justifiable to the designer.

- b. The designer will furnish to any subcontractor, upon request, evidence regarding amounts of money paid to the CM on account of the subcontractor's work.
- c. The CM is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The CM agrees that no contractual relationship exists between the subcontractor and the owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the CM.

#### **ARTICLE 17 - CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS**

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

- a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due the CM shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the CM, 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 45day limit. Should final payment to the CM beyond the date such 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 45 days, said CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the contract documents or said CM shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained

from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

- b. Within seven days of receipt by the CM of each periodic or final payment, the CM shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the CM, the CM 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.
- c. The percentage of retainage on payments made by the CM to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the CM. Any percentage of retainage on payments made by the CM to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the CM shall be subject to interest to be paid by the CM to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent the CM at the time of application and certification to the owner from withholding application and certification to the owner for payment to the 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 subcontractor to make timely payments for labor, equipment and materials; damage to CM or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by owner.

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

- a. The designer shall provide liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.
- b. The designer is the 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 CM, taking sides with neither.
- c. Should the designer cease to be employed on the work for any reason whatsoever, then the owner shall employ a competent replacement who shall assume the status of the former designer.
- d. The designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the designer may perform his functions under the contract documents.
- f. Based on the designer's inspections and evaluations of the project, the designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the

administration of the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The CM's decisions, however, relating to means and methods, and administration of the contracts the CM 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 CM 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 SHALL BE MADE BY THE CM EXCEPT UPON RECEIPT OF APPROVED CHANGE ORDER OR WRITTEN FIELD ORDER FROM THE DESIGNER, COUNTERSIGNED BY THE OWNER AND THE STATE CONSTRUCTION OFFICE AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE CONTRACT PRICE SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.**

**A FIELD ORDER, TRANSMITTED BY FAX OR HAND DELIVERED, MAY BE USED WHERE THE CHANGE INVOLVED IMPACTS THE CRITICAL PATH OF THE WORK. A FORMAL CHANGE ORDER SHALL BE ISSUED WITHIN THE TIME STATED ON THE FIELD ORDER.**

In the event of emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the CM 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 CM is restricted to the use of the following methods:
  1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
  2. Otherwise, the contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined shall not exceed twenty percent (20%) of **net cost** except where the change involves a subcontractor, allowance shall not exceed fifteen percent (15%) for the subcontractor, and ten percent (10%) for the CM. Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than ten 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.

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

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

- g. In all change orders, the procedure will be for the designer to request proposals for the change order work in writing. The CM will provide such proposal and supporting data in suitable format. The designer shall verify correctness. Within fourteen (14) days after receipt of the CM's proposal, the designer shall prepare the change order and forward to the CM for his signature or otherwise respond, in writing, to the CM's proposal. Within seven (7) days after receipt of the change order executed by the CM, the designer shall, certify the change order by his signature, and forward the change order and all supporting data to the owner for the owner's signature. The owner shall execute the change order and forward to the State Construction Office for final approval, within seven (7) days of receipt. The State Construction Office shall act on the change order within seven (7) days. Upon approval by the State Construction Office, one copy remains with the State Construction Office, and the remaining copies are sent to the designer for distribution to the owner(s), CM 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 CM 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 CM's terms are unacceptable, the owner, with the approval of the State Construction Office, may require the CM 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.
- k. To the extent anything in this article conflicts with the RFP, the provisions of the RFP shall control.

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

- a. Should the CM consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay, and shall not proceed with the work affected until further advised, except in 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 designer shall render a written decision within seven (7) days of receipt of claim.
- b. **THE CM SHALL NOT ACT ON INSTRUCTIONS RECEIVED BY HIM FROM PERSONS OTHER THAN THE DESIGNER, AND ANY CLAIMS FOR EXTRA COMPENSATION OR EXTENSION OF TIME ON ACCOUNT OF SUCH INSTRUCTION WILL NOT BE HONORED.** The designer will not be responsible for misunderstandings claimed by the CM 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 CM be denied by the designer or owner, and cannot be resolved by a representative of the State Construction Office, the CM may request a mediation in connection with GS 143-128g in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, then the CM may pursue his claim in accordance with the provisions of G.S. 143-135.3 and the following:
  1. A CM who has not completed a contract with a board 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 CM 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 Chapter 150B of the General Statutes.
  2. (a) A CM who has completed a contract with a board 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 CM claims is due. The claim shall be submitted within sixty (60) days after the CM receives a

final statement of the board's disposition of his claim and shall state the factual basis for the claim.

- (b) The director shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the director and the CM agree. The CM may appear before the director, either in person or through counsel, to present facts and arguments in support of his claim. The director may allow, deny or compromise the claim, in whole or in part. The director shall give the CM a written statement of the director's decision on the CM's claim.
- (c) A CM who is dissatisfied with the director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within sixty (60) days of receiving the director's written statement of the decision.
- (d) As to any portion of a claim that is denied by the director, the CM may, in lieu of the procedures set forth in the preceding subsection of this section, within six (6) months of receipt of the director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

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

The designer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order, copied to the State Construction Office, and shall be binding on the owner and the CM.

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

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the owner and the designer, the owner shall be reimbursed by the CM. A change order will be issued to reflect a reduction in the contract sum.

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

- a. The final completion date will be as determined by the owner, designer, and CM during the pre-construction phase of the project; and will be incorporated into the contract for construction services between the owner and the CM.
- b. {NOT USED}.
- c. {NOT USED}.
- d. If the CM is delayed at any time in the progress of his work by any act or negligence of the owner or the designer, or by any employee of either; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and owner may determine is reasonable.

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 CM reflecting the effect of the weather on progress of the work and initialed by the designer's representative. Time extensions for weather delays do not entitle the CM to "extended overhead" recovery.

- e. Request for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the CM shall notify the Designer of the delay within 20 days of the beginning of the delay and only one claim is necessary.
- f. The CM shall notify his surety in writing of extension of time granted.
- g. No claim shall be allowed on account of failure of the designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c.

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

- a. The owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Prior to the final payment, the owner, with the approval of the State Construction Office, may request the CM) in writing, through the designer if applicable, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the CM agrees, the designer will schedule a beneficial occupancy inspection, with the approval of the State Construction Office, after which the designer may issue a certificate of substantial completion. The certificate shall include the following documentation:
  - 1. Date of substantial completion.
  - 2. A tentative list of items to be completed or corrected before final payment.
  - 3. Establishing responsibility between the CM 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 CM from any part of the project which the designer has so certified to be substantially complete, but the owner will allow the CM 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 CM from his contractual requirement to complete the project within the specified time.

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

- a. Upon notification from the CM that the project is complete and ready for inspection, the designer shall make a preliminary final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the CM shall complete all items requiring corrective measures noted at the preliminary inspection. The designer shall schedule a final inspection at a time and date acceptable to the owner, CM and State Construction Office.
- b. {NOT USED}.
- c. At the final inspection, the designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the designer and State Construction Office representative shall make the following determinations:
  1. That the project is completed and accepted.
  2. That the project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the owner may invoke Article 28, Owner's Right to Do Work.
  3. That the project is not complete and another date for a final inspection will be established.
- d. Within fourteen (14) days of acceptance per Paragraph c1 or within fourteen (14) days after completion of punch list per Paragraph c2 above, the designer shall certify the work and issue applicable certificate(s) of compliance.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs c1 or c2 above shall be handled in accordance with Article 42.
- f. The date of acceptance will establish the following:
  1. The beginning of guarantees and warranties period.
  2. The date on which the contractor's insurance coverage for public liability, property damage and builder's risk may be terminated.
  3. {NOT USED}.
  4. The termination date of utility cost to the contractor.

## **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 designer shall be promptly removed from the work site by the CM, 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 CM.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the designer, and shall make satisfactory progress until completed.

- c. Should the CM 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, nor the designer, shall relieve the CM from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. He 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 CM and establish a time limit for completion of corrections by the CM. The owner will be the judge as to the responsibility for correction of defects.

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

If, during the progress of the work or during the period of guarantee, the CM fails to prosecute the work properly or to perform any provision of the contract, the owner, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the CM from the designer, 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 CM, such action and cost of same having been first approved by the designer. Should the cost of such action of the owner exceed the amount due or to become due the CM, then the CM 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 CM fails to begin the work under the contract within the time specified or fails to establish a GMP or obtain bids from or enter into contracts with qualified principal trade or specialty contractors within the GMP, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the CM shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the owner may give notice in writing, sent by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the

owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said CM and surety. In case the expense so incurred by the owner shall be less than the sum which would have been payable under the contract, if it had been completed by said CM, then the said CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the CM and the surety shall be liable and shall pay to the owner the amount of said excess.

### **ARTICLE 30 – CONSTRUCTION MANAGER’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the CM, or if the owner should fail or refuse to make payment on account of a certificate issued by the designer within thirty (30) days after receipt of same, then the CM, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the owner and the designer, may suspend operations on the work or terminate the contract.
- b. The owner shall be liable to the CM for the cost of all materials delivered and work performed on this contract plus 20 percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

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

- a. Based on applications for payment submitted to the designer by the CM and certificates for payment issued by the designer, the owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the contract documents.
- b. The period covered by each application for payment shall be one calendar month ending on the last day of the month or as follows: **INSERT PAYMENT SCHEDULE**
- c. Provided an application for payment is received by the designer not later than the 5<sup>th</sup> day of the month, the owner shall make payment to the CM not later than the 20<sup>th</sup> day of the following month. If an application for payment is received by the designer after the application date fixed above, payment shall be made by the owner not later than forty-five days after the designer receives the application for payment.
- d. With each application for payment, for work performed directly by the CM and such principal trade and specialty contractors as the CM may specify, the CM shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the owner or designer to demonstrate that cash disbursements already made by the CM on account of cost of the work equal or exceed (1) progress payments already received by the CM less (2) that portion of those payments attributable to the CM’s fee; plus (3) payrolls for the period covered by the present application for payment.
- e. Each application for payment shall be based upon the most recent schedule of values submitted by the CM in accordance with the contract documents. The schedule of values shall allocate the entire GMP among the various portions of the work, except that the CM’s fee shall be shown as a separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the designer may

- require. This schedule, unless objected to by the designer, shall be used as a basis for reviewing the CM's applications for payment. .
- f. Applications for payment shall show the percentage completion of each portion of the work as of the end of the period covered by the application for payment. The percentage completion shall be the percentage of that portion of the work which has actually been completed.
  - g. 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 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. Add the CM's fee: the CM's portion of the fee for construction phase services shall be an amount which bears the same ration to the fixed-sum fee as the total payment described in the two preceding clauses bears to the cost of the work defined in the contract documents, and multiply that figure by fifty percent (50%). The remaining fifty percent (50%) portion of the CM's fee shall be paid to the CM upon satisfactory completion and close out of the project.
    - 4. Subtract the aggregate of previous payments made by the owner.
    - 5. Subtract the amount, in any, by which the CM has been previously overpaid, as evidenced by the owner's review of the CM's documentation required by paragraph (d) above or by any audit of the CM records.
    - 6. Subtract amounts, if any, for which the designer has withheld or nullified a certificate of payment.
    - 7. Subtract retainage as per paragraph (h) below.
  - h. Except with the owner's prior approval, payments allocated to principal trade and specialty contractors shall be subject to a retention of five (5%). Whenever any item of work indicated on the CM's schedule of values is completed on or before a target date mutually agreed upon by the owner, designer and the CM, and the designer and owner agree the work is completed, the owner may reduce the amount of retainage on that item by fifty percent (50%) for the remainder of the project. Retainage in the traditional sense shall not be held on the CM's fee; however, the CM's fee shall be paid in accordance with section (g)3. above meaning the fifty percent (50%) of the CM's fee for construction services 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 designer are satisfied that the project has been completed in accordance with the plans and specifications and within the GMP, all general conditions of the contract pertaining to close out have been satisfied, and all principal trade and specialty contractors have satisfactorily completed their respective contracts.

- i. Except with the owner's prior approval, the CM shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the site.
- j. The designer shall take action on the CM's application for payment in accordance with the Agreement between the Owner and Designer. The designer's certification for payment shall be based upon the designer's on-site observation and the documentation submitted in accordance with paragraph (d) and the CM's application for payment.

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

- a. Within five (5) days from receipt of request for payment from the CM, the designer shall issue and forward to the owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the CM 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 contractor.
  - 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 CM except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer for approval, the CM 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 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 CM shall forward to the designer, the final application for payment along with the following documents:

1. List of minority business subcontractors and material suppliers showing breakdown of contracts amount.
  2. Affidavit of Release of Liens.
  3. Affidavit of contractors 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 designer will not authorize final payment until the work under contract has been certified by designer, certificates of compliance issued, and the CM has complied with the closeout requirements. The designer shall forward the CM's final application for payment to the owner along with respective certificate(s) of compliance required by law.

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

- a. The designer with the approval of the State Construction Office may withhold payment for the following reasons:
1. Faulty work not corrected.
  2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
  3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against principal trade and specialty contractors.
- b. The secretary of the Department of Administration may authorize the withholding of payment for the following reasons:
1. Claims filed against the CM or evidence that a claim will be filed.
  2. Evidence that subcontractors have not been paid.
- c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the CM without cause will make owner liable for payment of interest to the contractor as provided in G.S. 143-134.1.

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

The work under this contract shall not commence until the CM 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 CM shall ensure that it and all principal trade and specialty contractors shall provide and maintain, during the life of the contract, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. **Public Liability and Property Damage**

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

Bodily Injury:	\$500,000 per occurrence
Property Damage:	\$100,000 per occurrence / \$300,000 aggregate

In lieu of limits listed above, a \$500,000 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 CM shall ensure that it and all principal trade and specialty contractors shall purchase and maintain property insurance during the life of this contract, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, the contractor, the subcontractors 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 contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

d. **Deductible**

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

e. **Other Insurance**

The CM shall ensure that it and all principal trade and specialty contractors shall obtain such additional insurance as may be required by the owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

**f. Proof of Carriage**

The CM shall ensure that it and all principal trade and specialty contractors shall furnish the owner with satisfactory proof of carriage of the insurance required before written approval is granted by the owner.

- g. The owner may elect to purchase insurance covering all contractors including subcontractors through a “wrap-up” insurance program sponsored by the State agency or institution. Under such program, the CM and principal trade and specialty contractors are not required to purchase insurance provided under the “wrap-up” program. If the owner is participating in a “wrap-up” program, this contract shall be amended to reflect the program’s terms in lieu of this article.

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

- a. The CM 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 these specifications (Section 307 and Section 308).
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

**ARTICLE 36 - CONTRACTOR'S AFFIDAVIT**

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

**ARTICLE 37 - ASSIGNMENTS**

The CM 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 CM under the contract may be assigned.

**ARTICLE 38 - USE OF PREMISES**

- a. The CM 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 designer and shall not exceed those established limits in his operations.
- b. The CM shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The CM shall enforce the designer'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 CM 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 designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No principal trade or specialty contractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the designer and the affected contractor(s).

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

- a. The CM 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. Any permanent meters installed shall be listed in the CM's name until his work is fully accepted by the owner. As stipulated in the Supplementary General Conditions, the Owner may: (1) pay utilities cost directly, (2) the CM to pay all utilities cost, (3) or reimburse the CM for the actual cost of utilities. The Owner or CM, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in project completion.
- d. Meters shall be relisted in the owner's name on the day following completion and acceptance of the CM's work, and the owner shall pay for services used after that date.
- e. The owner shall be reimbursed for all metered utility charges after the meter is relisted in the owner's name and prior to completion and acceptance of the work of **all** contractors. Reimbursement shall be made by the contractor whose work has not been completed and accepted. .
- d. Prior to the operation of permanent systems, the CM will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. The CM 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 CM and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CM.
- f. The CM shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.

- g. The CM shall coordinate the work so that the building's permanent lighting system shall be ready at the time the general contractor begins interior painting and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. The CM 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 CM 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 CM shall ensure that all lamps are in proper working condition at the time of final project acceptance.
- i. The CM shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
- j. The CM shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- k. On multi-story construction projects, the CM shall provide temporary elevators, lifts, or other special equipment for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the CM's General Conditions.
- l. The CM 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 CM's name, and the name of the designer and consultants. Directional signs may be erected on the owner's property subject to approval of the owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the owner.

## **ARTICLE 41 - CLEANING UP**

- a. The CM 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 designer. The CM shall provide an on site refuse container(s) for the use of all principal trade and specialty contractors. The CM shall ensure that each principal trade and specialty contractor removes their rubbish and debris from the building on a daily basis. The CM shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The CM shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the CM 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 CM shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The CM shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.
- c. Additionally, the owner may bring an action for latent defects caused by the negligence of the CM, which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

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

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

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

To the fullest extent permitted by law, the CM shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, 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 CM, the CM's subcontractor, or the agents of either the CM or the CM's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

## **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 contractor's statements:

Contractors performing contracts for state agencies shall give the state agency for whose project the property was purchased a signed statement containing the information listed in G.S. 105-164.14(e).

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

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

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

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

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

Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

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

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

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

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

The CM 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 CM 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. Contractors are reminded of the requirements of instructions under General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* from the State Construction Office is to be incorporated in all asbestos abatement projects for the Capital Improvement Program.

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

GS 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 E are hereby incorporated into and made a part of this contract.

#### **ARTICLE 50 – CONTRACTOR EVALUATION**

The CM'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 bid on future State capital improvement projects. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The owner may request the CM's comments to evaluate the designer.