

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 GENERAL PROVISIONS

1.1. **BASIC DEFINITIONS**

- 1.1.1 **Contract for Construction.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification.
- 1.1.2 **Contract Documents.** The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, advertisement or invitation to bid, Instructions to Bidders, other documents listed in the Agreement and Modifications issued after execution of the Contract. In the event of conflicts among the contract documents, the Specifications shall take precedence over the Drawings, and the Supplementary Conditions shall take precedence over the General Conditions. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor or Sub-subcontractor.
- 1.1.3 **Contractor.** The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Unless otherwise stated, the term "Contractor" means the General Contractor or the General Contractor's authorized representative.
- 1.1.4 **Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.1.5 **Designer.** The Architect or Engineer registered in accordance with the provisions of Chapter 89C of the NC General Statutes, identified as such in the Contract for Construction and is referred to throughout the Contract Documents as if singular in number. The term "Designer" refers to the Designer or the Designer's authorized representative(s). The Designer shall be entitled to performance and enforcement of obligations under the Contract for Construction intended to facilitate performance of the Designers' duties.
- 1.1.6 **Modification.** A Modification is (1) a written amendment to the Contract signed by the parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Designer.
- 1.1.7 **Owner.** The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.
- 1.1.8 **Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

- 1.1.9 Project Manual. The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.
- 1.1.10 Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.1.11 Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the project.

1.2 EXECUTION, CORRELATION, AND INTENT

- 1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Designer shall identify such unsigned Documents and insure that they are properly signed by the necessary parties.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, has checked and verified all site conditions, and hereby waives any and all claims, present or future, for misrepresentation on the part of the Owner or Designer.
- 1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- 1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any Subcontractor.
- 1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

- 1.3.1 The Drawings, Specifications and other documents prepared by the Designer are instruments of the Designer's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Designer. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright of the drawings, specifications and other documents prepared by the Designer. All copies of them, except the

Contractor's record set, shall be returned or suitably accounted for to the Designer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project; they are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects without the specific written consent of the Owner and Designer. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Designer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Designer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents.

1.5 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2 **OWNER**

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.1.1 The Owner shall furnish plan and profile of existing County utilities. The Contractor is responsible for locating all existing utilities prior to Work.
- 2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 2.1.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.
- 2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to

commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Designer's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior review and confirmation by the Designer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.1, and shall at once report to the Designer errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity knowing or should have known it involves an error, inconsistency or omission in the Contract Documents without such notice to the Designer, the Contractor shall assume full responsibility for such performance and shall bear the full costs for correction.
- 3.1.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Designer immediately.
- 3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.11.

3.2. SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.
- 3.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.
- 3.2.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

- 3.2.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3 LABOR AND MATERIALS

- 3.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 3.3.3 Materials, equipment or items required for a complete job which are shown on the drawings but not mentioned in the specifications or materials, equipment or items required by the specifications but not shown on the drawings, shall be furnished and installed the same as though both shown on the drawings and required by the specifications.

3.4 WARRANTY

- 3.4.1 The Contractor warrants to the Owner and Designer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Designer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.4.2 Except as otherwise specifically stated below, the Contractor shall guarantee his materials and workmanship against defect due to faulty materials or faulty workmanship or negligence for a period of twelve (12) months following Substantial Completion of the Work. Where the manufacturer's warranty on equipment or parts thereof exceeds twelve (12) months, the guarantee period on such equipment or parts thereof shall be extended to include the full warranty of the manufacturer. The Contractor shall repair or replace such defective materials, equipment or workmanship to the full satisfaction of the Owner within the stipulated guarantee period without cost to the Owner.

3.5 TAXES

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

3.6 PERMITS, FEES AND NOTICES

- 3.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for

proper execution and completion of the Work which are customarily secured after execution of the Contract for Construction and which are legally required when bids are received or negotiations concluded.

- 3.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.
- 3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Designer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.
- 3.6.4 If the Contractor performs Work the Contractor knows or should have known it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Designer and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.7 ALLOWANCES

- 3.7.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.
- 3.7.2 Unless otherwise provided in the Contract Documents:
- (1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
 - (2) allowances shall cover the cost to the Contractor of materials and equipment delivered to the site and all required taxes, less applicable trade discounts;
 - (3) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
 - (4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by a Change Order. The amount of the Change Order shall reflect (a) the difference between actual costs and the allowances under Clause 3.7.2.(2) and (b) changes in Contractor's costs under Clause 3.7.2.(3).

3.8 SUPERINTENDENT

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing upon request.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

- 3.9.1 Promptly after being awarded the Contract, the Contractor shall prepare and submit for the Designer's review and comment a construction schedule for the Work. The schedule shall not exceed time limits provided in the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. If separate prime contracts are awarded by the Owner in connection with this Project, the Contractor shall additionally submit a Contractor's construction schedule for the Work to the General Contractor in order for the General Contractor to carry out its duties under Article 6.
- 3.9.2 The Contractor shall prepare and keep current, for the Designer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Designer reasonable time to review submittals.
- 3.9.3 The Contractor shall conform to the most recent schedules.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Designer and shall be delivered to the Designer for submittal to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- 3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 3.11.3 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Designer is subject to the limitations of Paragraph 4.1.6.
- 3.11.5 The Contractor shall review, approve and submit to the Designer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of

separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

- 3.11.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or other appropriate action taken by the Designer. Such Work shall be in accordance with approved submittals.
- 3.11.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 3.11.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Designer's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Designer in writing of such deviation at the time of submittal and the Designer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Designer's approval thereof.
- 3.11.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product Data, Samples or similar submittals, to revisions other than those requested by the Designer on previous submittals.
- 3.11.10 Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.
- 3.11.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13 CUTTING AND PATCHING

- 3.13.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.13.2 The Contractor shall not damage or endanger a portion of the work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such

construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14 CLEANING UP

- 3.14.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.
- 3.14.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.15 ACCESS TO WORK

The Contractor shall provide the Owner and Designer access to the Work in preparation and progress wherever located.

3.16 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Designer harmless from loss unless a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Designer.

3.17 INDEMNIFICATION

- 3.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Designer, Designer's consultants, and agents and employees of any of them from and against claims, damages, economic losses and expenses of any kind (including but not limited to fees and charges of engineers, attorneys, and other professionals and costs related to court action or arbitration), arising out of or resulting from performance of the Work under this Agreement, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable unless caused in whole or part by the negligence of Owner. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.17.
- 3.17.2 In claims against any person or entity indemnified under this Section 3.17, by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.17, shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for

the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

- 3.17.3 The obligations of the Contractor under this Section 3.17, shall not extend to the liability of the Designer, the Designer's consultants, and agents and employees of any of them arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Designer, the Designer's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 DESIGNER'S ADMINISTRATION OF THE CONTRACT

- 4.1.1 The Designer will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction through final payment, and with the Owner's concurrence, from time to time during the correction period described in Paragraph 11.2. The Designer will advise and consult with the Owner. The Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.
- 4.1.2 The Designer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.2. The Designer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Designer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 4.1.3 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Designer. Communications by and with the Designer's consultants shall be through the Designer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Designer.
- 4.1.4 Based on the Designer's inspections, observations and evaluations of the Contractor's Applications for Payment, the Designer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 4.1.5 The Designer will have authority to reject Work which does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Designer will have authority to require additional inspection or testing of the Work in accordance with Paragraphs 12.5.2 and 12.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Designer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Designer to the Contractor, Subcontractors, material and

equipment suppliers, their agents or employees, or other persons performing portions of the Work.

- 4.1.6 The Designer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Designer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Designer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Designer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Designer, of any construction means, methods, techniques, sequences or procedures. The Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.1.7 The Designer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.
- 4.1.8 The Designer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- 4.1.9 The Designer will interpret and decide matters concerning performance under and requirements of the Contract documents on written request of either the Owner or Contractor. The Designer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Designer shall be furnished in compliance with this Paragraph 4.1.9, then delay shall not be recognized on account of failure by the Designer to furnish such interpretations until 15 days after written request is made for them.
- 4.1.10 Interpretations and decisions of the Designer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Designer will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.
- 4.1.11 The Designer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
- 4.1.12 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Article 11.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Designer may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the

right of the Designer to stop the Work shall not give rise to a duty on the part of the Designer to exercise this right for the benefit of the Contractor or any other person or entity.

4.2 CLAIMS AND DISPUTES

- 4.2.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made pursuant to the Dispute Resolution Procedure set forth in Paragraph 4.4. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 4.2.2 DECISION OF DESIGNER. Claims, including those alleging an error or omission by the Designer, shall be referred initially to the Designer for action as provided in Paragraph 4.4. A decision by the Designer shall be required as a condition precedent to mediation and litigation of a Claim between any party involved in this construction Project as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work or the extent to which the Work has been completed. The decision by the Designer in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Designer is vacant, (2) the Designer has not received evidence or has failed to render a decision within agreed time limits, or (3) 45 days have passed after the Claim has been referred to the Designer.
- 4.2.3 TIME LIMITS ON CLAIMS. Claims by the Contractor must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.
- 4.2.4 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 4.2.5 WAIVER OF CLAIMS: FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:
- (1) unsettled claims arising out of the Contract; or
 - (2) failure of the Work to comply with the requirements of the Contract Documents;
or
 - (3) terms of special warranties required by the Contract Documents.
- 4.2.6 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions.

The Designer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Designer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified the Designer shall so notify the Owner and Contractor in writing stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Designer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Designer for initial determination, subject to further proceedings pursuant to paragraph 4.4.

4.2.7 **CLAIMS FOR ADDITIONAL COST.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (a) a written interpretation from the Designer, (b) a written order for a minor change in the Work issued by the Designer, (c) termination of the Contract by the Owner, Claim shall be filed in accordance with the procedure established herein. This Article and Article 7, shall be the exclusive means by which the Contractor may claim additional cost or damages from the Owner, and the Contractor hereby waives any and all right to claim additional cost or damages by any other remedy including, without limitation, quantum meruit, subrogation, or implied contract.

4.2.8 **CLAIMS FOR ADDITIONAL TIME.** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Adverse weather conditions shall not be a basis for a Claim for additional time nor costs.

4.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice as such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.2.7 or 4.2.8.

4.4 DISPUTE RESOLUTION PROCEDURE

4.4.1 To prevent all disputes and litigation, it is agreed by the parties that any claim, question, difficulty or dispute arising from this Agreement or the construction process shall be first submitted to the Designer to address the issue. Upon review of the Claim, the Designer shall take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Designer expects to take action, (3) reject the Claim in whole or in part stating reasons for rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise.

The Designer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

- 4.4.2 If a Claim has been resolved, the Designer will prepare or obtain appropriate documentation.
- 4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Designer's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Designer, (2) modify the initial Claim and resubmit it to the Designer, or (3) notify the Designer that the initial Claim stands and submit the Claim to the Durham County Manager for mediation pursuant to Paragraph 4.4.4, below.
- 4.4.4 The Durham County Manager, as mediator, shall address any properly submitted claim, question, difficulty or dispute arising from this Agreement or the construction process, which has not been satisfactorily resolved by the Designer. Such requests shall be made to the Durham County Manager in writing within ten (10) days after the Designer's preliminary response. The mediator shall notify Contractor in writing of the decision within thirty (30) calendar days from the date of the submission of the claim, question, difficulty or dispute, unless the mediator requires additional time to gather information or allow the parties to provide additional information. The mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this Section, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.
- 4.4.5 The mediation session shall be private. Prior to commencement of mediation, if requested by either party or the mediator, the parties and the mediator shall execute a written confidentiality agreement in accordance with the provisions of North Carolina law. All such mediation sessions shall be held in Durham County, North Carolina.
- 4.4.6 If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgement may be entered upon it in accordance with applicable law in any court of competent jurisdiction.
- 4.4.7 If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.
- 4.4.8 The dispute resolution procedure set forth in this Section shall be made available to any party involved in this construction project including County, Contractor, Designer, Subcontractors as well as Sub-subcontractors and is a precondition to initiation of litigation concerning the dispute.

ARTICLE 5
SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Designer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work, including (1) Heating, ventilating, and air conditioning, (2) Plumbing, (3) Electrical, and (4) General. The Designer will promptly reply to the Contractor in writing stating whether or not the Owner or the Designer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Designer to reply promptly shall constitute notice of no reasonable objection.
- 5.2.2 The Contractor shall NOT substitute any person or company listed in the Contractor's original Bid Proposal, except (1) if the listed subcontractor's bid is later determined by the Contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the work, or (2) with the approval of the Owner for good cause shown by the Contractor.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms and conditions of the Contract Documents and Contract for Construction, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner and Designer. Each subcontract agreement shall preserve and protect the rights of the Owner and Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed

Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 6.1.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.
- 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner- Contractor Agreement.
- 6.1.3 The General Contractor shall provide for coordination of the activities of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the General Contractor in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor and separate contractors until subsequently revised.
- 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10 and 11.
- 6.1.5 The General Contractor shall be responsible for scheduling the work of all contractors; the maintenance of the progress schedule for all prime contractors for this project; and for the notification of the Designer of any changes in the progress schedule.

6.2 MUTUAL RESPONSIBILITY

- 6.2.1 The Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Designer apparent discrepancies or defects in

such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

- 6.2.3 Costs caused by delays, by improperly timed activities, defective construction, or any other damages shall be borne by the party responsible therefor. The Owner shall not be liable nor responsible for any delays or damages to the Contractor caused by separate Contractors or the Designer.
- 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate Contractors as provided in Paragraph 10.2.5.
- 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate Contractor shall be subject to the provisions of Sections 4.2 and 4.4, provided the separate Contractor has reciprocal obligations.
- 6.2.6 The Owner and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.13.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.14, the Owner may clean up and allocate the cost among those responsible as the Designer determines to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

- 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Designer; a Construction Change Directive requires agreement by the Owner and Designer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Designer alone pursuant to Paragraph 7.4.
- 7.1.3 Changes in the work shall be performed under applicable Provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

- 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 7.1.5 Overhead and profit shall not exceed 15% of the value of labor and material for work performed by any contractor or subcontractor. If the work is performed by a subcontractor, the prime contractor's overhead and profit shall not exceed 5%.

7.2 CHANGE ORDERS

- 7.2.1 A Change Order is a written instrument prepared by the Designer and signed by the Owner, Contractor, and Designer, stating their agreement upon all of the following:
- (1) a change in the Work;
 - (2) the amount of the adjustment in the Contract Sum, if any; and
 - (3) the extent of the adjustment in the Contract Time, if any.
- 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Paragraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

- 7.3.1 A Construction Change Directive is a written order prepared by the Designer and signed by the Owner and Designer, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
- mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - unit prices stated in the Contract Documents or subsequently agreed upon;
 - cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (4) as provided in Paragraph 7.3.6.
- 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Designer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for

determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

- 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Designer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under clause 7.3.3(3), the Contractor shall keep and present, in such form as the Designer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph 7.3.6 shall be limited to the following:

costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
additional costs of supervision and field office personnel directly attributable to the change.

- 7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Designer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

- 7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Designer for determination.

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

7.4 MINOR CHANGES IN THE WORK

The Designer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8
TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.
- 8.1.3 The date of substantial Completion is the date certified by the Designer in accordance with Paragraph 9.9.
- 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

- 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor and the Contractor's surety shall be liable for and shall pay the Owner such sums as shall be set forth in the Agreement between Owner and Contractor as liquidated damages each calendar day of delay until the work is substantially complete.
- 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by the Contract for Construction to be furnished by the Contractor. The date of commencement of the work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Designer, the Contractor shall notify the Owner and Designer in writing not less than five days before commencing the Work.
- 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Designer, or of an employee of either, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidably casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending litigation, or by other causes which the Designer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Designer may determine.
- 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.2.8.

- 8.3.3 Should the work be interrupted or hindered by the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to such interruption or hindrance but such interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.
- 8.3.4 Should the work be delayed in whole by any act or acts of the Contractor, the Contractor shall not be entitled to an extension of time pursuant to Paragraph 4.2, nor shall such delay constitute a claim either for damages or for loss of anticipated profits by the Contractor. Should the work be delayed in part by any act or acts of the Contractor and in part by any act or acts of the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to that portion of the delay for which the Contractor is not responsible, but such delay shall not constitute a claim either for damages or for loss of anticipated profits by the Contractor.
- 8.3.5 Should the work be delayed, interrupted or hindered, in whole or in part, by any act or acts of any separate prime contractors, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2.8 in an amount equal to such delay, interruption or hindrance but such delay, interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.

ARTICLE 9
PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Contractor shall submit to the Designer a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer may require. This Schedule of Values, unless objected to by the Designer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

- 9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Designer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, supported by such data substantiating the Contractor's right to payment as the Owner or Designer may require, such as copies of requisitions from subcontractors and material suppliers and reflecting retainage if provided for elsewhere in the Contract Documents.
- 9.3.2 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

- 9.3.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.
- 9.3.4 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- 9.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.
- 9.3.6 Provided an Application for Payment is received by the Designer not later than the tenth (10th) day of a month, the Owner shall make payment to the Contractor not later than the thirtieth (30th) day of the month.

9.4 **RETAINAGE**

To ensure proper performance of this Contract, Owner shall retain five percent (5%) of the amount of each approved Application for Payment until the project work is 50% complete provided that the Contractor continues to perform satisfactorily and any non-conforming work identified in writing prior to that date has been corrected by the Contractor and accepted by the Owner. If the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate retainage in the amount of 5% for each subsequent periodic Application for Payment until the Contractor's performance becomes satisfactory. The project shall be deemed fifty percent (50%) complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete. Following 50% completion of the project, the Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed 5%, in order to allow the Owner to retain 2 ½% total retainage through the completion of the project. Within sixty (60) days after the submission of a final pay application, the Owner with written consent of the Surety shall release to the Contractor all retainage on payments held by the Owner if (1) the Owner receives a certificate of substantial completion from the architect, Designer or design consultant in charge of this Project, or (2) the Owner receives beneficial occupancy or use of the project. However, the Owner may retain sufficient funds to secure completion of the project or corrections to any work. If the Owner retains funds, the amount retained shall not exceed two and one half times the estimated cost of the work to be completed or corrected. Any reduction in the amount of retainage

on payments shall be with the consent of the Contractor's Surety. Retainer provisions contained in Contractor's subcontracts may not exceed the terms and conditions for retainage provided herein. Contractor is further required to satisfy the retainage provisions of N.C.G.S. 143-134.1(b2) with regard to subcontracts for early finishing trades (structural steel, piling, caisson, and demolition) and to coordinate the release of retainage for such trades from the retainage held by Owner from the Contractor pursuant to statute. Nothing herein shall prevent the Owner from withholding payment to the Contractor in addition to the amounts identified herein for unsatisfactory job progress, defective construction not remedied, disputed work, or third party claims filed against the owner or reasonable evidence that a third party claim will be filed.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 The Designer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Designer determines is properly due, or notify the Contractor and Owner in writing of the Designer's reasons for withholding certification in whole or in part as provided in Paragraph 9.6.1.

9.5.2 The Designer's certification for payment shall constitute a representation to the Owner, based on the Designer's inspections at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that the inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of his profession; and that to the best of his knowledge and in the professional opinion of the Designer, the Contractor has fulfilled the obligations of such plans, specifications, and contract. The Designer's certification for payment shall be signed and sealed by the Designer and presented to the Owner. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Designer. The issuance of a Certificate for Payment shall further constitute a representation by the Designer, that the Contractor is entitled to payment in the amount certified.

9.6 DECISIONS TO WITHHOLD CERTIFICATION

9.6.1 The Designer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Designer's opinion, the representations to the Owner required by Paragraph 9.5.2 cannot be made. If the Designer is unable to certify payment in the amount of the Application, the Designer will notify the Contractor and Owner as provided in Paragraph 9.5.1. If the Contractor and Designer cannot agree on a revised amount, the Designer will promptly issue a Certificate for Payment for the amount for which the Designer is able to make such representations to the Owner. The Designer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Designer's opinion to protect the Owner from loss due to:

defective Work not remedied;

third party claims filed or reasonable evidence indicating probable filing of such claims;

failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

damage to the Owner or another contractor;

(6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.7 PROGRESS PAYMENTS

9.7.1 After the Designer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Designer.

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

9.7.3 The Designer will furnish to a Subcontractor, upon request and if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Designer and Owner on account of portions of the Work done by such Subcontractor.

9.7.4 Neither the Owner nor Designer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.7.5 Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 9.7.2, 9.7.3, and 9.7.4.

9.7.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.8 FAILURE OF PAYMENT

The Contractor shall not stop the Work for the failure of the Designer to issue a Certificate of Payment, or the Owner to make timely payment.

9.9 SUBSTANTIAL COMPLETION

- 9.9.1 Substantial Completion is the stage in the progress of the Project when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, so the Owner can occupy or utilize the Work for its intended use.
- 9.9.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Designer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item or such list does not alter the responsibility for the Contractor to complete all Work in accordance with the contract Documents. Upon receipt of the Contractor's list, the Designer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer. The Contractor shall then submit a request for another inspection by the Designer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Designer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.
- 9.9.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Designer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.10 PARTIAL OCCUPANCY OR USE

- 9.10.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Designer as provided under Subparagraph 9.9.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Designer.

- 9.10.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Designer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 9.10.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.11 FINAL COMPLETION AND FINAL PAYMENT

- 9.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Designer will promptly make such inspections and, when the Designer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Designer will promptly issue a Final Certificate for Payment stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Final Certificate is due and payable. The Designer's Final Certificate for Payment will constitute a further representation that the conditions listed in Paragraph 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.
- 9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract for Construction to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) if required by the Owner, other or additional data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances rising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 9.11.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Designer so confirms, the Owner shall, upon application by the Contractor and certification by the Designer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for work not fully completed and accepted is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the

Designer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

- 9.11.4 Acceptance of final payment by the Contractor, Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

- 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and construction of the Project.
- 10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (hereinafter "APCB") which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Designer by phone and in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Designer.
- 10.1.3 The Contractor shall not be required to perform without consent of Owner and Designer any Work relating to asbestos or PCB.

10.2 SAFETY OF PERSONS AND PROPERTY

- 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- employees on the working on the Project and other persons who may be affected thereby;
 - the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

- 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including erecting necessary barricades or other temporary walls and structures as required during the period of construction, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Paragraphs 10.2.1.(2) and (3), caused in whole or in part by the Contractor, Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 10.2.1.(2) and (3), except damage or loss attributable to acts or omissions of the Owner or Designer and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3. All costs to repair any damage and loss to property referred to in Paragraphs 10.2.1.(2) and (3), shall be the sole responsibility of the Contractor and such repair or replacement shall be performed expeditiously without cost to the Owner.
- 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent, required under Paragraph 3.8, unless otherwise designated by the Contractor in writing to the Owner and Designer.
- 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- 10.2.8 Existing utilities have been identified and described in the Contract Documents insofar as information is reasonably available, however, it is the Contractor's responsibility to verify such information and to preserve all existing utilities whether shown in the Contract Documents or not. If utility conflicts are encountered by the Contractor during construction, Contractor shall file sufficient notice to the owners of the utilities so that they may make the necessary adjustments, as well as the Designer or Designer.

10.3 EMERGENCIES

In an emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraphs 4.2.7, 4.2.8 and Article 7.

ARTICLE 11
UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK

- 11.1.1 If a portion of the Work is covered contrary to the Designer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Designer, be uncovered for the Designer's observation and be replaced at the Contractor's sole expense without change in the Contract Time.
- 11.1.2 If a portion of the Work has been covered which the Designer has not specifically requested to observe prior to its being covered, the Designer may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner or separate contractor shall be responsible for payment of such costs. If such work is in accordance with the Contract Documents, the Owner, by appropriate Change Order, shall be charged with the cost of uncovering and replacement.

11.2 CORRECTION OF WORK

- 11.2.1 The Contractor shall promptly correct Work rejected by the Designer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear any and all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Designer's services and expenses made necessary thereby.
- 11.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.10.1 or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the work. This obligation under this Paragraph 11.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 11.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 11.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.2. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Designer, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting

costs and damages that should have been borne by the Contractor, including compensation for the Designer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

- 11.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- 11.2.6 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 11.2.2, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the work.

11.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 12 **MISCELLANEOUS PROVISIONS**

- 12.1 **GOVERNING LAW.** This Contract for Construction shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract, shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina, after exhausting the dispute resolution procedure set forth in Section 4.4, herein.
- 12.2 **SUCCESSORS AND ASSIGNS.** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- 12.3 **WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the business address listed in the Contract for Construction.

- 12.4 **RIGHTS AND REMEDIES.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 12.5 **WAIVER OF A RIGHTS.** No action or failure to act by the Owner or Designer shall constitute an obligation or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- 12.6 **COMPLIANCE WITH LAWS.** Contractor represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this contract will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

12.7 TESTS AND INSPECTIONS

- 12.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear the costs of tests, inspections, and approvals. Should any retest be necessary due to the failure of the Work to pass the first test or for any other reason whatsoever, the Contractor shall bear all related costs of retests, inspections or re-inspections, and approvals. The Contractor shall give the Designer timely notice of when and where tests and inspections are to be made so the Designer may observe such procedures.
- 12.7.2 If the Designer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Paragraph 12.5.1, the Designer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Designer of when and where tests and inspections are to be made so the Designer may observe such procedures.
- 12.7.3 If such procedures for testing, inspection or approval under Paragraphs 12.5.1 and 12.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Designer's services and expenses.
- 12.7.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Designer.
- 12.7.5 If the Designer is required by the Contract Documents to observe tests, inspections, or approvals, the Designer will do so promptly and, where practicable, at the normal place of testing.
- 12.7.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

12.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

As between the Owner and Contractor:

Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the Final Certificate for Payment; and

After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.4, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 11.2 or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 13

TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE CONTRACTOR

13.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 180 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

issuance of an order of a court or other public authority having jurisdiction;
an act of government, such as a declaration of national emergency, making material unavailable;

because the Designer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 9.6.

13.1.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days written notice to the Owner and Designer, terminate the Contract and recover from the Owner payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, not including overhead, profit, or damages.

13.2 TERMINATION BY THE OWNER FOR CAUSE

13.2.1 The Owner may terminate the Contract if the Contractor:

persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

otherwise is in substantial breach of a provision of the Contract Documents.

13.2.2 When any of the above reasons exist, the Owner, upon certification by the Designer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of surety:

take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and
finish the Work by whatever reasonable method the Owner may deem expedient.

13.2.3 When the Owner terminates the Contract for one of the reasons stated in Paragraph 13.2.1, the Contractor shall not be entitled to receive further payment.

13.2.4 If the unpaid balance of the Contract Sum does not cover the cost of finishing the Work, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner, shall be certified by the Designer, upon application, and this obligation for payment shall survive termination of the Contract.

13.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

13.4 BANKRUPTCY

13.4.1 The bankruptcy of the Contractor shall not terminate this Contract until such time that it is specifically rejected by the Trustee or Contractor in bankruptcy. During the election period the Contractor has to assume or reject this Contract, the Contractor shall continue to perform its Work under the Contract.

13.4.2 In the event the Contractor in Bankruptcy assumes the Contract, the Contractor shall apply progress payments to all of its unpaid obligations on this project before using any of these monies for either administrative expenses of the bankruptcy or as general assets of the estate.

13.5 **SECURITY OF NON-PUBLIC RECORDS**

Pursuant to N.C.G.S. § 132-1.7 entitled, “Sensitive Public Security Information”, public records, as defined in N.C.G.S. § 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Therefore, all information provided, received, gathered or obtained by Contractor containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities shall be held confidential and shall be used by the Contractor only for the purpose of fulfilling the terms of this Agreement. All plans and drawings shall be returned to the County, or otherwise destroyed at the direction of the County, upon termination or expiration of this Agreement. Any breach of this paragraph by Contractor shall result in the immediate termination of this contract.