

PROJECT MANUAL

Rolesville Town Hall Renovations

502 Southtown Circle
Rolesville, NC 27571

OWNER:

Town of Rolesville

JG Ferguson, Parks & Recreation Director
502 Southtown Circle
PO BOX 250
Rolesville, NC 27571
(919) 556-3506
jg.ferguson@rolesville.nc.gov

DESIGNER:

Baxter-Armistead Architecture, PC

3206-112 Heritage Trade Drive
Wake Forest, NC 27587
(919) 554-1505
Joe Armistead
joe@baxterarmistead.com

January 27, 2020

CONTENTS:

ADVERTISEMENT FOR BIDS
INSTRUCTIONS TO BIDDERS
PROCEDURES FOR REPORTING SALES TAX
CONSTRUCTION CONTRACT
GENERAL CONDITIONS
SPECIFICATIONS
DRAWINGS (<https://www.rolesvillenc.gov/finance/bid-opportunities>)
BID PROPOSAL FORM

ADVERTISEMENT FOR BIDS

Sealed proposals will be received until **2:00pm on Wednesday, February 19, 2020** at the Rolesville Town Hall, 502 Southtown Circle, Rolesville, NC 27571, for the construction of renovations to the existing Town Hall.

Complete plans and specifications for this project can be obtained from JG Ferguson, Parks & Recreation Director, Town of Rolesville, 502 Southtown Circle, Rolesville, NC 27571 or via email at jg.ferguson@rolesville.nc.gov or by calling (919) 556-3506 during normal office hours.

A mandatory pre-bid meeting will be held at the project, 502 Southtown Circle, Rolesville NC 27571 on **Tuesday, February 4, 2020 at 2:00pm**. All questions must be submitted to owner by **Wednesday, February 12, 2020**.

Work included in the project is listed below:

This renovation project involves the demolition of selected walls within the structure and installation of new walls in order to create a new lobby and front reception area. Includes associated electrical, plumbing, and HVAC work. Will require ceiling and flooring work.

Town of Rolesville as owner reserves the right to reject any and all bids for any reason.

Baxter Armistead Architecture, PC
Joe Armistead, Principal Architect
3206-112 Heritage Trade Drive
Wake Forest, NC 27587
919-554-1505

Town of Rolesville
JG Ferguson, Parks & Recreation Director
502 Southtown Circle
919-556-3506

INSTRUCTIONS TO BIDDERS

Quality Monitoring

Work must be completed to the satisfaction of Baxter Armistead Architecture, PC AND to the Town of Rolesville.

Payment Methods and Approvals

Payment applications will be processed monthly based on work completed. Retainage of 5% of contract amount will be withheld until completion of any and all punch list items.

Baxter Armistead Architecture, PC will review all pay applications within 5 days of submittal and forward with recommendation to the Town of Rolesville.

Scheduling

Project will begin on or about Monday, March 2, 2020 and the contractor has 60 days to complete the work from Notice to Proceed. Work should occur between the hours of 7:00am and 5:00pm on weekdays. Additional hours or weekend work may be possible in limited circumstances.

Notice to Proceed

After contractor receives written notice to proceed by way of signed contract with owner, a construction schedule is to be submitted to Joe Armistead of Baxter Armistead Architecture, PC.

Liquidated Damages

Contractor will not be held responsible for delays outside of their control, such as unusual weather. Contractor is responsible for notifying Baxter Armistead Architecture, PC in writing as to any anticipated delays and the reasons for same. Contractor will be assessed liquidated damages in amount of \$500.00 per day after the completion date established in the construction contract if there is any remaining work or punch list items.

Licensing Reminder

All contractors must have licenses under State laws for respective trades.

Bonds Requirements

Bid bonds equal to not less than 5% of bid amount will be required. Performance bonds and Payment bonds will be required for the full amount of the contract and for the duration of the project only. Please NOTE again; payments WILL NOT BE MADE until work completed and accepted by owner and architect.

Owner's Right to Reject Bids

Owner reserves the right to reject any or all bids and to waive informalities.

PROCEDURE FOR REPORTING NORTH CAROLINA SALES TAX EXPENDITURES ON TOWN OF ROLESVILLE CONTRACTS

The following procedure in handling the North Carolina sales tax is applicable to this project. Contractors shall comply fully with the requirements outlined hereinafter, in order that the owner may recover the amount of the tax permitted under the law.

1. It shall be the general contractor's responsibility to furnish the owner documentary evidence showing the materials used and sales tax paid by the general contractor and each of his subcontractors. Any county sales tax included in the Contractor's statements must be shown separately from the state sales tax. If more than one county is shown, each county shall be listed separately.
2. The documentary evidence shall consist of a certified statement, by the general contractor and each of his subcontractors individually, showing total purchases of materials from each separate vendor and total sales taxes by each county paid each vendor. The certified statement must show the invoice number(s) covered and inclusive dates of such invoices. State sales tax shall be listed separately from county sales tax. If more than one county is shown, each county shall be listed separately.
3. Materials used from general contractor's or subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
4. The general contractor shall not be required to certify the subcontractor's statements.
5. The documentary evidence to be furnished to owners eligible for sales or use tax refunds covers sales and/or use taxes paid on building materials used by contractors and subcontractors in the performance of contracts with churches, orphanages, hospitals not operated for profit, educational institutions not operated for profit, and other charitable or religious institutions or organization not operated for profit, and incorporated cities, towns, and counties in this State. The documentary evidence is to be submitted to the above-named institutions, organizations, and governmental units to be included in claims for refunds to be prepared and submitted by them to obtain refunds provided by G.S> 105-164.14 and is to include the purchases of building materials, supplies, fixtures, and equipment which become a part of or annexed to buildings or structures being erected, altered, or repaired under contract with such institutions, organizations, or governmental units.

The Contractor or contractors to whom an award is made on this project will be required to follow the procedure outlined above.

The Contractor is advised that all requests for payment, partial or final, for work completed under this contract must include a sales tax report submitted in accordance with the procedures outlined above.

CONSTRUCTION CONTRACT for the TOWN OF ROLESVILLE

This Construction Contract for the Town of Rolesville (the "Agreement") is made and entered into this the _____ day of _____, 20____ by and between the **TOWN OF ROLESVILLE, NORTH CAROLINA**, a municipal corporation of the State of North Carolina ("Owner") and _____ (the "Contractor"). Owner and Contractor are, collectively, the "Parties" and individually, a "Party."

The Project: Rolesville Town Hall Renovations
Name and Location: 502 Southtown Circle
Rolesville, NC 27571

The Designer is: Baxter-Armistead Architecture, PC
3206-112 Heritage Trade Drive
Wake Forest, NC 27587

1. **CONTRACT DOCUMENTS.** The "Contract Documents" consist of this Agreement, General Conditions of the Contract for Construction ("General Conditions"); Specifications; Drawings; Addenda issued prior to execution of the Agreement; other documents listed in Paragraph 19 of the Agreement (if any); and Modifications executed by the Parties after execution of the Agreement; and, for public Projects, the Owner's Advertisements to Bid or Invitations to Bid, the Owner's Instructions to Bidders, the Contractor's Bid or Proposal, Performance and Payment Bonds, and Certificates of Insurance (together, the "Contract"). The Contract Documents form the Contract and are fully a part of the Contract as if attached to the Agreement or repeated herein. 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.

The Owner and Contractor agree that should the Contractor utilize the services of a Subcontractor for any Work under this Contract, the Subcontractor shall be required to comply with all terms and conditions of this Contract and any and all Contract Documents entered into between the Owner and Contractor and any of its Subcontractors shall require the same of their Subcontractors.

2. **WORK.** The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.
3. **RELATIONSHIP OF THE PARTIES.** The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Designer and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve information required by the Contractor and to make payments to the Contractor, both in accordance with the requirements of the Contract Documents.
4. **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION.** The Work required by the Contract shall be commenced by the Contractor not later than **5** calendar days after the Owner's notice to the Contractor to proceed and the entire work shall be completed not later than **60** calendar days after the date of notice to proceed.

The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial

occupancy and use of the completed Work following expiration of the Contract Time as defined above, and that the Owner has entered into, or will enter into, binding agreements with third parties based upon the Contractor's achieving Substantial Completion of the Work within the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or fails to cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Contractor agree that the Owner shall be entitled to liquidated damages for the Contractor's failure to complete substantially or failure to cause Substantial Completion of any portion of the Work within the Contract Time as set forth below.

If the Contractor fails to complete substantially or fails to cause the Substantial Completion of any Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing on the upon the first day following expiration of the Contract Time and continuing until the date that the Contractor achieves Substantial Completion of the entire Work. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work: **\$500** per day.

The Owner may deduct liquidated damages described above from any unpaid amounts then or thereafter due the Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable by the Contractor to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the prime interest rate as published by the Wall Street Journal.

Notwithstanding anything to the contrary in the Contract, if the Owner is unable to recover any portion of liquidated damages in accordance with the terms and conditions above because any portion thereof is found to be unenforceable or invalid as a penalty or otherwise, then the Owner shall be entitled to recover from the Contractor all of the Owner's actual damages in connection with any failure by the Contractor to complete substantially to achieve Substantial Completion of the Work within the Contract Time, including without limitation, consequential damages.

5. CONTRACT SUM AND PAYMENT

5.1 Owner agrees to pay for services, satisfactorily performed, in accordance with the Contract Documents. Unless otherwise specified, Contractor shall submit an Application for Payment in the manner described in Article 9 of the General Conditions. Payment will be processed promptly upon receipt and upon approval of the Application by Owner.

5.2 Contractor shall receive from Owner a sum not to exceed \$ [], as full compensation for the provision of construction services provided under this Contract, subject to additions and deductions as provided in the Contract Documents.

5.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

[]

5.4 Unit prices, if any, are as follows:

[May reference bid form]

6. **PROGRESS PAYMENTS.** Based upon Applications for Payment submitted to the Designer by the Contractor and Certificates for Payment issued by the Designer pursuant to Sections 9.5 and 9.6 of the General Conditions, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in Sections 9.3, 9.4, and 9.7 of the General Conditions.
7. **FINAL PAYMENT.** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor and all requirements expressed in Sections 9.3 and 9.11 of the General Conditions have been satisfied except for those requirements set forth in Sections 11.2 and 11.3 of the General Conditions and any other requirements which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Designer; such final payment shall be made by the Owner not more than 30 days after the issuance of the Designer's final Certificate for Payment.
8. **INDEMNIFICATION.** The Contractor's indemnification obligations connected with the Contract are set forth in Paragraph 3.17 of the General Conditions.
9. **NOTICES.** All notices which may be required by this Contract or any rule of law shall be effective when received by the following individuals through personal delivery or by certified mail at the following addresses:

FOR: TOWN OF ROLESVILLE
JG Ferguson, Parks & Recreation Director
PO Box 250
Rolesville, NC 27571

FOR: CONTRACTOR

10. **NON-DISCRIMINATION.** Contractor shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event Contractor is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state, or local law, or this provision, this Contract may be canceled, terminated or suspended in whole or in part by Owner, and Contractor may be declared ineligible for further Owner contracts.
11. **HEALTH AND SAFETY.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing services under this Contract.
12. **NON-ASSIGNMENT.** This Contract is not assignable by either Party, by operation of law or otherwise, except as provided in Section 12.2 of the General Conditions.
13. **MODIFICATION.** This Contract may be modified only by a written agreement executed by both Parties.
14. **TERMINATION OR SUSPENSION.** This Contract may be terminated by the Owner or the Contractor as provided in Article 13 of the General Conditions. The Work may be suspended by the Owner as provided in Section 13.4 of the General Conditions.

15. E-VERIFY. As a condition of payment for services rendered under this Contract, Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor provides Work utilizing a Subcontractor, Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Contractor shall verify by affidavit compliance of the terms of this section upon request by the Owner.
16. IRAN DIVESTMENT ACT. Contractor attest that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4. Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (See N.C.G.S. 143C-6A-6(a).) It is Contractor's responsibility to monitor its compliance with this restriction. Contracts valued at less than \$1,000 are exempt from this restriction.
17. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL. Contractor certifies that it has not been designated by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel. It is Contractor's responsibility to monitor compliance with this restriction. Contracts valued at less than \$1,000 are exempt from this restriction.
18. INSURANCE AND BONDS
 - 18.1 CONTRACTOR'S INSURANCE. Contractor agrees to purchase at its own expense insurance coverages to satisfy the following minimum requirements and to secure the required insurance prior to performing Work. A certificate reflecting the following minimum coverages shall accompany this Agreement:
 - Workers' Compensation Insurance - Limits of no less than \$1,000,000 for each accident and each employee. Waivers of Indemnity are not recognized by the North Carolina Department of Insurance and will not be accepted by the Town of Rolesville.
 - Commercial General Liability - Combined single limits of no less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate. This insurance shall include Comprehensive Broad Form Coverage including contractual liability. It shall provide coverage for claims including (1) damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; (2) personal injury and advertising injury; (3) damages because of physical damage to or destruction of tangible property, including the loss of use of such property; (4) bodily injury or property damage arising out of completed operations; and (5) the Contractor's indemnity obligations under Section 3.17 of the General Conditions. The following language must be endorsed onto the policies and listed on Certificate of Insurance: "Town of Rolesville is named additional insured as its interests may appear."
 - Commercial Automobile Liability – Automobile Liability covering vehicles owned and non-owned vehicles used by the Contractor, with policy limits of no less than \$1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought on an Owner site. The following language must be endorsed onto the policies and listed on Certificate of Insurance: "Town of Rolesville is named additional insured as its interests may appear."

All insurance companies used by the Contractor must be licensed in North Carolina.

Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor and shall provide the Owner no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Contract.

18.2 PERFORMANCE BOND AND PAYMENT BOND. The Contractor has furnished and attached hereto a Performance Bond in the penal sum of \$ [], and a Payment Bond in the penal sum of \$ [] covering the faithful performance of this Contract and the payment of all obligations arising hereunder, in such form and content as the Owner may prescribe and with surety approved by the Owner. Should any surety upon the bond for the performance of this Contract become unacceptable to the Owner, the Contractor must promptly furnish additional security as may be required from time to time by the Owner to protect the interests of the Owner and of persons, firms and corporations supplying labor or materials in the performance of the work contemplated by the Contract.

19. INCORPORATION OF CONTRACT DOCUMENTS. The Contract Documents, except for Modifications issued after execution of this Contract, are enumerated as indicated:

- Agreement
- General Conditions of the Contract for Construction
- Supplemental and Other Conditions
- Job Specifications

Title

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- Project Drawings

Title

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- Addenda

Number / Date

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- Advertisement to Bid
- Instructions to Bidders
- Contractor's Proposal
- Performance Bond (w/Power-of-Attorney)
- Payment Bond (w/Power-of-Attorney)
- Certificate of Insurance
- Other (Describe)

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20. The Agreement and the other Contract Documents described herein represent the entire and integrated agreement between the Owner and Contractor and supersede any and all prior negotiations, representations or agreements concerning the Project between the Parties, whether written or oral.

21. OTHER PROVISIONS.

- 21.1 If a court finds any provision of the Contract invalid or unenforceable, in whole or in part, the finding shall not affect the validity or enforceability of any other provision of the Contract or the remainder of the provision in question.
- 21.2 No act or failure to act by the Owner or Contractor constitutes a waiver of any right, remedy, obligation or duty afforded them under the Contract or Law, or approval of, or acquiescence in, any breach of contract or negligence of the other party, except as stated in the Contract or otherwise agreed in writing.
- 21.3 The Parties may sign this Agreement in counterparts. Together the counterparts shall constitute a complete document. Signatures transmitted electronically shall have the same effect as physical delivery of the paper bearing the original signatures.

SIGNATURE PAGE FOLLOWS

TOWN OF ROLESVILLE

This instrument has been pre-audited
in the manner required by the Local
Government Budget and Fiscal Control Act.

By: _____

Date: _____

Finance Officer

CONTRACTOR

ATTEST:

By: _____

Print Name: _____

Title: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, a Notary Public in and for the aforesaid County and State, do hereby certify that _____
personally appeared before me this day and acknowledged that he is _____ of
_____, a North Carolina corporation, and that by authority duly given and as the act of
the corporation, the foregoing instrument was signed in its name by its _____, sealed with its
corporate seal and attested by _____ as its _____.

Witness my hand and notarial seal this ___ day of _____, 20__.

Notary Public

(SEAL)

My commission expires: _____

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

1 ARTICLE 1 GENERAL PROVISIONS

1.1 **BASIC DEFINITIONS**

- 1.1.1 Contract. 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. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Designer or the Designer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Designer or the Designer's consultants, or (4) between any persons or entities other than the Owner and the Contractor.
- 1.1.2 Contract Documents. The Contract Documents are enumerated in the Construction Contract for the Town of Rolesville (hereinafter, the Agreement).
- 1.1.3 Contractor. The Contractor is 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" shall mean the General Contractor or the General Contractor's authorized representative(s).
- 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 Designer is the Architect or Engineer registered in accordance with the provisions of Chapter 89C of the North Carolina General Statutes, is identified as such in the Agreement, and is referred to throughout the Contract Documents as if singular in number. Unless otherwise stated, the term "Designer" shall mean the Designer or the Designer's authorized representative(s).
- 1.1.6 Modification. A Modification is (1) a written amendment to the Agreement or to other Contract Documents signed by both Parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Designer.
- 1.1.7 Owner. The Owner is the Town of Rolesville. The term "Owner" shall mean the Owner or the Owner's authorized representative(s).
- 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 Separate Contractor. The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements.
- 1.1.11 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.
- 1.1.12 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.
- 1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the worksite, is familiar with local conditions under which the Work is to be performed, has correlated personal observations with requirements of the Contract Documents, has checked and verified all worksite conditions.
- 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: The Drawings, Specifications, and other documents prepared by the Designer are instruments of the Designer's service, which describe the Work to be executed by the Contractor. 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 Articles, Sections, 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.

2 ARTICLE 2 OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish plan and profile of existing Town 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 STOP THE WORK: If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.3 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.

3 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 any errors, inconsistencies, or omissions discovered. If the Contractor performs any construction activity when it knew or should have known that such work involves any errors, inconsistencies, or omissions in the Contract Documents without providing notice to the Designer, the Contractor shall assume full responsibility for such performance and shall bear

the full costs for any required correction.

- 3.1.2 The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements, conditions, and other information known to the Contractor with the Contract Documents before commencing and construction activity. If the Contractor discovers errors, inconsistencies, or omissions it shall promptly report such conditions to the Designer.
- 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. The Contractor shall be solely responsible 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 or entities performing portions of the Work for, or on behalf of the Contractor or any of its Subcontractors.
- 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 (if any) 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 that 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 if they were 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.

3.4.3 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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). To the extent that any allowance is not fully used, then the unused amount of each allowance shall be credited to the Owner by a Change Order.

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 perform Work in general accordance with 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 certificates.
- 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 defend (as that term is defined by N.C. Gen. Stat. § 22B-1), indemnify, and hold harmless the Owner, the Owner's elected officials, officers, directors, managers, agents, employees, and affiliated entities of any of them; the Designer, the Designer's consultants, agents, employees, and affiliated entities of any of them; and any parties which the Contract Documents require the Contractor to defend, indemnify, or hold harmless (altogether, the "Indemnified Parties") from and against any and all claims, losses, damages, demands, injuries, judgments, causes of action, suits, and liability of every kind including without limitation attorneys' fees and other litigation expenses incurred by an Indemnified Party (collectively, the "Indemnified Claims") for the following:

- 1 For bodily injury to or the death of any person, or damage to or destruction of tangible property (including the loss of its use) arising from the negligence of the Contractor or the Contractor's derivative parties (as "derivative parties" are defined by N.C. Gen. Stat. § 22B-1); provided, however, that the Contractor shall not be required to indemnify or hold harmless an Indemnified Party against any damages arising out of bodily injury to persons or damage to personal property proximately caused by or resulting from the negligence, in whole or in part, of such Indemnified Party.
- 2 For all Indemnified Claims not included in Subparagraph 1 above, in which the fault of

the Contractor or its derivative parties (as "fault" and "derivative parties" are defined by N.C. Gen. Stat. § 22B-1) is a proximate cause of the loss, damage, or expense indemnified.

3 The Contractor shall also indemnify and hold harmless the Indemnified Parties which are eligible for indemnification pursuant to this Paragraph 3.17.1 for their attorney's fees, litigation and/or arbitration expenses, and court costs which they actually incur in any court, tribunal, or alternative dispute resolution procedure and which are required of such party by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

3.17.2 In any and all Indemnified Claims against the Indemnified Parties by an employee of the Contractor, to the fullest extent permitted by law, any indemnification obligation shall not be limited by amount or type of damages, compensation, or benefits payable by or for the Contractor 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.

3.17.4 If any indemnity obligation of the Contractor under this Section 3.17 or elsewhere in the Contract, is held to be unenforceable, Contractor shall indemnify and hold harmless the Indemnified Parties to the full extent permitted by Law. Further, the Contractor's liability resulting from its defense and indemnity obligations under the Contract is not limited or affected in any way by insurance coverage or lack thereof.

4 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 Section 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 Section 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 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 12.7.2 and 12.7.3, 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 Section 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 Section 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. Claims include 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 Section 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 Section 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) forty-five (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 ten (10) days after occurrence of the event giving rise to such Claim or within ten (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 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 ten (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 twenty-one (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 Section 4.4.

- 4.2.6 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 Section 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.
- 4.2.7 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 costs.
- 4.2.8 Waiver of Claims for Consequential Damages. The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract except to the extent that such damages are covered and paid under a policy of insurance maintained by the Owner. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination in accordance with Article 13. Nothing contained in this Paragraph 4.2.9 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
- 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 ten (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

Paragraphs 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 Contract 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 for mediation pursuant to Paragraph 4.4.4, below.
- 4.4.4 A mediator shall address any properly submitted Claim, question, difficulty, or dispute arising from this Contract or the construction process, which has not been satisfactorily resolved by the Designer or Owner. The mediator's orders, decisions, and decrees shall be non-binding. Mediation, pursuant to this Paragraph, 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. The mediator shall be agreed upon by the Parties and the Designer.
- 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 Wake County, North Carolina.
- 4.4.6 If, as a result of mediation, a voluntary settlement is reached the agreement shall be reduced to writing, and it shall be enforceable in the General Court of Justice in the Wake County, North Carolina, which shall be the exclusive venue and jurisdiction for disputes arising thereunder.
- 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 Wake and the State of North Carolina.
- 4.4.8 The dispute resolution procedure set forth in this Paragraph shall be made available to any party involved in this construction project including Owner, Contractor, Designer, Subcontractors, as well as Sub-subcontractors and is a precondition to initiation of litigation concerning the dispute.
- 4.4.9 The Parties shall share the mediator's fee and any filing fees equally.

5 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 contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.3 The Contractor shall NOT substitute any person or company listed in the Contractor's original Bid Proposal, except (1) when one of 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.

5.4 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.

6 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 Contract.
- 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 any Separate Contractors and the General Contractor (and the Owner and Designer as needed) 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 (if any) 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 the Separate Contractor's 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 Section 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 Section 3.14, the Owner may clean up and allocate the cost among those responsible as the Designer determines to be just.

7 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 Section 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:
- 1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - 2 unit prices stated in the Contract Documents or subsequently agreed upon;
 - 3 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:
- 1 costs of labor, including social security, old age, and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - 2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
 - 3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - 4 costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes related to the Work; and
 - 5 additional costs of supervision and field 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. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Designer and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Designer's order for a minor change without prior notice to the Designer that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly.

8 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 Contract. 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 Section 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 Contract, 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 Contract 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 Section 4.2 in an amount equal to such interruption or hindrance, but the Contractor hereby waives any claim for damages resulting from such interruption or hindrance.
- 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 Section 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 Section 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.

9 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 pursuant to a Certificate of Payment within thirty (30) days.

9.4 RETAINAGE

- 9.4.1 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 submission of the application has been corrected by the Contractor and accepted by the Owner. 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.
- 9.4.2 After the Work is 50% complete, if the Owner determines the Contractor's performance is

unsatisfactory and/or it has failed to correct non-conforming Work, the Owner may reinstate the retainage amount of 5% for each subsequent periodic Application for Payment until the Contractor's performance becomes satisfactory.

9.4.3 Notwithstanding the above, after the Work is 50% complete, the Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed 5%, in order to allow the Owner to retain 2.5% total retainage through the completion of the Project.

9.4.4 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 Designer or the Contractor, 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.

9.4.5 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, non-conforming Work, disputed Work, and/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 (7) 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:

- 1 defective Work not remedied;
- 2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- 3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- 5 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
- 7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 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 on 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.

9.9.3 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.

9.9.4 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 Paragraph 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.

10 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:
- 1 employees working on the Project and other persons who may be affected thereby;
 - 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the 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 comply with and give notices required by 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 Clauses 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 Clauses 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 Clauses 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 Section 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.
- 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.

11 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 not to be 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 non-conforming Work within a reasonable time, the Owner may correct it in accordance with Section 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 NON-CONFORMING 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.

12 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 Wake 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 if any 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:** Where Contract Documents require one Party to notify or give notice to the other Party, such notice shall be provided in writing to the representative of the other Party designated in Paragraph 9 of the Agreement in the manners designated in the agreement.

- 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 12.7.1, 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 12.7.1 and 12.7.2 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.

13 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:
 - 1 issuance of an order of a court or other public authority having jurisdiction;
 - 2 an act of government, such as a declaration of national emergency, making material unavailable;
 - 3 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 Section 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:
 - 1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- 3 persistently disregards laws, ordinances, or rules or regulations or orders of a public authority having jurisdiction;
- 4 fails to abide by the Non-Discrimination requirements of Paragraph 10 of the Agreement; or,
- 5 is otherwise in substantial breach of a provision of the Contract Documents.

13.2.2 When any of the above reasons exist, the Owner 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 (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of surety:

- 1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and
- 2 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 TERMINATION BY THE OWNER FOR CONVENIENCE

13.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

13.3.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall: (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

13.3.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts, but not for overhead or profit on the Work not executed.

13.4 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.

13.5 BANKRUPTCY

13.5.1 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.

13.5.2 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.

14 **ARTICLE 14 SECURITY OF NON-PUBLIC RECORDS**

14.1 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 Contract. All plans and drawings shall be returned to the Owner, or otherwise destroyed at the direction of the Owner, upon termination or expiration of this Contract. Any breach of this Paragraph 14.1 by Contractor shall result in the immediate termination of this Contract.

SPECIFICATIONS

SPECIFICATIONS MANUAL
Rolesville Town Hall Renovations
502 Southtown Circle
Rolesville, NC 27571

DATE: January 27, 2020

Table of Contents

Technical Specifications:

- Section 01230, Alternates
- Section 01330, Submittal Procedures
- Section 01770, Closeout Procedures

SECTION 01230 - ALTERNATES

GENERAL

3. RELATED DOCUMENTS

Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

4. SUMMARY

This Section includes administrative and procedural requirements for alternates.

5. DEFINITIONS

Alternate: An amount proposed by bidders and stated on the Bid Form for certain work defined in the Bidding Requirements that may be added to or deducted from the Base Bid amount if Owner decides to accept a corresponding change either in the amount of construction to be completed or in the products, materials, equipment, systems, or installation methods described in the Contract Documents.

The cost or credit for each alternate is the net addition to or deduction from the Contract Sum to incorporate alternate into the Work. No other adjustments are made to the Contract Sum.

6. PROCEDURES

Coordination: Modify or adjust affected adjacent work as necessary to completely integrate work of the alternate into Project.

Include as part of each alternate, miscellaneous devices, accessory objects, and similar items incidental to or required for a complete installation whether or not indicated as part of alternate.

Execute accepted alternates under the same conditions as other work of the Contract.

PRODUCTS (Not Used)

EXECUTION (Not Used)

END OF SECTION 01230

SECTION 01330 - SUBMITTAL PROCEDURES

GENERAL

7. RELATED DOCUMENTS

Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

8. SUMMARY

This Section includes administrative and procedural requirements for submitting Shop Drawings, Product Data, Samples, and other miscellaneous submittals.

9. SUBMITTAL PROCEDURES

General: Electronic copies of CAD Drawings of the Contract Drawings will **not** be provided by Architect for Contractor's use in preparing submittals.

Coordination: Coordinate preparation and processing of submittals with performance of construction activities.

Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.

Coordinate transmittal of different types of submittals for related parts of the Work so processing will not be delayed because of need to review submittals concurrently for coordination.

Architect reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.

Processing Time: Allow enough time for submittal review, including time for resubmittals, as follows. Time for review shall commence on Architect's receipt of submittal.

Initial Review: Allow (fifteen) 15 days for initial review of each submittal. Allow additional time if processing must be delayed to permit coordination with subsequent submittals. Architect will advise Contractor when a submittal being processed must be delayed for coordination.

Concurrent Review: Where concurrent review of submittals by Architect's consultants, Owner, or other parties is required, allow (twenty-one) 21 days for initial review of each submittal.

Identification: Place a permanent label or title block on each submittal for identification.

Indicate name of firm or entity that prepared each submittal on label or title block.

Provide a space approximately 4 x 5 inches on label or beside title block to record Contractor's review and approval markings and action taken by Architect.

Include the following information on label for processing and recording action taken:

Project name.
Date.
Name and address of Architect.
Name and address of Contractor.
Name and address of subcontractor.
Name and address of supplier.
Name of manufacturer.

Deviations: Highlight, encircle, or otherwise identify deviations from the Contract Documents on submittals.

Additional Copies: Unless additional copies are required for final submittal, and unless Architect observes noncompliance with provisions of the Contract Documents, initial submittal may serve as final submittal.

Submit one copy of submittal to concurrent reviewer in addition to specified number of copies to Architect..

Additional copies submitted for maintenance manuals will be marked with action taken and will be returned.

PRODUCTS (NOT USED)

EXECUTION

10. CONTRACTOR'S REVIEW

Review each submittal and check for compliance with the Contract Documents. Note corrections and field dimensions. Mark with approval stamp before submitting to Architect

Approval Stamp: Stamp each submittal with a uniform, approval stamp. Include Project name and location, submittal number, Specification Section title and number, name of reviewer, date of Contractor's approval, and statement certifying that submittal has been reviewed, checked, and approved for compliance with the Contract Documents.

11. ARCHITECT'S ACTION

General: Architect will not review submittals that do not bear Contractor's approval stamp and will return them without action.

Action Submittals: Architect will review each submittal, make marks to indicate corrections or modifications required, and return it. Architect will stamp each submittal with an action stamp and will mark stamp appropriately to indicate action taken.

Informational Submittals: Architect will review each submittal and will not return it, or will reject and return it if it does not comply with requirements. Architect will forward each submittal to appropriate party.

END OF SECTION 01330

SECTION 01770 - CLOSEOUT PROCEDURES

GENERAL

12. RELATED DOCUMENTS

Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

13. SUMMARY

This Section includes administrative and procedural requirements for contract closeout, including, but not limited to, the following:

- Inspection procedures.
- Project Record Documents.
- Operation and maintenance manuals.
- Warranties.
- Instruction of Owner's personnel.
- Final cleaning.

Related Sections include the following:

- Division 1 Section "Operation and Maintenance Data" for operation and maintenance manual requirements.
- Division 1 Section "Demonstration and Training" for requirements for instruction of Owner's personnel.

14. SUBSTANTIAL COMPLETION

Preliminary Procedures: Before requesting inspection for determining date of Substantial Completion, complete the following. List items below that are incomplete in request.

- Prepare a list of items to be completed and corrected (punch list), the value of items on the list, and reasons why the Work is not complete.
- Advise Owner of pending insurance changeover requirements.
- Submit specific warranties, workmanship bonds, maintenance service agreements, final certifications, and similar documents.
- Obtain and submit releases permitting Owner unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.

Prepare and submit Project Record Documents, operation and maintenance manuals, Final Completion construction photographs and photographic negative, damage or settlement surveys, property surveys, and similar final record information.

Deliver tools, spare parts, extra materials, and similar items to location designated by Owner. Label with manufacturer's name and model number where applicable.

Make final changeover of permanent locks and deliver keys to Owner. Advise Owner's personnel of changeover in security provisions.

Complete startup testing of systems.

Submit test/adjust/balance records.

Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.

Advise Owner of changeover in heat and other utilities.

Submit changeover information related to Owner's occupancy, use, operation, and maintenance.

Complete final cleaning requirements, including touchup painting.

Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.

Inspection: Submit a written request for inspection for Substantial Completion. On receipt of request, Architect will either proceed with inspection or notify Contractor of unfulfilled requirements. Architect will prepare the Certificate of Substantial Completion after inspection or will notify Contractor of items, either on Contractor's list or additional items identified by Architect, that must be completed or corrected before certificate will be issued.

Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

Results of completed inspection will form the basis of requirements for Final Completion.

15. FINAL COMPLETION

Preliminary Procedures: Before requesting final inspection for determining date of Final Completion, complete the following:

Submit a final Application for Payment according to Division 1 Section "Payment Procedures."

Submit certified copy of Architect's Substantial Completion inspection list of items to be completed or corrected (punch list), endorsed and dated by Architect. The certified copy of the list shall state that each item has been completed or otherwise resolved for acceptance.

Submit evidence of final, continuing insurance coverage complying with insurance requirements.

Submit pest-control final inspection report and warranty.

Instruct Owner's personnel in operation, adjustment, and maintenance of products, equipment, and systems. [Submit demonstration and training videotapes.]

Inspection: Submit a written request for final inspection for acceptance. On receipt of request, Architect will either proceed with inspection or notify Contractor of unfulfilled requirements. Architect will prepare a final Certificate for Payment after inspection or will notify Contractor of construction that must be completed or corrected before certificate will be issued.

Reinspection: Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.

16. LIST OF INCOMPLETE ITEMS (PUNCH LIST)

Preparation: Submit 3 (three) copies of list. Include name and identification of each space and area affected by construction operations for incomplete items and items needing correction including, if necessary, areas disturbed by Contractor that are outside the limits of construction.

Organize list of spaces in sequential order, starting with exterior areas first.

Organize items applying to each space by major element, including categories for ceiling, individual walls, floors, equipment, and building systems.

Include the following information at the top of each page:

Project name.

Date.

Name of Architect.

Name of Contractor.

Page number.

17. PROJECT RECORD DOCUMENTS

General: Do not use Project Record Documents for construction purposes. Protect Project Record Documents from deterioration and loss. Provide access to Project Record Documents for Architect's reference during normal working hours.

Record Drawings: Maintain and submit one set of blue- or black-line white prints of Contract Drawings and Shop Drawings.

Mark Record Prints to show the actual installation where installation varies from that shown originally. Require individual or entity who obtained record data, whether individual or entity is Installer, subcontractor, or similar entity, to prepare the marked-up Record Prints.

Give particular attention to information on concealed elements that cannot be readily identified and recorded later.

Accurately record information in an understandable drawing technique.

Record data as soon as possible after obtaining it. Record and check the markup before enclosing concealed installations.

Mark Contract Drawings or Shop Drawings, whichever is most capable of showing actual physical conditions, completely and accurately. Where Shop Drawings are marked, show cross-reference on Contract Drawings.

Mark record sets with erasable, red-colored pencil. Use other colors to distinguish between changes for different categories of the Work at the same location.

Mark important additional information that was either shown schematically or omitted from original Drawings.

Note Construction Change Directive numbers, Change Order numbers, alternate numbers, and similar identification where applicable.

Identify and date each Record Drawing; include the designation "PROJECT RECORD DRAWING" in a prominent location. Organize into manageable sets; bind each set with durable paper cover sheets. Include identification on cover sheets.

Record Specifications: Submit one copy of Project's Specifications, including addenda and contract modifications. Mark copy to indicate the actual product installation where installation varies from that indicated in Specifications, addenda, and contract modifications.

Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.

Mark copy with the proprietary name and model number of products, materials, and equipment furnished, including substitutions and product options selected.

Note related Change Orders, Record Drawings (and Product Data), where applicable.

Record Product Data: Submit one copy of each Product Data submittal. Mark one set to indicate the actual product installation where installation varies substantially from that indicated in Product Data.

Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.

Include significant changes in the product delivered to Project site and changes in manufacturer's written instructions for installation.

Note related Change Orders, Record Drawings, (and Record Specifications), where applicable.

Miscellaneous Record Submittals: Assemble miscellaneous records required by other Specification Sections for miscellaneous record keeping and submittal in connection with actual performance of the Work. Bind or file miscellaneous records and identify each, ready for continued use and reference.

18. OPERATION AND MAINTENANCE MANUALS

Assemble a complete set of operation and maintenance data indicating the operation and maintenance of each system, subsystem, and piece of equipment not part of a system. Include operation and maintenance data required in individual Specification Sections and as follows:

Operation Data:

Emergency instructions and procedures.

System, subsystem, and equipment descriptions, including operating standards.

Operating procedures, including startup, shutdown, seasonal, and weekend operations.

Description of controls and sequence of operations.

Piping diagrams.

Maintenance Data:

Manufacturer's information, including list of spare parts.

Name, address, and telephone number of Installer or supplier.

Maintenance procedures.

Maintenance and service schedules for preventive and routine maintenance.

Maintenance record forms.

Sources of spare parts and maintenance materials.

Copies of maintenance service agreements.

Copies of warranties and bonds.

Organize operation and maintenance manuals into suitable sets of manageable size. Bind and index data in heavy-duty, 3-ring, vinyl-covered, loose-leaf binders, in thickness necessary to accommodate contents, with pocket inside the covers to receive folded oversized sheets. Identify each binder on front and spine with the printed title "OPERATION AND MAINTENANCE MANUAL," Project name, and subject matter of contents.

19. WARRANTIES

Submittal Time: Submit written warranties on request of Architect for designated portions of the Work where commencement of warranties other than date of Substantial Completion is indicated.

Partial Occupancy: Submit properly executed warranties within (fifteen) 15 days of completion of designated portions of the Work that are completed and occupied or used by Owner during construction period by separate agreement with Contractor.

Organize warranty documents into an orderly sequence based on the table of contents of the Project Manual.

Bind warranties and bonds in heavy-duty, 3-ring, vinyl-covered, loose-leaf binders, thickness as necessary to accommodate contents, and sized to receive 8-1/2-by-11-inch paper.

Provide heavy paper dividers with plastic-covered tabs for each separate warranty. Mark tab to identify the product or installation. Provide a typed description of the product or installation, including the name of the product and the name, address, and telephone number of Installer.

Identify each binder on the front and spine with the typed or printed title "WARRANTIES," Project name, and name of Contractor.

Provide additional copies of each warranty to include in operation and maintenance manuals.

PRODUCTS

20. MATERIALS

Cleaning Agents: Use cleaning materials and agents recommended by manufacturer or fabricator of the surface to be cleaned. Do not use cleaning agents that are potentially hazardous to health or property or that might damage finished surfaces.

EXECUTION

21. DEMONSTRATION AND TRAINING

Instruction: Instruct Owner's personnel to adjust, operate, and maintain systems, subsystems, and equipment not part of a system.

Provide instructors experienced in operation and maintenance procedures.

Provide instruction at mutually agreed-on times. For equipment that requires seasonal operation, provide similar instruction at the start of each season.
Schedule training with Owner through Architect with at least (seven) 7 days' advance notice.
Coordinate instructors, including providing notification of dates, times, length of instruction, and course content.

22. FINAL CLEANING

General: Provide final cleaning. Conduct cleaning and waste-removal operations to comply with local laws and ordinances and Federal and local environmental and antipollution regulations.

Cleaning: Employ experienced workers or professional cleaners for final cleaning. Clean each surface or unit to condition expected in an average commercial building cleaning and maintenance program. Comply with manufacturer's written instructions.

Complete the following cleaning operations before requesting inspection for certification of Substantial Completion for entire Project or for a portion of Project:

Clean Project site, yard, and grounds, in areas disturbed by construction activities, including landscape development areas, of rubbish, waste material, litter, and other foreign substances.

Sweep paved areas broom clean. Remove petrochemical spills, stains, and other foreign deposits.

Rake grounds that are neither planted nor paved to a smooth, even-textured surface.

Remove tools, construction equipment, machinery, and surplus material from Project site.

Remove snow and ice to provide safe access to building.

Clean exposed exterior and interior hard-surfaced finishes to a dirt-free condition, free of stains, films, and similar foreign substances. Avoid disturbing natural weathering of exterior surfaces. Restore reflective surfaces to their original condition.

Remove debris and surface dust from limited access spaces, including roofs, plenums, shafts, trenches, equipment vaults, manholes, attics, and similar spaces.

Sweep concrete floors broom clean in unoccupied spaces.

Vacuum carpet and similar soft surfaces, removing debris and excess nap; shampoo if visible soil or stains remain.

Clean transparent materials, including mirrors and glass in doors and windows. Remove glazing compounds and other noticeable, vision-obscuring materials. Replace chipped or broken glass and other damaged transparent materials. Polish mirrors and glass, taking care not to scratch surfaces.

Remove labels that are not permanent.

Touch up and otherwise repair and restore marred, exposed finishes and surfaces. Replace finishes and surfaces that cannot be satisfactorily repaired or restored or that already show evidence of repair or restoration.

Do not paint over "UL" and similar labels, including mechanical and electrical nameplates.

Wipe surfaces of mechanical and electrical equipment, and similar equipment. Remove excess lubrication, paint and mortar droppings, and other foreign substances.

Replace parts subject to unusual operating conditions.

Clean plumbing fixtures to a sanitary condition, free of stains, including stains resulting from water exposure.

Replace disposable air filters and clean permanent air filters. Clean exposed surfaces of diffusers, registers, and grills.

Clean ducts, blowers, and coils if units were operated without filters during construction.

Clean light fixtures, lamps, globes, and reflectors to function with full efficiency.

Replace burned-out bulbs, and those noticeably dimmed by hours of use, and defective and noisy starters in fluorescent and mercury vapor fixtures to comply with requirements for new fixtures.

Leave Project clean and ready for occupancy.

Pest Control: Engage an experienced, licensed exterminator to make a final inspection and rid Project of rodents, insects, and other pests. Prepare a report.

Comply with safety standards for cleaning. Do not burn waste materials. Do not bury debris or excess materials on Owner's property. Do not discharge volatile, harmful, or dangerous materials into drainage systems. Remove waste materials from Project site and dispose of lawfully.

END OF SECTION 01770

BID PROPOSAL FORM

OWNER: Town of Rolesville
502 Southtown Circle
Rolesville, NC 7571

PROJECT: Rolesville Town Hall Renovations

Bidder's Interest: The undersigned, as Bidder, hereby declares that only the person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any person, company or parties making a bid or proposal. In all respects bidder's proposal is made fairly and in good faith without collusion or fraud.

Knowledge of Local Conditions and Contract Documents: The bidder further declares that he has examined the sites of proposed work and informed himself fully in regard to all conditions relating to the place where the work is to be done. Further, bidder declares he has examined drawings, specifications, and contract documents relative to the work and has read all provisions prior to opening of bids and has satisfied himself relative to work to be performed.

Stipulated Amount: Bidder hereby proposes and agrees if this proposal is accepted to contract with the Town of Rolesville in the form of agreement specified, and to furnish all materials, equipment, machinery, tools, apparatus, means of transportation, services, and labor necessary to complete the Base Bid work for construction this Project.

Owner's Rights Reserved: Undersigned understands the Owner reserves the right to reject any and all proposals or to waive any formality or technicality in any proposal in the interest of the owner.

Additional work: Bidder agrees to perform additional work which may be required to complete the work upon execution by both parties of a proper Change Order. Bidder is not to commence any additional work prior to approval and execution of such Change Orders.

Contract Time: Upon award of contract, Undersigned agrees to fully complete all work prior to schedule, as specified in the Contract Documents.

Addenda: Undersigned hereby acknowledges receipt of the following addenda to the bidding documents:

Addendum Number	Date	Received
_____	_____	_____
_____	_____	_____

Bidder will complete work in full and complete accordance with specifications and contract documents to the full and entire satisfaction of the Town of Rolesville with understanding that no money will be allowed for extra work except as set forth in the General Conditions of the Contract Documents. Bidder will complete the work for the amounts listed hereafter.

CONSTRUCTION CONTRACT

Base Bid:

_____ Dollars (\$ _____)

Unit Prices:

NONE.

Alternates:

Alternate 1: Provide "ADA" compliant automatic door operator as indicated at the new front entry storefront door with associated electrical. _____ Dollars

Alternate 2: Provide "Solid Surface" counter tops in lieu of plastic laminate as indicated in the base bid. _____ Dollars

Proposal respectfully submitted this _____ day of _____, 2020.

(Firm or Corporation Name Making Bid)

Witness:

By: _____

By: _____
(proprietorship or partnership)

Title: _____
(owner, partner, corporate president, or vp)

Attest:

Address: _____

By: _____

NC License No: _____

Title _____
(corporate secretary or assistant secretary)

(Corporate Seal)