



**GENERAL CONDITIONS OF THE CONTRACT**

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## **ARTICLE 1 - DEFINITIONS**

- a. The **contract documents** consist of the Request for Proposal (RFP); Construction conditions if applicable; Supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond;

signed by the CM, designer and the Owner, and approved by the State Construction Office, in that order (Article 19).

- k. **Field Order**, as used herein, shall mean a written approval for the CM to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the CM, designer, Owner, and State Construction Office (SCO).
- l. **Field Change**, as used herein shall mean a written approval from the Owner for the CM to proceed with work requested by the Owner to be paid for from the CM Contingency or
- m. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the losses incurred by the Owner by reason of failure of the CM to complete the work within the time specified.
- n. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the CM, and which engages to be responsible for the CM and his acceptable performance of the work.
- o. **Routine written communications between the Designer and the Construction Manager** are any communication in any transmittal format, sent by mail, courier, electronic mail, or facsimile. Such
- p. **Clarification or Request for information (RFI)** is a request from the CM seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the

of precedence shall be: Form of Contract, specifications, ~~large~~ detail drawings, small scale drawings.

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

### ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the ~~designer~~ designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The CM and the Designer shall prepare ~~as~~ deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or

change in accordance with progress of the work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The CM shall not proceed with the work without such detail drawings and/or written clarifications.

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

The Designer shall furnish free of charge to the contractors copies of ~~plans~~ specifications as follows: The CM shall receive up to thirty (30) sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the CM shall clearly and legibly record all ~~work~~-place that is at variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the CM at the request of the CM.

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

- a. Within thirty (30) consecutive calendar days of the

## ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The CM shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water and shall require the Principal Trade and Specialty Contractors to, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe proper and lawful construction, maintenance and use of same. The CM shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefor, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the CM shall require the Principal Trade and Specialty Contractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CM through the Principal Trade or Specialty Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CM through the Principal Trade or Specialty Contractor has the option of using any product and manufacturer combination listed. However, the CM through the Principal Trade or Specialty Contractor shall be aware that the cited examples are used only to denote the quality standard of product and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products are acceptable. The CM will be responsible for reviewing all substitution requests from Principal Trade or Specialty Contractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids.
- e. The CM shall obtain written approval from the designer



## ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

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

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

- a. The CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the CM observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the CM performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the CM unless otherwise specified.
- c. Projects constructed by the State of North Carolina or by agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The CM shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.
- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The CM shall pay the cost of these permits and inspections unless otherwise specified.

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

- a. The CM shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner, and by laws or ordinances governing such conditions. The CM shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The CM shall be responsible for and pay for any damages caused to the Owner. The CM shall have access to the project at all times.
- b. The CM shall provide cover and protect all portions of the structure when the work is not in progress, provide and set up temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.
- d.

specifications. All walks, roads, etc., shall be barricaded as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.

- e. The CM shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on ~~the~~ <sup>the</sup> including the requirements of the *A.G.C. Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons ~~on~~ <sup>or</sup> about the location of the work. The CM shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The CM shall insure that protection is provided against damage ~~or~~ <sup>injury</sup> resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f.

- b. Upon receipt of notice that a land disturbing activity is in violation of said act, the CM shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c.

recovering and restoring to design condition, work that has been covered or concealed will be paid by the CM.



Prequalification Form approved by the State Building Commission. Only prequalified contractors are allowed to bid to and contract with the CM on a project.

- b. All bids for Principal Trade and Specialty Contracts shall be publically advertised and shall be opened publically in a public venue, and once opened, shall be public records under N.C.G.S. 132. The CM shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. 128, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. 128(f1). Once Principal Trade and Specialty Contractors are in place, the CM shall provide copies of the contract to the Project Designer and also provide a list of equipment and material suppliers.
- c. A CM may perform a portion of the work only if (a) bidding produces no responsible, responsive bidder for that portion of the work, or (b) the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the Principal Trade or Specialty Contractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (c) the Owner approves performance of the work by the CM.
- d. The Designer will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the CM on account of the work of the Principal Trade or Specialty Contractor.

Should final payment to the CM beyond the date such contracts have been certified to be completed by the Project Designer, accepted by the Owner, or occupied by the Owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the contract documents or said CM shall be paid interest on any unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the Owner is retaining a reasonable sum pending execution of such conditions, interest on such reasonable sum shall not apply.

- b. Within seven days of receipt by the CM of each periodic or final payment, the CM shall pay the Principal Trade and Specialty Contractors based on work completed or services provided under their contract with the CM. Should any periodic or final payment to a Principal Trade or Specialty Contractor be delayed by more than seven days after receipt of periodic or final payment by the CM, the CM shall pay the Principal Trade or Specialty Contractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
- c. The percentage of retainage on payments made by the CM to the Principal Trade and Specialty Contractors shall not exceed the percentage of retainage on payments made by the Owner to the CM. Any percentage of retainage on payments made by the CM to the Principal Trade or Specialty Contractors that exceeds the percentage of retainage on payments made by the Owner to the CM shall be subject to interest to be paid by the CM to the Principal Trade or Specialty Contractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent the CM at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Principal Trade or Specialty Contractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of the Principal Trade or Specialty Contractor to make timely payments for labor, equipment and materials; damage to CM or another subcontractor; reasonable evidence that a Principal Trade Specialty Contract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

- c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the Designer may perform his functions under contract documents.
- f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the administration of the project. Hi



1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
  2. Otherwise, the contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Methods "c(2)" above, the allowances for overhead and profit combined for a Principal Trade or Specialty Contractor and all ~~other~~ subcontractors shall not exceed fifteen percent (15%) ~~net cost~~ of the work. No allowance for overhead and profit will be allowed for the CM until the change orders aggregate to a sum in excess of five percent (5%) of the Cost of the Work portion of the GMP. Once this threshold is met the CM may add an overhead & profit allowance not to exceed four percent (4%) of the net cost of the change order. Change orders to the GMP which authorize additional phases of a project without a change in scope of the originally intended project will not be considered in establishing the threshold for additional CM overhead & profit. Under ~~Method~~ "c (1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph ~~above~~, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
1. The actual costs of materials and supplies incorporated or ~~costs~~ as part of the project;
  2. The actual costs of labor expended on the project site;
  3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;
  4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required ~~for~~ the project;
  5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project.
- Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner.
- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty

(30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

All change orders shall be supported

misunderstandings claimed by the CM of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

- c. Should a claim for extra compensation by the CM be denied by the Project Designer or Owner, and cannot be resolved by a representative of the State Construction Office, the CM may request a mediation in connection with N.C.G.S.-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, then the CM may pursue his claim in accordance with the provisions of N.C.G.S. 143









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

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

**ARTICLE 31 - REQUEST FOR PAYMENT**

- a. Based on applications for payment submitted to the Project Designer by the CM and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the contract documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Provided an application for payment is received by the Project Designer not later than the 5



2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work or if approved in





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

d. **Deductible**

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

e. **Other Insurance**

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall obtain such additional insurance as may be required by the Owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

f. **Proof of Carriage**

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall furnish the Owner with satisfactory proof of carriage of the insurance required before written approval is granted by the Owner.

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

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

#### **ARTICLE 38 - USE OF PREMISES**

- a. The CM shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Project Designer and shall not exceed those established limits in his operations.
- b. The CM shall not load or permit any part of the structure to be built with a weight that will endanger its safety.
- c. The CM shall enforce the Project Designer's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

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

- a. The CM shall ensure that all cutting, fitting or patching that may be required to make the work come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the Project Designer may direct.
- b. Any cost brought about by defective or tilted work shall be borne by the party responsible therefor.
- c. No Principal Trade or Specialty Contractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the Project Designer and affected contractor(s).

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

- a. The CM shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the CM is to pay all utilities, any permanent meters



- k. On multi-story construction projects, the CM shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall either be included in the CM Construction Management Fee or specified as part of the work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
- l. The CM will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on a white background. The sign







