



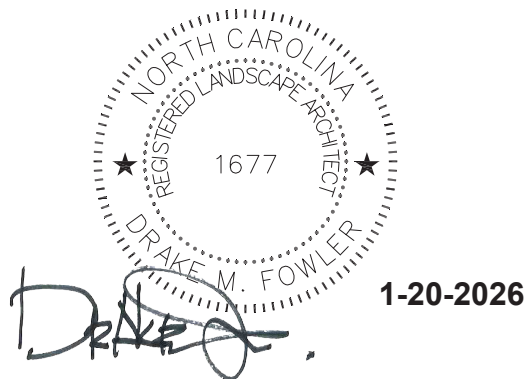
Bidding Documents for:

**THE NORTH CAROLINA ARBORETUM
100 Frederick Law Olmsted Way
Asheville, NC 28806**

**SCO ID # 25-30700-01A
TNCA Property Fencing Repairs**

January 19, 2026

**Bid Date and Time:
11:00 am, Tuesday March 3rd, 2026**



TNCA Property Fencing Repairs

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ADVERTISEMENT FOR BID

(SCO # 25-30700-01)

PROJECT NAME: The North Carolina Arboretum Property Fencing Repairs

SCOPE OF WORK: Provide labor and materials to replace and/or repair damaged sections of 10' tall black, commercial chainlink fencing and posts along roughly 2 miles of the Arboretum's campus perimeter. Material specifications should match the existing black chainlink fence on property. Debris removal associated with this project has already been completed.

NOTICE TO BIDDERS: Sealed proposals from a single prime licensed General Contractor in North Carolina will be received by the State of North Carolina through the NC Arboretum, Asheville NC until **11:00 am on Tuesday, March 3rd, 2026**, at which time bids will be publicly opened and read aloud at **NC Arboretum Operations Center Library, 35 Greenhouse Way, Asheville, NC 28806**. Proposals shall be mailed or delivered to the following:

The North Carolina Arboretum
Attn: Stephanie Lee, Chief Financial Officer
100 Frederick Law Olmsted Way
Asheville NC 28806

PRE-BID MEETING: A mandatory Pre-bid meeting will be held for all interested bidders **at 1:00 pm on Tuesday February 17th, 2026 at the NC Arboretum Operations Center Library, 35 Greenhouse Way, Asheville, NC 28806**. The meeting will address project specific questions, issues, bidding procedures and bid forms. ***Immediately following the pre-bid meeting, campus personnel will be available for a walk-through of the project site. Site walk attendance is mandatory in order to understand the layout of the property, the layout of the fence to be replaced, and the extent of the damage to be repaired.***

Questions pertaining to the bid will be answered in the form of a written addenda posted to this same location no later than (7) days before the opening of bids. All questions related to this advertisement shall be submitted by 5:00 pm on Friday, February 20th, 2026 to Caitlin Sloop at the following email address: csloop@ncarboretum.org

Contractor to note on the outside of the bid envelope –

Bid Proposal:

The North Carolina Arboretum Property Fencing Repairs

Tuesday, March 3rd, 2026

(Contractor's Name)

(Contractor's NC General Contractor License Number)

The state reserves the unqualified right to reject any and all proposals.

NOTICE TO BIDDERS

Sealed proposals will be received by the North Carolina Arboretum in Asheville NC, by:

Mailing Address:

The North Carolina Arboretum

Attn: Stephanie Lee, Chief Financial Officer
100 Frederick Law Olmsted Way
Asheville NC 28806
(828) 665-2492 x214

Hand Delivery and Bid Opening Address:

The North Carolina Arboretum

Attn: Stephanie Lee, Chief Financial Officer
Operations Center Library
35 Greenhouse Way
Asheville NC 28806

up to **11:00 am Tuesday, March 3rd, 2026** and immediately thereafter publicly opened and read for the furnishing of labor, material and equipment entering into the construction of

The North Carolina Arboretum Property Fencing Repairs (SCO # 25-30700-01)

SCOPE OF WORK: Provide labor and materials to replace and/or repair damaged sections of 10' tall black, commercial chainlink fencing and posts along roughly 2 miles of the Arboretum's campus perimeter. Material specifications should match the existing black chainlink fence on property. Debris removal associated with this project has already been completed.

Bids will be received for a **single prime contract**. All proposals shall be lump sum.

Pre-Bid Meeting

A mandatory pre-bid meeting will be held for all interested bidders at **1:00 pm on Tuesday February 17th, 2026 at the Operations Center Library, 35 Greenhouse Way, Asheville, NC 28806**. The meeting will address project specific questions, issues, bidding procedures and bid forms. ***Immediately following the pre-bid meeting, campus personnel will be available for a walk-through of the project site. Site walk attendance is mandatory in order to understand the layout of the property, the layout of the fence to be replaced, and the extent of the damage to be repaired.***

The last day to submit written questions is Friday, February 20th, 2026. Questions are to be emailed to Caitlin Sloop at csloop@ncarboretum.org. The last addendum, if necessary, will be issued on February 24th, 2026.

Complete plans and specifications and contract documents can be obtained on the Arboretum's website <https://www.ncarboretum.org/about-us/open-bid-opportunities/> or by emailing Caitlin Sloop at csloop@ncarboretum.org.

NOTE: The bidder shall include with the bid proposal the form *Identification of Minority Business Participation* identifying the minority business participation it will use on the project and shall include either *Affidavit A* or *Affidavit B* as applicable. Forms and instructions are

included within the Proposal Form in the bid documents. Failure to complete these forms is grounds for rejection of the bid. (GS143-128.2c Effective 1/1/2002.)

All contractors are hereby notified that they must have proper license as required under the state laws governing their respective trades.

General contractors are notified that Chapter 87, Article 1, General Statutes of North Carolina, will be observed in receiving and awarding general contracts. General contractors submitting bids on this project must have license classification for unlimited general contracting for performing commercial work.

NOTE--SINGLE PRIME CONTRACTS: Under GS 87-1, a contractor that superintends or manages construction of any building, highway, public utility, grading, structure or improvement shall be deemed a "general contractor" and shall be so licensed. Therefore a single prime project that involves other trades will require the single prime contractor to hold a proper General Contractors license. **EXCEPT:** On public buildings being bid single prime, where the total value of the general construction does not exceed 25% of the total construction value, contractors under GS87- Arts 2 and 4 (Plumbing, Mechanical & Electrical) may bid and contract directly with the Owner as the SINGLE PRIME CONTRACTOR and may subcontract to other properly licensed trades. [GS87-1.1- Rules .0210](#)

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company, insured by the Federal Deposit Insurance Corporation, of an amount equal to not less than five percent (5%) of the proposal, or in lieu thereof a bidder may offer a bid bond of five percent (5%) of the bid executed by a surety company licensed under the laws of North Carolina to execute the contract in accordance with the bid bond. Said deposit shall be retained by the owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required by law.

A performance bond and a payment bond will be required for one hundred percent (100%) of the contract price.

Payment will be made based on ninety-five percent (95%) of monthly estimates and final payment made upon completion and acceptance of work.

No bid may be withdrawn after the scheduled closing time for the receipt of bids for a period of 30 days.

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

Designer / Owner:

The North Carolina Arboretum

(Name)

100 Frederick Law Olmsted Way

Asheville NC 28806

(Address)

(828) 665-2492 x214

(Phone)

FORM OF PROPOSAL

The North Carolina Arboretum Property Fencing Repairs

Contract: _____

The North Carolina Arboretum

Bidder: _____

SCO-ID # 25-30700-01

Date: _____

The undersigned, as bidder, hereby declares that the only 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 other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The bidder further declares that he and his subcontractors have fully complied with NCGS 64, Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

The Bidder proposes and agrees if this proposal is accepted to contract with the State of North Carolina through the North Carolina Arboretum in the form of contract specified below, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of Property Fencing Repairs in full in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of the State of North Carolina, and the North Carolina Arboretum, with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the contract documents, for the sum of:

SINGLE PRIME CONTRACT:

Base Bid:

_____ Dollars(\$)

General Subcontractor:

Plumbing Subcontractor:

_____ Lic _____

_____ Lic _____

Mechanical Subcontractor:

Electrical Subcontractor:

_____ Lic _____

_____ Lic _____

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

MINORITY BUSINESS PARTICIPATION REQUIREMENTS

Provide with the bid - Under GS 143-128.2(c) the undersigned bidder shall identify **on its bid** (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. **Also** list the good faith efforts (Affidavit **A**) made to solicit minority participation in the bid effort.

NOTE: A contractor that performs all of the work with its own workforce may submit an Affidavit (**B**) to that effect in lieu of Affidavit (**A**) required above. The MB Participation Form must still be submitted even if there is zero participation.

After the bid opening - The Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low bidder, the bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

An Affidavit (**C**) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the 10% goal established. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort and Affidavit **D** is not necessary;

*** OR ***

If less than the 10% goal, Affidavit (**D**) of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

Note: Bidders must always submit **with their bid** the Identification of Minority Business Participation Form listing all MB contractors, vendors and suppliers that will be used. If there is no MB participation, then enter none or zero on the form. Affidavit A **or** Affidavit B, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low bidder is grounds for rejection of the bid.

Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of _____

(Name of firm or corporation making bid)

By: _____
Signature

Name: _____
Print or type

Title _____
(Owner/Partner/Pres./V.Pres)

Address _____

License No. _____

Federal I.D. No. _____

Email Address: _____

Addendum received and used in computing bid:

Addendum No. 1 _____ Addendum No. 3 _____ Addendum No. 5 _____ Addendum No. 6 _____

Addendum No. 2 _____ Addendum No. 4 _____ Addendum No. 6 _____ Addendum No. 7 _____

**INSTRUCTIONS TO BIDDERS
AND
GENERAL CONDITIONS OF THE CONTRACT**

STANDARD FORM FOR CONSTRUCTION PROJECTS

**UNIVERSITY OF NORTH CAROLINA
SYSTEM OFFICE**

INSTRUCTIONS TO BIDDERS

For a proposal to be considered it must be in accordance with the following instructions:

1. PROPOSALS

Proposals must be made in strict accordance with the Form of Proposal provided therefore, and all blank spaces for bids, alternates and unit prices applicable to bidder's work shall be properly filled in. When requested alternates are not bid, the proposer shall so indicate by the words "No Bid". Any blanks shall also be interpreted as "No Bid". The bidder agrees that bid on Form of Proposal detached from specifications will be considered and will have the same force and effect as if attached thereto. Photocopied or faxed proposals will not be considered. Numbers shall be stated both in writing and in figures for the base bids and alternates. If figures and writing differ, the written number will supersede the figures.

Any modifications to the Form of Proposal (including alternates and/or unit prices) will disqualify the bid and may cause the bid to be rejected.

The bidder shall fill in the Form of Proposal as follows:

- a. 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.
- b. 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.
- c. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and the title of the office of such persons shall appear after their signatures.
- d. If the proposal is made by a joint venture, it shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable.

Proposals should be addressed as indicated in the Advertisement for Bids and be delivered enclosed in an opaque sealed envelope, marked "Proposal" and bearing the title of the work, name of the bidder, and the contractor's license number of the bidder. Bidders should clearly mark on the outside of the bid envelope which contract(s) they are bidding.

Bidder shall identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts or an affidavit indicating work under contract will be self-performed, as required by G.S.

143-128.2 (c) and G.S. 143-128.2 (f). Failure to comply with these requirements is grounds for rejection of the bid.

For projects bid in the single-prime alternative, the names and license numbers of major subcontractors shall be listed on the proposal form.

It shall be the specific responsibility of the bidder to deliver his bid to the proper official at the selected place and prior to the announced time for the opening of bids. Later delivery of a bid for any reason, including delivery by any delivery service, shall disqualify the bid.

Unit prices quoted in the proposal shall include overhead and profit and shall be the full compensation for the contractor's cost involved in the work. See General Conditions, Article 19c-1.

2. EXAMINATION OF CONDITIONS

It is understood and mutually agreed that by submitting a bid the bidder acknowledges that he has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and has satisfied himself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including, but not limited to, the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. It is further mutually agreed that by submitting a proposal the bidder acknowledges that he has satisfied himself as to the feasibility and meaning of the plans, drawings, specifications and other contract documents for the construction of the work and that he accepts all the terms, conditions and stipulations contained therein; and that he is prepared to work in cooperation with other contractors performing work on the site.

Reference is made to contract documents for the identification of those surveys and investigation reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work which have been relied upon by the designer in preparing the documents. The owner will make copies of all such surveys and reports available to the bidder upon request.

Each bidder may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his bid price for the performance of the work. Any on-site investigation shall be done at the convenience of the owner. Any reasonable request for access to the site will be honored by the owner.

3. BULLETINS AND ADDENDA

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. It shall be the bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required.

Should the bidder find discrepancies in, or omission from, the drawings or documents or should he be in doubt as to their meaning, he shall at once notify the designer who will send written instructions in the form of addenda to all bidders. Notification should be no later than seven (7) days prior to the date set for receipt of bids. Neither the owner nor the designer will be responsible for any oral instructions.

All addenda should be acknowledged by the bidder(s) on the Form of Proposal. However, even if not acknowledged, by submitting a bid, the bidder has certified that he has reviewed all issued addenda and has included all costs associated within the bid.

4. BID SECURITY

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, or a bid bond in an amount equal to not less than five percent (5%) of the proposal, said deposit to be retained by the owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten (10) days after the award or to give satisfactory surety as required by law (G.S. 143-129).

Bid bond shall be conditioned that the surety will, upon demand, forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract. The owner may retain bid securities of any bidder(s) who may have a reasonable chance of award of contract for the full duration of time stated in the Notice to Bidders. Other bid securities may be released sooner, at the discretion of the owner. All bid securities (cash or certified checks) shall be returned to the bidders promptly after award of contracts, and no later than seven (7) days after expiration of the holding period stated in the Notice to Bidders. Standard Form of Bid Bond is included in these specifications and shall be used.

5. RECEIPT OF BIDS

Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina. Bid security shall be required as prescribed by statute. Prior to the closing of the bid, the bidder will be permitted to change or withdraw his bid. Guidelines for opening of public construction bids are available from the owner.

6. OPENING OF BIDS

Upon opening, all bids shall be read aloud. Once bidding is closed, there shall not be any withdrawal of bids by any bidder and no bids may be returned by the designer to any bidder. After the opening of bids, no bid may be withdrawn, except under the provisions of General Statute 143-129.1, for a period of thirty days unless otherwise specified. Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder. The owner reserves the unqualified right to reject any and all bids. Reasons for rejection may include, but shall not be limited to, the following:

- a. If the Form of Proposal furnished to the bidder is not used or is altered.
- b. If the bidder fails to insert a price for all bid items, alternates, and unit prices requested.
- c. If the bidder adds any provisions reserving the right to accept or reject any award.

- d. If there are unauthorized additions or conditional bids, or irregularities of any kind which tend to make the proposal incomplete, indefinite or ambiguous as to its meaning.
- e. If the bidder fails to complete the proposal form where information is requested so the bid may be properly evaluated by the owner.
- f. If the unit prices contained in the bid schedule are unacceptable to the owner.
- g. If the bidder fails to comply with other instructions stated herein.

7. BID EVALUATION

The award of the contract will be made to the lowest responsible bidder as soon as practical. The owner may award on the basis of the base bid and any alternates the owner chooses.

Before awarding a contract, the owner may require the apparent low bidder to qualify himself to be a responsible bidder by furnishing any or all of the following data:

- a. The latest financial statement showing assets and liabilities of the company or other information satisfactory to the owner.
- b. A listing of completed projects of similar size.
- c. Permanent name and address of place of business.
- d. The number of regular employees of the organization and length of time the organization has been in business under present name.
- e. The name and home office address of the surety proposed and the name and address of the responsible local claim agent.
- f. The names of members of the firms who hold appropriate trade licenses, together with license numbers.
- g. If prequalified, contractor information will be reviewed and evaluated comparatively to submitted prequalification package.

Failure or refusal to furnish any of the above information, if requested, shall constitute a basis for disqualification of any bidder.

In determining the lowest responsible, responsive bidder, the owner shall take into consideration the bidder's compliance with the requirements of G.S. 143-128.2(c), the past performance of the bidder on construction contracts for the State with particular concern given to completion times, quality of work, cooperation with other contractors, and cooperation with the designer and owner. Failure of the low bidder to furnish affidavit and/or documentation as required by G.S. 143-128.2(c) shall constitute a basis for disqualification of the bid.

Should the owner adjudge that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above information, said apparent low bidder will be so notified and his bid security shall be returned to him.

8. PERFORMANCE BOND

The successful bidder, upon award of contract, shall furnish a performance bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

9. PAYMENT BOND

The successful bidder, upon award of contract, shall furnish a payment bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

10. PAYMENTS

Payments to the successful bidders (contractors) will be made on the basis of monthly progress in compliance with Article 31, General Conditions.

11. PRE-BID CONFERENCE

Prior to the date set for receiving bids, the designer may arrange and conduct a Pre-Bid Conference for all prospective bidders. The purpose of this conference is to review project requirements and to respond to questions from prospective bidders and their subcontractors or material suppliers related to the intent of bid documents. Attendance by prospective bidders shall be as required by the "Notice to Bidders".

12. SUBSTITUTIONS

In accordance with the provisions of G.S. 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the designer with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order.

Submittals for proposed substitutions shall include the following information:

- a. Name, address and telephone number of manufacturer and supplier as appropriate.
- b. Trade name, model or catalog designation.
- c. Product data including performance and test data, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.
- d. Detailed comparison with specified products including performance capabilities, warranties, and test results.
- e. Other pertinent data including data requested by the designer to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the designer to those specified, all bidders of record will be notified by Addendum.

GENERAL CONDITIONS OF THE CONTRACT

The use or reproduction of this document or any part thereof is authorized for and limited to use on projects of the University of North Carolina, and is distributed by, through and at the discretion of UNC System Office, Raleigh, North Carolina, for that distinct and sole purpose.

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ARTICLE 1 - DEFINITIONS-

- a. The **contract documents** consist of the Notice to Bidders; Instructions to Bidders; General Conditions of the Contract; special conditions if applicable; Supplementary General Conditions; the drawings and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the proposal; the contract; the performance bond; the payment bond; insurance certificates; and the approval of the university attorney. All of these items together form the contract.
- b. The **owner** is the State of North Carolina through the agency named in the contract.
- c. The **designer(s)** are those referred to within this contract, or their authorized representatives. The designer(s), as referred to herein, shall mean architect and/or

engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.

- d. The **contractor** , as referred to hereinafter, shall be deemed to be either of the several contracting parties called the "Party of the First Part" in either of the several contracts in connection with the total project. Where, in special instances hereinafter, a particular contractor is intended, an adjective precedes the word "contractor," as "general," "heating," etc. For the purposes of a single prime contract, the term contractor shall be deemed to be the single contracting entity identified as the "Party of the First Part" in the single construction contract. Any references or adjectives that name or infer multiple prime contractors shall be interpreted to mean the single prime contractor.
- e. A **subcontractor** , as the term is used herein, shall be understood to be one who has entered into a direct contract with a contractor, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work** , as used herein as a noun, is intended to include materials, labor and workmanship of the appropriate contractor.
- h. The **project** is the total construction work to be performed under the contract documents by the several contractors.
- i. **Project expeditor**, as used herein, is an entity stated in the contract documents, designated to effectively facilitate scheduling and coordination of work activities. See Article 14(f) for responsibilities of a Project Expediter. **For the purposes of a single prime contract, the single prime contractor shall be designated as the Project Expediter.**
- j. **Change order** , as used herein, shall mean a written order to the contractor subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the contractor, designer, and the owner, and approved by the UNC System Office in that order (Article 19).
- k. **Field Order** , as used herein, shall mean a written approval for the contractor to proceed with the work requested by owner prior to issuance of a formal Change Order.

The field order shall be signed by the contractor, designer, and owner (university or affiliate).

- l. **Time of completion** , as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).
- m. **Liquidated damages** , as stated in the contract documents, is an amount reasonably estimated in advance to cover the consequential damages associated with the owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the contractor(s) to complete the work within the time specified. Liquidated damages does not include the owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the contractor, or consequential damages that the owner identified in the bid documents that may be impacted by any delay caused solely by the Contractor (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
- n. **Surety** , as used herein, shall mean the bonding company or corporate body which is bound with and for the contractor, and which engages to be responsible for the contractor and his acceptable performance of the work.
- o. **Routine written communications between the designer and the contractor** , are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information."
- p. **Clarification or Request for information (RFI)** , is a request from the contractor 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 contractor's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- q. **Approval** , means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- r. **Inspection** , shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.

- s. **“Equal to” or “approved equal”** , shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents. Acceptance of equal is subject to the approval of the designer and owner.
- t. **“Substitution” or “substitute”** , shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation. Acceptance of substitution is subject to the approval of the designer and owner.
- u. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
- v. **Indicated and shown** shall mean provide as detailed, or called for, and reasonably implied in the contract documents.
- w. **Special inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with the approved construction documents and referenced standards.
- x. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance with the owner’s project requirements and the project design documents.
- y. **Designer Final Inspection** is the inspection performed by the design team to determine the completeness of the project in accordance with approved plans and specifications. This inspection occurs prior to SCO final inspection.
- z. **SCO Final Inspection** is the inspection performed by the State Construction Office to determine the completeness of the project in accordance with North Carolina Building Codes and approved plans and specifications.
- aa. **Beneficial Occupancy** is requested by the owner and is occupancy or partial occupancy of the building after all life safety items have been completed as determined by the State Construction Office. Life safety items include but are not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.
- bb. **Final Acceptance** is the date on which the State Construction Office accepts the construction as totally complete. This includes certification by the designer that all punch list items are completed.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS-

- a. The drawings and specifications are complementary, one to the other and that which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a bid for a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The contractor shall execute each copy of the proposal, contract, performance bond and payment bond as follows:
 - 1. If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
 - 2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
 - 3. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and the title of the office of such persons shall appear after their signatures.
 - 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. 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.
 - 6. The seal of the bonding company shall be impressed on each signature page of the bonds.
 - 7. The date of the performance and payment bond shall not be prior to the date of the contract.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS-

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

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

- a. The designer or owner shall furnish free of charge to the contractors electronic copies of plans and specifications. If requested by the contractor, paper copies of plans and specifications shall be furnished free of charge as follows:
 - 1. General contractor - Up to twelve (12) sets of general contractor drawings and specifications, up to six (6) sets of which shall include drawings and specifications of all other contracts, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the contractor shall clearly and legibly record all work-in-place that is at variance with the contract documents.
 - 2. Each other contractor - Up to six (6) sets of the appropriate drawings and specifications, up to three (3) sets of which shall include drawings and specifications of all other contracts, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the contractor shall clearly and legibly record all work-in-place that is at variance with the contract documents.
 - 3. Additional sets shall be furnished at cost, including mailing, to the contractor upon request by the contractor. This cost shall be stated in the bidding documents.
 - 4. For the purposes of a single-prime contract, the contractor shall receive up to 30 sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the contractor shall clearly and legibly record all work-in-place that is at variance with the contract documents.

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

- a. Within 15 consecutive calendar days after the notice to proceed, each prime contractor shall submit a schedule for submission of all shop drawings, product data, samples, and similar submittals through the Project Expediter to the designer. This schedule shall

indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.

- b. The contractor(s) shall review, approve and submit to the designer all Shop Drawings, Coordination Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the contractor's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the contractor. Submittals shall be presented to the designer in accordance with the schedule submitted in paragraph (a) so as to cause no delay in the activities of the owner or of separate contractors.
- c. The designer shall review required submittals promptly, noting desired corrections if any, and retaining two (2) copies (one for the designer, one for the owner) for his use. The remaining copies of each submittal shall be returned to the contractor not later than twenty (20) days from the date of receipt by the designer, for the contractor's use or for corrections and resubmittal as noted by the designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- d. Approval of shop drawings/submittals by the designer shall not be construed as relieving the contractor from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such lack of compliance or errors first have been called in writing to the attention of the designer by the contractor.

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

- a. The contractor shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the designer, his authorized representative, the owner, or State Construction Office.
- b. The contractor shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the contractor and submitted to the designer upon project completion and no later than 30 days after final acceptance of the project.
- c. The contractor shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS-

All drawings and specifications are instruments of service and remain the property of the State of North Carolina through the UNC System institution or affiliate. The use of these instruments on work other than this contract without permission of the owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the owner upon request after completion of the work.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES-

- a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and 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 therefrom, 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 contractor shall 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 contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and owner approve.
- e. The designer is the judge of equality for proposed substitution of products, materials or equipment.

- f. If at any time during the construction and completion of the work covered by these contract documents, the language, conduct, or attire of any workman of the various crafts be adjudged a nuisance by the owner or designer, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS-

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The contractor shall protect and save harmless the owner against suit on account of alleged or actual infringement. The contractor 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 contractor 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 contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other state, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the contractor and included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by the contractor unless otherwise noted.
- c. Projects constructed by the State of North Carolina or by any agency or institution of the state are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The contractor 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 may be subject also to county and municipal building codes and inspection by local authorities. The contractor shall pay the cost of these permits and inspections as noted in the specifications.

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

- a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.
- b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer and owner.
- d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in

Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

- g. The contractor shall designate a responsible person of his organization as safety officer/inspector, to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.
- h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973-

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

ARTICLE 13 - INSPECTION OF THE WORK-

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours and during any time work is in preparation and progress by the designer, designated official representatives of the owner, State Construction Office, and those persons required by state law to test special work for official approval. The contractor shall therefore provide safe access to the work at all times for such inspections.
- b. All instructions to the contractor will be made only by or through the designer or his designated project representative. Observations made by official representatives of the owner shall be conveyed to the designer for review and coordination prior to issuance to the contractor.
- c. All work shall be inspected by the designer, special inspector and/or State Construction Office prior to being covered by the contractor. Contractor shall give a minimum two weeks' notice unless otherwise agreed to by all parties. If inspection fails, after the first

re-inspection all costs associated with additional reinspections shall be borne by the contractor.

- d. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the contractor shall give adequate notice to the designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, and it shall be the contractor's responsibility to serve ample notice of such tests.
- e. All laboratory tests shall be paid by the owner unless provided otherwise in the contract documents except the general contractor shall pay for laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- f. Should any work be covered up or concealed prior to inspection and approval by the designer, special inspector, and/or State Construction Office such work shall be uncovered or exposed for inspection, if so requested by the designer in writing. Inspection of the work will be made upon notice from the contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the contractor involved.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE-

- a. Throughout the progress of the work, each contractor shall keep at the job site a competent superintendent and supervisory staff satisfactory to the designer and the owner. The superintendent and supervisory staff shall not be changed without the consent of the designer and owner unless said superintendent ceases to be employed by the contractor or ceases to be competent as determined by the contractor, designer and owner. The superintendent and other staff designated by the contractor in writing shall have authority to act on behalf of the contractor, and instructions, directions or notices given to him shall be as binding as if given to the contractor. However, directions, instructions and notices shall be confirmed in writing.
- b. The contractor shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.

- c. All contractors shall be required to cooperate and consult with each other during the construction of this project. Prior to installation of work, all contractors shall jointly prepare coordination drawings, showing locations of various ductworks, piping, motors, pumps, and other mechanical or electrical equipment, in relation to the structure, walls and ceilings. These drawings shall be submitted to the designer through the Project Expediter for information only. Each contractor shall lay out and execute his work to cause the least delay to other contractors. Each contractor shall be financially responsible for any damage to other contractor's work and for undue delay caused to other contractors on the project.
- d. The contractor is required to attend job site progress conferences as called by the designer. The contractor shall be represented at these job progress conferences by both home office and project personnel. These representatives shall have authority to act on behalf of the contractor. These meetings shall be open to subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. Each contractor shall be prepared to assess progress of the work as required in his particular contract and to recommend remedial measures for correction of progress as may be appropriate. The designer or his authorized representative shall be the coordinator of the conferences and shall preside as chairman. The contractor shall turn over a copy of his daily reports to the designer and owner at the job site progress conference. The owner will determine the daily report format.
- e. The contractor(s) shall employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. The designer shall designate a project expediter on projects involving two or more prime contracts. The project expediter shall be designated in the Supplementary General Conditions. The Project Expediter shall have at a minimum the following responsibilities:
 - 1. Prepare the project construction schedule and shall allow all prime contractors (multi-prime contract) and subcontractors (single-prime contract) performing general, plumbing, HVAC, and electrical work equal input into the preparation of the initial construction schedule.
 - 2. Maintain a project progress schedule for all contractors.
 - 3. Give adequate notice to all contractors to ensure efficient continuity of all phases of the work.

4. Notify the designer of any changes in the project schedule.
 5. Recommend to the owner whether payment to a contractor shall be approved.
- g. It shall be the responsibility of the Project Expediter to cooperate with and obtain from several prime contractors and subcontractors on the job, their respective work activities and integrate these activities into a project construction schedule in form of a detailed bar chart or Critical Path Method (CPM) schedule. Each prime contractor shall provide work activities within fourteen (14) days of request by the Project Expediter. A “work activity”, for scheduling purposes, shall be any component or contractual requirement of the project requiring at least one (1) day, but not more than fourteen (14) days, to complete or fulfill. The project construction schedule shall graphically show all salient features of the work required to construct the project from start to finish and within the allotted time established in the contract. The time (in days) between the contractor’s early completion and contractual completion dates is part of the project total float time; and shall be used as such, unless amended by a change order. On a multi-prime project, each prime contractor shall review the proposed construction schedule and approve same in writing. The Project Expediter shall submit the proposed construction schedule to the designer for comments. The complete Project construction schedule shall be of the type set forth in the Supplementary General Condition or subparagraph (1) or (2) below, as appropriate:
1. For a project with total contracts of \$500,000 or less, a bar chart schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work.
 2. For a project with total contracts over \$500,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Project Expediter and shall be paid for by the Project Expediter.

Bar Chart Schedule, Where a bar chart schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by designers, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the contractor. The contractor shall allow sufficient time in his schedule for all commissioning, required inspections and completion of final punch list(s). Each Work activity will be assigned a time estimate by the contractor. One day shall be the smallest time unit used.

CPM Schedule, Where a CPM schedule is required, it shall be in time-scaled precedence format using the Project Expediter's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format. The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the work to be performed by the contractor. The contractor shall allow sufficient time in his schedule for all commissioning, required inspections and completion of final punch list(s). Each Work activity will be assigned a time estimate by the contractor. One day shall be the smallest time unit used.

The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time shall not be considered for the exclusive use or benefit of either the owner or the contractor, but must be allocated in the best interest of completing the Work within the Contract time. Extensions to the Contract time, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change. On contracts with a price over \$2,500,000 the CPM schedule shall also show what part of the Contract Price is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price.

Early Completion of Project , The contractor may attempt to complete the project prior to the Contract Completion Date. However, such planned early completion shall be for the contractor's convenience only and shall not create any additional rights of the contractor or obligations of the owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The contractor shall not be required to pay liquidated damages to the owner because of its failure to complete by its planned earlier date. Likewise, the owner shall not pay the contractor any additional compensation for early completion nor will the owner owe the contractor any compensation should the owner, its officers, employees, or agents cause the contractor not to complete earlier than the date required by the Contract Documents.

- h. The proposed project construction schedule shall be presented to the designer no later than fifteen (15) days after written notice to proceed. No application for payment will be processed until this schedule is accepted by the designer and owner.
- i. The approved project construction schedule shall be distributed to all contractors and displayed at the job site by the Project Expediter.
- j. The several contractors shall be responsible for their work activities and shall notify the project expediter of any necessary changes or adjustments to their work. The project expediter shall maintain the project construction schedule, making biweekly adjustments, updates, corrections, etc., that are necessary to finish the project within

the Contract time, keeping all contractors and the designer fully informed. Copy of a bar chart schedule annotated to show the current progress shall be submitted by the contractor(s) to the designer, along with monthly request for payment. For project requiring CPM schedule, the contractor shall submit a biweekly report of the status of all activities. The bar chart schedule or status report shall show the actual Work completed to date in comparison with the original Work scheduled for all activities. If any activities of the work of several contractors are behind schedule, the contractor must indicate in writing, what measures will be taken to bring each such activity back on schedule and to ensure that the Contract Completion Date is not exceeded. A plan of action and recovery schedule shall be developed and submitted to the designer by the Project Expediter, when (1) the contractor's report indicates delays, that are in the opinion of the designer or the owner, of sufficient magnitude that the contractor's ability to complete the work by the scheduled completion is brought into question; (2) the updated construction schedule is thirty (30) days behind the planned or baseline schedule and no legitimate time extensions, as determined by the designer, are in process; and (3) the contractor desires to make changes in the logic (sequencing of work) or the planned duration of future activities of the CPM schedule which, in the opinion of the designer or the owner, are of a major nature. The plan of action, when required shall be submitted to the owner for review within two (2) business days of the contractor receiving the owner's written demand. The recovery schedule, when required, shall be submitted to the owner within five (5) calendar days of the contractor's receiving the owner's written demand. Failure to provide an updated construction schedule or a recovery schedule may be grounds for rejection of payment applications or withholding of funds as set forth in Article 33.

- k. The project expediter shall notify each contractor of such events or time frames that are critical to the progress of the job. Such notice shall be timely and reasonable. Should the progress be delayed due to the work of any of the several contractors, it shall be the duty of the project expediter to immediately notify the contractor(s) responsible for such delay, the designer, the owner and other prime contractors. The designer shall determine the contractor(s) who caused the delays and notify the bonding company of the responsible contractor(s) of the delays, and shall make a recommendation to the owner regarding further action.
- l. Designation as project expediter entails an additional project control responsibility and does not alter in any way the responsibility of the contractor so designated, nor the responsibility of the other contractors involved in the project. The project expediter's superintendent(s) shall be in attendance at the project site at all times when work is in progress unless conditions are beyond the control of the contractor or until termination of the contract in accordance with the contract documents. It is understood that such superintendent shall be acceptable to the owner and designer and shall be the one who will be continued in that capacity for the duration of the project unless he ceases to be on the contractor's payroll or the owner otherwise agrees. The superintendent shall not

be employed on any other project for or by the contractor or by any other entity during the course of the work. If the superintendent is employed by the contractor on another project without the owner's approval, then the owner may deduct from the contractor's monthly general condition costs an amount representing the superintendent's cost and shall deduct that amount for each month thereafter until the contractor has the superintendent back on the owner's project full-time.

ARTICLE 15 - SEPARATE CONTRACTS AND CONTRACTOR RELATIONSHIPS

- a. Effective from January 1, 2002, Chapter 143, Article 8 was amended to allow public contracts to be delivered by the following delivery methods: single-prime, dual (single-prime and separate-prime), construction manager at risk, and alternative contracting method as approved by the State Building Commission. The owner reserves the right to prepare separate specifications, receive separate bids, and award separate contracts for such other major items of work as may be in the best interest of the State. For the purposes of a single prime contract, refer to Article 1 – Definitions.
- b. All contractors shall cooperate with each other in the execution of their work, and shall plan their work in such manner as to avoid conflicting schedules or delay of the work. See Article 14, Construction Supervision.
- c. If any part of contractor's work depends upon the work of another contractor, defects which may affect that work shall be reported to the designer in order that prompt inspection may be made and the defects corrected. Commencement of work by a contractor where such condition exists will constitute acceptance of the other contractor's work as being satisfactory in all respects to receive the work commenced, except as to defects which may later develop. The designer shall be the judge as to the quality of work and shall settle all disputes on the matter between contractors.
- d. Any mechanical or electrical work such as sleeves, inserts, chases, openings, penetrations, etc., which is located in the work of the general contractor shall be built in by the general contractor. The respective mechanical and electrical contractors shall set all sleeves, inserts and other devices that are to be incorporated into the structure in cooperation and under the supervision of the general contractor. The responsibility for the exact location of such items shall be that of the mechanical and/or electrical contractor.
- e. The designer and the owner shall have access to the work whenever it is in preparation and progress and during normal working hours. The contractor shall provide facilities for such access so the designer may perform his functions under the contract documents.

- f. Should a contractor cause damage to the work or property of another contractor, he shall be directly responsible, and upon notice, shall promptly settle the claim or otherwise resolve the dispute.

ARTICLE 16 - SUBCONTRACTS AND SUBCONTRACTORS -

- a. Within thirty (30) days after award of the contract, the contractor shall submit to the designer and to the owner a list giving the names and addresses of subcontractors and equipment and material suppliers he proposes to use, together with the scope of their respective parts of the work. Should any subcontractor be disapproved by the designer, the designer shall submit his reasons for disapproval in writing to the owner for the owner's consideration with a copy to the contractor. If the owner concurs with the designer's recommendation, the contractor shall submit a substitute for approval. The designer shall act promptly in the approval of subcontractors, and when approval of the list is given, no changes of subcontractors will be permitted except for cause or reason considered justifiable by the designer.
- b. The designer will furnish to any subcontractor, upon request, evidence regarding amounts of money paid to the contractor on account of the subcontractor's work.
- c. The contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The contractor agrees that no contractual relationship exists between the subcontractor and the owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the contractor.
- d. The owner reserves the right to limit the amount of portions of work to be subcontracted as hereinafter specified.

ARTICLE 17 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

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

- a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime

contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor 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 a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

- b. Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
- c. The percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the owner to the prime contractor. Any percentage of retainage on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainage on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

- d. Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by owner.

ARTICLE 18 - DESIGNER'S STATUS-

- a. The designer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to direct work to be performed, to stop work, to order work removed, or to order corrections of faulty work where any such action by the designer may be necessary to assure successful completion of the work.
- b. The designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the owner and the contractor, taking sides with neither.
- c. Should the designer cease to be employed on the work for any reason whatsoever, then the owner shall employ a competent replacement who shall assume the status of the former designer.
- d. The designer and his consultants will make inspections of the project. They will inspect the progress, the quality and the quantity of the work.
- e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer and owner may perform their functions under the contract documents.
- f. Based on the designer's inspections and evaluations of the project, the designer shall issue interpretations, directives and decisions as may be necessary to administer the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract.

ARTICLE 19 - CHANGES IN THE WORK-

- a. The owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the contractor from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change shall be made by the contractor except upon receipt of an approved change order or written field order from the designer, countersigned by the owner authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A field order, transmitted by fax, electronically, or hand-delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the designer or owner, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either c.1 or c.2 below, or both.

- c. In determining the values of changes, either additive or deductive, contractors are restricted to the use of the following methods:
 - 1. Where the extra work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by the contractor, designer and owner, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed on 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. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph b and c.2. above, the allowances for overhead and profit combined shall be as follows: all contractors (the single contracting entity (prime), his subcontractors (first tier), or their subcontractors (second tier, third tier, etc.) shall be allowed a maximum of ten percent (10%) on work they each self-perform; the prime contractor shall be allowed a maximum of five percent (5%) on contracted work of his first tier subcontractor; first tier, second tier, third tier, etc. subcontractors shall be

allowed a maximum of two and one-half percent (2.5%) on the contracted work of their subcontractors. Under c.1. no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under c.2. and b. above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.

- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
 - 1. The actual costs of materials and supplies incorporated or consumed as part of the work.
 - 2. The actual costs of labor expended on the project site. Labor expended in coordination, change order negotiation, record document maintenance, shop drawing revision or other tasks necessary to the administration of the project are considered overhead whether they take place in an office or on the project site.
 - 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) 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 work.
 - 5. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the work.
 - 6. Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the owner.
- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.

- g. In all change orders, the procedure will be for the designer to request proposals for the change order work in writing. The contractor will provide such proposal and supporting data in suitable format. The designer shall verify correctness. Delay in the processing of the change order due to a lack of proper submittal by the contractor of all required supporting data shall not constitute grounds for a time extension or basis for a claim. Within fourteen (14) days after receipt of the contractor's accepted proposal including all supporting documentation required by the designer, the designer shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the designer shall certify the change order by his signature, and forward the change order and all supporting data to the owner for the owner's signature. The owner shall execute the change order within seven (7) days of receipt. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the contractor shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- j. If, during the progress of the work, the owner requests a change order and the contractor's terms are unacceptable, the owner may require the contractor to perform such work on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the designer or owner a correct account of the cost together with all proper invoices, payrolls and supporting data. Upon completion of the work a change order will be prepared with allowances for overhead and profit per paragraph d. above and "net cost" and "cost" per paragraph e. above. Without prejudice, nothing in this paragraph shall preclude the owner from performing or having performed that portion of the work requested in the change order.

ARTICLE 20 - CLAIMS FOR EXTRA COST -

- a. Should the contractor consider that as a result of instructions given by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay. The written notice shall be a stand-alone document, shall clearly state that a claim for extra cost is being made, and shall provide a detailed justification for the extra cost. The contractor shall not proceed

with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation shall be considered unless the claim is so made. The designer shall render a written decision within seven (7) days of receipt of claim.

- b. The contractor shall not act on instructions received by him from persons other than the designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The designer shall not be responsible for misunderstandings claimed by the contractor 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 contractor that complies with the requirements of (a) above be denied by the designer or owner, and cannot be resolved by a representative of The University of North Carolina System Office, the contractor may request a mediation in connection with G.S. 143-128(f1) in the dispute resolution rules adopted by the State Building Commission (1 N.C.A.C. 30H .0101 through .1001). If the contractor is unable to resolve its claims as a result of mediation, the contractor may pursue the claim in accordance with the provisions of G.S. 143-135.3 and the following:
 - 1. A contractor who has not completed a contract with an institution of The University of North Carolina and who has not received the amount he claims is due under the contract may submit a verified written claim to the Vice President for Finance and Capital Planning of The University of North Carolina System Office for the amount the contractor claims is due. If the claim remains unresolved after review by the Vice President, the contractor may submit the verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.
 - 2. (a) A contractor who has completed a contract with an institution of University of North Carolina for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Vice President for Finance and Capital Planning of The University of North Carolina System Office for the amount the contractor claims is due. If the claim remains unresolved after review by the Vice President, the contractor may submit the verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within sixty (60) days

after the contractor receives a final statement of the Vice President's disposition of the claim and shall state the factual basis for the claim.

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

ARTICLE 21 - MINOR CHANGES IN THE WORK-

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

ARTICLE 22 - UNCORRECTED FAULTY WORK-

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

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

- a. The time of completion is stated in the Supplementary General Conditions and in the Form of Construction Contract. The Project Expediter, upon notice of award of contract,

shall prepare a construction schedule to complete the project within the time of completion as required by Article 14.

- b. The contractors shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the designer and shall fully complete all work hereunder within the time of completion stated. Time is of the essence and the contractor acknowledges the owner will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the contractor(s) shall pay the owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. Should the work be delayed by both the owner and contractor, liquidated damages shall be apportioned to reflect the delays of each party. In the case of concurrent delays, contractor caused delays shall be accounted for before owner and designer caused delays.
- c. In the event of multiple prime contractors, the designer shall be the judge as to the division of responsibility between the contractor(s), based on the construction schedule, weekly reports and job records, and shall apportion the amount of liquidated damages to be paid by each of them, according to delay caused by any or all of them.
- d. If the contractor is delayed at any time in the progress of his work solely by any act or negligence of the owner, the designer, or by any employee of either; by any separate contractor employed by the owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order only for the time which the designer and owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the contractor reflecting the effect of the weather on progress of the work and initialed by the designer's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. Time extensions for weather delays, acts of God, labor disputes, fires, delays in transportation, unavoidable casualties or

other delays which are beyond the control of the owner do not entitle the contractor to compensable damages for delay. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- e. Request for extension of time shall be made in writing to the designer with copies to the owner within twenty (20) days following cause of delay. In case of continuing cause for delay, the contractor shall notify the designer in writing with copies to the owner of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- f. The contractor shall notify his surety in writing of extension of time granted.
- g. No claim for time extension shall be allowed on account of failure of the designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c. Demand must be in written form clearly stating the potential for delay unless the drawings or instructions are provided. Any delay granted will begin after the twenty (20) day demand period is concluded.

ARTICLE 24 - PARTIAL UTILIZATION BENEFICIAL OCCUPANCY-

- a. The owner may desire to occupy or utilize all or a portion of the project prior to completion of the project.
- b. Should the owner request a utilization of the building or portion thereof, the designer shall perform a designer final inspection of the area after being notified by the contractor that the area is ready for such. After the contractor has completed designer final inspection punch list and the designer has verified, the designer shall schedule a beneficial occupancy inspection at a time and date acceptable to the owner, contractor(s) and State Construction Office. If beneficial occupancy is granted by the owner and State Construction Office, in such areas the following will be established:
 - 1. The beginning of guarantees and warranties period for the equipment necessary to support the area.
 - 2. The owner assumes all responsibilities for utility costs for the entire building
 - 3. Contractor will obtain consent of surety.
 - 4. Contractor will obtain endorsement from insurance company permitting beneficial occupancy.
- c. The owner shall have the right to exclude the contractor from any part of the project which the designer has so certified to be substantially complete, but the owner will allow the contractor reasonable access to complete or correct work to bring it into compliance with the contract.
- d. Occupancy by the owner under this article will in no way relieve the contractor from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE AND PROJECT CLOSEOUT-

- a. Upon notification from the contractor(s) that the project is complete and ready for inspection, the designer shall make a designer final inspection to verify that the project is complete and ready for owner and SCO final inspection. Prior to owner & SCO final inspection, the contractor(s) shall complete all items requiring corrective measures noted at the designer final inspection. The designer shall schedule a SCO final inspection at a time and date acceptable to the owner, contractor(s) and State Construction Office.

- b. At the SCO final inspection, the designer and his consultants shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the SCO final inspection, the designer, the owner, and State Construction Office representatives shall make one of the following determinations:
 - 1. That the project is completed and accepted.
 - 2. That the project will be accepted subject to correction of the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of SCO final inspection or the owner may invoke Article 28, Owner's Right to Do Work.
 - 3. That the project is not complete and another date for a SCO final inspection will be established.
- c. Within fourteen (14) days of final acceptance per Paragraph b1 or within fourteen (14) days after completion of punch list per Paragraph b2 above, the designer shall certify the work and issue applicable certificate(s) of compliance.
- d. Any discrepancies listed or discovered after the date of SCO final inspection and acceptance under Paragraphs b1 or b2 above, shall be handled in accordance with Article 42, Guarantee.
- e. The final acceptance date will establish the following:
 - 1. The beginning of guarantees and warranties period.
 - 2. The date on which the contractor's insurance coverage for public liability, property damage and builder's risk may be terminated.
 - 3. That no liquidated damages (if applicable) shall be assessed after this date.
 - 4. The termination date of utility cost to the contractor.
- f. Prior to issuance of final acceptance date, the contractor shall have his authorized representatives visit the project and give full instructions to the owner's designated personnel regarding operating, maintenance, care, and adjustment of all equipment and special construction elements. In addition, the contractor shall provide the owner a complete instructional video (media format acceptable to the owner) on the operation, maintenance, care, and adjustment of all equipment and special construction elements.

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT-

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

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT-

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

ARTICLE 28 - OWNER'S RIGHT TO DO WORK-

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

ARTICLE 29 - ANNULMENT OF CONTRACT-

If the contractor fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the owner may give notice in writing, sent by certified mail, return receipt requested, to the contractor and his surety of such delay, neglect or default, specifying the same, and if the contractor within a period of seven (7) days after such notice shall not proceed in accordance therewith, then the owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within seven (7) days after being so notified and notify the owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said contractor and surety. In case the expense so incurred by the owner shall be less than the sum which would have been payable under the contract, if it had been completed by said contractor, then the said contractor and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the contractor and the surety shall be liable and shall pay to the owner the amount of said excess.

ARTICLE 30 - CONTRACTOR'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 contractor, or if the owner should fail or refuse to make payment on account of a certificate issued by the designer within forty-five (45) days after receipt of same, then the contractor, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the owner and the designer, may suspend operations on the work or terminate the contract.
- b. The owner shall be liable to the contractor for the cost of all materials delivered and work performed on this contract plus ten (10) percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT-

- a. Not later than the fifth day of the month, the contractor shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 - 1. Total of contract including change orders.
 - 2. Value of work completed to date.
 - 3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the contractor's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.
 - 4. Less previous payments.
 - 5. Current amount due.
- b. The contractor, upon request of the designer, shall substantiate the request with invoices of vouchers or payrolls or other evidence.
- c. Prior to submitting the first request, the contractor shall prepare for the designer a schedule showing a breakdown of the contract price into values of the various parts of

the work, so arranged as to facilitate payments to subcontractors in accordance with Article 17, contractor and Subcontractor Relationships. The contractor(s) shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier as listed in Affidavit C, if applicable.

- d. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the contractor, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the contractor desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in an independent, licensed, bonded warehouse approved by the designer and the owner and located as close to the site as possible. The warehouse selected must be approved by the contractor's bonding and insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer and owner of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the contractor. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the State absolute right to possession of the materials at any time. Bond, security and insurance protection shall continue to be the responsibility of the contractor(s).
- e. In the event of beneficial occupancy, retainage of funds due the contractor(s) may be reduced with the approval of the owner to an equitable amount to cover the list of items to be completed or corrected. Retainage may not be reduced to less than two and one-half (2 1/2) times the estimated value of the work to be completed or corrected. Reduction of retainage must be with the consent and approval of the contractor's bonding company.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT-

- a. Within five (5) days from receipt of request for payment from the contractor, the designer shall issue and forward to the owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is

not approved by the designer, he shall state in writing to the contractor and the owner his reasons for withholding payment.

- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the owner except:
 - 1. Claims arising from unsettled liens or claims against the contractor.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the contractor except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer for approval, the contractor shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but are not limited to the following:
 - 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the owner).
 - 2. Transfer of required attic stock material and all keys in an organized manner.
 - 3. Record of owner's training.
 - 4. Resolution of any final inspection discrepancies.
 - 5. Granting access to contractor's records, if the State Auditor, owner's internal auditors, or the Joint Legislative Commission on Governmental Operations have made a request for such access pursuant to Article 52.
- e. The contractor shall forward to the designer, the final application for payment along with the following documents:

1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subcontractors and material suppliers.
 2. Affidavit of Release of Liens.
 3. Affidavit of contractors of payment to material suppliers and subcontractors. (See Article 36).
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.
- f. The designer will not authorize final payment until the work under contract has been certified by designer, certificates of compliance issued, and the contractor has complied with the closeout requirements. The designer shall forward the contractor's final application for payment to the owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD-

- a. The designer with the approval of the owner may withhold payment for the following reasons:
1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- b. The owner may authorize the withholding of payment for the following reasons:
1. Claims filed against the contractor or evidence that a claim will be filed.
 2. Evidence that subcontractors have not been paid.
- c. The owner may withhold all or a portion of the contractor's general conditions costs set forth in the approved schedule of values if the contractor has failed to comply with any of the following:
- (1) a request to access its records by the State Auditor, the owner's internal auditors, or the Joint Legislative Commission on Governmental Operations pursuant to Article 52;

- (2) a request for a plan of action and/or recovery schedule under Article 14j;
 - (3) a request to provide electronic copies of contractor's baseline schedule and/or updates with all logic used to create schedules in the original format of the scheduling software; or
 - (4) contractor's failure to have its superintendent on the project full time.
- d. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the contractor without cause will make owner liable for payment of interest to the contractor in accordance with G.S. 143-134.1. As provided in G.S. 143-134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third party-claims filed against the owner or reasonable evidence that a third-party claim will be filed.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until all required insurance and verifying certificates of insurance have been obtained by the contractor and documentation has been approved in writing by the owner. A cancellation endorsement shall be provided for all required policies that contains a provision that coverages afforded under the policy will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after giving written notice, such notice having been delivered or mailed to the insured and the owner of such alteration or cancellation.

a. Worker's Compensation and Employer's Liability

The contractor shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. Public Liability and Property Damage

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

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

In lieu of limits listed above, a \$500,000 combined single limit shall satisfy both conditions.

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

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

The contractor shall purchase and maintain property insurance until final acceptance, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, the contractor, the subcontractors and sub-subcontractors in the work and shall insure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of the contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

d. **Deductible**

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

e. **Other Insurance**

The contractor 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 contractor shall furnish the owner with satisfactory proof of carriage of the insurance required before written approval is granted by the owner.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND-

- a. Each contractor shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound with these specifications.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONTRACTOR'S AFFIDAVIT-

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

ARTICLE 37 - ASSIGNMENTS-

The contractor 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 contractor under the contract may be assigned.

ARTICLE 38 - USE OF PREMISES-

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

ARTICLE 39 - CUTTING, PATCHING AND DIGGING-

- a. The contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.

- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No contractor shall endanger any work of another contractor by cutting, digging or other means. No contractor shall cut or alter the work of any other contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS-

- a. The contractor 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 including all utilities required for testing, cleaning, balancing and sterilization of designated plumbing, mechanical and electrical systems. Any permanent meters installed shall be listed in the contractor's name until work has a final acceptance. The contractor will be solely responsible for all utility costs prior to final acceptance. The contractor shall contact all affected utility companies prior to bid to determine their requirements to provide temporary and permanent service and include all costs associated with providing those services in their bid. Coordination of the work of the utility companies during construction is the sole responsibility of the contractor.
- b. Meters shall be relisted in the owner's name on the day following final acceptance of the project expediter's work, and the owner shall pay for services used after that date.
- c. The owner shall be reimbursed for all metered utility charges after the meter is relisted in the owner's name and prior to completion and acceptance of the work of **all** contractors. Reimbursement shall be made by the contractor whose work has not been completed and accepted. If the work of two or more contractors has not been completed and accepted, reimbursement to the owner shall be paid by the contractors involved on the basis of assessments by the designer.
- d. Prior to the operation of permanent systems, the project expediter will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. All contractors shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly

determined by the contractor(s), the designer and the owner. Use of the equipment in this manner shall be subject to the approval of the designer and owner and shall in no way affect the warranty requirements of the contractor(s).

- f. The electrical contractor shall have the building's permanent power wiring distribution system in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- g. The electrical contractor shall have the building's permanent lighting system ready at the time the general contractor begins interior painting and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. Each prime contractor shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
 - 1. Prior to final acceptance of work by the State Construction Office and owner, each contractor shall remove and replace any parts of the permanent building systems damaged through use during construction.
 - 2. Temporary filters as recommended by the equipment manufacturer in order to keep the equipment and ductwork clean and free of dust and debris shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the owner's acceptance of the work.
 - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.
 - 4. It shall be understood that any warranty on equipment presented to the owner shall extend from the day of final acceptance by the owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 - 5. The electrical contractor shall have all lamps in proper working condition at the time of final project acceptance.
- i. The project expediter shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other

contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.

- j. The project expeditor shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- k. On multi-story construction projects, the project expeditor shall provide temporary elevators, lifts, or other special equipment for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the project expeditor's bid.
- l. The General Contractor will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the names of prime contractors on the project, and the name of the designer and consultants. Directional signs may be erected on the owner's property subject to approval of the owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the owner.

ARTICLE 41 - CLEANING UP-

- a. The contractors shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer or project expeditor. The project expeditor shall provide an onsite refuse container(s) for the use of all contractors. Each contractor shall remove their rubbish and debris from the building on a daily basis. The general contractor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. The project expeditor shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, each contractor shall clean his portion of the work, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the owner, with no cleaning required by the owner.

ARTICLE 42 - GUARANTEE-

- a. The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or

beneficial occupancy; and shall replace such defective materials or workmanship without cost to the owner.

- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.
- c. Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS-

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

ARTICLE 44 - INDEMNIFICATION-

To the fullest extent permitted by law, the contractor shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the contractor, the contractor's subcontractor, or the agents of either the contractor or the contractor's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

ARTICLE 45 - TAXES-

- a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).

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

Amount of county sales and use tax paid per contractor's statements:

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

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

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

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

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

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

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

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

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE-

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

ARTICLE 47 - EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES-

The contractor(s) agree not to discriminate against any employee or applicant for employment because of physical or mental disabilities in regard to any position for which the employee or applicant is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with such disabilities without discrimination based upon their physical or mental disability in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. Contractors are reminded of the requirements of instructions under Instructions to Bidders and General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* from the State Construction Office is to be incorporated in all asbestos abatement projects for the Capital Improvement Program.

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project. The document *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix E are hereby incorporated into and made a part of this contract.

ARTICLE 50 – CONTRACTOR EVALUATION

The contractor's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to bid on future State capital improvement projects. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The owner may request the contractor's comments to evaluate the designer.

ARTICLE 51- GIFTS

Pursuant to N.C. General Statute 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, subcontractor, supplier, vendor, etc.) to make gifts or to give favors to any State employee. This prohibition covers those vendors and contractors who: (1) have a contract with a government agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review General Statute 133-32.

During the construction of the project, the contractor is prohibited from making gifts to any of the owner's employees, owner's project representatives (architect, engineers, construction manager and their employees), employees of the State Construction Office and/or any other state employees that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the construction administration, financial administration and/or disposition of claims arising from and/or relating to the contract and/or the project.

ARTICLE 52 – AUDITING – ACCESS TO PERSONS AND RECORDS

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

any other type of claim for payment or damages from the owner and/or its project representatives.

- b. The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:
 - 1. The State Auditor
 - 2. The internal auditors of the affected department, agency, or institution
 - 3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.
- c. The Joint Legislative Commission on Governmental Operations has the authority to:
 - 1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
 - 2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
 - 3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
 - 4. Receive reports as required by law or as requested by the Commission.
 - 5. Access and review:
 - (a) Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - (b) Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to
 - (i) records related to the drafting and approval of the subcontract, and
 - (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.
- d. The Joint Legislative Commission on Governmental Operations has the power to:
 - 1. Compel access to any document or system of records held by a non-State entity

receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.

2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.
- e. Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.
- f. Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.
- g. Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.
- h. A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

ARTICLE 53 – NORTH CAROLINA FALSE CLAIMS ACT

The North Carolina False Claims Act (NCFCA), N.C. General Statute 1-605 through 1-618, applies to this contract. The contractor should familiarize itself with the entire NCFCA and should seek the assistance of an attorney if it has any questions regarding the NCFCA and its applicability to any requests, demands and/or claims for payment it submits to the State through the contracting university or affiliate.

The purpose of the NCFCA “is to deter persons from knowingly causing or assisting in causing the state to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the state by reason of a false or fraudulent claim” (Section 1-605[b]). A contractor’s liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for lost productivity, claims for lost efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass through claims of subcontractors and/or suppliers, documentation used to support any of the foregoing requests or claims, and/or any other request for payment from the state through the contracting state agency, institution or university. The parts of the NCFCA that are most likely to be enforced with respect to this type of contract are as follows:

- A “claim” is “[a]ny request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor...if the money or property is to be spent or used on the State’s behalf or to advance a State program or interest and if the State government: (a) provides or has provided any portion of the money or property that is requested or demanded; or (b) will reimburse such contractor... for any portion of the money or property which is requested or demanded.” (Section 1-606(2).)
- “Knowing” and “knowingly” – Whenever a person, with respect to information, does any of the following: (a) Has actual knowledge of the information; (b) Acts in deliberate ignorance of the truth or falsity of the information; and/or (c) Acts in reckless disregard of the truth or falsity of the information. (Section 1-606 (4).) Proof of specific intent to defraud is not required. (Section 1-606 (4).)
- “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. (Section 1-606(4).)
- Liability – “Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person[:] (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. (3) Conspires to commit a violation of subdivision (1), (2) ...” (Section 1-607(a)(1), (2).)
- The NCFCFA shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. 3729, et seq., and any subsequent amendments to that act. (Section 1-616 (c).)

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

ARTICLE 54 – TERMINATION FOR CONVENIENCE

- a. The owner may, at any time and for any reason terminate the contractor's services and work at the owner's convenience. Upon receipt of such notice, the contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities, and supplies in connection with the performance of this agreement.
- b. Upon such termination, the contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this agreement; plus, (2) such other costs actually incurred by the contractor as are permitted by the prime contract and approved by the owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to the contractor prior to the date of the termination of this agreement. The contractor shall not be entitled to any claim or claim of lien against the owner for any additional compensation or damages in the event of such termination and payment.

**SUPPLEMENTARY GENERAL CONDITIONS
OF THE CONTRACT**

STANDARD FORM FOR CONSTRUCTION CONTRACTS

THE NORTH CAROLINA ARBORETUM

SUPPLEMENTARY GENERAL CONDITIONS (SGC's) OF THE CONTRACT

This document supplements but does not alter in any way the requirements of the General Conditions of the Contract.

ARTICLE 1 - DEFINITIONS

As defined in Article 1 of the General Conditions, the Supplementary General Conditions as well as the TNCA General Requirements are considered part of the contract documents.

The Owner is the State of North Carolina through The North Carolina Arboretum.

All references to "Designer" shall be used interchangeably with "Owner", as this is an Owner-designed project.

Provide shall mean purchase, deliver, install, new, clean, completely operational, fully tested and ready for use.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

The submittal requirements are described in Article 5 of the General Conditions. Items for which submittals are required are listed below:

Pre-Submittals:

- The contractor shall provide the Owner a complete list of contact information for the Contractor, his key personnel, and all Subcontractors. This list shall be provided to the Owner prior to beginning the Work and shall be updated regularly with the updated provided to the Owner.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

The Contractor shall maintain at the job site (job site office) a readable set of the complete set of working drawings and specifications for his work, including all shop drawings. The Contractor shall maintain at the job site an up-to-date, readable set of the As-Built drawings.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

Should an accident or disruption occur on the project work site, the Contractor shall notify the Owner and TNCA Campus Police as soon as possible and no less than 24 hours of occurrence.

The Contractor and Subcontractors shall be responsible for security to their equipment and the site-stored materials under their jurisdiction, whether paid for by the Owner or not, until acceptance of the project. The Contractor shall coordinate security requirements with the Owner.

The Contractor shall maintain daily field reports by its field supervision listing, but not limited to, personnel onsite (including all subcontractors), weather conditions, major scopes of work under construction, material deliveries, safety incidents, progress photographs, and inspections. The Contractor shall submit a copy of the daily field reports to the Designer and Owner upon request and at project completion

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

The Contractor shall request and obtain permission from the Owner for an interruption of utility or services a minimum of seven (7) days in advance. Failure of the Contractor to obtain Owner permission shall not be grounds for an extension of time.

The Contractor shall comply with Owner's Interim Life Safety Plan requirements to maintain egress from all occupied buildings.

ARTICLE 14 - CONSTRUCTION SUPERVISION and SCHEDULE

The Contractor shall start work within two (2) weeks upon receipt of Notice to Proceed. The Contractor shall submit a project work schedule before beginning work. The starting date and work schedule shall be adhered to, and the work shall be performed during the Owner's normal working hours, 8:00 AM to 5:00 PM, unless otherwise established and coordinated with the Owner. Requests by the Contractor to work outside normal working hours shall be made a minimum of one (1) week in advance. The Contractor's bid shall include all costs associated with workers working outside of normal business hours and/or costs associated with workers working overtime as required to meet the specified project schedule. The Owner reserves the right to request work to be performed outside normal working hours and to limit Contractor activities when they conflict with Owner operations. Any increased costs due to Owner requirements for work outside normal hours not specified in the Contract Documents will be negotiated.

The Contractor shall maintain a daily field report including, but not limited to, listing of all personnel on site (including all Subcontractors), weather conditions, major scopes of work under construction, material deliveries, safety incidents, progress photographs, and inspections.

ARTICLE 16 - SUBCONTRACTS and SUBCONTRACTORS

All Subcontractors shall be identified in writing and approved by the Owner prior to the start of work

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME, LIQUIDATED DAMAGES

The Contractor shall commence work to be performed under this Contract on the date to be specified in the Notice to Proceed from the Contract Administrator and shall fully complete all work hereunder within ninety (90) consecutive calendar days from the date specified in the Notice to Proceed. The following are the critical dates for the project: Anticipated Notice to Proceed: March 5th, 2026; Site available for Work: March 5th, 2026; Construction Completion: June 1st, 2026. No increase in contract time will be allotted for the addition of Bid Alternate work.

If the Contractor should fail to complete the work within the time specified (including approved Change Orders) and this failure directly prevents the Owner from utilizing and/or occupying the building premises or results in other direct costs to the Owner, Liquidated Damages in the amount of Five Hundred Dollars (\$500.00) per consecutive calendar day will be assessed for each day the schedule of the Work exceeds the contractual duration set forth in the contract or therefore extended by approved change order. Other reduction/restrictions to work hours, site use, and other construction general conditions may occur if the contract time extends beyond the contract time specified (including approved Change Orders).

If the Contractor is delayed at any time in the progress of the Contractor's work by any act or negligence of the Owner, the Owner's employees or the Owner's separate Contractor; by changes

ordered in the work; by abnormal weather conditions; by any causes beyond the Contractor's control; or by other causes deemed justifiable by Owner, then the contract time may be reasonably extended in a written order from the Owner upon written request from the Contractor within ten (10) days following the cause for delay.

Non-compensable weather delays affecting the critical path shall be tracked during the period leading up to the building being dried-in, and calculated and awarded via Change Order if warranted, at the end of the construction period.

ARTICLE 34 – MINIMUM INSURANCE REQUIREMENTS

Automobile Liability insurance (the "Auto Insurance") for claims and all perils for errors, omissions, and damages of any kind or character which may arise out of or result from Contractor's performance under this Agreement. The Auto Liability Insurance shall cover owned, hired, and non-owned commercial vehicles with policy limits of no less than \$150,000 bodily injury and property damage and \$150,000 uninsured/under insured motorist per occurrence.

ARTICLE 38 - USE OF PREMISES

Work under this contract shall be performed in such a manner as to avoid interruption or interference with the operation of any existing activity on the premises or at the location of the work. The Owner may enforce extra restrictions during certain periods of the year.

While on TNCA premises, Contractor's and Sub-Contractor's personnel shall be identifiable at all times, for example, by wearing company names or logos on garments or hard hats.

Damage done to TNCA premises that are under the control of the Contractor, or damage caused by the contractor to premises used by the contractor, shall be corrected at the Contractor's expense.

The contractor shall schedule deliveries between 8:00 AM and 4:00 PM. The contractor shall have adequate personnel and any necessary equipment onsite to receive deliveries. The contractor shall notify the Owner of any deliveries of equipment, material or road work that will impede the flow of vehicular or pedestrian traffic. The contractor shall provide traffic control by certified traffic control personnel (vehicular and pedestrian) during these deliveries. Staging for multiple concrete / steel / other large material deliveries, crane and other large pieces of equipment must be coordinated with the Owner. The contractor shall schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.

A minimum five working days' notice must be given to the Owner to block parking spaces, drives, roads, streets and pedestrian walks.

Roads, streets, drives, fire lanes must remain open at all times. Adequate clearance must be maintained for emergency vehicles to negotiate the drive. Maintain a minimum of 20 feet for fire lanes. Construction vehicles are not allowed to block, park, or stage in fire lanes. Vehicles blocking fire lanes will be ticketed and towed at the Contractor's expense.

The Contractor will provide additional cleanup, warning signs, and barricades if deemed necessary by the Owner.

The Contractor's scheduling and staging requirements must be coordinated with, and approved by the Owner.

Materials/Equipment Storage: Storage of construction materials and equipment shall be limited to the approved project staging area unless otherwise agreed to, in writing, in advance. Should the

Contractor fail to remove any material or equipment stored outside the staging area within twenty-four (24) hours of notification from TNCA, TNCA shall have the right to remove and dispose of such materials from the campus and deduct the cost of such removal and disposition from the Contractor's next application for payment.

Site Maintenance: Contractor is responsible for maintaining a clean, organized, safe job site, free of accumulated construction debris and trash. To that end, Contractor shall be responsible for cleaning their work areas daily at a minimum and the proper disposal of construction debris and trash. Debris shall be secured in trucks so that material cannot fall or be blown from trucks during transportation. Demolition debris is not to remain on the project site. Contractors or subcontractors must provide their own dumpsters and provide for periodic dumping for demolition debris.

Contractors working for The North Carolina Arboretum are required to comply with Arboretum policies, which are provided herein and hereby incorporated and made a part of this contract.

- Smoking and Vaping Policies
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-45.aspx>
- Illegal Drugs and Illegal Use or Abuse of Alcohol
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-38.aspx>
- Alcoholic Beverages
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-81.aspx>
- Weapons on Campus
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-91.aspx>
- Behavioral Threat Assessment and Management Teams
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-109.aspx>
- Title IX Sexual Harassment Policy
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-129.aspx>
- Trespassing on University Property
<https://www.wcu.edu/discover/leadership/office-of-the-chancellor/legal-counsel-office/university-policies/numerical-index/university-policy-115.aspx>

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

The Owner will provide water and electricity to the extent they are available at the project site. The Contractor shall be responsible for making connections to provided utilities.

The Contractor shall provide restroom facilities. The Contractor's personnel shall not use toilet or washroom facilities in the existing buildings.

The Contractor shall be responsible for procedures to make temporary disruptions to existing utilities serving the building(s) as well as disruptions to roads and pedestrian walks and any disruptions shall be planned well in advance of the work. The work shall be executed in a manner to provide reasonably continuous service throughout the construction period. Any and all disruptions and interruptions of service shall be coordinated with the Owner a minimum of seven (7) days in advance. Failure of the Contractor to obtain Owner permission shall not be grounds for an extension of time.

Size and location of any required Job site signage shall be approved by the Owner prior to installation.

**GUIDELINES FOR
RECRUITMENT AND SELECTION OF MINORITY BUSINESSES
FOR PARTICIPATION IN THE UNIVERSITY OF NORTH CAROLINA
CONSTRUCTION CONTRACTS**

In accordance with G.S. 116-31.11 and G.S. 143-128.2 these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, design-build, public-private partnership, and alternative contracting methods, on University of North Carolina construction projects in the amount of \$100,000 to \$4,000,000. The legislation provides that the State, including the University of North Carolina System, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded. These requirements are published to accomplish that end.

SECTION A: INTENT

It is the intent of these guidelines that the State through The University of North Carolina, its constituent institutions, and/or affiliates (hereafter The University of North Carolina) as awarding authorities for construction projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the statutory goal of ten percent (10%) for participation by minority businesses in each construction project as mandated by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

SECTION B: DEFINITIONS

1. Minority business, minority person, and socially and economically disadvantaged individual - G.S. 143-128 (g) includes the following definitions. Any changes to G.S. 143-128 (g) are incorporated herein upon enactment:
 - (1) The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
 - (2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
 - (3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

2. Public Entity – The State of North Carolina and all public subdivisions and local governmental units.
3. Owner - The State of North Carolina, through the constituent institution named in the contract.
4. Designer – Any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering, work.
5. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
6. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
7. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
8. Subcontractor - A firm under contract with the prime contractor, construction manager at risk, design-builder, or private developer under public-private partnerships for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

SECTION C: RESPONSIBILITIES

1. Office for Historically Underutilized Businesses, Department of Administration (hereinafter referred to as HUB Office). The HUB Office has established a program, which allows interested persons or businesses qualifying as a minority business under G.S. 143-128.2, to obtain certification in the State of North Carolina procurement system. The information provided by the minority businesses will be used by the HUB Office to:
 - a. Identify those areas of work for which there are minority businesses, as requested.
 - b. Make available to interested parties a list of prospective minority business contractors and subcontractors.
 - c. Assist in the determination of technical assistance needed by minority business contractors.

In addition to being responsible for the certification/verification of minority businesses that want to participate in the State construction program, the HUB Office will:

- (1) Maintain a current list of minority businesses. The list shall include the areas of work in which each minority business is interested.
- (2) Inform minority businesses on how to identify and obtain contracting and subcontracting opportunities through the University of North Carolina and other public entities.
- (3) Inform minority businesses of the contracting and subcontracting process for public construction building projects.
- (4) Work with the North Carolina trade and professional organizations to improve the ability of minority businesses to compete in the State construction projects.
- (5) The HUB Office also oversees the minority business program by:
 - a. Monitoring compliance with the program requirements.
 - b. Assisting in the implementation of training and technical assistance programs.
 - c. Identifying and implementing outreach efforts to increase the utilization of minority businesses.

- d. Reporting the results of minority business utilization to the Secretary of the Department of Administration, the Governor, and the General Assembly.
2. The University of North Carolina System Office: The University of North Carolina System Office will be responsible for the following:
 - a. Reviewing the apparent low bidders' statutory compliance with the requirements listed in the proposal prior to award of construction contracts within their awarding authority. The State through The University of North Carolina, reserves the right to reject any or all bids and to waive informalities.
 - b. Assisting constituent institutions in monitoring of contractors' compliance with minority business requirements in the contract documents during construction.
 - c. Consulting and advising institutions and affiliates regarding changes in HUB statutes, executive orders, or state procedures.
 - d. Resolving any protest and disputes arising on projects within The University of North Carolina System Office award authority.
3. Constituent Institutions and Affiliates of The University of North Carolina: Before awarding a contract, the constituent institution shall do the following:
 - a. Implement The University of North Carolina HUB plan.
 - b. Attend the scheduled prebid conference.
 - c. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office for Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 1. A description of the work for which the bid is being solicited.
 2. The date, time, and location where bids are to be submitted.
 3. The name of the individual within the owner's organization who will be available to answer questions about the project.
 4. Where bid documents may be reviewed.
 5. Any special requirements that may exist.
 - d. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
 - e. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in its efforts to meet the goals.
 - f. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award to the University of North Carolina.
 - g. Evaluate documentation to determine good faith effort has been achieved for minority business utilization prior to recommendation of award to University of North Carolina.
 - h. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
 - i. Document evidence of implementation of Owner's responsibilities.
4. Designer
Under the single-prime bidding, separate prime bidding, construction manager at risk, design-build, public-private partnership, or alternative contracting method, the designer will:

- a. Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
- b. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
- c. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- d. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f), including the bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce, prior to recommendation of award.
- e. During construction phase of the project, review "MBE Documentation for Contract Payment" – (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the owner.
- f. Make documentation showing evidence of implementation of Designer's responsibilities available for review by The University of North Carolina System Office and HUB Office, upon request.

5. Prime Contractor(s), CM at Risk, Design-Builder, Public-Private Partnership developer and Its First-Tier Subcontractors: Under all construction delivery methods contractor(s) will:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. If there are more than three (3) minority businesses in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires. The notification will include the following:
 - (1) A description of the work for which the subbid is being solicited.
 - (2) The date, time and location where subbids are to be submitted.
 - (3) The name of the individual within the company who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
- d. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
- e. Identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- f. Make documentation showing evidence of implementation of Subcontractor responsibilities available for review by the University of North Carolina System Office and HUB Office, upon request.
- g. Upon being named the apparent low bidder, the Bidder shall provide **one** of the following: (1) an affidavit (Affidavit B) indicating bidder's self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f) and has all material and supplies required for the project. Bidder may be asked to provide additional documentation in support of the claim of self-performance and regarding the Good Faith Effort to utilize minority suppliers where possible. (2) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to

or more than the applicable goal; (3) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal (Affidavit D). Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.

- h. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided for formal contracts (>\$500,000) as required in Article 31 of the General Conditions of the Contract to facilitate payments to the subcontractors.
 - i. The contractor(s) on formal contracts (>\$500,000) shall submit with each monthly pay request(s) and final payment(s), "MBE Documentation for Contract Payment" – (Appendix E), for designer's review. This documentation is also required for contracts under informal bidding, but these projects, typically of shorter duration, may have a single payment request at project completion.
 - j. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner, The University of North Carolina System Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
 - k. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit subbids from minority businesses.
 - l. It is the intent that these requirements apply to all contractors and first tier subcontractor under any of the approved construction delivery methods permitted on state projects.
6. Minority Business Responsibilities: While minority businesses are not required to become certified in order to participate in the State construction projects, it is recommended that they become certified and should take advantage of the appropriate technical assistance that is made available. In addition, minority businesses who are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

SECTION D: DISPUTE PROCEDURES

It is the policy of this state that disputes that involves a person's rights, duties or privileges, should be settled through informal procedures. To that end, minority business disputes arising under these guidelines should be resolved as governed under G.S. 143-128(g).

SECTION E: EFFECTIVE DATE

These guidelines shall apply upon promulgation on university construction projects. Copies of these guidelines may be obtained from The University of North Carolina System Office
website: <https://www.northcarolina.edu/offices-and-services/finance-and-administration/capital-design-and-construction/>.

SECTION F: FORMS

In addition to these guidelines, there will be issued with each construction bid package provisions for contractual compliance providing MBE participation in State, through The University of North Carolina, building projects. An explanation of the process follows, titled "MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)" along with relevant forms for its implementation ("Identification of Minority Business Participation" form, Affidavits A, B, C, D, and Appendix E).

MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)

APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Participation in University of North Carolina Construction Contracts** are hereby made a part of these contract documents. These guidelines shall apply to all contractors regardless of ownership. Copies of these guidelines may be obtained from The University of North Carolina System Office website:

<https://www.northcarolina.edu/offices-and-services/finance-and-administration/capital-design-and-construction/>

MINORITY BUSINESS SUBCONTRACT GOALS:

The minimum goals for participation by minority firms as subcontractors on this project have been set at 10%.

The bidder must identify on its bid (by using the "Identification of Minority Business Participation" form provided in the bid document), the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts **or** affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

Failure to submit these documents is grounds for rejection of the bid. Bid amounts from rejected bids shall not be read aloud at public bid openings.

The lowest responsible, responsive bidder must provide:

Affidavit C, if the portion of work to be performed by minority firms is equal to or greater than 10% of the bidder's total contract price. Affidavit C includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, and lists the participating minority firms with the dollar value of their contracts.

OR

Affidavit D, if the portion of work to be performed by minority firms is less than 10% of the bidder's total contract price. Affidavit D includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, lists the participating minority firms with the dollar value of their contracts, and must include adequate **documentation of Good Faith Effort**.

OR

Affidavit B (with bid), if the bidder does not customarily subcontract work on this type project and has all material and supplies required for the project. Bidder may be asked to provide additional documentation in support of the claim of self-performance and regarding the Good Faith Effort to utilize minority suppliers where possible.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

Summary of required submissions: Use check boxes to assist in ensuring that all appropriate forms are submitted.

ALL BIDDERS MUST SUBMIT TWO FORMS WITH THEIR BID:

€ “Identification of Minority Business Participation” form

AND

€ Affidavit A – “Listing of Good Faith Efforts”

OR (IF APPLICABLE)

€ Affidavit B – “Intent to Perform Contract with Own Workforce”

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid. Bid amounts from rejected bids shall not be read aloud at public bid openings.

=====

**IN ADDITION, THE APPARENT LOWEST
RESPONSIVE, RESPONSIBLE BIDDER SUBMITS:**

€ **Affidavit C** – “Portion of the Work to be Performed by Minority Firms” if the percentage of work to be performed by minority firms is 10% or more. This form is to be submitted within 72 calendar hours of notification of being low bidder.

OR

€ **Affidavit D** – “Good Faith Efforts” if the percentage of work to be performed by minority firms is less than 10%. This form is to be submitted within 72 calendar hours of notification of being low bidder.

The above information is mandatory. Failure to submit these documents is grounds for rejection of the bid.

MINIMUM COMPLIANCE REQUIREMENTS:

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and the State (The University of North Carolina) for performance of this contract. Failure to comply with any of these statements, affidavits or intentions, or with the minority business guidelines shall constitute a breach of the contract. A finding by the State (The University of North Carolina) that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the State (The University of North Carolina) whether to terminate the contract for breach.

In determining whether a contractor has made a Good Faith Effort, the University of North Carolina will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Good Faith Efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government, maintained lists at least 10 days before the bid or proposal date, and notifying them of the nature and scope of the work to be performed.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals were due.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- (5) Attending any prebid meetings scheduled by the public owner.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

Attach to bid

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

The total value of minority business contracting will be (\$)_____.

Attach to bid (as appropriate)

Attach to bid (as appropriate)

Attach to bid (as appropriate)

AFFIDAVIT A
Listing of Good Faith Efforts
(The University of North Carolina)

County of _____

Affidavit of _____

_____ for _____

(Name of Bidder)

(Name of Project)

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.
(1 NC Administrative Code 30 I.0101)

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☐ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

Attach to bid (as appropriate)

Attach to bid (as appropriate)

Attach to bid (as appropriate)

AFFIDAVIT B
Intent to Perform Contract with Own Workforce
(The University of North Carolina)

County of _____

Affidavit of _____

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____

(Name of Project) contract.

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

AFFIDAVIT C

Portion of the Work to be Performed by HUB Certified/Minority Businesses
(The University of North Carolina)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidder's total contract price, then the bidder must complete this affidavit.

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

County of _____

Affidavit of _____ I do hereby certify that on the

(Name of Bidder)

_____ contract.

(Name of Project)

Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	**HUB Certified	Work Description	Dollar Value
		Y / N		
		Y / N		
		Y / N		
		Y / N		
		Y / N		
		Y / N		

* Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

** HUB Certification with the State HUB Office is required to be counted toward state participation goals.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

AFFIDAVIT D

Good Faith Efforts

(The University of North Carolina)

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

If the goal of 10% participation by HUB Certified/minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

County of _____

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

(Project Name)

Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with HUB certified/minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

(Attach additional sheets if required)

Name and Phone Number	*Minority Category	**HUB Certified	Work Description	Dollar Value
		Y / N		
		Y / N		
		Y / N		
		Y / N		
		Y / N		

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

** HUB Certification with the State HUB Office required to be counted toward state participation goals.

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.

F. Copy of pre-bid roster

G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

H. Letter detailing reasons for rejection of minority business due to lack of qualification.

I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

APPENDIX E
MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

MBE FIRM NAME	* INDICATE TYPE OF MBE	AMOUNT PAID THIS MONTH	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

* Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Date: _____

Approved/Certified By: _____

Name

Title

Signature

Signature certifies that any minority firms not previously verified in the bid/award process have been appropriately verified, services have been rendered, and payment is due as processed.

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____

_____ as principal, and _____, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto the State of North Carolina* through _____ as obligee, in the penal sum of _____ DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this ____ day of ____ 20__

WHEREAS, the said principal is herewith submitting proposal for and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

FORM OF CONSTRUCTION CONTRACT

(ALL PRIME CONTRACTS)

THIS AGREEMENT, made the ____ day of _____ in the year of 20__ by and between _____ hereinafter called the Party of the First Part and the *State of North Carolina*, through the *North Carolina Arboretum* hereinafter called the Party of the Second Part.

WITNESSETH:

That the Party of the First Part and the Party of the Second Part for the consideration herein named agree as follows:

1. Scope of Work: The Party of the First Part shall furnish and deliver all of the materials, and perform all of the work in the manner and form as provided by the following enumerated plans, specifications and documents, which are attached hereto and made a part thereof as if fully contained herein: advertisement; Instructions to Bidders; General Conditions; Supplementary General Conditions; specifications; accepted proposal; contract; performance bond; payment bond; power of attorney; workmen's compensation; public liability; property damage and builder's risk insurance certificates; approval of attorney general; certificate by the Office of State Budget and Management, and drawings, titled:

__TNCA Property Fencing Repairs_____

SCO ID# ____25-30700-01_____

Consisting of the following sheets:

Dated: _____ and the following addenda:

Addendum No. ____ Dated: ____ Addendum No. ____ Dated: ____

Addendum No. ____ Dated: ____ Addendum No. ____ Dated: ____

Addendum No. ____ Dated: ____ Addendum No. ____ Dated: ____

Addendum No. ____ Dated: ____ Addendum No. ____ Dated: ____

2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within **120 consecutive calendar days** from said date. For each day in excess thereof, liquidated damages shall be as stated in Supplementary General Conditions. The Party of the First Part, as one of the considerations for the awarding of this

contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days as outlined in Article 14 of the General Conditions of the Contract.

3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

_____ (\$_____)

Summary of Contract Award:

Base Bid:

Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Alternate # - Description of Alt:	_____
Total:	_____

4. In accordance with Article 31 and Article 32 of the General Conditions of the Contract, the Party of the Second Part shall review, and if approved, process the Party of the First Party's pay request within 30 days upon receipt from the Designer. The Party of the Second Part, after reviewing and approving said pay request, shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.

5. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.

6. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Second Party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount, and with such

surety or sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.

7. The Party of the First Part attest that it and all of its subcontractors have fully complied with all requirements of NCGS 64 Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written.

Contractor: (Trade or Corporate Name)

By: _____

Name: _____

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres.
only)

The State of North Carolina, through

The North Carolina Arboretum

(Agency, Department or Institution)

By: _____

Name: _____

Title: _____

Attachments

Form of Performance Bond

Form of Payment Bond

Power of Attorney

Insurance Certificate(s) and Endorsements

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name and Address
of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterpart(s).

Contractor: (Trade or Corporate Name)

By: _____

Name: _____

Title: _____
(Owner, Partner, or Corp. Pres. or Vice
Pres. only)

(Surety Company)

By: _____

Name: _____

Title: _____
(Attorney in Fact)

(Surety Corporate Seal)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name and Address
of Surety: _____

Name of
Contracting Body: _____

Amount of Bond: _____

Project: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterpart(s).

Contractor: (Trade or Corporate Name)

By: _____

Name: _____

Title: _____
(Owner, Partner, or Corp. Pres. or Vice
Pres. only)

(Surety Company)

By: _____

Name: _____

Title: _____
(Attorney in Fact)

(Surety Corporate Seal)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

SHEET FOR ATTACHING POWER OF ATTORNEY

SHEET FOR ATTACHING INSURANCE CERTIFICATES

APPROVAL OF THE ATTORNEY GENERAL

CERTIFICATION BY THE OFFICE OF STATE
BUDGET AND MANAGEMENT

Provision for the payment of money to fall due and payable by the

under this agreement has been provided for by allocation made and is
available for the purpose of carrying out this agreement.

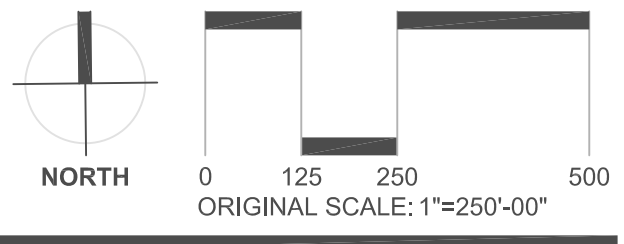
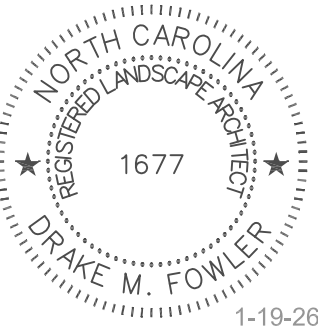
This _____ day of _____ 20____.

Signed _____
Budget Officer



100 Frederick Law Olmsted Way
Asheville, NC 28806
(828) 665-2492

The North Carolina Arboretum Property Fence Layout



ISSUE DATE: 12-12-2025

REVISIONS		
#	DATE	DESCRIPTION

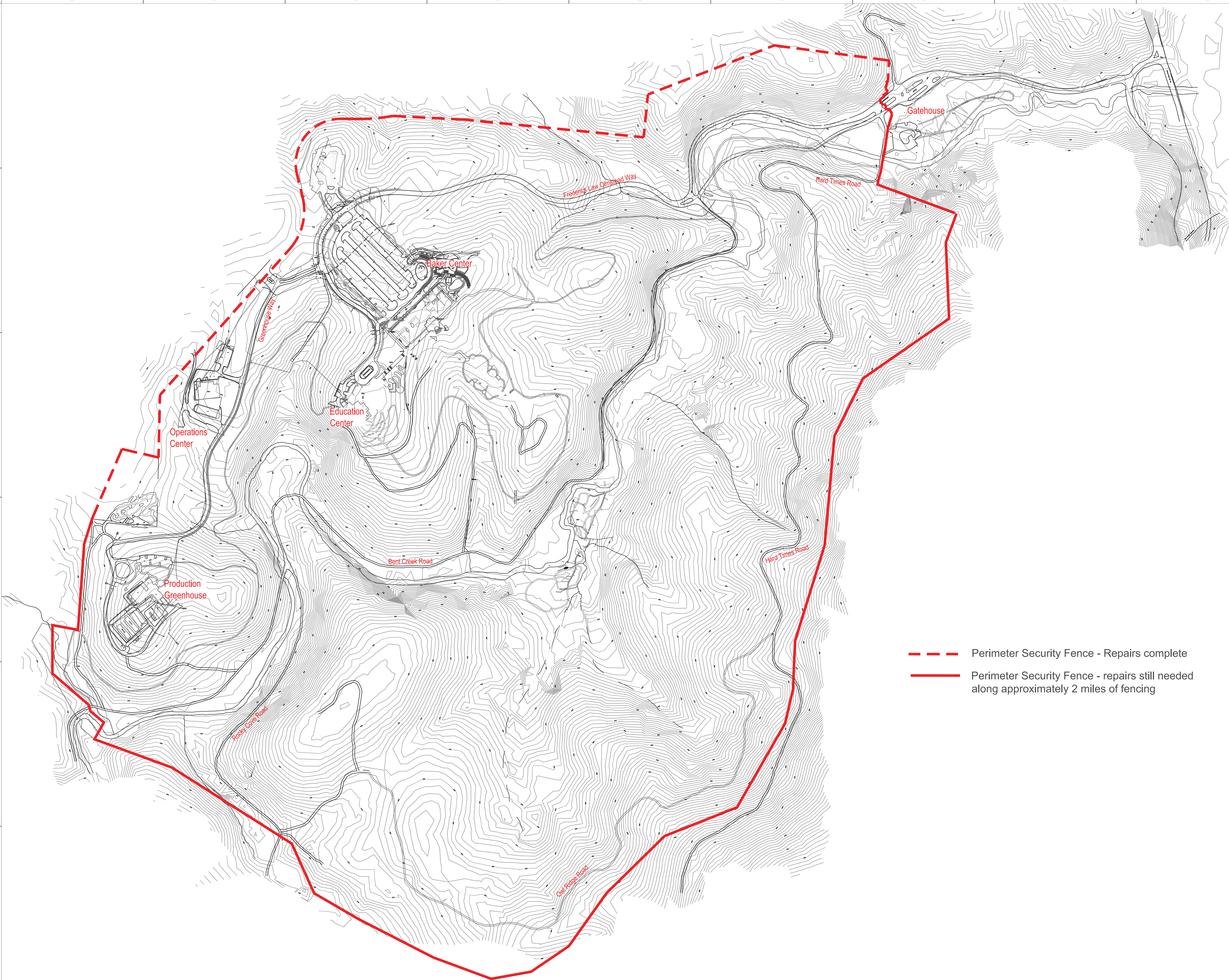
DRAWN: CS REVIEWED: OF

SCO # 25-30700-01

Property Fence Exhibit

SHEET NUMBER

1.0



- Perimeter Security Fence - Repairs complete
- Perimeter Security Fence - repairs still needed along approximately 2 miles of fencing