

STATE OF NORTH CAROLINA STANDARD FORM OF INFORMAL CONTRACT AND GENERAL CONDITIONS

FOR

**Western Carolina University
Cordelia Camp Backfill - Admissions to HFR 1st Floor Upfit
H.F. Robinson Building - 1 University Way
SCO Project ID # 18-18884-01A**

SCOPE OF WORK

Furnish all labor, material, layout, tools, equipment, accessories, hoisting, temporary protection for own work, coordination of own work and interaction with the work of others, field administration, scheduling, project management, field supervision, daily clean-up, engineering and layout, quality control, safety, and closeout required to complete the Work as indicated on the Drawings and Specifications dated 2/22/19 and listed below for the following Scope of Work:

1. DRAWINGS: Cover Sheet, A1.1, A2.1, A3.1, A5.1, A5.2, A6.1, A6.4, A7.1, A8.1, SK.001 and SK.002
2. SPECIFICATION SECTION 064216 – FLUSH WOOD PANELING
3. SPECIFICATION SECTION 079200 – JOINT SEALANTS
4. SPECIFICATION SECTION 095000 - WOOD PANEL CEILINGS
5. SPECIFICATION SECTION 095113 – ACOUSTICAL PANEL CEILINGS

NOTICE TO BIDDERS

Sealed proposals will be received by:

Javier Torres, AIA – University Architect, Western Carolina University
Facilities Management Building
3476 Old Cullowhee Road
Cullowhee, NC, 28723

or

Via email at: jtorres@wcu.edu
828-227-2345

up to **3:00 PM**, on **March 21st, 2019** and immediately thereafter publicly opened and read aloud. Complete plans and specification and contract documents can be obtained by visiting WCU's Facilities Management 'Project Solicitations' webpage found at

<https://www.wcu.edu/discover/campus-services-and-operations/facilities-management/facilities-planning-design-and-construction/project-solicitations.aspx>

If mailing or hand delivering a proposal, please note on the envelope:

**Bid: Attn: Javier Torres, AIA
WCU Cordelia Camp Backfill - Admissions to HFR 1st Floor Upfit
Wood Wall Paneling and Ceilings Bid Package
Bid Date: March 21st, 2019
(Contractor Name)
(License Number)**

Bidders' questions will be entertained in writing until **3:00 PM** on **March 14th, 2019**. Address all questions to University Architect, Javier Torres, AIA at jtorres@wcu.edu.

Contractors are hereby notified that they must have proper license under the State laws governing their respective trades and that North Carolina General Statute 87 will be observed in receiving and awarding contracts. General Contractors must have general license classification for Building, Specialty and/or Unclassified.

No bid may be withdrawn after the opening of bids for a period of 30 days. The Owner reserves the right to reject any or all bids and waive informalities. Bids shall be made only on the BID/ACCEPTANCE form provided herein with all blank spaces for bids properly filled in and all signatures properly executed.

BID/ACCEPTANCE FORM

for

Cordelia Camp Backfill – Admissions to HFR 1st Floor Upfit

SCO ID # 18-18884-01A

1 University Way, Cullowhee, NC 28723

Project description: Complete (turn-key) installation of Flush wood wall paneling, Wood panel ceilings, Acoustical panel ceilings and associated joint sealants.

The undersigned, as bidder, proposes and agrees if this bid is accepted to contract with the State of North Carolina through **Western Carolina University** for the furnishing of all materials, equipment, and labor necessary to complete the construction of the work described in these documents in full and complete accordance with plans, specifications, and contract documents, and to the full and entire satisfaction of the State of North Carolina, the project designers and Western Carolina University for the sum of:

BASE BID: _____ **Dollars \$** _____

Respectively submitted this _____ day of _____ 20____

(Contractor's Name)

Federal ID#: _____

By: _____

Witness: _____

Title: _____

(Owner, partner, corp. Pres. Or Vice President)

(Proprietorship or Partnership)

Address: _____

Attest: (corporation)

Email Address: _____

(Corporate Seal)

By: _____ License #: _____

Title: _____

(Corporation, Secretary./Ass't Secretary.)

ACCEPTED by the STATE OF NORTH CAROLINA

through the

WESTERN CAROLINA UNIVERSITY

Total amount of accepted by the owner: _____

BY: _____ TITLE: _____

Date: _____

GENERAL CONDITIONS

1. GENERAL

It is understood and agreed that by submitting a bid that the Contractor has examined these contract documents, drawings and specifications and has visited the site of the Work, and has satisfied himself relative to the Work to be performed.

2. DEFINITIONS

Owner: "Owner" shall mean, The State of North Carolina through **Western Carolina University**

Contractor: "Contractor" shall mean the entity that will provide the services for the Owner.

Designer: 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 responsible for preparing the project plans and specifications. They will be referred to hereinafter as if each were of the singular number, masculine gender.

Contract Documents: "Contract Documents" shall consist of the Notice to Bidders; General Conditions of the Contract; special conditions if applicable; Supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the bid; the contract; the performance bond if applicable; and insurance certificates. All of these items together form the contract.

INTENT AND EXECUTION OF DOCUMENTS

The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.

In such cases where the nature of the work requires clarification by the Designer/ Owner, the Designer/ Owner shall furnish such clarification. Clarifications and drawings shall be consistent with the intent of the Contract Documents, and shall become a part thereof.

4. AS-BUILT MARKED-UP CONSTRUCTION DOCUMENTS

Contractor shall provide one complete set of legible "as-built" marked-up construction drawings and specifications recording any and all changes made to the original design during the course of construction. In the event no changes occurred, submit construction drawings and specifications set with notation "No Changes." The Designer/Owner must receive "As-built" marked-up construction drawings and specifications before the final pay request can be processed.

5. SUBMITTAL DATA

The Contractor awarded the contract shall submit all specified submittals to the Owner/Designer. A minimum number of copies as specified by the owner, of all required submittal data pertaining to construction, performance and general dimensional criteria of the components listed in the technical specifications shall be submitted. No material or equipment shall be ordered or installed prior to written approval of the submittals by the Designer/Owner. Failure to provide submittal data for review on equipment listed in the technical specifications will result in removal of equipment by the Contractor at his expense if the equipment is not in compliance with the specifications.

6. 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 five (5) days prior to the

receipt of bids or by the date specified in the pre bid conference, 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.

7. WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

The contractor shall maintain, in readable condition at his job site 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 owner, designer or his authorized representative.

The contractor shall maintain at the job site, 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 acceptance of the project.

8. MATERIALS, EQUIPMENT, EMPLOYEES

- a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, 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; the designer prior to the opening of bids shall make such approval or disapproval. 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 approves.

- 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 to the owner or designer, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.
- g. The Contractor shall cooperate with the designer and the owner in coordinating construction activities.
- h. The Contractor shall maintain qualified personnel and effective supervision at the site at all times during the project, and exercise the appropriate quality control program to ensure compliance with the project drawings and specifications. The designer is responsible for determining compliance with the drawings and specifications.

9. CODES, PERMITS AND INSPECTIONS

The Contractor shall obtain the required permits, if required, 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. 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 Owner, he shall bear all cost arising there from.

All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as are applicable.

Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to county or municipal building codes and may* not be subject to inspection by county or municipal authorities. Where appropriate, the Contractor shall, cooperate with the county or municipal authorities by obtaining building permits. The contractor at no cost may obtain permits to the owner.

All fire alarm work shall be in accordance with the latest State Construction Office (SCO) *Guidelines for Fire Alarm Installation* (NFPA72). Where the contract documents are in conflict with the SCO guidelines, the SCO guidelines shall govern. The Contractor shall be responsible for all the costs for the correction of the work where he installs it in conflict with the latest edition of the SCO *Guidelines for Fire Alarm Installation*.

<p>*Inspection and certification of compliance by local authorities is necessary if an architect or engineer was <u>not</u> employed on the project, or if the plans and specifications were not approved and the construction inspected by the State Construction Office.</p>
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10. PROTECTION OF WORK, PROPERTY, THE PUBLIC AND SAFETY

- 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, except as indicated in the Supplemental General Conditions.
- 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 it. 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.
- i. 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 13(b).
- j. 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.

11. SUBCONTRACTS AND SUBCONTRACTORS

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.

12. CONTRACTOR-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. The Owner reserves the right to limit the amount of portions of work to be subcontracted as hereinafter specified.

13. CHANGES IN THE WORK AND CLAIMS FOR EXTRA COST

- 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 approved change 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. Should a claim for extra compensation by the contractor be denied by the designer or the owner, the contractor may pursue his claim in accordance with G.S. 143-135.3.

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 Method "c(1)" or Method "c(2)" 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, Owner and State Construction Office the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c (2) herein. If neither party elects to proceed under c (2), 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 Methods "c(2)" above, the allowances for overhead and profit combined shall be as follows: all contractors (the single contracting entity (prime), his subcontractors (1st tier subs), or their sub-subcontractors (2nd tier subs, 3rd tier subs, etc.) shall be allowed a maximum of 10% on work they each self-perform; the prime contractor shall be allowed a maximum of 5% on contracted work of his 1st tier sub; 1st tier, 2nd tier, 3rd tier, etc. contractors shall be allowed a maximum of 2.5% on the contracted work of their subs. ; Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than 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.
- 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. Change orders shall be submitted by the contractor in writing to the owner/designer for review and approval. 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 lack of proper submittal by the contractor of all required supporting data shall not constitute grounds for a time extension or basis of 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.

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."

- h. 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.
- i. 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 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 to have performed that portion of the work requested in the change order.

14. 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 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 (if applicable) 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 contractor, or the surety (if applicable) 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 (if applicable). 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 (if applicable) 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 (if applicable) shall be liable and shall pay to the owner the amount of said excess.

15. TERMINATION FOR CONVENIENCE

- a. Owner may at any time and for any reason terminate Contractor's services and work at Owner's convenience, after notification to the contractor in writing via certified mail. Upon receipt of such notice, 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, 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 Contractor as approved by Owner; (3) plus ten percent (10%) of the cost of the balance of the work to be completed for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

16. 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.

17. REQUESTS FOR PAYMENT

Contractor shall refer to the Supplemental General Conditions for specific directions on payment schedule, procedures and the name and address where to send applications for payments for this project. It is imperative that invoices be sent only to the above address in order to assure proper and timely delivery and handling.

The Designer/Owner will process all Contractor pay requests as the project progresses. The Contractor shall receive payment within thirty (30) consecutive days after Designer/Owner's approval of each pay request. Payment will only be made for work performed as determined by the Designer/Owner.

Retainage:

- a. Retainage withheld will not exceed 5% at any time.
- b. The same terms apply to general contractor and subcontractors alike.
- c. Following 50% completion of the project no further retainage will be withheld if the contractor/subcontractor has performed their work satisfactorily.
- d. Exceptions:
 1. Owner/Contractor can reinstate retainage if the contractor/subcontractor does not continue to perform satisfactorily.
 2. Following 50% completion of the project, the owner is authorized to withhold additional retainage from a subsequent periodic payment if the amount of retainage withheld falls below 2.5%.

Final payment will be made within forty-five (45) consecutive days after acceptance of the work, receipt of marked-up "as-built" drawings and specifications and the submission both of notarized Contractor's affidavit and final pay request. All pay requests shall be submitted to the Designer/Owner for approval.

THE CONTRACTOR'S FINAL PAYMENT AFFIDAVIT SHALL STATE: "THIS IS TO CERTIFY THAT ALL COSTS OF MATERIALS, EQUIPMENT, LABOR, SUBCONTRACTED WORK, AND ALL ELSE ENTERING INTO THE ACCOMPLISHMENT OF THIS CONTRACT, INCLUDING PAYROLLS, HAVE BEEN PAID IN FULL."

18. PAYMENTS WITHHELD

The designer with the approval of the Owner may withhold payment for the following reasons:

- a. Faulty work not corrected.
- b. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
- c. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- d. The secretary of the Department of Administration may authorize the withholding of payment for the following reasons:
 - i. Claims filed against the contractor or evidence that a claim will be filed.
 - ii. Evidence that subcontractors have not been paid.

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 as provided in 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.

19. MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until the contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the owner. These certificates shall document that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the owner of such alteration or cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

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.

20. ASSIGNMENT

No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the Owner and solely as a convenience to the Contractor, the Owner may: (1) forward the Contractor's payment check directly to any person or entity designated by the Contractor, and (2) include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the Owner to anyone other than the Contractor, and the Contractor shall remain responsible for fulfillment of all contract obligations.

21. CLEANING UP AND RESTORATION OF SITE

The Contractor shall keep the sites and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Before final inspection and acceptance of the project, the Contractor shall thoroughly clean the sites, and completely prepare the project and site for use by the Owner.

At the end of construction, the contractor shall oversee and implement the restoration of the construction site to its original state. Restoration includes but not limited to walks, drives, lawns, trees and shrubs, corridors, stairs and other elements shall be repaired, cleaned or otherwise restored to their original state.

22. GUARANTEE

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 final acceptance of the work and shall replace such defective materials or workmanship without cost to the owner.

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.

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.

Guarantees for roofing workmanship and materials shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

23. STANDARDS

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector which customarily requires the label or re-examination listing or identification marking of appropriate safety standard organization, such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution.

All equipment and products must be independent third party tested and labeled (UL, FM, or CTS) before final connections to Owner services or utilities.

24. 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.

25. 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.

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.

26. MINORITY BUSINESS PARTICIPATION

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority business in total value of work for each State building project.

For construction contracts with a value of less than \$300,000, the Owner has the responsibility to make a good faith effort to solicit minority bids and to attain the goal. The contractor shall include with his bid a completed Identification of HUB Certified/Minority Business Participation form. Contractor shall submit completed Appendix E MBE Documentation for Contract Payments form with final payment request.

For construction contracts with a value of \$300,000 or greater, the contractor shall comply with the document *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Identification of Minority Business Participation, Affidavits A, B, C, and D, and Appendix E. These forms provided herein are hereby incorporated and made a part of this contract.

27. ACCESS TO PERSONS AND RECORDS

The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by the Owner in accordance with General Statute 147-64.7. 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 Owner and/or its project representatives.

28. GOVERNING LAWS

This contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina. The Contractor shall comply with all applicable federal, State and local laws, statutes, ordinances and regulations including, but not limited to, the Omnibus Transportation Act of 1991 and its implementing regulations.

29. 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 projects. In addition to final evaluation, an interim evaluation may be prepared during the progress of project. The owner may request the contractor's comments to evaluate the designer.

SECTION 007300 - SUPPLEMENTAL GENERAL CONDITIONS

PART 1 GENERAL

1.01 SUMMARY

- A. The following Supplementary General Conditions of the Contract augment the State Construction Office, North Carolina Department of Administration Informal Contract "General Conditions".
- B. Where any article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplementary general conditions, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.
- C. Unless otherwise stated, the terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

1.02 ARTICLE 5 - SUBMITTAL DATA

- A. ADD the following paragraph to Article 5:

a. The GC shall submit with initial approval of the design documents for compliance and accuracy, electronic copies in PDF format of all shop drawings and submittals. Physical samples shall be submitted for color and workmanship (mock-up) approval. All Shop Drawings, Samples and Submittals for approval shall be completed within fifteen (15) days after award of the sub-contract agreement between the GC and the specialty subcontractor.

- B. ADD the following paragraph to Article 5:

b. The GC shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions or modifications including those requested by the Designer on previous submittals. In the absence of such written notice, the Designer's approval of a resubmission shall not apply to such revisions.

1.03 ARTICLE 7 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- A. MODIFY the second sentence of Article 7 to read:

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 **and Owner upon request and** at project completion and no later than 30 days after final acceptance of the project.

- B. ADD the following paragraph to Article 7:

The GC shall submit a copy of the daily field reports by its field supervision listing but not limited to personnel on site (including all subcontractors); weather conditions; major scopes of work under construction; material deliveries; safety incidents; progress photographs, and inspections.

1.04 ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

A. ADD the following paragraphs to Article 8:

i. The GC shall provide the Owner a complete list of addresses and emergency telephone numbers for the GC, 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.

j. The GC acknowledges and agrees that, to the best of its knowledge, neither GC nor its employees, representatives or sub-contractors has at any time (1) been charged with personal or professional misconduct; (2) been convicted of any crime (other than traffic fines); (3) been required to register as a sex offender under Title I of the Sex Offender Registration and Notification Act of 2006 (SORNA). GC shall notify Owner immediately should any of the above conditions come into being.

k. The GC and subcontractors at its cost, agrees to perform criminal background checks, using services through companies such as 123nc.com, and screen all its employees, Consultants, and representatives prior to assigning them to perform any Service at Western Carolina University. Such background checks will be made available to Western Carolina University upon request.

l. The GC and subcontractors shall verify the work authorization of all employees that work on Western Carolina University property through E-Verify. Such authorization will be made available to Western Carolina University upon request.

m. Should an accident or disruption occur on the project work site, the GC shall notify Western Carolina University Safety Officer immediately.

n. The GC and each of its subcontractors shall be responsible for security to his/their equipment and the site-stored materials under his/their jurisdiction whether paid for by the Owner or not, until acceptance of the Project.

1.05 ARTICLE 9 – CODES, PERMITS AND INSPECTIONS

A. ADD the following paragraph to Article 9:

k. Minimum of (72) hours prior to any interruption in any minor utility or other services, and minimum 7 days for any interruption of major utility or service, the GC shall request and obtain permission from the Owner for such interruption. Failure of the GC to obtain Owner permission shall not be grounds for an extension of time.

l. Prior to performing any “hot work” or any work above ceiling in existing buildings, the GC shall obtain a permit for such from the Owner’s Facilities Management Department.

m. The GC shall comply with Owner’s Interim Life Safety Plan requirements to maintain egress from all occupied buildings.

n. Upon completion of the Work, the Contractor shall deliver to the Owner original copies of all required certificates of inspection.

1.06 ARTICLE 17 – REQUESTS FOR PAYMENT

A. ADD the following to the first paragraph, Article 17:

Contractor shall submit requests for payment to Owner monthly based on mutually agreed percentage of completion of the work.

1.07 ARTICLE 21 – CLEANING UP AND RESTORATION OF SITE

A. ADD the following paragraph to Article 21:

GC shall comply with Owner's requirements for Interim Life Safety Plan requirements.

1.08 ARTICLE 22 – GUARANTEE

A. ADD the following paragraph to Article 22:

Individual specifications requirements shall have warranties start at the date of Final Acceptance.

1.09 **ARTICLE 30 - TIME OF COMPLETION, DELAYS, EXTENSIONS OF TIME**

A. ADD Article 30 with the heading 'TIME OF COMPLETION, DELAYS, EXTENSIONS OF TIME' and the following language:

- a. **The GC shall commence work to be performed under this agreement on a date to be specified in a written order from the Designer and shall fully complete all work within Twenty-One (21) consecutive calendar days from, and including said date. For each day in excess of the above number of days, the Contractor shall pay to the Owner the sum of \$100 (One-hundred Dollars and 00/100) per day as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said GC to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.**
- b. **The GC agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate or progress as will insure full completion thereof within the time specified.**
- c. **If the Contractor is delayed at any time in the progress of his work by any act or negligence of the Owner, his employees or his 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 days following the cause for delay.**

- d. Time extensions for weather delays, acts of God, labor disputes, fire, 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 delays.
- e. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents.

1.10 ARTICLE 32 - COPIES OF DRAWINGS AND SPECIFICATIONS

- A. ADD Article 31 with the heading 'COPIES OF DRAWINGS AND SPECIFICATIONS' and the following language:

The Designer shall furnish free of charge to the General Contractor (GC) or Construction Manager (CM) an electronic copy in PDF format of the bid documents. Paper copies of drawing sets and specifications shall be furnished at cost, including mailing at the request of the General Contractor or Construction Manager. This cost shall be stated in the bidding documents.

END OF SECTION 007300