

# **BRIDGE PARK GREEN INFRASTRUCTURE IMPROVEMENTS CONTRACT AGREEMENT**

**THIS AGREEMENT** entered into this, \_\_\_\_\_, by and between "Contractor" Grading & Landscaping, Inc. of the State of North Carolina, with its principle office at \_\_\_\_\_, the "Contractor", hereinafter called ("CONTRACTOR"), and the Town of Sylva of 83 Allen Street, Sylva, NC 28779 the "Owner", hereinafter called ("Town").

## **WITNESSETH:**

The Contractor "CONTRACTOR" has entered into a contract dated \_\_\_\_\_ based on the bid submitted on October \_\_\_\_, 2023 hereinafter called (the "Project").

THEREFORE, in consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner "TOWN" and the Contractor "CONTRACTOR" agree as follows:

## **ARTICLE 1 - SCOPE OF WORK**

(1) "CONTRACTOR" shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the Project as described in the attached proposal dated October \_\_\_\_, 2023 and reasonably inferable from the Contract Documents, including any additions, deletions or modifications mutually agreed upon and formally incorporated into the Project.

## **ARTICLE 2 - THE CONTRACT AND CONTRACT DOCUMENTS**

(1) The Contract: The Contract between "CONTRACTOR" and TOWN consists of this document and the other Contract Documents described in Article 2 Section 2, "The Contract Documents". The Contract shall be effective as of \_\_\_\_\_, the date of its approval, and that date shall also be considered the execution date of the Contract.

(2) The Contract Documents: The Contract Documents consist of this Agreement (including all Exhibits, Schedules, and Attachments), the Proposal dated October \_\_\_\_, 2023, and all Construction Documents hereafter prepared by "CONTRACTOR" and approved by TOWN including all written modifications, amendments, minor changes, Change Orders and Field Orders issued hereafter in accordance with this Agreement and the Contract Documents.

## **ARTICLE 3 - GENERAL PROVISIONS**

(1) TOWN and "CONTRACTOR" agree to proceed on the basis of trust, good faith and fair dealing.

(2) "CONTRACTOR" is fully qualified to act as the general contractor for the Project and is, and will remain, licensed to practice general contracting by all public entities that have jurisdiction over "CONTRACTOR" or the Project.

(3) "CONTRACTOR" will maintain all necessary licenses, insurance, permits or other authorizations necessary to act as the Contractor for the Project until "CONTRACTOR"'s duties under this Contract have been satisfied.

(4) The standard of care and standard of services applicable to "CONTRACTOR"'s construction services is the degree of skill and diligence normally employed by providers of technical services, construction professionals, and skilled construction tradesmen and/or staff performing the same and/or similar services.

(5) All notices to "CONTRACTOR" shall be in writing and shall be signed by an authorized representative of TOWN. Such notices can be delivered in person to the official representative of "CONTRACTOR" or mailed to "CONTRACTOR"'s official address listed above. Such delivery in person or by mail shall constitute service of notice.

#### **ARTICLE 4 - INTERPRETATION AND INTENT**

(1) It is the intent of TOWN and "CONTRACTOR" to include all items necessary for the proper execution and completion of the Project. Prior to execution of the Agreement, TOWN and "CONTRACTOR" shall review all the Contract Documents, for any conflicts or ambiguities. TOWN and "CONTRACTOR" will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

(2) The Contract Documents are intended to permit the parties to complete the Project and all obligations required by the Contract Documents within the construction schedule and Contract Price.

(3) The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.

(4) In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, TOWN and "CONTRACTOR" shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 2 Section 2 of The Contract Documents hereof.

(5) If TOWN Project Criteria contain specifications:

(a) "CONTRACTOR" shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in TOWN's Project Criteria which are incorporated in the construction documents

(b) "CONTRACTOR" shall be entitled to an adjustment in the Contract Price and/or Contract Time to the extent "CONTRACTOR"'s cost and/or time of performance have been adversely impacted by such inaccurate design specification as defined on the construction documents.

(6) The Contract Documents for the entire agreement between TOWN and "CONTRACTOR" and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or

other agreements have been made by the parties except as specifically stated in the Contract Documents.

#### **ARTICLE 5 - CONTRACT TIME**

Contract Commencement: The "Commencement Date" is within (60) days of "CONTRACTOR"'s receipt of TOWN's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

(2) Contract Time: The work will be substantially complete and ready for final payment by April 1, 2024. Any delay in the Contract Commencement Date that adversely affects the Project schedule shall not bind "CONTRACTOR" to the original Contract Time and Contract Schedule.

(3) Substantial Completion: Substantial Completion is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete in accordance with the Contract Documents so that TOWN can occupy or use the Project or portion thereof for its intended purposes.

(4) Final Completion: Final Completion of the Project or identified portions of the Project shall be achieved as expeditiously as reasonably practicable and without adverse affect to quality workmanship.

(5) Time is of the Essence:-TOWN and "CONTRACTOR" mutually agree that time is of the essence with respect to maintaining in good faith the schedules, milestones, dates and times set forth in the Contract Documents. Failure to substantially complete the project by April 26, 2024 shall result in a liquidated damage fee of \$1,000 per day payable by CONTRACTOR to TOWN until such time as the project is substantially completed.

#### **ARTICLE 6 - CONTRACT PRICE**

(i) Contract Price: TOWN shall pay "CONTRACTOR" in accordance with the Contract Documents the sum of \_\_\_ and \_\_\_ Dollars (\$) the ("Contract Price"), subject to adjustments made in accordance with The Contract Documents of Article 2 Section 2 hereof.

#### **ARTICLE 7 - PROCEDURE FOR PAYMENT**

(1) Application for Payment: "CONTRACTOR" shall submit to TOWN on the thirtieth (30 th) day of each month, beginning with the first month after the date of Contract Commencement, "CONTRACTOR"'s Application for Payment on the basis for Work completed during the previous month.

(2) Progress Payments: TOWN shall make payment within thirty (30) days after TOWN's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made for Work completed.

(3) Interest: All Payments due and unpaid by TOWN to "CONTRACTOR" shall bear interest commencing {5} days after payment is due at the rate of one and one-half percent (1.5%) per month until paid.

(4) Engineer of Record: Equinox Environmental Consultation and Design, Inc., of 14 O'Henry Avenue Suite 206, Asheville, NC 28801, hereinafter called ("EQUINOX") shall serve as the Engineer of Record for the Project. EQUINOX shall inspect and approve, on behalf of TOWN, the accuracy and workmanship of the work completed in accordance with the contract documents each application for payment prior to progress payment.

(5) Retainage-TOWN **will** retain a portion of the amount due "CONTRACTOR" each progress payment until substantial completion. The amount retained by TOWN shall be limited to the following:

(a) Not more than five percent (5%) of work claimed shall be withheld until the contract reaches fifty percent (50%) completion.

(b) No further retainage shall be withheld from progress payments once the contract has reached fifty percent (50%) completion.

(c) TOWN may reinstate a five percent (5%) retainage after the contract reaches fifty percent (50%) completion in the event Project workmanship or progress become unsatisfactory.

(d) TOWN may withhold additional retainage from progress payments as necessary to maintain a total retainage of not less than two- and one-half percent (2.5%) of contract cost through substantial completion.

(6) Sales Tax Statement: "CONTRACTOR" shall submit to TOWN a North Carolina State sales and use tax statement on materials and equipment incorporated into the project each application for payment.

#### **ARTICLE 8 - SUSPENSION AND TERMINATION**

(1) Termination: Upon (30) day's written notice to "CONTRACTOR", TOWN may, for its convenience and without cause, elect to terminate this Agreement. In such event,-TOWN shall pay "CONTRACTOR" for the following:

(a) All Work executed and for proven loss, cost or expense in connection with the Project;

(b) The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Subcontractors, Engineers and Design Consultants: and

(c) The fair and reasonable sums for overhead and profit on the sum of items (a) and (b) of Article 8 Section 1 above.

(2) Suspension: In the event TOWN directs a suspension of performance, through no fault of "CONTRACTOR", and provided "CONTRACTOR" submits a proper claim as provided in this Contract, TOWN shall pay "CONTRACTOR" as full compensation for such suspension "CONTRACTOR"'s reasonable costs, actually incurred and paid, of:

(a) demobilization and remobilization, including such costs paid to Subcontractors, Engineers and Design Consultants;

(b) preserving and protecting Construction Work in place;

(c) storage of materials or equipment purchased for the Project, including insurance and bonds thereon; and

(d) performing in a later, or during a longer, time frame than that contemplated by the Project Proposal dated October \_\_\_, 2023 and/or the "Contract Documents".

## **ARTICLE 9 – PERFORMANCE BOND AND INSURANCE**

(1) Before commencing Work for the Project, "CONTRACTOR" shall:

a. provide the Performance Bond equal to 100% of the contract price in accordance with the bid requirements for the project;

b. provide TOWN verifying certificates of Insurance from reputable insurers authorized to do business in the state of North Carolina.

(2) Per industry standards, "CONTRACTOR" shall warrant that policies shall not be canceled or changed until at least thirty (30) days prior written notice has been given TOWN.

(3) Unless otherwise required in this Agreement, "CONTRACTOR" shall during the performance of the Contract, maintain in full force and effect Insurance complying with all North Carolina statutory requirements and maintain a minimum insurance coverage during the Project of the types and amounts specified:

- Commercial General Liability – Combined single limit of no less than \$1,000,000 for each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.
- Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a Town of Sylva site.
- Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse the Town of Woodfin as an 'Additional Insured' on the Umbrella or Excess Liability unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

- Worker's Compensation & Employers Liability – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a Waiver of Subrogation.
- Additional Insured – The Contractor agrees to endorse the Town as an Additional Insured on the Commercial General Liability. The Additional Insured shall read Town of Sylva as its interest may appear.
- Certificate of Insurance – Contractor agrees to provide Town of Sylva a Certificate of Insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

Town of Sylva  
83 Allen Street  
Sylva, NC 28779

All primary insurance carriers must be authorized to do business in North Carolina.

#### **ARTICLE 10 - REPRESENTATIVES OF THE PARTIES**

(1) TOWN has designated the person below as its designated representative for general management of this Agreement. Any reference to TOWN herein is a reference to the person named below, but only in such person's capacity as a representative for TOWN.

Name: Jake Scott  
Title: Public Works Director  
Address: 83 Allen Street, Sylva NC 28779

Phone: 828) 586-2719  
Email: [jscott@townofsylva.org](mailto:jscott@townofsylva.org)

For the purpose of correspondence and notices, copies shall be sent to:  
ATTN: Jake Scott  
The Town of Sylva  
83 Allen Street

Sylva, NC 28779

(2) "CONTRACTOR" has designated the person below as its designated representative for general management of this Agreement.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

For the purpose of correspondence and notices to "CONTRACTOR", copies shall be sent to:

ATTN: \_\_\_\_\_

#### **ARTICLE 11 – INDEMNIFICATION**

(1) "CONTRACTOR" and TOWN shall, to the extent that the same may be caused by its own negligence or willful misconduct, defend and indemnify the other, its officers, employees and agents, against and hold them harmless from all liability, damage, cost or expense. Prompt notice shall be given of any such claim.

#### **ARTICLE 12 – WARRANTY**

(1) "CONTRACTOR" warrants to TOWN that all Work will be of good quality and will conform with the Contract Documents. Work not conforming to the requirements of the Contract Documents will be corrected by "CONTRACTOR".

(2) All materials furnished and incorporated into the Project will be of good quality, and free of defects.

#### **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

(1) Governing Laws: The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of North Carolina without regard to its choice of law provisions.

(2) Partial Invalidity: If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

(3) Default: Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.

(4) Non-Disclosure: Except as expressly permitted by the Agreement, "CONTRACTOR" and TOWN shall maintain to each and the other all Proprietary Information in confidence and not disclose it to any third party. TOWN shall handle the Proprietary Information with the same degree of care it applies to its own confidential information, and at a minimum all due care to protect the confidentiality of the Proprietary Information.

**LIST OF EXHIBITS AND CONTRACT SUPPLEMENTS**

- EXHIBIT A                    Proposal/Bid Dated \_\_\_\_\_, 2023
  
- EXHIBIT B                    Insurance
  
- EXHIBIT C                    Plan set Dated September 14, 2023
  
- EXHIBIT D                    Minority Business Contract Provisions
  
- EXHIBIT E                    Application for Payment
  
- EXHIBIT F                    Change Order Form
  
- EXHIBIT G                    State of North Carolina Sales and Use Tax Report Summary

IN EXECUTION of this Agreement as of the date first written above, TOWN and “CONTRACTOR” each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each is duly authorized with the necessary corporate approvals to execute this Agreement, and perform the services described herein.

Client’s Signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name \_\_\_\_\_

Contractor’s Signature \_\_\_\_\_ Date: \_\_\_\_\_

Company: \_\_\_\_\_

Print Name: \_\_\_\_\_



**EXHIBIT A**

**Proposal/Bid Dated \_\_\_\_\_, 2023**

**EXHIBIT B**

**Insurance**

**EXHIBIT C**

**Plan set Dated September 14, 2023**

**EXHIBIT D**

**Minority Business Contract Provisions**

## **GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS**

In accordance with G.S. 143-128.2 (effective January 1, 2002) these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State construction projects in the amount of \$300,000 or more. The legislation provides that the State 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 of North Carolina, as awarding authority 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 - 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, the Pacific Islands;
  - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
  - e. Female
2. Minority Business - means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, 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.
3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637. "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged".
4. Public Entity - means State and all public subdivisions and local governmental units.
5. Owner - The State of North Carolina, through the Agency/Institution named in the contract.
6. Designer – Any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering, work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

8. 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.
9. 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.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk 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 State Construction Office 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. State Construction Office

The State Construction Office will be responsible for the following:

- a. Furnish to the HUB Office a minimum of twenty-one days prior to the bid opening the following:
  - (1) Project description and location;
  - (2) Locations where bidding documents may be reviewed;
  - (3) Name of a representative of the owner who can be contacted during the advertising period to advise who the prospective bidders are;
  - (4) Date, time and location of the bid opening.
  - (5) Date, time and location of prebid conference, if scheduled.
- b. Attending scheduled prebid conference, if necessary, to clarify requirements of the general statutes regarding minority-business participation, including the bidders' responsibilities.

- c. Reviewing the apparent low bidders' statutory compliance with the requirements listed in the proposal, that must be complied with, if the bid is to be considered as responsive, prior to award of contracts. The State reserves the right to reject any or all bids and to waive informalities.
- d. Reviewing of minority business requirements at Preconstruction conference.
- e. Monitoring of contractors' compliance with minority business requirements in the contract documents during construction.
- f. Provide statistical data and required reports to the HUB Office.
- g. Resolve any protest and disputes arising after implementation of the plan, in conjunction with the HUB Office.

### 3. Owner

Before awarding a contract, owner shall do the following:

- a. Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and non-minority businesses.
- 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 an attempt 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 State Construction Office.
- g. Evaluate documentation to determine good faith effort has been achieved for minority business utilization prior to recommendation of award to State Construction Office.
- h. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- i. Make documentation showing evidence of implementation of Owner's responsibilities available for review by State Construction Office and HUB Office, upon request

### 4. Designer

Under the single-prime bidding, separate prime bidding, construction manager at risk, 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) – (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.

- 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 and forward copies to the State Construction Office.
- f. Make documentation showing evidence of implementation of Designer’s responsibilities available for review by State Construction Office and HUB Office, upon request.

5. Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors

Under the single-prime bidding, the separate-prime bidding, construction manager at risk and alternative contracting 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. 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.

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.

- 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 PM, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by State Construction 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 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; (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. 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 as required in Article 31 of the General Conditions of the Contract to facilitate payments to the subcontractors.
- i. The contractor(s) shall submit with each monthly pay request(s) and final payment(s), “MBE Documentation for Contract Payment” – (Appendix E), for designer’s review.
- j. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner, State Construction 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 of these requirements apply to all contractors performing as prime contractor and first tier subcontractor under construction manager at risk 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 4: 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 5:** These guidelines shall apply upon promulgation on state construction projects. Copies of these guidelines may be obtained from the Department of Administration, State Construction Office, (physical address) 301 North Wilmington Street, Suite 450, NC Education Building, Raleigh, North Carolina, 27601-2827, (mail address) 1307 Mail Service Center, Raleigh, North Carolina, 27699-1307, phone (919) 807-4100, Website: [www.nc-sco.com](http://www.nc-sco.com)

**SECTION 6:** In addition to these guidelines, there will be issued with each construction bid package provisions for contractual compliance providing minority business participation in the state construction program.

## MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)

### APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Participation in State 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 Department of Administration, State Construction Office, (physical address) 301 North Wilmington Street, Suite 450, NC Education Building, Raleigh, North Carolina, 27601-2827, (mail address) 1307 Mail Service Center, Raleigh, North Carolina, 27699-1307, phone (919) 807-4100, Website: <http://www.nc-sco.com>

### MINORITY BUSINESS SUBCONTRACT GOALS:

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

The bidder must identify on its bid, 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).

The lowest responsible, responsive bidder must provide 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.

**OR**

Provide Affidavit D, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, **with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal.**

**OR**

Provide Affidavit B, which includes sufficient information for the State to determine that the bidder does not customarily subcontract work on this type project.

**The above information must be provided as required. 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 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 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 whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, the State 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 are 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.

**APPENDIX E**

**MBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments made to Minority Business Enterprises 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), Social and Economically Disadvantage (D)

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_

Name

\_\_\_\_\_ Title

\_\_\_\_\_ Signature

**SUBMIT WITH EACH PAY REQUEST & FINAL PAYMENT**

**EXHIBIT E**

**Application for Payment**

Contractor Address

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**APPLICATION FOR PAYMENT**

To/Owner:

Payment Application Number:

Payment Application Date:

Payment Application Period:

Project Name:

Payment Application Invoice Number:

Project Number

---

**PAYMENT APPLICATION SUMMARY**

Original Contract Amount \_\_\_\_\_  
Net Change by Change Orders \_\_\_\_\_  
Current contract Total \_\_\_\_\_

**TOTAL COMPLETED TO DATE**

Less Retainage of (5/50%) \_\_\_\_\_

**AMOUNT ELIGIBLE TO DATE**

Less Previous Payments \_\_\_\_\_

**AMOUNT DUE THIS INVOICE**

Percentage Completion to Date \_\_\_\_\_

BALANCE TO FINISH, PLUS RETAINAGE \_\_\_\_\_

---

**CHANGE ORDER SUMMARY**

Total changes approved in previous \_\_\_\_\_  
months by Owner

Total approved this Payment Application \_\_\_\_\_  
Totals \_\_\_\_\_

NET CHANGES by Change Order \_\_\_\_\_

---

**Contractor**

We certify to the best of our knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Document without defect, and that all payments for previous work have been made from previous payments received by the Owner. We further certify that the current payment shown herein is now due and that all work, materials and equipment incorporated in this Application for Payment, shall pass to said Owner upon payment free and clear of all Liens, security interests, and encumbrances; except such as are covered by the bond(s) accepted by the Owner indemnifying the Owner.

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**Architect's Certificate for Payment.**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of their knowledge, information and belief the work has progressed as indicated, the quality of workmanship is in accordance with the contract documents, and the Contractor is entitled to payment of the amount certified below.

\_\_\_\_\_  
NAME Date

\_\_\_\_\_  
NAME Date

\_\_\_\_\_  
OWNER Date

\_\_\_\_\_  
Amount Certified

**EXHIBIT F**

**Change Order Form**

CHANGE ORDER NO.



PROJECT:  
CONTRACT FOR:  
CONTRACTOR:

Under the terms of the Contract and without invalidating the original provisions thereof, the following change(s) in work is(are) authorized for the change in contract amount herein set forth: (Description of change order with detailed breakdown attached)

The time of completion including previous orders is \_\_\_ calendar days and shall be (increased) (decreased) (unchanged) by \_\_\_ calendar days by this change order for a revised contract date of completion of \_\_\_\_\_. (Detailed analysis supporting the requirements for a change in duration is attached)

**CONTRACT COST SUMMARY**

					TOTALS
1. Original Contract Amount					\$
2. Amt. of Previous Orders	ADD	\$	Deduct	\$	
3. Amt. of This Order:	ADD	\$	Deduct	\$	
4. Total additions lines 2 &3		\$	Minus Total Deducts:	\$	\$
(Line 4 shall show the net amount to be added or (deducted) from the contract amount.)					
5. Revised Contract Total Amount					\$
6. The Owner certifies that the contingency fund balance after this change is					\$

Fill in one copy only

I certify that my Bonding Company will be notified forthwith that my contract has been (increased) (decreased) 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.

\_\_\_\_\_  
(Contractor) By: \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Designer) By: \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Owner) By: \_\_\_\_\_ (Date)

\_\_\_\_\_  
By: \_\_\_\_\_ (Date)

\_\_\_\_\_  
Other approving Agency (if needed) By: \_\_\_\_\_ (Date)



**REQUEST FOR AUTHORIZATION TO CHANGE**

DATE:

REQUEST NO.:

PROJECT NAME:

OWNER:

CONTRACTOR:

DESIGNER:

CONTRACT FOR:

---

**DESCRIPTION OF CHANGE:**

---

**REASON FOR CHANGE:**

---

**SUMMARY REVIEW OF CONTRACTOR'S ESTIMATE FOR TIME AND COST: (Attach Contractor's detailed cost breakdown of labor and materials).**

---

**DESIGNER SUMMARY:**

1. Schedule items affected by this change:
  
2. Can Contractor mitigate the change without requiring a contract time extension?
  
3. Will the change require a contract time extension for other contractors? Which?
  
4. Are additional costs indicated by reason of the time extension? If so they must be included in 5 & 6 Below.

**CONTRACTOR'S ESTIMATE** \_\_\_\_\_

**DESIGNER'S ESTIMATE** \_\_\_\_\_

5. Estimated cost of change: \_\_\_\_\_

\_\_\_\_\_

6. Estimated time extension field cost (if any) \_\_\_\_\_

\_\_\_\_\_

**DESIGNER RECOMMENDATION AND CERTIFICATION:**

I certify that I have reviewed all aspects of this change order and have determined that it is in the best interest of the owner to have the work accomplished. I have also determined that the cost and time allotment are fair and equitable, and I recommend acceptance by the owner.

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**State of North Carolina Sales and Use Tax Report Summary**

STATE OF NORTH CAROLINA  
 COUNTY SALES AND USE TAX REPORT  
 SUMMARY TOTALS AND CERTIFICATION

CONTRACTOR: \_\_\_\_\_

Page  1  of      

PROJECT: \_\_\_\_\_

FOR PERIOD: \_\_\_\_\_

	TOTAL FOR COUNTY OF:	TOTAL FOR COUNTY OF:	TOTAL FOR COUNTY OF:	TOTAL FOR COUNTY OF:	TOTAL FOR COUNTY OF:	TOTAL FOR COUNTY OF:	TOTAL ALL COUNTIES
CONTRACTOR							
SUBCONTRACTOR(S)*							
COUNTY TOTAL							

\* Attach subcontractor(s) report(s)  
 \*\* Must balance with Detail Sheet(s)

I certify that the above figures do not include any tax paid on supplies, tools and equipment which were used to perform this contract and only includes those building materials, supplies, fixtures and equipment which actually became a part of or annexed to the building or structure. I certify that, to the best of my knowledge, the information provided here is true, correct, and complete.

Sworn to and subscribed before me,

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
 Signed

\_\_\_\_\_  
 Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
 Print or Type Name of Above

Seal

NOTE:  
 This certified statement may be subject to audit.

STATE OF NORTH CAROLINA  
SALES AND USE TAX REPORT DETAIL

CONTRACTOR: \_\_\_\_\_

Page  2  of \_\_\_\_\_

SUBCONTRACTOR \_\_\_\_\_

FOR PERIOD: \_\_\_\_\_

PROJECT: \_\_\_\_\_

PURCHASE DATE	VENDOR NAME	INVOICE NUMBER	TYPE OF PROPERTY	INVOICE TOTAL	COUNTY TAX PAID	COUNTY OF SALE *
				\$	\$	
				<b>TOTAL:</b>	<b>\$</b>	

\* If this is an out-of-state vendor, the County of Sale should be the county to which the merchandise was shipped.