

**PAYMENT BOND**

Date of Execution: March 31, 2009

Name of Principal: L&H Signs, Inc.  
(Contractor)

Name of Surety: Hartford Fire Insurance Company

Name of Contracting Body: Buncombe County Tourism Development Authority  
One Million Two Hundred Forty-Nine Thousand  
Amount of Bond: Nine Hundred Twenty-Nine and no/100--(\$1,249,929.00)

Project: Asheville Area Wayfinding Program  
Project No.: 2937

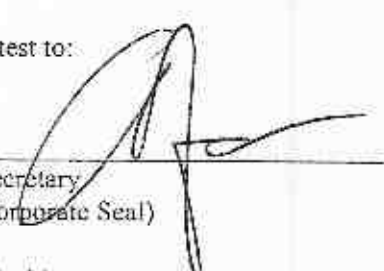
KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, (hereinafter referred to as "Contracting Body"), in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

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

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


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

Attest to:

  
Secretary  
(Corporate Seal)

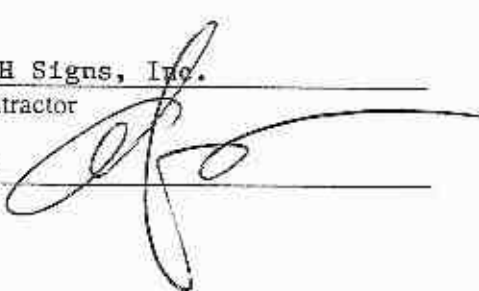
Attest for:

Surety  
Witness:

  
~~Secretary~~ Luella G. Rauffman  
(Corporate Seal)

L&H Signs, Inc.  
Contractor

By:

  
Hartford Fire Insurance Company

By:

Kimberly A. Horning  
Kimberly A. Horning, Attorney-in-fact

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

P.O. BOX 2103, 690 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06115

call: 888-266-3488 or fax: 860-757-5835

Agency Code: 44-410622

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- ☒ **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- ☒ **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- ☐ **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- ☐ **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- ☐ **Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

David R. Bradbury, Luella G. Kauffman, Anthony M. Macinanti, Timothy C. Hoagland, Kitty A. Cassell, Heidi R. Brutko,  
Jamie J. Womer, Kimberly A. Homing, Brent D. Headley, Lydia A. Mantle, R. Scott Miller, Stephanie L. Bankert  
of  
Lancaster, PA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on January 22, 2004 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergenholtz*

Paul A. Bergenholtz, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Assistant Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 3rd day of March, 2008, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Assistant Vice President of the Companies; the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Scott E. Paseka*

Scott E. Paseka  
Notary Public

My Commission Expires October 31, 2012

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of March 31, 2009.

Signed and sealed at the City of Hartford.



*Gary W. Stumper*

Gary W. Stumper, Assistant Vice President

## APPLICATION FOR PAYMENT

PROJECT: Asheville Area Wayfinding Program

Date: \_\_\_\_\_

Date of Notice to Proceed: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Days Remaining in Contract: \_\_\_\_\_

%Complete: \_\_\_\_\_

ENGINEER: Mattem & Craig, Inc., Asheville, NC

CONTRACTOR:	_____	Federal ID # _____
SUMMARY:	TOTAL WORK COMPLETED TO DATE:	\$ _____
	TOTAL STORED MATERIALS	\$ _____
	TOTAL EARNED THIS APPLICATION	\$ _____
	LESS RETAINAGE	\$ _____
	SUBTOTAL	\$ _____
	LESS PREVIOUS PAYMENTS	\$ _____
	CURRENT PAYMENT DUE	\$ _____

SIGNATURES:

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

_____ Name	_____ Title	_____ Date
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VERIFICATION:

IN ACCORDANCE WITH THE CONTRACT AND  
THIS APPLICATION FOR PAYMENT, THE  
CONTRACTOR HAS COMPLETED THE WORK  
STATED ABOVE AND IS ENTITLED THE FULL  
PAYMENT IN THE AMOUNT SHOWN.

CONSTRUCTION INSPECTOR

_____ Name	_____ Title	_____ Date
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CONSTRUCTION INSPECTOR SENIOR

_____ Name	_____ Title	_____ Date
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APPROVAL:

THIS APPLICATION HEREBY APPROVED FOR PAYMENT:  
ENGINEER:

_____ Name	_____ Title	_____ Date
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APPROVAL:

THIS APPLICATION IS HEREBY APPROVED FOR PAYMENT:  
BUNCOMBE CO TOURISM DEVELOPMENT AUTHORITY REPRESENTATIVE

_____ Name	_____ Title	_____ Date
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## CONSENT TO CHANGE ORDER

The undersigned contractor, \_\_\_\_\_ and its surety, \_\_\_\_\_, indicated on the Payment Bond for the project identified as Asheville Area Wayfinding Program, do hereby consent on behalf of themselves, their successors and assigns, to an increase in the amount of \$ \_\_\_\_\_ to the original (revised) contract price in the amount of \$ \_\_\_\_\_ as set forth in the Change Order Number \_\_\_\_\_ to said contract.

IN WITNESS WHEREOF, each party has caused this agreement to be executed by its duly authorized official as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
(Principal) Secretary  
(Corporate Seal)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety) Secretary  
(Corporate Seal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that \_\_\_\_\_, personally came before me this day and acknowledged that (he/she) is the Secretary of \_\_\_\_\_, a corporation, and that by authority duly given as the act of the corporation the foregoing instrument was signed in its name by its President and attested by (himself/herself) as its Secretary.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



# ASHEVILLE

**DRUG FREE WORKPLACE**

**DRUG FREE WORKPLACE CERTIFICATION**

L&H Signs, Inc

(Contractor's Name)

, Contractor with the Buncombe County Tourism  
Development Authority for the project know as Asheville Area Wayfinding Program,

certifies that the City's Drug Free Workplace Policy, as set forth in Resolution No. 96-75, has been

reviewed by or explained to the officers, agents and employees of L&H Signs, Inc, and  
(Contractor's Name)

L&H Signs, Inc

(Contractor's Name)


hereby agrees that said Policy is a part of this Contract and  
further certifies that L&H Signs, Inc will comply with the requirements thereof.  
(Contractor's Name)

This the 26th day of February, 2009

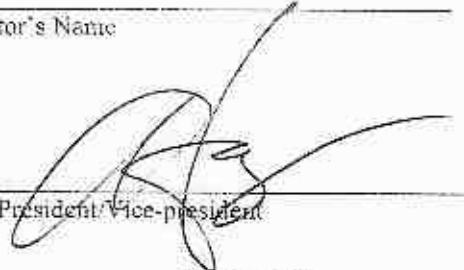
L&H Signs, Inc

Contractor's Name


Attest:

  
Secretary/Treasurer

By:

  
President/Vice-president

SWORN TO AND SUBSCRIBED before me this 26th day of February,  
2009

  
Notary Public

My Commission Expires Aug 26, 2012

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Christine S. Gabel, Notary Public  
Marion Twp., Berks County  
My Commission Expires Aug. 28, 2012  
Member: Pennsylvania Association of Notaries

# ASHEVILLE

## EROSION CONTROL STATEMENT

01230

**EROSION CONTROL STATEMENT**

This Erosion Control Statement shall be attached to and become part of the Contract Documents for the project entitled:

Asheville Area Wayfinding Program

The subject project, as designed, disturbs less than one (1) contiguous acre of land and therefore does not require an erosion control permit under the current guidelines set forth by the North Carolina Department of Environment, Health and Natural Resources, Land Quality Section.

This statement also affirms that property and timely installation and maintenance of erosion and sedimentation control measures and devices as well as minimal impact construction scheduling shall be employed for the subject project in efforts to reduce on-site erosion and off-site sedimentation.

Signature \_\_\_\_\_

This Erosion Control Statement is issued this \_\_\_\_\_

4-7-09

# ASHEVILLE

**MINORITY BUSINESS**

# CHECKLIST

## FOR REVIEW OF GOOD FAITH EFFORTS

(MB Form 1 due on day of bid and MB Form 1A and MB Form 3 must accompany this form at bid opening or within 72 hours of bid opening)

1. Have you attended any of the pre-bid conferences scheduled?  
( ☒ ) Yes ( ) No (Where and date)
2. Have you advertised for at least three (3) consecutive days in general circulation, trade association, construction and minority focused media regarding subcontracting opportunities with your firm at least fifteen (15) days prior to bid opening on formal projects?  
( ) Yes ( ☒ ) No (Show how and attach proof)
3. Have you utilized the services of the City and County's Minority Affairs Office, available minority community organizations, minority contractors' group, local, state and federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of minorities and women? ( ) Yes ( ☒ ) No (Show how)
4. Have you provided interested MBs with adequate and equal access to information about the plans, specifications and requirements of the contract and insurance or licenses?  
( ) Yes ( ☒ ) No
5. Did you provide written notice to all appropriate certified MBs within the identified subcontracting/supplier/service categories that their interest in the contract was being solicited and in sufficient time to allow the MBs to participate? Additionally, did the solicitation contain a description and location of the project, the work for which the subcontractors' bids are being solicited, date, time and location where the subcontractors' bids are to be submitted, locations where bidding documents could be reviewed? ( ) Yes ( ☒ ) No
6. Have you selected portions of the work to be performed by MBs in order to increase the likelihood of meeting MB goals including breaking it into economically feasible units where appropriate?  
( ) Yes ( ☒ ) No
7. Have you designated someone in your firm to be the single contact for MBs that may have questions, etc.? ( ) Yes ( ☒ ) No (Please indicate name of person and title)
8. Have you worked with the Office of Minority Affairs Office in developing and administering areas of technical assistance for MBs, i.e. bonding, lines of credit or insurance?  
( ) Yes ( ☒ ) No
9. Did you follow up initial solicitations of interest by contacting MBs to determine with certainty whether they are interested in bidding? ( ) Yes ( ☒ ) No
10. Did you negotiate in good faith with interested MBs, not rejecting MBs as unqualified without sound reasons based on a thorough investigation of their capabilities?  
( ) Yes ( ☒ ) No (Show how)

Signature

Title



# MINORITY BUSINESS PLAN MINIMUM COMPLIANCE REQUIREMENTS:

The annual verifiable goals for minority business participation in construction projects, procurement projects, professional and other service projects are as follows:

<u>CONSTRUCTION</u>	<u>COUNTY</u>	<u>CITY</u>
African Americans	12% Overall	3%
Hispanic, Asian & Native Americans	for all	1%
Women	minorities	8%
<u>PROCUREMENT</u>	<u>COUNTY</u>	<u>CITY</u>
African Americans	10% Overall	5%
Hispanic, Asian & Native Americans	for all	2%
Women	minorities	18%
<u>PROFESSIONAL SERVICES</u>	<u>COUNTY</u>	<u>CITY</u>
African Americans	10% Overall	7%
Hispanic, Asian & Native Americans	for all	7%
Women	minorities	37%
<u>OTHER SERVICES</u>	<u>COUNTY</u>	<u>CITY</u>
African Americans	10% Overall	10%
Hispanic, Asian & Native Americans	for all	2%
Women	minorities	18%

Effective January 1, 2000, the Minority Business Plan changed to include a 72-hour delay for minimum compliance. The Bidder must provide, with the bid, documented proof in the form of MB (Minority Business) Form 1 (MB Utilization Commitment) or MB Form 2 (Letter of Intent To Perform Work Without Subcontracting) that goals have been met or exceeded. Other forms must be submitted, as noted in the following statements, with the MB Form 1 either at the time the bid is due (by any bidder) or 72 hours after the bid opening by the lowest bidder. The following is a description of the Minority Business Forms and what a bidder must do to submit a responsible bid.

- Good Faith Checklist – This checklist provides ways in which the general contractor can actively work to increase participation by minority and women owned firms. Please answer all questions honestly and provide supporting documentation. Failure to provide this evidence may result in rejection of the bid and award to the next lowest responsible bidder. **MB Form 1, MB Form 1A, MB Form 3 must accompany this form.**
- MB Form 1 (MB Utilization Commitment) – This form states the amount of MB participation. Because of the 72-hour delay policy, the bidder must turn this form in at the time of the bid. The bidder can turn in the remaining "good faith effort" documentation in 72 hours or at the time of the bid. **The Good Faith Checklist, MB Form 1A, MB Form 3 must accompany this form.**
- MB Form 1A (MB Unavailability – Subcontracting, Supplies And/Or Services) – This form is very important because general contractors will need to list all of the minority and women owned firms contacted for a project bid that were unavailable to bid. This form must include any copies of correspondence, faxes, phone logs, etc. to document good faith effort made to meet the goals and provide MB's opportunities to participate in significant materials or services opportunities available. **The Good Faith Checklist, MB Form 1, MB Form 3 must accompany this form.**

- MB Form 2 (Letter Of Intent To Perform Work Without Subcontracting) – This form provides information sufficient for the City of Asheville or Buncombe County to determine that the Bidder does not customarily subcontract work on this type of project. **This form does not need to be accompanied by any other MB Form and must be turned in with the bid.**
- MB Form 3 (Letter Of Intent To Perform As A Subcontractor, Or Provide Materials Or Services) – This form is to be completed and signed by each certified minority or woman owned firm that will provide services, supplies, etc. and submitted with the general contractor's bid. These minority and woman owned firms must be also listed in MB Form 1. **The Good Faith Checklist, MB Form 1, MB Form 1A must accompany this form.**
- MB Form 4 (For Building Construction) – This form is used by the bidder if he/she is submitting a separate specification contract bid. **The Good Faith Checklist, MB Form 1, MB Form 1A and MB Form 3 must accompany this form.**

**If the MB subcontract goals are not achieved, the Bidder must provide the following documentation to the City of Asheville and Buncombe County:**

1. MB Utilization Commitment (MB Form 1) with the bid.
2. Documentation of Bidder's best faith efforts to meet the goals set forth in these provisions must be submitted with the bid or within 72 hours of the bid opening. This documentation must include but not limited to the following evidence:
  - a. Copies of solicitations for quotes to MB firms from the Directory Certified of Minority Businesses provided by the Office of Minority Affairs. Each solicitation must contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received by the Prime Bidder.
  - b. Copies of quotes or responses from each firm responding to the solicitation.
  - c. Documentation of any contacts, correspondence or conversation with MB firms made in an attempt to meet the goals.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible bidder. The City of Asheville and Buncombe County reserve the right to waive any informality if they can be resolved prior to award of the contract and it is in their best interest to do so and award the contract. If the successful contractor fails to make or maintain best faith efforts to meet or maintain goals for minority business participation, there may be a penalty of 5% of the contract price imposed.

## **SUBCONTRACTING PAYMENT REQUIREMENTS:**

North Carolina General Statute 143-134.1 states that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the City of Asheville and Buncombe County to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and contract may be terminated in accordance with the termination provisions of the contract.

The Contractor must provide to the City of Asheville and Buncombe County an itemized statement of payments made to each MB subcontractor with each request for payment and before final payment. **The Office of Minority Affairs will send a copy of the MB Form(s) necessary to report payment information to the successful bidder. These forms include the following:**

1. MB Form 4-A – This form is documentation of monthly contract payments by general contractors to minority and women firms. Our office monitors projects by the City and County to ensure that all parties are meeting their obligations and to be a liason when problems arise. Please direct this form to the appropriate city or county agency and the Office of Minority Affairs, One Oak Plaza, Suite 104, Asheville, NC 28801. If you have questions, please contact us at (828) 250-4120.
2. MB Form 4-B – This form is documentation of quarterly contact payments to minority and women firms from general contractors. Our office provides quarterly updates on minority and women firm's participation percentages and this information is vital to that reporting.
3. MB Form 5 – This form is a documentation of the total (final) contract payment made by the general contractor to minority and woman subcontractors. General contractors need to complete this form and submit with final payment requests to the City or the County. This form must additionally be sent to the Office of Minority Affairs, One Oak Plaza, Suite 104, Asheville, NC 28801. If you have questions, please contact our office at (828) 250-4120. Our office monitors the completion of projects and ensures that the minority and women firms are paid in a timely manner.

## **PROGRAM COMPLIANCE REQUIREMENTS:**

All written statements, certifications or intentions made by the Bidder shall become a part of the agreement between the Contractor, the City of Asheville or Buncombe County for performance of this contract. Failure to comply with any of these statements, certifications or intentions or with the MB Plan shall constitute a breach of the contract. A finding by the City of Asheville or Buncombe County that any information submitted either prior to award of the contract or during 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 City of Asheville or Buncombe County whether to terminate the contract for breach.

In determining whether a contractor has made best faith efforts, the City of Asheville and Buncombe County will evaluate all efforts made by the Contractor and will determine compliance in regards to quantity intensity, and results of these efforts. Both of these governmental bodies may take into account those factors listed in the MB Plan.

**MB FORM 1**  
**MB UTILIZATION COMMITMENT**

(Must be submitted with bid - MB Form 1A and MB Form 3 can be submitted with bid or within 72 hours of bid opening)

We, L&H Signs, Inc, do certify that on the

Asheville Area Wayfinding Project

(Project Name)

2937

(Project Number)

1,103,321

(Dollar Amount of Bid)

we will expend a minimum of 0 % of the total dollar amount of the contract with minority business enterprises. MBs will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. If the Bidder intends to subcontract, this form must be completed and submitted with the bid and documentation of good faith efforts regardless of the amount or lack of participation attained.  
**CERTIFIED MINORITY FIRMS MUST COMPLETE MB FORM 3 TO BE SUBMITTED WITH BID OR WITHIN 72 HOURS OF THE BID OPENING.**

Name and Phone Number of Firm	Indicate MB Category	Description of Work	Dollar Value
Crawford Sign Co	n/a	Installation	355,000

The undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that s/he has read the terms of this commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: February 26, 2009

L&H Signs, Inc

(Name of Bidder)

By: 

Title: President





## ASHEVILLE ~ BUNCOMBE

Office of Minority Affairs  
205 College Street, Suite 200  
Asheville, NC 28801

Brenda G. Mills, Director  
Phone (828) 250-4120  
Fax (828) 251-4943



January 12, 2000

### MINORITY BUSINESS PLAN CHANGES AND FORMS REVISIONS

In December 1999, the Board of Commissioners and the Asheville City Council approved changes to the Minority Business Plan. This policy went into affect January 1, 2000. The attached forms are a reflection of the 72-Hour Delay Policy for providing "Good Faith Efforts" documentation following bid opening. Please read the attached documents carefully!

We mailed you a copy of the current Minority Business Plan (revised 12/99). Please refer to pages 8-9 for further explanation of the 72-Hour Delay Policy. If you have questions, please contact our office.

**Please destroy any forms that do not have the new revision date of January 2000. Our office is continuously making all efforts to make the forms as easy to manage, complete and understand as possible and your help is greatly appreciated. Please share these documents with members of your staff who will need them.**

Buncombe County Employees may retrieve these forms at any time from the N drive. The current forms will always be found there for your use.

**If you have any questions, please feel free to contact our office at any time. We welcome your comments and appreciate your efforts to increase minority business participation!**

# ASHEVILLE

**GENERAL CONDITIONS  
&  
SUPPLEMENTARY CONDITIONS**



## **SUPPLEMENTARY CONDITIONS**

**GENERAL CONDITIONS:** The "General Conditions of the Contract for Construction", AIA Document A201-1997, Fifteenth Edition, Articles 1 through 14 inclusive, (the "General Conditions"), is a part of this contract, and is incorporated herein as fully as if here set forth.

**SUPPLEMENTS:** The following supplements modify, change, delete or add to the General Conditions. Where any part of the General Conditions is modified or voided by these Supplementary General Conditions, the unaltered provisions of that part shall remain in effect.

**ANY AND ALL REFERENCES TO THE "ARCHITECT" IN THESE GENERAL CONDITIONS SHALL BE AGREED TO REFER TO MATTERN & CRAIG, INC. AS THE CONSTRUCTION ADMINISTRATOR AND MERJE DESIGN AS THE DESIGN ENGINEER.**

### **ARTICLE 1. GENERAL PROVISIONS**

#### **Subparagraph 1.3.1**

Delete the subparagraph in its entirety and substitute in lieu thereof the following:

Terms capitalized in these General Conditions include those, which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other published documents.

### **ARTICLE 2. OWNER**

#### **Subparagraph 2.1.2**

Delete the subparagraph in its entirety.

#### **Subparagraph 2.2.1**

Delete the subparagraph in its entirety.

#### **Subparagraph 2.2.3**

Delete the subparagraph in its entirety.

### **ARTICLE 3. CONTRACTOR**

#### **Subparagraph 3.3.1**

Delete the last sentence in its entirety.

#### **Subparagraph 3.5.1**

Add to the last line the following: To the extent conforming work is damaged resulting from nonconforming work, this warranty obligation will require the correction of such damaged work.

#### **Subparagraph 3.11.1**

Delete the last sentence and substitute in lieu thereof the following:

These shall be d to the Owner upon completion of the Work.

Subparagraph 3.17.1

Delete the subparagraph in its entirety and substitute the following: The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of copyrights and patent rights and shall save the Owner harmless from loss on account thereof.

3.18.1 delete and replace with:

To the fullest extent permitted by law, Contractor and Architect shall indemnify, hold harmless and defend the Owner from any and all damages, claims, costs, judgments, expenses, penalties, fines or other losses, including reasonable attorney's fees, arising out of or related to the Contractor's or Architect's, or anyone for whose acts or omissions the Contractor is liable for, failure to perform this agreement, or to for Contractor's or Architect's negligent acts and omissions. This obligation of indemnity shall survive the termination of this Agreement and shall include an obligation to indemnify the Owner against any and all statutory fines or penalties and against any claims of lien which may be filed by any party associated with this Project. To the extent that any portion of this Agreement is determined to be invalid, the Parties agree that this provision may be judicially modified to reflect the maximum obligation of indemnity permitted by law.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

Subparagraph 4.4.3

Delete the last sentence in it entirety.

Subparagraph 4.4.8

Delete the subparagraph in its entirety.

Sub-articles 4.5 and 4.6

Delete the sub-articles in their entirety, including subparagraphs 4.5.1, 4.5.2, 4.5.3, 4.6.1, 4.6.2, 4.6.3, 4.6.4, 4.6.5 and 4.6.6, and substitute in lieu thereof a new sub-article 4.5 as follows:

All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, except as provided in subparagraph 4.2.13 with respect to the Architect's decisions on matters relating to artistic effect, shall be decided by a civil action or civil actions, which shall be commenced, heard and tried only in Buncombe County, North Carolina. Each party hereby waives any right or claim for a change of venue from Buncombe County, North Carolina. This paragraph shall be effective notwithstanding any other provisions to the contrary in any of the Contract Documents or supplements thereto. Nothing herein shall, however, prevent the Contractor and the Owner from mutual agreement to submit claims, disputes or other matters in question to arbitration, either binding or non-binding, or to mediation.

ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTOR

Subparagraph 6.1.4

Delete the subparagraph in its entirety.

Subparagraph 6.2.3

Delete the subparagraph in its entirety.

#### ARTICLE 8, TIME

##### Subparagraph 8.2.2

Delete the phrase "and Owner" from the third line of the subparagraph.

##### Sub-article 8.3.1, Delays and Extensions of Time

Delete the phrase "pending mediation and arbitration" from the fifth line.

Add the following sub-articles and subparagraphs:

##### Sub-article 8.4, Liquidated Damages

- 8.4.1 The Work to be performed under this Contract shall be commenced with 14 calendar days after the date of written notice by the Owner to the Contractor to proceed.

The Work shall be completed within 150 calendar days after the date of such notice and within such extensions of time as provided for the Contract.

- 8.4.2 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress and the time for completion of the Work to be done thereunder are ESSENTIAL CONDITIONS and are OF THE ESSENCE of this Contract. The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and construction conditions prevailing in this locality.
- 8.4.3 IF THE CONTRACTOR SHALL NEGLECT, FAIL, OR REFUSE TO COMPLETE THE WORK WITHIN THE TIME HEREIN SPECIFIED, THEN the Contractor does hereby agree, as a part of the consideration for the awarding of this Contract to pay to the Owner the sum of Five Hundred Dollars (\$500.00), not as a penalty, but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.
- 8.4.4 The said amount of Five Hundred Dollars (\$500.00) per day is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event, sustain, and said amounts shall be retained from time to time by the Owner from current applications for payment.
- 8.4.5 It is further agreed that time is of the essence to each and every portion of this Contract and to the specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this Contract.

##### Sub-article 8.5, Prosecution of Work

- 8.5.1 The Contractor will be required to prosecute the Work in a continuous and uninterrupted manner from the time he receives the Notice to Proceed until completion and final acceptance of the project. The contractor will not be permitted to suspend his operations except for reasons beyond his control, except where the Owner's Representative has authorized a suspension of the Contractor's operations in writing.

#### ARTICLE 9, PAYMENTS AND COMPLETION

##### Subparagraph 9.7.1

Delete the phrase "or awarded by arbitration" in the fourth line of the subparagraph.

Delete the last sentence in its entirety.

##### Subparagraph 9.8.2

Add a new second sentence to the subparagraph as follows:

The Contractor shall proceed promptly to complete and correct items on the list.

##### Subparagraph 9.91

Delete the phrase "consented to by the insurer as required under Clause 11.4.1.5".

#### ARTICLE 10, PROTECTION OF PERSONS AND PROPERTY

##### Subparagraph 10.3.2

Revise the third sentence to read as follows:

The Contractor and the Architect will reply to the Owner within 24 hours in writing stating whether or not either has reasonable objection to the person or entities proposed by the Owner.

Delete the last sentence of the subparagraph in its entirety.

##### Subparagraph 10.3.3

Delete this subparagraph in its entirety.

##### Subparagraph 10.5

Delete this sub-article in its entirety.

#### ARTICLE 11, INSURANCE AND BOND

##### Sub-article 11.1, Contractor's Liability Insurance

##### Subparagraphs 11.1.1, 11.1.2, and 11.1.3.

Delete these sub-article 11.1, including subparagraphs 11.1.1, 11.1.2 and 11.1.3 in their entirety and substitute in lieu there the following:

- 11.1.1 Contractor shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed will provide protection from claims set forth below which may arise out of or result from Contractor's other obligations under the Contract.

Documents, whether it is to be performed or furnished by Contractor, by any Sub-contractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for those acts any of them may be liable.

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts.
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employee;
4. Claims for damages insured by personal injury liability coverage, which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason.
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from;
6. Claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property;
7. Claims for damages because of bodily injury or death, of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by subparagraph 11.1.1, shall include the specific coverage's and be written for not less than the limits of liability and coverage's provided in the sub-paragraph 11.1.3, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance and X, C, U coverage. Contractor shall maintain such completed operations insurance for at least two years after final payment and furnish Owner with evidence of continuation of such insurance at final payment and one year thereafter.

11.1.3 The insurance required by sub-paragraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

1. Workers' Compensation and Employer's Liability:
  - a. Workers' Compensation: Statutory
  - b. Employer's Liability:

\$ 100,000 each accident
\$ 500,000 total disease
\$ 100,000 per employee disease
2. Commercial General Liability:
  - a. General Aggregate \$ 2,000,000
  - b. Each Occurrence \$ 1,000,000
  - c. Products/Completed Operations \$ 2,000,000 (aggregate)
3. Commercial Auto Liability:

Combined Single Limit	\$ 1,000,000
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4. Excess (Umbrella) Liability

- 11.1.4 Contractor shall purchase and maintain the same type of "all risk" insurance for portions of the Work stored off the site or in transit when such portions of the Work are to be included in an application for payment. The Contractor shall be responsible for the payment of any deductible amounts associated with this insurance.
- 11.1.5 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with sub-paragraphs 11.1.1 through 11.1.4 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Owner by certified mail and will contain waiver provisions in accordance with sub-paragraph 11.1.7. All such insurance shall be secured prior to the date of commencement of the Work and shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with sub-article 12.2 and for such other time as may be required by the Contract Documents.
- 11.1.6 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with sub-paragraph 11.1.1 through 11.1.4 shall include the interests of the Owner who shall be listed as ADDITIONAL INSURED on those policies (or the certificates or other evidence thereof). Those certificates must be evidenced to the Owner on a form or forms acceptable to the Owner.

ALL CONTRACTORS AND AGREEMENTS be amended to include the following language just after the section/sentence that requires the City to be additional insured:

Company/Individual Name will cause its insurer(s) to issue a general endorsement (form CG20 10), or specific amendatory endorsement naming the City of Asheville as an additional insured, without limitation for general liability as regards this agreement.

- 11.1.7 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with sub-paragraphs 11.1.1 through 11.1.4 shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insured's or as an additional insured. If the insurers require separate waiver forms to be signed by any subcontractor or other parties, contractor will obtain the same.

#### Sub-article 11.2, Owner's Liability Insurance

This sub-article is deleted in its entirety, and substituted in lieu thereof the following:

- 11.2.1 Owner's Liability Insurance: Owner shall be responsible for purchasing and maintaining Owner's own liability insurance, and/or making appropriate provision for self-funding, at Owner's option, may purchase and maintain such insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

#### Sub-article 11.4 Property Insurance

##### Subparagraphs 11.4.1 through and 11.4.10

Delete these subparagraphs in 11.4.1 through 11.4.10 in their entirety.

#### Sub-article 11.5 Performance Bond and Payment Bond

##### Subparagraphs 11.5.1 and 11.5.2



Delete subparagraphs 11.5.1 and 11.5.2 in their entirety and substitute in lieu thereof the following:

11.5.1 The Contractor shall furnish a Payment Bond in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Contractors' obligations under the Contract Documents. This Bond shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by law or regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents. All Bonds shall be in the forms prescribed by law or regulation or by the Contract Documents and be executed by such sureties legally authorized to do business in the State of North Carolina and as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published by the U.S. Treasury Department. A certified copy of the authority to act must accompany all bonds signed by an agent.

11.5.2 If the surety on any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or if it ceases to meet the requirements of sub-paragraph 11.5.1, Contractor shall within five days thereafter substitute another bond and surety, both of which must be acceptable to Owner.

#### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

##### Clause 12.2.2.1

Delete the third sentence of the subparagraph in its entirety.

#### ARTICLE 13 MISCELLANEOUS PROVISIONS

##### Subparagraph 13.2.1

Delete the Phrase "as a whole" from the fifth line of the subparagraph in its entirety and substitute in lieu thereof the following:

"in whole or in part"

##### Sub-article 13.8, American With Disabilities Act

#### 13.8 AMERICAN WITH DISABILITIES ACT

The Contractor shall comply with the provisions of the Americans With Disabilities Act ("ADA") and all rules and regulations promulgated thereunder. The Contractor hereby agrees to indemnify Owner from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Contractor, its subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder.

##### Sub-article 13.9

Add a new sub-article 13.9 as follows:

#### 13.9 DRUG-FREE WORKPLACE POLICY

- 13.9.1 The Owner is a drug-free workplace employer. The Owner has adopted a policy requiring contractors entering into a construction contract with Owner to provide a drug-free workplace in the performance of a construction contract.

The Contractor hereby certifies that it will provide a drug-free workplace during the performance of the Work. The Contractor agrees to do the following:

1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken for violations of such prohibition;
2. Establish a drug-free awareness program to inform employees about (I) the dangers of drug abuse in the workplace, (II) the contractor's policy of maintaining a drug-free workplace, (III) any available drug counseling, rehabilitation, and employee assistance programs, and (IV) the penalties that may be imposed upon employees for drug abuse violation.
3. Notify each employee that as a condition of employment, the employee will (I) abide by the terms of the prohibition outlined in 13.9.1 above, and (II) notify the contractor of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;
4. Notify the City of Asheville within ten (10) days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction.
5. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime; and
6. Make a good faith effort to continue to maintain a drug-free workplace for employees.

- 13.9.2 If the Contractor makes a false certificate or fails to comply with the above drug-free workplace requirements during the performance of the Work, it shall be grounds for suspension, termination, or debarment of the Contractor by the Owner.

#### ARTICLE 14, TERMINATION OR SUSPENSION OF THE CONTRACT

##### Clause 14.1.1.4

Delete this clause in its entirety.

##### Subparagraph 14.1.3

Revise the subparagraph to read as follows:

If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed.

Subparagraph 14.3.2

Delete the second sentence in its entirety.

Subparagraph 14.4.3

Delete the subparagraph in its entirety and substitute in lieu thereof the following:

In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable cost of such termination.

# ASHEVILLE

**SPECIAL CONDITIONS**

## Asheville Area Wayfinding Program

1. The contractor shall not perform work on any of the recognized national holidays, which occur during the construction of this project.
2. Disruption of natural conditions surrounding the site shall be kept to a minimum. Restoration of these areas shall be done as soon as possible.
3. The Contractor's one (1) year warranty on materials and workmanship shall be extended to two (2) years for all compacted aggregate base course (CABC), bituminous pavement and concrete pavement repair.
4. Bids for this project will be valid for six (6) months.
5. There will be one (1) crew dedicated to one (1) street under construction, at a time. Once construction begins on an individual street the assigned crew must remain on that street until it is completed.
6. The Contractor shall, at all times, provide traffic control in accordance with NCDOT and MUTCD standards and shall conduct the work in such a manner as to ensure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Upon approval of the Director of Engineering or NCDOT officials, "Street Closed" signs shall be placed immediately adjacent to the Work, as per Traffic Control plan. At any time that streets are required to be closed, the Contractor shall notify law enforcement agencies, fire departments, parties operating emergency vehicles and residents before the street is closed and again as soon as it is opened.
7. The Contractor shall provide all residents along included streets with advance notice, in the form of door-hanger notices, not to exceed two weeks prior to construction, of anticipated times of construction. Additional notice shall be provided if vehicles will need to be moved or streets closed.
8. The Contractor shall provide radios or other means of communication to the traffic control personnel, if they are not within site distance of each other while single lane is utilized, as per MUTCD standards.
9. Storage of materials and equipment shall be at a location where it minimizes traffic conflict and public inconvenience. Contractor is responsible for securing permission of the storage site from the respective owner or government agency.
10. Progress Payment for those items which require ticket submittal will be done based upon only those tickets that are submitted with the corresponding pay request documents. The quantity of each of these items for which the contractor is asking for reimbursement shall match the total of the tickets submitted and will be based upon the following formulas:

$$\text{CABC} = \frac{115/\text{bs.}}{\text{S.Y. Inch}}$$

$$\text{B-25.0B} = \frac{114/\text{bs.}}{\text{S.Y. Inch}}$$

$$\text{S-9.50B} = \frac{112/\text{bs.}}{\text{S.Y. Inch}}$$

11. Vacuum systems shall be used to clean surfaces after the installation / construction process. Sweepers or blowers shall not be used for the cleaning of surfaces or the removal of excess stone.
12. The contractor is here-by advised that the BCDTA has a limited and fixed budget allocation for this project. As such BCDTA reserves the right to add / delete certain streets, bid items or quantities to / from the contract in an effort to bring the total construction cost as close to the allocated budget as possible. BCDTA will notify the contractor of any addition / deletion as soon as reasonable to allow adequate planning and scheduling.
13. BCDTA reserves the right to refuse any or all Bids submitted and / or negotiate individual bid item prices if they are considered unreasonable.
14. All signing required shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). Pay item for signs to include all necessary hardware, supports, posts, etc. for a complete installation.



## **MEET NORTH CAROLINA ONE CALL**

NORTH CAROLINA ONE CALL, a corporation formed and funded by participating utility companies and municipalities in the interest of community and job safety and improved service through damage reduction to the utilities.

**A ONE-CALL TOLL-FREE TELEPHONE NUMBER, 1-800-632-4949, PROVIDES AN AVENUE TO ALL OF THE PARTICIPATING MEMBERS FROM ANY POINT WITHIN THE STATE OF NORTH CAROLINA.**

Anyone proposing to excavate, dig, bore, tunnel, blast or disturb the earth in any manner in which buried utilities may be damaged is requested to call the toll-free number between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday, forty-eight hours before starting the proposed work.

Within minutes of your telephone call, the participating members will be made aware of your plans and will be given pertinent information that has been provided by you about your planned work. You will be told the names of the participating members from whom you can expect a response -- if there are buried facilities in the path of your activity, the route of the utilities will be staked and/or marked at no expense to you. If there are no facilities in the area of the planned work, you will be called or notified by a representative of the participating company accordingly.

Should a non-participating utility operator be serving your area, we recommend that you call them on an individual basis. All utility operators, whether company or municipality, will be provided an opportunity to become a member of North Carolina One Call.

Naturally, knowing the route of the utilities, the excavator is expected to exercise caution and to avoid damage as the project progresses.

Damage prevention doesn't just happen -- It is a planned and orderly process through which each of us can participate --**YES, WE CAN AND WE WILL DRAMATICALLY REDUCE DAMAGES TO THE UTILITIES IN THE STATE OF NORTH CAROLINA!! THANKS FOR YOUR HELP.**

**BEFORE YOU DIG**

**IN THE INTEREST OF COMMUNITY AND JOB SAFETY AND IMPROVED SERVICE**

**CALL  
NORTH CAROLINA ONE CALL  
1-800-632-4949**

May, 1997

# ASHEVILLE

## TECHNICAL SPECIFICATIONS

**THE CITY OF ASHEVILLE &  
BUNCOMBE COUNTY  
WAYFINDING AND SIGNAGE PROGRAM,  
VEHICULAR AND PEDESTRIAN  
BID DOCUMENTATION PACKAGE**

07 August 2008

**TECHNICAL SPECIFICATIONS**

Asheville Convention & Visitors Bureau  
PO Box 1010  
Asheville, North Carolina 28802

**Project No. Y41-07962.000**

Architecture  
Interior Design  
Land Planning  
Historic Preservation  
Urban Design  
Landscape Architecture  
Graphic Design

The Widener Building, Suite 1500  
One South Penn Square  
Philadelphia, PA 19107-35002  
Tel 215 636 9999  
Fax 215 636 9988  
[www.hillier.com](http://www.hillier.com)

## **TECHNICAL SPECIFICATIONS**

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Section 10436 – Post & Panel Signs

**THE CITY OF ASHEVILLE &  
BUNCOMBE COUNTY  
WAYFINDING AND SIGNAGE PROGRAM,  
VEHICULAR AND PEDESTRIAN  
BID DOCUMENTATION PACKAGE**  
01 August 2008

### **TECHNICAL SPECIFICATIONS**

Asheville Convention & Visitors Bureau  
PO Box 1010  
Asheville, North Carolina 28802

## GENERAL CONDITIONS

### 1. DEFINITIONS.

Addendum:	Written change to the Bid Documents issued by The City of Asheville before award of a Contract. More than one such change is referred to as "Addenda."
Affirmative Action Implementation Plan:	The plan submitted by each Bidder with its Bid in the form required by the Bid Documents as to the proposed method of compliance with the affirmative action goals of The City of Asheville set forth in the Bid Documents.
Application for Payment:	Contractor's written request for payment of amounts due for completed portions of the Work and, if the Contract so provides, for materials delivered and suitably stored on or off The City of Asheville premises pending their incorporation into the Work. Each Application for Payment must be approved by the City of Asheville Representative, the Designer and The City of Asheville before payment will be made.
Award:	The issuance of a Contract by The City of Asheville.
Bid:	A complete and properly signed written proposal of the Bidder, submitted on the Bid Proposal Form (supplemented by additional information as appropriate) included in the Bid Documents, to furnish, deliver and install the necessary materials and to perform the Work in accordance with the Contract Documents.
Bidder:	An individual, firm, partnership or corporation qualified to submit a Bid for the Contract Work.
Bonds:	The Bid Bond given as Bid Security, if any, the Performance Bond and Labor and Material man's Bond, or any other bond required by the Contract Documents.
The City of Asheville	The City of Asheville, also called the Owner.
Change Order:	A written order to the Contractor, after the Contract is executed, authorizing a change in Contract Price, the Contract Time, or other provisions of the Contract Documents. Change Orders are not valid unless signed by The City of Asheville Authorized Representative.
City:	The City of Asheville or its authorized representative.
Contract:	The Contract Documents form the parties' Contract for construction.
Contract Documents:	May include the following: Invitation to Bid Instructions to Bidders Bid Form Drawings Specifications Affirmative Action Implementation Plan Agreement General Conditions Workforce Standards Performance Bond Labor and Material man's Payment Bond

Release  
Addenda

Contractor:	The individual, firm, partnership or corporation which, as an independent contractor, and not an employee, has entered into the Contract with The City of Asheville
Contract Sum:	The price which the Contract states is the total amount The City of Asheville must pay to the Contractor as full and fair compensation for the performance of the Work required by the Contract Documents. The Contract Sum can be adjusted only by Change Order.
Contract Time:	Contract Time means the total time allowed for performance of the Contractor's Work, including all time extensions authorized by Change Order. Contract Time can be adjusted only by Change Order.
Days:	Unless otherwise stated, any reference to days means calendar days.
Engineer:	The term "Engineer" used throughout the Contract Documents is deemed to mean any design professional engaged by The City of Asheville to carry out the design and documentation of the Work. The term "Engineer" may refer not only to a licensed Engineer, but also to a Designer, planner or other design professional.
Final Application for Payment:	The Application for Payment made for the last payment under the Contract, including retainages. The Final Application for Payment must be approved by the City of Asheville Representative, Designer and The City of Asheville before payment will be made.
Notice of Award:	Written notice to the successful Bidder that The City of Asheville is awarding the Contract to that Bidder.
Notice to Proceed:	Written notice from The City of Asheville to the Contractor to proceed with the Work.
Owner:	The City of Asheville, the entity entering into the Contract with the Contractor.
City of Asheville Representative:	The person or organization retained by the Owner to monitor and administer construction for the Owner, and to facilitate communications of project participants, but not to act as the Owner's agent. See definition of "Owner's Authorized Representative."
Subcontractor:	Any person, firm or corporation, other than the employees of the Contractor, who contracts with the Contractor to furnish labor or labor and materials under the Contract.
Work:	The construction and services required by the Contract Documents, including all labor materials, equipment and services to be provided by the Contractor to fulfill its obligations under the Contract Documents.

Work Site:

The area within which the Contractor is to perform the Work under the Contract, including areas obtained by or provided to the Contractor for use in connection with the Contract, when contiguous to the project limits.

## 2. CONTRACT INTERPRETATION.

- 2.1 Documents** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contractor shall perform in accordance with the Contract Documents and with all requirements reasonably inferable from the Contract Documents as being necessary to produce the intended results. In case of conflict, the most expensive combination of quality and quantity shall govern.
- 2.2 Reference** Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Invitation to Bid except where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent provision shall govern.
- 2.3 Ambiguities in Contract** The Contractor shall refer any perceived ambiguity, inconsistency, or discrepancy in the Contract Documents to The City of Asheville for clarification. Absent such clarification, the more stringent requirement in any case shall apply.
- 2.4 Differences Between** The most recent revision of Drawings shall control over older revisions. In the event of discrepancy between any drawing and the figure written thereon, the figures shall govern over scaled dimensions.
- 2.5 Omissions and Mis-Descriptions.** Before submitting its Bid to The City of Asheville, thereafter, the Contractor shall carefully study and compare all Drawings, Specifications and other Contract Documents; shall verify all figures on the Drawings before laying out the Work. The Bidder (and the Contractor) shall promptly notify The City of Asheville of all errors, inconsistencies, or omissions it may discover, and obtain specific instructions in writing before proceeding with the Work. The Contractor shall be liable to The City of Asheville for all costs and damages resulting from errors in construction which could have been avoided by such examination and notification, and shall correct at its own expense and without extension of Contract Time, all work improperly constructed through failure to notify the Designer and request specific instructions. Omission from the Drawings or Specifications or the mis-description of details of Work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described Work (no matter how extensive) and it shall be performed as if fully and correctly set forth and described in the Drawings and Specifications at no additional expense or delay to The City of Asheville.
- 2.6 Verification of Dimensions and Existing Work.** Before commencing work, The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the Designer and City of Asheville Representative at once.



**2.7 Duty to Notify of Defects in Other Work.** If any part of the Contractor's Work depends upon the work of another contractor or on existing conditions or structures in the building, the Contractor shall, before beginning that portion of the Work, report to the Designer and Owner's Representative any defects or deficiencies in the work upon which its Work depends that might affect the Contractor's Work. If the Contractor proceeds with the Work, without giving any such notice, the Contractor shall be deemed to have accepted the work of the other contractor or the existing conditions as being adequate for its purposes, and shall not be entitled to an increase in Contract Price or Contract Time for correcting any resulting defects or deficiencies in its Work.

**2.8. Contractor's Responsibilities For Execution of the Work**

**2.8.1 Compliance with Contract Documents.** The Contractor shall perform the Work in strict accordance with the Contract Documents. The Contractor shall not depart from the scope of the Work as defined in the Contract Documents without written authorization from The City of Asheville. The Contractor shall not be relieved of responsibility for deviations from the Contract Documents by the Designer's approval of shop drawings or other submittals.

**2.8.2 Standard of Quality.** The Contractor shall perform all Work in accordance in accordance with first-class construction practices, in a good and workmanlike manner, and free from defects. The Contractor shall use in the Work only materials that are new, previously unused, of first-class quality and free from manufacturing or other defect or deficiency.

**2.9 Compliance with Laws.** The Contractor shall, at all times, comply strictly with all applicable codes, regulations, statutes, laws, ordinances, regulations or rules of any governmental authority having jurisdiction over the Work or the location within which the Work takes place (collectively, "Laws") and shall obtain all approvals necessary in connection with the Work. Without limitation, the Contractor shall comply with all Laws applicable to building construction, use or occupancy, payment of subcontractors and materialmen, payment of employee wages or related taxes, health and safety Laws, environmental Laws, and applicable rules of the National Board of Fire Underwriters or any other body now or hereafter constituted to exercise similar functions.

**2.10 Taxes.** Except as otherwise provided in the Contract Documents, the Contractor shall pay all applicable taxes arising from or relating to the Work, at no further cost to The City of Asheville.

**2.11 Defective Work or Materials**

**2.11.1 Workmanship or materials not conforming to the requirements of the Contract Documents** are hereby deemed to be rejected, whether in place or not, and regardless of whether such materials have been expressly rejected by the Designer. Rejected materials or Work shall be immediately removed from the Work Site, and promptly replaced at the Contractor's sole expense, and without any extension of Contract Time.

**2.11.2** If The City of Asheville issues a written direction to the Contractor to correct non-conforming or defective Work, and the Contractor does not comply with the direction within seven (7) days, The City of Asheville may, without further notice to the Contractor correct the deficiencies itself or through others and charge the cost of doing so to the Contractor (or deduct it from further payments to the Contractor). This remedy is without prejudice to any other remedy The City of Asheville may have under the Contract Documents or at law.

**2.11.3** If the Contractor fails promptly to correct Work that is not in accordance with the Contract Documents, The City of Asheville has the right to order the Contractor to stop the Work or portions of the Work until the non-conforming Work has been corrected. The Contractor shall not be entitled to

an increase in Contract Price or an extension of Contract Time as a result of any such stop work order. Any delay caused to completion of the Work by such an order shall be treated as a delay caused by the Contractor's breach. The Owner shall have no duty to stop the Work for the reasons stated in this Subparagraph.

2.11.4 The Contractor shall pay (or The City of Asheville may deduct from further payment to the Contractor) any extra costs The City of Asheville incurs as a result of additional work the Designer or City of Asheville Representative must do to evaluate, correct, or otherwise deal with non-conforming Work by the Contractor.

## **2.12 Required Tests and Inspections**

2.12.1 The Work may be subject to inspection and testing by The City of Asheville the City of Asheville Representative and the Designer at reasonable times. Such inspection and testing is for the sole benefit of The City of Asheville and shall not relieve the Contractor of responsibility for performing the Work in strict compliance with the Contract Documents. Except as specifically provided to the contrary in the Contract Documents, no testing or inspection shall be construed as constituting or implying acceptance.

2.12.2 Any Work done without proper inspection or testing as required by the Contract Documents is subject to rejection. If any Work should be covered up before the required inspection or testing and approval, it must be uncovered, at the Contractor's sole expense and without extension of the Contract Time, to allow the inspection and testing, and promptly restored thereafter.

2.12.3 The Contractor shall be responsible for having performed all tests or inspections required by applicable laws as a condition of obtaining required certificates or permits or otherwise. The Contractor shall also obtain, from an electrical underwriter, in form and substance reasonably satisfactory to the Owner, certifying that all electrical work pursuant to the Contract has been completed in accordance with current electrical underwriting.

**2.13 Means and Methods.** The Contractor is solely responsible for the means and methods of construction and the safe performance of the Work. The Contractor shall employ only competent, skilled, reliable and honest workers for the Work, who will work in harmony with other workers on the Work Site. The City of Asheville may require the Contractor to remove from the Work Site any employee whom it determines to be intemperate, incompetent, a threat to the safety of persons or property, or who fails to perform the Work in a manner acceptable to The City of Asheville. The Contractor shall promptly comply with any such direction and shall not thereafter employ the removed employee for the Work.

**2.14 Unauthorized Work.** Any work which is not in accordance with the Contract Documents is unauthorized. Any work the Contractor performs which is beyond that required or authorized by the Contract Documents shall be likewise considered unauthorized and The City of Asheville shall not be obligated to pay for it, under the Contract, or under a theory of quantum meruit, unjust enrichment or otherwise. The City of Asheville may, but need not, order that any unauthorized Work be removed from the Work Site at the Contractor's sole expense and without extension of the Contract Time.

**2.15 Storage of Materials.** Materials delivered to the Work Site for use in the Work may be stored only in areas designated by The City of Asheville.

**2.16 Equipment and Services.** Unless provided to the contrary elsewhere in the Contract Documents, the Contractor shall provide all temporary services required to complete its Work, all tools, scaffolding, hoists, cranes or other equipment and incidental materials needed for the completion of

the Work. If weather protection (including heating) or additional ventilation is required to protect workers, the Work, or the boundaries within which Work is taking place, the Contractor shall provide it.

- 2.17 Subcontractor Warranties.** All warranties and guarantees of Subcontractors, including suppliers and manufacturers, with respect to any portion of the Work shall be obtained by the Contractor for the benefit of and in the name of The City of Asheville and, to the extent possible, shall be directly enforceable by The City of Asheville. If such warranties are not directly enforceable by The City of Asheville, the Contractor shall fully cooperate with The City of Asheville in enforcing the warranties. The Contractor shall use its best efforts to obtain from all manufacturers and suppliers guarantees and warranties upon the best terms and longest periods available. The Contractor shall cause its Subcontractors to include in their subcontracts and purchase orders the requirement that all guarantees and warranties be obtained in the name of The City of Asheville. The Contractor shall be jointly and severally liable for any such warranties or guarantees. To the extent that any such warranty or guaranty would be voided by reason of the Contractor's negligence or breach in incorporating material or equipment into the Work, the Contractor shall be responsible for correcting such defect and shall be responsible pursuant to the guarantee obligations set forth herein.

**2.18 Hazardous Materials**

2.18.1 The Contractor shall not bring onto the Work Site or use in the Work any hazardous or toxic materials, such as asbestos, asbestos products, or polychlorinated biphenyl. If the Contractor discovers that any materials or processes specified in the Contract Documents would require use of such hazardous or toxic materials, it shall inform the Designer and City of Asheville Representative immediately.

2.18.2 If the Contractor encounters materials on the Work Site which the Contractor believes to be toxic or hazardous, which have not been placed on the Work Site by the Contractor, which have not been rendered harmless, and for which no express provision has been previously made in the Contract Documents, the Contractor shall stop work in the affected area and immediately report the condition to the Project Manager and Designer. Work in the affected area shall be resumed when the condition is identified as not toxic or hazardous, or when the condition has been remediated by The City of Asheville.

2.18.3 The Contractor shall not spill or release oil, solvents, or other chemical substances onto the Work Site. If such releases do occur, the Contractor shall promptly report them to the City of Asheville Representative, and shall be responsible for removing and cleaning up the spilled or released substances in a legally proper manner, at the Contractor's own cost, and for paying any costs The City of Asheville incurs as a result of the spill or release. This responsibility shall exist whether or not the Contractor has been negligent.

- 2.19 Clean-Up.** The Contractor shall keep the Work and the entire Work Sites safe, clean, and reasonably free from trash or debris at all times. The Contractor shall arrange for prompt removal and legal disposal of all rubbish, packing materials, scrap, rubble, and other waste material from the Work Sites. Flammable materials and chemicals or other hazardous substances will be removed from the Work Sites at the end of each day, or when they are no longer needed at the Work Sites, whichever comes first. As soon as practicable after Final Completion, the Contractor shall remove all of its project offices, equipment, tools, temporary fences, barriers, scaffolding, and other material from the Work Sites, and leave the Work Sites broom clean and free of all construction-related debris or trash.

**2.20 Record Drawings.** The Contractor and each Subcontractor shall keep on file at the Work Site one complete copy of the Drawings and Specifications, in good order and marked currently to record all changes, revisions and additions made during the construction, whether pursuant to field order or otherwise, and the location and detail of Work installed on a field run basis, as well as a complete set of approved shop drawings and Change Orders ("collectively, the Record Drawings"). The Record Drawings shall be made available for review by The City of Asheville and Designer at all times. One (1) complete set of the Record Drawings shall be delivered to The City of Asheville after Final Completion of the Work, and as a condition precedent to Final Payment.

**2.21 Use of Premises.** The contractor shall not use any portion of the Premises for any purpose other than prosecution of the Work.

### **3. SHOP DRAWINGS, SAMPLES, AND OTHER SUBMITTALS.**

**3.1 Requirement of Prompt Submittal.** The Contractor shall submit to the Designer for review shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work, The City of Asheville's activities or the work of separate contractors.

**3.2 Work to Conform with Submittals.** The Contractor shall perform no Work requiring submittal and review of shop drawings or other submittals until the submittals have been approved by the Engineer. Work shall be performed in accordance with approved submittals.

**3.3 Contractor's Representation.** By submitting shop drawings or other submittals, the Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained in the submittals with the requirements of the Work and the Contract Documents.

### **4. CHANGES/CHANGE ORDERS.**

**4.1 Right to Make Changes.** The City of Asheville may, without invalidating the Contract, and without prior notice to the surety, order changes in the Work, including additions, deletions or modifications. Any such change may be made ONLY by written Change Order executed by The City of Asheville's Authorized Representative. Neither the Contract Time nor Contract Sum may be changed except by such a Change Order. The Designer is NOT authorized to execute Change Orders or to bind The City of Asheville to any change to the Contract Documents.

**4.2 Entitlement to Contract Adjustment.** The Contractor is entitled to an adjustment to the Contract Time or the Contract Price if it has complied with the notice and documentation provisions of this Article and if:

4.2.1 the Owner issues any directive which changes the work so that the cost of performing the Work or the time within which the Work can be completed is materially affected;

4.2.2 the site or as-built conditions differ materially from those which the Contractor knew, or which it should have discovered as a result of its pre-construction site and document investigation, and the difference will materially increase the cost or time of performance;

4.2.3 there is any material error, omission or inconsistency in the plans and specifications which the Contractor did not discover and could not reasonably have discovered in carrying out its obligations under Paragraphs 2.3, 2.6 and 2.7, and which materially increases the cost or time or performance;



4.2.4 the Contractor's performance is delayed, because of any event which was not anticipated when the Contract was executed, which is beyond the reasonable control of the Contractor, and which is not otherwise limited by the Contract Documents.

The City of Asheville is likewise entitled to deductive Change Orders when changes are made that will decrease the cost of completing the Work.

- 4.3 Notice of Change.** The Contractor shall notify the City of Asheville Representative and Designer, in writing, within three (3) days of receiving a directive, or discovering any condition, which it believes will materially affect the cost of completing the Work or the time within which the Work can be completed. The Contractor shall submit a written request for Change Order within seven (7) days of its written notice of change. The request shall set out, in reasonable detail, the reasons for the requested adjustments, and shall state the number of additional days sought and/or the amount of any increase in compensation sought. The City of Asheville Representative may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back up if The City of Asheville reasonably believes that such additional information is needed to understand and evaluate the request.
- 4.4 Change Orders.** After receiving a request for Change Order, The City of Asheville will promptly render a decision as to whether it agrees that the Contractor is entitled to adjustments in Contract Time, Contract Price or both. If the Contractor has provided unit prices in submitting its bid, and the Owner has accepted such unit prices, then all adjustments in Contract Price with respect to the change by the stated unit price. In all other cases, The City of Asheville and the Contractor will agree upon the appropriate adjustments and the resulting agreement shall be set forth in a written Change Order and signed by both The City of Asheville and the Contractor. The Contractor's execution of a Change Order will be its representation and agreement that the Change Order constitutes its full and final adjustment for all costs, schedule impacts, or other consequences arising from the change in question, and that no further adjustments in Contract Time or Contract Price will be sought or due with respect to the change.
- 4.5 Delay or Disruption.** The Contractor shall be entitled to recover damages for delay or disruption ONLY if the delay or disruption was caused solely by the action or inaction of The City of Asheville or its representatives, and the Contractor establishes that, but for the delay, it would have been able to complete its work on time. Damages for delay shall exclude all costs attributed to home office costs or overheads, whether calculated by the Eichleay formula or otherwise, and all costs attributed to lost profits, opportunity costs, other business forgone, or similar costs. Such costs shall not be recoverable, regardless of the cause of the delay or disruption.
- 4.6 Duty to Continue Work.** If the Contractor and The City of Asheville do not agree that any adjustment sought by the Contractor is justified, or if the parties fail to agree upon the appropriate amount of the adjustment in Contract Time or Contract Price, the Contractor shall nevertheless proceed with the Work, and shall promptly make a written claim.
- 4.7 Waiver of Right to Adjustment.** If the Contractor fails to notify The City of Asheville in accordance with Paragraph 5.3, of any action or event which it claims materially affects the cost of completing the Work or the time within which it can be completed, the Contractor shall be deemed to have waived its right to any adjustment in the Contract Price or Contract Time as a result of the action or event in question. In such a case, the Contractor shall also be deemed to have waived any claim additional time or compensation under theories of quantum merit or unjust enrichment or negligence.

**5. SUBCONTRACTORS.**

- 5.1 Contractor Responsible for Subcontractor Work.** The Contractor may retain Subcontractors to perform portions of the Work. However, the Contractor shall be fully responsible for Work performed by Subcontractors, as if it had been performed by the Contractor itself.
- 5.2 Contract Requirements Apply.** All Subcontractors must agree that they have the same duties and obligations to the Contractor as the Contractor has to The City of Asheville under this Contract.
- 5.3 No Third-Party Rights.** The Subcontractors shall have no rights against The City of Asheville, either under a third-party beneficiary theory or otherwise.
- 5.4 Insurance.** The Contractor shall require all Subcontractors to obtain and maintain throughout the duration of the Work, insurance of the types and limits stated in paragraph 11 of the General Conditions. No Subcontractor will be permitted to perform any Work until the Contractor has provided The City of Asheville, and any additional insured's, with evidence that the Subcontractor has obtained the required insurance.

**6. PROJECT SECURITY AND SAFETY REQUIREMENTS.**

- 6.1 Continued Occupancy of Owner.** The Contractor shall be responsible for the protection and security of those portions of the Work Site that have been turned over to it for construction and for the protection and security of all materials, supplies and construction equipment, whether on or off the Work Site. The Contractor acknowledges that the Work Site, or areas of the building within which the Work is being done, may be occupied by The City of Asheville or other members of the public during the course of the Work, and agrees to take all reasonable security measures to protect the people and property on the Work Site from injury and damage, and to exclude from areas under construction persons who are not authorized to be in those areas. The Contractor shall comply with The City of Asheville's directions concerning areas within which it must confine its activities so as to avoid injury to persons and interference with operations.
- 6.2 Safety.** The Contractor shall provide and maintain all safety devices or measures required by any applicable laws, regulations, ordinances, or rules, by The City of Asheville's insurers, or reasonably required by Project conditions, for the protection of the health and safety of all persons who may come onto the Work Site, and for the protection of property from damage due to the Work. The Contractor shall promulgate and enforce safety regulations for its workers and Subcontractors. Among other things, the Contractor shall
- 6.2.1 comply with all applicable laws, regulations, ordinances, rules, regulations or orders of any public authority (federal, state or local) as they relate to the health or safety of persons or protection of property,
- 6.2.2 submit to The City of Asheville, before performing any work on the Work Site, a written safety program in full compliance with the requirements of this Article and which is consistent with applicable federal, state, and local laws, regulations, rules, regulations or orders, and
- 6.2.3 implement all practices, procedures and programs customarily implemented by construction contractors for projects of a similar nature.
- 6.3 Damage to Site on Which Work Is Carried Out.** The Contractor shall be liable to The City of Asheville for any damage it causes to the Work or to the site or buildings in which the Work is being

carried out. Until Final Completion, the Contractor shall protect all of its Work and shall not damage the work of other contractors or the property of The City of Asheville. The Contractor shall pay for any such damage, and The City of Asheville may withhold from further payments to the Contractor amounts reasonably attributable to any damage to the Work or to other property.

#### **6.4 Responsibility for Materials and Work**

6.4.1 The Contractor shall remain solely responsible for materials delivered and Work performed until Final Completion of the Work, except those materials and Work that may have been accepted pursuant to Subparagraph 7.4.3 of the General Conditions. The Contractor remains responsible for punch list Work until it is approved and accepted by The City of Asheville. The Contractor shall bear the risk of loss for any damage, however caused, to the Work or to tools, materials and equipment, until Final Completion of the Work or acceptance of Work.

6.4.2 The Contractor shall, at its own cost, promptly rebuild, repair or restore Work that has been destroyed or damaged before Final Completion.

6.4.3 The City of Asheville may, by written notice and at its own sole discretion, relieve the Contractor of the duty to maintain and protect certain portions of the Work, and of the risk of loss with respect to that Work. Any such notice shall not act to discharge the Contractor's obligation to repair or replace defective Work or Work that does not conform with the Contract Documents. Any such notice shall not operate to relieve the Contractor of its obligation safety obligations or its responsibility, under any provision of the Contract Documents, for death, personal injury, or property damage, or from the Contractor's indemnity obligations.

### **7. DUTY TO COORDINATE WITH OTHER CONTRACTORS ON SITE**

7.1 **Duty Not To Interfere.** The Contractor shall not unreasonably impede, hinder or delay the work on any other contractor which The City of Asheville or others may have performing work on the Work Site. The Contractor shall cooperate with any contractor who will be performing work that may connect, complement, interfere with or otherwise be dependent upon the Contractor's Work, and shall resolve any disputes or problems with such other contractor. If amicable resolution is not promptly reached, the Contractor shall notify the City of Asheville Representative and shall thereafter follow the City of Asheville Representative's directions for resolving the issues. All contractors responsible for Work defined in individual sections of the Project shall be responsible, jointly and severally, for coordinating their various sections of work as to scheduling, installation procedures and installation of related materials.

7.2 **Scheduling.** If The City of Asheville requests, the Contractor shall include provision in the Contractor's schedule for the work of other contractors.

7.3 **Damages Caused by Other Contractors..** If any other contractor performing work on the Work Site at the same time as Contractor should hinder, delay or damage the Contractor's Work, or should otherwise cause loss or injury to the Contractor, the Contractor agrees that it will look solely to such contractor for relief. Neither The City of Asheville nor its representatives shall be responsible for any such hindrance, delay, damage, loss or injury, and the Contractor will, in no event, attempt to hold The City of Asheville or its representatives liable for resulting costs or damages. Similarly, the Contractor agrees that it will be directly responsible to any other contractor performing work on the Work Site for any loss, injury, damage or delay, including acceleration costs, incurred as a result of delay, interference, or damage to Work caused by the Contractor. The Contractor and its Performance Bond surety shall indemnify and hold harmless The City of Asheville from and against any claim brought against any of them by another contractor for the damages covered by this Paragraph,



including costs, expenses and attorneys' fees incurred as a result of the Contractor's alleged acts or omissions.

## **8. PAYMENT**

**8.1 Schedule of Values.** Within five (5) days after executing the Contract, the Contractor shall submit to The City of Asheville a Schedule of Values allocated to various portions of the Work. The schedule, when approved, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**8.2 Progress Payments.** The City of Asheville shall make monthly progress payments to the Contractor for Work performed in accordance with the Contract Documents, and for which the Contractor has sought payments via properly completed, documented and approved Applications for Payment. At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the City of Asheville Representative an itemized Application for Payment which conforms to the following requirements:

**8.2.1** The Application for Payment shall be typed on the American Institute of Designers Document AIA G702, Application and Certificate for Payment, and include AIA G703, with the continuation sheet included.

**8.2.2** The Contractor will add the following lines for signature to the AIA G702:

The City of Asheville (Owner) \_\_\_\_\_

**8.2.3** The Contractor's submission of an Application for Payment shall constitute its representation that the services and materials described in the application and for which payment is sought have been provided to The City of Asheville and that the application and all supporting invoices and other documentation are true and accurate in all respects.

## **8.3 Substantiating Data for Progress Payments**

**8.3.1** When The City of Asheville or its representatives require additional data to substantiate a payment application, the Contractor shall submit the information with a numbered cover letter, identifying:

- (1) Project name and number.
- (2) Payment application number and date.
- (3) Detailed list of enclosures.
- (4) The item number, identification and a description, for stored material on-site (if the Owner has expressly agreed to pay for stored material(s)).

**8.4 Timing of Payment.** Progress payments will be made by The City of Asheville within thirty (30) calendar days after presentation by the Contractor of a properly submitted and approved invoice.

**8.5 Passage of Title.** Material, equipment, hardware and work covered by progress payments or final payment shall become the sole property of The City of Asheville, no matter where located. This provision shall not be construed as relieving the Contractor from the responsibility for the fulfillment of the terms of the Contract.

**8.6 Final Completion; Final Payment.** After the Contractor has completed the Work, including completion of any acceptance testing, and the Designer so certifies, The City of Asheville will accept the Work. This will constitute Final Completion of the Work. The Contractor shall submit its Final Application for Payment within ten (10) days of Final Completion. The Final Application for Payment must conform in form and substance to the requirements for applications for progress payment and must include satisfactory evidence that all Subcontractors and suppliers have been paid all amounts due to them for labor or materials provided for the Work and must include a written certification from the Contractors that all of the Work has been completed in accordance with the Contract and applicable laws.

**8.7 The City of Asheville's Right to Withhold Payments.** The City of Asheville may withhold payment for any Work claimed to have been performed by the Contractor if the Application for Payment states, or The City of Asheville reasonably determines that:

- 8.7.1 any Work for which payment is sought is defective or non-conforming and such defects or non-conformance have not been remedied; or
- 8.7.2 the Contractor has not promptly paid all amounts due to laborers, materialmen and Subcontractors; or
- 8.7.3 any of the Contractor's laborers, Subcontractors or materialmen has filed a mechanic's lien against the Project, and the Contractor has not caused such lien to be discharged; or
- 8.7.4 The City of Asheville reasonably determines that the Contractor will be unable to complete the Work for the balance of the Contract Sum and the Contractor fails to provide reasonable assurances that it has the financial resources to complete the Work; or
- 8.7.5 the Contractor is otherwise in default under its Contract.

## **9. PREVAILING WAGE REQUIREMENTS.**

**9.1 Applicable Law.** The Contractor is hereby notified that the Contract is subject to the provisions, duties, obligations, remedies and penalties of the Prevailing Wage Act, which is incorporated herein by reference as if fully set forth herein.

**9.2 Wage Predetermination.** In compliance with the Prevailing Wage Act, the Prevailing Minimum Wage Predetermination is included in the General Requirements and is a part hereof, as approved by the Secretary of Labor and Industry. The prevailing minimum wage predetermination is included in the Contract Documents as Attachment "C" to these General Conditions.

**9.3 No Strike; No Lockout.** By executing the Contract, Contractor warrants and represents that the collective bargaining agreements between the Contractor and any union, which will perform under the Contract, include a no-strike, no-lockout clause.

## **10. INSURANCE.**

### **The City of Asheville Insurance Requirements**

Contractor shall furnish evidence to The City of Asheville that with respect to the operations he performs, he/she carries a comprehensive general liability insurance policy (including, but not limited to, blanket contractual liability, completed operations/products liability, contractor's protective liability, and explosion, collapse and underground hazard coverage) providing a limit of not less than two million dollars (\$2,000,000)

for all damages arising out of bodily injury or death in any one (1) occurrence, and providing for a limit of not less than two million dollars (\$2,000,000) for damages to or destruction of property, including the loss of the use thereof, in any one occurrence; two million dollars (\$2,000,000) aggregate limit shall apply to bodily injury, personal injury and death, and to property damage.

Contractor shall also furnish evidence to The City of Asheville that with respect to the operations he performs, he carries an Umbrella Liability Policy with a limit of two million dollars (\$2,000,000) with a self-insured retention limit or deductible not to exceed ten thousand dollars (\$10,000).

All policies of insurance, including Umbrella Coverage, must be endorsed to include as additional named insured each of the following:

- The City of Asheville
- North Carolina Department of Transportation

## **11. INDEMNIFICATION.**

**11.1 Indemnity.** To the full extent permitted by law, the Contractor shall indemnify, defend and hold harmless The City of Asheville, its City of Asheville Representative, and the North Carolina Department of Transportation from and against any and all losses, costs (including litigation costs and counsel fees), claims, suits, actions, damages, liability and expenses, including, but not limited to, those in connection with loss of life, bodily and personal injury or damage to property occasioned wholly or in part by the Contractor's breach or other act or omission or the act or omission of the Contractor's agents, Subcontractors, employees, or servants pursuant to this Contract. This indemnity shall apply whether or not the Contractor or party for whom it is responsible was negligent, and whether or not The City of Asheville, its City of Asheville Representative, and the North Carolina Department of Transportation, or any of their respective members, officers, employees, agents, consultants and representatives were negligent.

**11.2 Survival and Non-Exclusivity of Indemnity.** This indemnity shall survive termination of the Contract, Final Acceptance of the Work and final payment under the Contract. This indemnity is in addition to any other rights or remedies which The City of Asheville, its City of Asheville Representative, and the North Carolina Department of Transportation, and its representatives may have under the law or under the Contract. In the event of any claim or demand made against any party which is entitled to be indemnified here under, The City of Asheville may in its sole discretion reserve, retain or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims.

## **12. BONDS.**

**12.1 Time Due and Form.** Within five (5) days after The City of Asheville gives Notice of Award of the Contract to the Contractor, and prior to or concurrently with execution of the Contract, the Contractor shall provide to The City of Asheville surety bonds satisfactory to The City of Asheville in the amounts and for the purposes stated in the Agreement. The Bonds shall be executed by a responsible surety company or companies approved by The City of Asheville. Bonds shall be on the form included in the Bid Documents. The Contractor shall pay all Bond premiums, costs, and incidentals. No payment will be made to the Contractor and Notice Proceed will not be issued, until the Bonds have been approved by The City of Asheville.

**12.2 Requisite Signatures on Bonds.** Both the Contractor and the surety shall sign each Bond and the signature of the authorized agent of the surety shall be notarized.

### 13. TERMINATION.

#### 13.1 For Default

**13.1.1 Grounds.** The City of Asheville may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract properly and in a timely fashion, or if the Contractor files a voluntary petition in bankruptcy under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, makes a general assignment for the benefit of its creditors, or has a receiver appointed.

**13.1.2 Notice, Cure Period and Effective Date.** The City of Asheville shall give the Contractor ten (10) days' written notice of intent to terminate or default. During those ten days, the Contractor shall have the opportunity to cure the default. However, unless the default is not cured to the satisfaction of The City of Asheville within the ten days and The City of Asheville so notifies the Contractor in writing, the Contract shall be deemed terminated without further notice and effective immediately. The Contractor hereby agrees that, in the event of termination for default, title to all Work in progress on the Work Site shall pass to The City of Asheville.

**13.1.3 Further Payment to Contractor.** The City of Asheville shall have no obligation to pay the Contractor for any Work done or materials supplied after the effective date of termination. No further payments on the Contract shall be made after termination until the Work has been completed by The City of Asheville and then only if the total cost of completing the Work, and all consequential damages, was less than the remaining balance of the Contract Price at the time of termination.

**13.1.4 Assignment of Orders and Supply Contracts.** The City of Asheville may, at its sole option, assume supply contracts or orders the Contractor placed before termination. The Contractor shall have the obligation to identify to The City of Asheville all such orders and supply contracts so that The City of Asheville may exercise its option.

**13.1.5 The City of Asheville's Right to Complete The Work.** If the Contractor is terminated for default, The City of Asheville shall have the right to complete the Work by whatever means and methods it deems advisable.

**13.1.6 Contractor's Liability.** The Contractor shall be liable for all costs The City of Asheville incurs in completing the Work after a default termination, to the extent that those costs are in excess of the Contract Price, as well as for any other damages allowable under this Contract or at law.

**13.1.7 Conversion to Termination for Convenience.** If it is ultimately determined that The City of Asheville's termination of this Contract for default was wrongful, then the termination shall be deemed to have been a termination for convenience, and the Contractor's rights and remedies shall be limited and governed by the provisions dealing with terminations for convenience.

**13.2 For Convenience.** The City of Asheville may, upon ten (10) days' written notice, terminate this Contract for its convenience, and without declaring any default by the Contractor. In the event of such a termination, the Contractor shall cease Work. The Contractor's sole and exclusive remedy in cases of termination for convenience is payment for the Work completed up to the time of termination and for all unavoidable costs of canceling or terminating open orders or supply contracts. The Contractor shall

include in all Subcontracts for the Work a provision substantially similar to this Paragraph, authorizing termination for convenience and limiting the Subcontractors' rights and remedies as provided herein.

#### **14. MISCELLANEOUS.**

- 14.1 Independent Contractor.** The Contractor shall perform all Work under this Contract as an independent contractor and not an agent or employee of The City of Asheville.
- 14.2 The City of Asheville As Sole Contract Privy.** The Contractor is not in privity with, and shall have no claim against, the City for any costs it incurs or claims to have incurred in connection with the Work or the Contract, but must look solely to The City of Asheville for payment of such costs.
- 14.3 Contractor's License.** The Contractor represents that it has obtained and maintained in force whatever licenses are required by applicable state or local laws for contractors performing the type of work to be done pursuant to the Contract.
- 14.4 Assignment.** This Contract may not be assigned or transferred without the prior written consent of The City of Asheville. Any assignment of proceeds of this Contract shall be subject to all proper set-offs and contractually permitted withholdings in favor of The City of Asheville.
- 14.5 Governing Law/Waiver of Jury Trial.** This Contract shall be governed by and construed in accordance with the laws of North Carolina, without regard to its conflict of laws principles. The parties expressly waive their right to trial by jury and agree that all disputes relating to the Contract or its breach shall be decided by a judge sitting without jury.
- 14.6 Choice of Venue.** All disputes arising from or in connection with this Contract shall be decided in the Court of Common Pleas of The City of Asheville.
- 14.7 Integrated Agreement.** The Contract is an integration, constituting the entire agreement of the parties with respect to the subject matter of the Contract. It supersedes all prior or contemporaneous discussions, writings, or negotiations. The Contract may not be modified except by a writing executed by both parties.
- 14.8 Remedies Cumulative.** All rights and remedies provided to the parties under this Contract shall be cumulative, not exclusive. The parties may, in their discretion, avail themselves of any remedy permitted by the Contract, at law or in equity, and the exercise of one or more remedies by a party shall not preclude the simultaneous or subsequent exercise of other remedies.
- 14.9 Limitations.** Statutes of limitations applicable to The City of Asheville's right to assert claims or bring suit against the Contractor or the Contractor's surety in connection with the Contract or the Bonds shall not begin to run, or shall be deemed tolled, until Final Completion of the Work.
- 14.10 Captions.** The table of contents, titles, section headings, or other captions contained in the General Conditions or other Contract Documents are solely to facilitate reference and in no way affect, limit, or cast light upon the interpretation or construction of the Contract.
- 14.11 Advertising or Public Relations.** The City of Asheville reserves the right to review and approve in writing all The City of Asheville-related copy prior to publication as well as any The City of Asheville-related public statements and public discussions to be made by the Contractor, any of its Subcontractors, agents, officers, members or employees. The Contractor shall not allow The City of Asheville-related copy to be submitted to any trade association, seminar sponsor or other public

discussion group or be published in Contractor's advertisement or public relations programs until submitting The City of Asheville -related copy and receiving prior written approval from The City of Asheville. All information shall be factual and in no way imply that The City of Asheville endorses the Contractor's firm, service, or product.

Exhibit A Indemnity Agreement