



Town of Indian Trail Engineering Department

Memo

TO: Mayor and Town Council

FROM: Scott J. Kaufhold, P.E., Town Engineer

DATE: April 20, 2010

COUNCIL DATE: April 27, 2010

SUBJECT: Development Services Building Roof Replacement Contract

General Information:

The first bid opening for the Development Services Building Roof Replacement Contract was held on March 18, 2010. Two incomplete bids were submitted and both were rejected.

The second bid opening was held on April 6, 2010. There was one bidder, LCM Builders, Inc. Council will be provided the bid result by close of business Wednesday, April 21, 2010. This information is confidential until the contract is awarded.

Staff recommends awarding the contract to LCM Builders, Inc.

Required Actions:

Council's award of contract.

Attachment:

Development Services Building Roof Replacement Contract

BID SET NO. _____

BIDDER _____



**PROJECT MANUAL
FOR
DEVELOPMENT SERVICES BUILDING
ROOF REPLACEMENT
IN THE TOWN OF INDIAN TRAIL, NC**

PROJECT NUMBER:

420-2010-001

TOWN OF INDIAN TRAIL, NORTH CAROLINA

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I. INSTRUCTIONS TO BIDDERS

The Town of Indian Trail (hereinafter the "Town") will receive sealed bids for the following Project:

PROJECT NAME: **Development Services Building Roof Replacement**

PROJECT NUMBER: **420-2010-001**

BID DATE AND TIME: **Thursday, April 6, 2010, 2:00pm ("Bid Deadline")**

BID OPENING LOCATION: **Town of Indian Trail
Engineering Department
130 Blythe Drive
Indian Trail, NC 28079**

SCOPE OF WORK: **Removal of existing roof shingles and underlay. Adjusting gutters and downspouts, replacing failed soffit and fascia where necessary, installing a new roof, miscellaneous related work including clean up and removal of all old materials.**

Contract Documents: The Contract Documents are this Project Manual (which contains the Instructions to Bidders, Bid Documents, Agreement, Supplementary General Conditions, Project Special Provisions and Specifications), the Plans & Drawings, and any addenda.

Contract Documents are available at a charge of **\$10.00** (non-refundable) and can be obtained at the Town of Indian Trail, Engineering Department. If purchasing documents by mail, envelopes should be addressed to the Indian Trail Engineering, Attention: Vicky Watts, PO Box 2430, Indian Trail, NC 28079. Please add an **additional \$5.00** for first class postage and handling. A current e-mail address **must** be provided at the time of contract purchase. Any questions that arise prior to the bid opening will be responded to all bid holders at the same time using this means of communicate.

Content of Bid: Each Bid must contain the following fully-completed forms.

- a) Acknowledgement of Addenda (page 6 of this Project Manual)
- b) Itemized Bid Form (page 7 of this Project Manual)
- c) Execution of Bid Form (page 9 of this Project Manual)

Delivery of Bids: All bids shall be placed in a sealed envelope with the following information printed on the outside of the envelope:

BID FOR: _____ (Enter the project name as shown on the Project Manual)
Project Name

BIDDER'S NAME: _____ (Full name of Contractor submitting the bid)
Contractor's Name

PROJECT NUMBER: _____ (Town project number as shown on the Project Manual)
Project Number

DO NOT OPEN UNTIL: _____ (Enter the Bid Deadline shown on the Project Manual)
Bid Opening Date & Time

Bid Box: A secure Bid Box (lock box) is located at the bid opening location indicated above. Bids placed in the subject Bid Box prior to the bid opening date and time are considered bids received; and will be opened at the bid opening and read aloud.

Estimated Construction Cost: The estimated cost of this project is not provided.

Contractor's License for Construction Contracts: Bidders shall comply with all applicable laws regulating the practice of General Contracting as required by the General Statutes of North Carolina. The Bidder will provide his North Carolina General Contractor's License Number, Classification(s), and Limits in the space provided on the signature page of the bid. An Indian Trail privilege permit must be maintained throughout the life of the contract.

Equal Employment Opportunity: Bidders will ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, national origin, disability, or veteran's status.

OSHA Requirements: The Contractor shall comply with all OSHA provisions pertaining to the work being performed.

Bids are firm offers: All Bids shall be firm offers to contract for 30 days from the Bid Deadline.

Bid Phase Contact: For questions regarding the Project or Instructions to Bidders, contact: Joe Tolan, jrt@engineering.indiantrail.org, 704-821-1314. The Town will attempt to answer all questions in writing by email or by addenda transmitted by email. **THE TOWN WILL NOT MAKE AND BIDDERS MAY NOT RELY ON ORAL REPRESENTATIONS.**

Addenda: Addenda will be filed in the office of the Town Engineer and delivered by email to all persons who have requested Contract Documents. The Bidder shall be responsible for inquiring if Addenda have been issued.

Selection Criteria: The Town shall select as the contractor ("Selected Bidder") the lowest responsive and responsible Bidder, as required by North Carolina General Statutes. Consideration will be given only to Bids from contractors who are properly licensed and bonded. The Town also reserves the right to reject any and all Bids and to waive informalities and technicalities as it may deem to be in its best interest.

Only 1 Bid per Entity: No entity or person may submit or participate in the submission of more than 1 Bid.

Contract Award: The Town will inform the Selected Bidder of its selection and request that the Selected Bidder submit the executed Agreement plus insurance certificates and payment and performance bonds. The Selected Bidder shall submit the requested documents so that they are received by Town within 10 calendar days (or such other time as designated by Town) from the date of notice of selection. The contract shall not be deemed awarded and this Agreement shall not be binding on the Town unless and until both the Selected Bidder and Town have both executed the Agreement.

II. BID DOCUMENTS

Town of Indian Trail
Engineering Department
130 Blythe Drive
Indian Trail, NC 28079

PROJECT NAME: **Development Services Building Roof Replacement**

PROJECT NUMBER: **420 -2010-001**

The undersigned, having carefully examined the site and familiarized himself with the existing conditions on the Project area affecting the cost of work and with the Contract Documents, Performance Bonds (100% of Contract Amount), and Maintenance Bond (No leak guarantee (\$5,000)), and plans/details/drawings, as prepared by the Town of Indian Trail, hereby proposes to furnish all supervision, labor, equipment, materials and services, including all utility and transportation services required to construct and complete the Project in accordance with the above listed documents at and for the Contract Sum as determined by the unit or lump sum prices bid for work in place for the following items and quantities.

ACKNOWLEDGMENT OF ADDENDA

The Bidder hereby acknowledges receipt of any addenda

NUMBER: _____ DATE: _____ INITIAL: _____

BID FORM

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EXECUTION OF BID

A CONTRACT FOR THE ROOF REPLACEMENT:

PROJECT NAME: Development Services Building Roof Replacement

PROJECT NUMBER: 420-2010-001

The person executing the Bid, on behalf of the Bidder, being first duly sworn, deposes and says that:

- (1) It is the intent of the Bidder to enter into this Contract to furnish materials, labor, and equipment required to perform all work specified in accordance with the instructions, terms, conditions, provisions, specifications, plans and all other Contract Documents incorporated into this Invitation to Bid;
- (2) He/she is fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid;
- (3) Neither he/she, nor any official, agent or employee of the Bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is a restraint of free competitive bidding in connection with its Bid;
- (4) He/she will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, or veteran's status; and
- (5) He/she will comply with the Town of Indian Trail's drug free workplace policy.

Type of Bidder: Sole Proprietor Partnership Limited Liability Company Corporation Joint Venture

(Check appropriate box)

BIDDER #1

BIDDER #2

(If a Joint Venture or Partnership)

Name _____

Address _____

Phone _____

Fax _____

Printed Name _____

SIGNATURE _____

Title _____

NC General Contractor's License Number _____

Indian Trail License # _____

Classification _____

Limits _____

Subscribed and sworn before me Subscribed and sworn before me
this _____ day of _____, 201____ this _____ day of _____, 201____

My commission expires _____ *Signature* My commission expires _____ *Signature*

III. AGREEMENT

AGREEMENT FOR CONSTRUCTION

THIS AGREEMENT ("Agreement"), made and entered into on or about _____, 2010__, by and between the Town of Indian Trail, North Carolina, hereinafter called "Owner" and _____, hereinafter called "Contractor" (collectively, "Parties"),

WITNESSETH

In consideration of the mutual promises set forth herein, the parties hereto mutually promise and agree as follows:

1. **PROJECT:** Roof Replacement, Development Services Bldg., Project No. 420-2010-001
2. **COMPLETION OF WORK:** For the Contract Price, Contractor shall furnish all materials, labor, tools, equipment, and supervision for the construction of the Project and all expense, direct or indirect, connected with the proper execution of the same and of maintaining the same, until it is accepted by the Owner (the "Work"). All Work shall be performed and completed in an efficient and workmanlike manner, in accordance with the Contract Documents and in compliance with all applicable federal, local and state regulatory agencies.
3. **CONTRACT DOCUMENTS**
 - a. Instructions to Bidders
 - b. Bid Documents (Acknowledgment of Addenda, Itemized Bid Form, Execution of Bid Form)
 - c. This Agreement
 - e. Project Special Provisions
 - f. Technical Specifications
 - g. Addenda

The Contract Documents listed above are all essential parts of the contractual requirements. The terms "Contract Documents" and "Contract" shall have the same meaning. A requirement occurring in one Contract Document is as binding as though occurring in all. They are intended to be complementary. In case of discrepancy, detailed provisions shall have precedence over general conditions. Should any addenda, change orders or supplemental agreements be issued at a later date, they will become part of the Contract Documents, and their terms shall take precedence over conflicting terms in earlier Contract Documents.

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers an error or discrepancy, it shall immediately inform the Owner.

4. **CONTRACT PRICE:** This is a fixed price contract. For completion of the Work to the satisfaction of the Owner, the Owner shall pay the a total of \$_____.(the "Contract Price").
5. **CONTRACT TIME:** The Contractor shall achieve Substantial Completion of the Work no later than 14 calendar days from the date of commencement stated in the written or spoken Notice to Proceed. "Substantial Completion" shall mean all Work has been completed, inspection has occurred and a final punchlist has been agreed upon.
6. **LIQUIDATED DAMAGES:** Contractor has obligated itself to complete the Work within the Contract Time. Contractor acknowledges that Owner will be damaged should Contractor not complete the Work within the Contract Time. In lieu of proceedings to ascertain the amount of such damages, Contractor and Owner agree that such damages shall be equal to and Contractor shall be obligated to Owner in the amount of \$1,000.00 (one thousand dollars) for each calendar day the Work is not completed after the Contract Time.
7. **PAYMENTS AND RETAINAGE:** The Owner shall make no partial payments to Contractor nor hold retainage. Payment will be made in full upon satisfactory completion of the work, the presentation of necessary bonds, and acceptance by the Town.

8. **BONDS AND INSURANCE:** Owner's obligations under this Agreement are subject to the condition precedent that the Contractor provides a Performance Bond and Certificate of Insurance as required by the Contract Documents.

SIGNATURE SHEET

CONTRACTOR FIRM NAME: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

ADDRESS: _____

FEDERAL TAX ID NUMBER: _____

TOWN OF INDIAN TRAIL

By: _____

Printed Name: _____

Title: _____

Date: _____

This Agreement has been pre-audited in the manner required by the "Local Government Budget and Fiscal Control Act."

By: _____
Finance Officer

Date: _____

SURETY COMPANY CONTACTS

PERFORMANCE BOND NO.

Surety Name:

Address:

Phone No.:

Contact:

PAYMENT BOND NO.

Surety Name:

Address:

Phone No.:

Contact:

Attach Performance Bond to this sheet.

Attach CERTIFICATE OF INSURANCE to this sheet.

IV. SUPPLEMENTARY GENERAL CONDITIONS

1. SCOPE OF WORK

1.1 ALTERATION OF WORK AND QUANTITIES

The Owner reserves and shall have the right to make such alterations in the Work as may be necessary or desirable to complete the Work in the manner acceptable to Owner. Unless otherwise specified herein, the Owner may make such alterations in the Work as may increase or decrease the originally awarded Contract quantities, and the Contractor agrees to value the increase or decrease in quantities using the unit prices set forth in the Itemized Bid Form, or if there are none, as agreed to by the parties. These alterations shall be covered by Change Orders. Change Orders for altered Work may include extensions of Contract Time if, in the Owner's opinion, such extensions are warranted by the amount and difficulty of added work.

1.2 MAINTENANCE OF TRAFFIC

When the Contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of Work that is otherwise provided for in the Contract Documents, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein.

The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway.

Sufficient parking for all employees, as well as other, must be provided at all times throughout the period of the contract.

1.3 FINAL CLEANING UP

Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

1.4 ACCESS TO THE WORK

The Contractor shall identify access routes with suitable signs, barricades and similar equipment.

The entire access route and construction site shall be kept free and clean of all debris at all times and maintained in good repair by the Contractor. All damage to the access route caused by the actions of the Contractor or his agents shall be immediately repaired to the satisfaction of the Owner.

Contractor's vehicles, equipment, and materials may be stored in the area designated by the Owner. Upon completion of the work, the storage area shall be cleaned up and returned to its original condition to the satisfaction of the Owner. No special payment will be made for clean up and restoration of the storage area.

1.5 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the price bid on the contract .The Contractor will not be paid an additional amount for such work.

END OF SCOPE OF WORK

2. CONTROL OF WORK

2.1 CONFORMITY WITH PLANS AND SPECIFICATIONS

All Work and all materials furnished shall be in within the specified tolerances of the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified in the contract, plans and specifications.

If the Owner finds the materials furnished, Work performed, or the finished product not within the specified tolerances of the plans and specifications but that the portion of the Work affected will, in its opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, that the affected Work be accepted and remain in place. In this event, the Owner determine an adjustment in the Contract Price for the affected portion of the Work.

If the Owner finds the materials furnished, Work performed, or the finished product are not in within the specified tolerances of the plans and specifications and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner's written orders.

For the purpose of this subsection, the term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the Work in accordance with the Contract Documents. The term shall not be construed as waiving the Owner's right to insist on strict compliance with the requirements of the Contract Documents.

2.2 COOPERATION OF CONTRACTOR

The Contractor will be supplied with two copies of the contract. He shall have available on the Site at all times one copy of the contract. Additional copies may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Owner and his/her inspectors, the Engineer and with other contractors in every way possible. The Contractor shall have a competent superintendent on the Work at all times who is fully authorized as his/her agent on the Work. The superintendent shall be capable of reading and thoroughly understanding the contract and shall receive and fulfill instructions from the Owner or his/her authorized representative.

2.3 COOPERATION BETWEEN CONTRACTORS

The Owner reserves the right to contract for and perform other or additional work on or near the Work covered by this contract.

When separate contracts are let within the limits of any one project, each contractor shall conduct his/her Work so as not to interfere with or hinder the progress of completion of the Work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

Each contractor involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

2.4 AUTHORITY AND DUTIES OF INSPECTORS

Inspectors employed by the Owner shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract.

Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

2.5 INSPECTION OF THE WORK

All materials and each part or detail of the Work shall be subject to inspection by the Owner or Owner's inspectors. The Owner and Owner's inspectors shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Owner or Owner's inspector requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the Work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any Work done or materials used without supervision or inspection by the Owner may be ordered removed and replaced at the Contractor's expense unless the Owner failed to inspect after having been given reasonable notice in writing that the Work was to be performed.

2.6 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

All Work which does not conform to the requirements of the Contract Documents will be considered unacceptable, unless otherwise determined acceptable as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS.

Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the Work, shall be removed immediately and replaced in an acceptable manner at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with any order of the Owner made under the provisions of this subsection, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.

2.7 LOAD RESTRICTIONS

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at its own expense.

2.8 RETEST OF WORK

When as provided for in the Contract Documents, the Owner performs sampling and tests of the Work and if the tests show a failure to meet the requirements of the Contract Documents, the expense of retesting, after reworking or substitution by the Contractor will be at the expense of the Contractor and such costs will be deducted from the payments otherwise due to the Contractor.

2.9 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

All equipment which is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the contract, plans, and specifications.

Any person employed by the Contractor or by a subcontractor who, in the opinion of the Owner does not perform its work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner may suspend the Work by written notice until compliance with such orders.

The failure to provide adequate labor and equipment may be considered cause for terminating the Contract.

2.10 FIRE PREVENTION

- A. Contractor shall conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor. This includes keeping the Contract Work area clear of all trash at all times.
- B. All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden.
- C. Contractor shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding and burning are conducted, no inflammable materials shall be allowed, and welding activities shall be shielded. The Contractor shall post a Hot Work Permit whenever an open flame shall be utilized for work.

2.11 PUMPING AND DRAINAGE

Surface or sub-surface water or other fluid shall not be permitted to accumulate in excavations or under any structure. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner and other public agencies having jurisdiction.

2.12 DUST CONTROL

The Contractor, for the duration of the Contract, shall maintain all excavations, embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

2.13 WATER POLLUTION

Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, river, lake or other body of water, which may pollute the water or constitute substances or materials deleterious to fish and wild life.

2.14 ILLUMINATION

When any work is performed at night or where daylight is shut off or obscured, Contractor shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in compliance with local code, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

2.15 HAZARDOUS MATERIAL

- A. The Contractor shall immediately notify Owner of any hazardous materials subsequently found on the site and shall not remove same without the permission of Owner.
- B. If the contractor caused the hazardous material and subsequent contamination, Contractor shall remove said hazardous material and contaminated soils or materials from the site and shall dispose of same in accordance with all Federal, State or Local laws or regulations. Removal of such materials and contamination shall be monitored by a licensed hazardous materials laboratory, and said laboratory shall prepare a written report attesting to the complete removal of the contaminating material and resulting contamination, all to the satisfaction of, and at no cost to, the Owner.

2.16 EROSION CONTROL

Contractor shall conform to all Federal, State, and local laws and regulations pertaining to erosion control within or adjacent to the project.

END OF CONTROL OF WORK

3. PROSECUTION AND PROGRESS

3.1 NOTICE TO PROCEED

The Notice to Proceed may be written or spoken and shall state the date on which it is expected the Contractor will begin the Work and from which date Contract Time will be charged. The Contractor shall begin the Work to be performed under the contract within ten (10) calendar days of the date set in the written Notice to Proceed, but in any event, the Contractor shall notify the Owner in writing at least 24 hours in advance of the time actual construction operations will begin.

3.2 PROSECUTION AND PROGRESS

The Contractor shall not commence any actual construction prior to the date set forth in the Notice to Proceed.

3.3 TEMPORARY SUSPENSION OF THE WORK

The Owner shall have the authority by written notice to the Contractor, to suspend the Work wholly, or in part, for such period or periods as the Owner may deem necessary, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or to perform any or all of the Contractor's other duties under this Contract.

- A. If the Contractor is ordered by the Owner to suspend the Work under this Section due to an unforeseen cause not otherwise provided for in the other provisions of this Contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the Work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Owner's order to suspend the Work to the effective date of the Owner's order to resume the Work. Claims for such compensation shall be filed with the Owner within the time period stated in the Owner's order to resume work. The Contractor shall submit with its claim information substantiating the amount shown on the claim.
- B. If the Work is suspended under this Section for an indefinite period, the Contractor shall perform the following duties:
 - 1. Suitably store all materials.
 - 2. Implement measures to protect existing work from damage or deterioration.
 - 3. Erect such temporary structures and barricades as necessary to provide for traffic on, to or from the Project.
 - 4. Periodically inspect and maintain the Work and temporary measures during the suspension period, and repair any damage to the Work during the suspension period.
 - 5. Maintain all insurance and bond coverage.
 - 6. Perform such other work as required by the Contract Documents with respect to the Project.
 - 7. Remobilize when ordered to resume the Work by the Engineer.

The Contractor shall notify the Owner in writing fourteen (14) calendar days prior to demobilizing. At the time that the written notice is given to the Owner, the Contractor shall submit a written estimate of any costs of remobilization except in those cases in which the Contractor will bear the costs of remobilization under Paragraph C hereof. Compliance by the Contractor with such notice requirement, and with the requirement for submitting such written estimate, shall be a prerequisite to the Contractor's right to recover any costs incurred by the Contractor to comply with this Paragraph B, to the extent the Contractor would otherwise have a claim for such costs hereunder.

- C. If the Contractor requests a suspension of the Work in whole or in part, or if the Contractor is ordered by the Owner to suspend the Work under this Section due to inclement weather, due to the Contractor's failure to carry out orders given or due to the Contractor's failure to perform any of the Contractor's other duties under this Contract, then:
1. The Contractor shall not be entitled to any additional compensation for fulfilling the duties that the Contractor is required to perform by reason of such suspension, regardless of whether any additional compensation would otherwise be allowed hereunder, including, without limitation, any additional compensation for fulfilling any of the duties that are imposed upon the Contractor under Paragraph B hereof or for fulfilling the Contractor's duty to remobilize at the end of such suspension; and
 2. The Contractor shall pay the Owner all of the costs that are incurred by the Owner by reason of such suspension, including, but not limited to, the Engineer's fees and the costs of any necessary inspections or testing during the period of such suspension.

3.4 ADJUSTMENT OF CONTRACT TIME

The Contract Time may be adjusted only by change order, when requested by the Contractor in writing and approved by the Owner, for reasons outside of the Contractor's control, as follows:

- A. Natural disasters affecting the site; or
- B. Excessive rainfall during the entire calendar month, defined as total monthly rainfall in excess of the normal rainfall for that calendar month and total number of days with more than 0.10 inches of rainfall in excess of the normal number of such days for that calendar month. Normal values shall be taken as published in "Climatography of the United States No. 20 for North Carolina"; or
- C. Suspension of the Work as order by the Owner; or
- D. Delays in critical work by others that is not part of this Contract; or
- E. Significant additions to the scope of the Work.

The Contractor shall bear the burden of proof that a delay has been caused by factors outside his control, shall clearly demonstrate how the delay impacts the critical path of the Work as shown on his work schedule as last revised, and shall demonstrate that he has made reasonable and prudent efforts to overcome the impact of the delay on the critical path. With respect to item (b) above, a condition precedent to meeting its burden of proof will be the monthly submission to the owner of a statement of the number of days, if any, the Contractor was prevented from prosecuting the Work during the immediately preceding month due to excessive rainfall.

3.5 FAILURE TO COMPLETE PUNCH LIST ON TIME

The Contractor shall complete all punch list items determined by the Owner within thirty (30) calendar days. Should the Contractor fail or refuse to complete all punch list items to the satisfaction of the Owner within the said 30-day period, the Owner shall have the right to complete all said punch list items. In such event, Owner shall be entitled to recover from Contractor the Owner's actual costs incurred in completing such punch list items, plus any and all consequential damages and costs incurred by Owner as a result of Contractor's failure to complete such punch list items. Failure to complete all punch list items within sixty (60) calendar days, shall be considered Default of Contract and shall result in loss of any remaining payment otherwise due to the Contractor.

3.6 DEFAULT AND TERMINATION OF CONTRACT

The Contractor shall be considered in default and such default will be considered as cause for the Owner to terminate the Contract for any of the following reasons if the Contractor:

- A. Fails to begin the Work under the Contract within ten (10) calendar days of the date of commencement specified in the "Notice to Proceed"; or
- B. Fails to perform the Work or fails to provide sufficient workers, equipment or materials to assure completion of the Work in accordance with the terms of the Contract; or
- C. Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable; or
- D. Discontinues the prosecution of the Work; or
- E. Fails to resume Work which has been suspended within a reasonable time after notice to do so; or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- G. Allows any final judgment related to the Project to stand against him unsatisfied for a period of 10 days; or
- H. Makes an assignment for the benefit of creditors; or
- I. Fails to perform any covenant of this Contract, or
- J. For any other cause whatsoever, fails to carry on the Work in an acceptable manner.

Should the Owner consider the Contractor in default of the Contract for any reason hereinbefore, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If Contractor or Surety shall fail to cure such default within 10 calendar days after such written notice from the Owner of the existence of such default or, if such default cannot with reasonable diligence be cured within a period of 10 calendar days, then upon the failure of the Contractor to commence to cure such default within said 10-day period and to proceed with due diligence to complete the remedying of said default; then the Owner will, have full power and authority, without violating the Contract, to terminate the Contract and/or to take control of the Work.

All costs and charges incurred by the Owner, together with the cost of completing the Work, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

3.7 TERMINATION FOR CONVENIENCE

At any time after the acceptance of this Contract, the Owner shall have the absolute right to terminate the entire Contract or any part thereof for any reason whatsoever.

3.8 ACTIONS UPON TERMINATION FOR OR CONVENIENCE

Upon receipt of such notice of termination, the Contractor shall:

- A. Stop the performance of the Work.
- B. Take any other action toward termination of the Work which the Owner directs, including but not limited to:
 - 1. Stabilization of the unfinished site to meet the conditions of the erosion and sediment control permit and at the direction of the Department of Environment and Natural Resources.
 - 2. Maintain the necessary traffic control devices until all potential hazards due to unfinished construction activities have been removed and/or to the satisfaction of the Owner. Traffic

control devices that are determined by the Owner to remain shall become the property of the Owner.

3. Complete any pay item as directed by the Owner that if left uncompleted may result in a safety hazard.
4. Deliver all paid stored materials stored off site and material stored on site to a location directed by the Owner.
5. Remove all temporary facilities.
6. Provide any necessary items of Work to secure the Site from public access as directed by the Engineer.

3.9 PAYMENT UPON TERMINATION

When the Contract, or any portion thereof, is terminated before completion of work, payment will be made for the actual work completed at the Contract price as mutually agreed.

Reimbursement for organization of the Work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the Work and that are not incorporated in the Work shall, at the option of the Owner, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Owner.

If the sum of all previous payment and credits made by the Owner exceeds the sum payable due to the Contractor, such excess shall be refunded by the Contractor to the Owner immediately upon the determination of such excess by the owner.

If the Contract is terminated for convenience, the Contractor shall be paid a sum as profit determined taking the amount of profit the Contractor would have received upon completing this Contract, multiplied by a fraction, the numerator of which is the value of the Work completed as of the date of receipt of the notice of termination and the denominator of which is the Contract Price.

Termination of the Contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed Work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the Work performed.

The Owner shall be given full access to all books, cost records, correspondence and papers of the Contractor relating to the Contract in order to determine amounts to be paid the Contractor due to any termination of the Contract.

3.10 PARTIAL ACCEPTANCE

If at any time during the prosecution of the Work the Contractor substantially completes a usable unit or portion of the Work, the occupancy of which will benefit the Owner, he may request the Owner to make final inspection of that unit. If the Owner finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept it as being completed, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the Contract.

3.11 FINAL ACCEPTANCE

Upon due notice from the Contractor of presumptive completion of the entire Work, the Owner will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The Owner shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any Work, in whole or in part, as being unsatisfactory, the Owner will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which shall constitute the final inspection, provided the Work has been satisfactorily completed. In such event, the Owner will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

END OF PROSECUTION AND PROGRESS

4. MEASUREMENT AND PAYMENT

4.1 MEASUREMENT OF QUANTITIES

All Work completed under the Contract will be measured by the Owner, or his/her authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all pay items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation the average end area method or other acceptable methods will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inches.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material be paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed, and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon or ton. When measured by volume, such volumes will be measured at 60°F or will be corrected to the volume at 60°F using ASTM D 4311 for asphalts or ASTM D 633 for tars.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton or hundredweight.

Timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the Work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered by the Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account Work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within one-half percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed one-tenth of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales "over weighing" (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighing-accuracy test will be reduced by the percentage of error in excess of one-half of 1 percent.

In the event inspection reveals the scales have been "under weighing" (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit Contract prices for the various items of the project.

When the estimated quantities for a specific portion of the Work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the Work will be made, unless the dimensions of said portions of the Work shown on the plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

4.2 COMPENSATION FOR ACTUAL QUANTITIES

When the actual quantities of work vary from the estimated quantities, the Contractor shall accept as payment in full, so far as pay items are concerned, payment at the unit price for the quantities of work actually completed and

accepted. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly or indirectly from its unbalanced allocation of overhead and profit among the pay items, or from any other cause.

4.3 PARTIAL PAYMENT/RETAINAGE

The Owner shall make no partial payments to Contractor nor hold retainage. Payment will be made in full upon satisfactory completion of the work, the presentation of necessary bonds, and acceptance by the Town.

4.4 TAXES AND LICENSES

North Carolina sales and/or use taxes are applicable to purchases of building materials and other tangible personal property by Contractors for use in performing Town contracts (see Tax Statement Submittal at page 36). Use tax is also due on construction equipment brought into North Carolina for use in the performance of Town contracts (N.C. Revenue Laws, G.S. 105-164.4 and G.S. 105-164.6). Contractors are liable for payment of applicable franchise, corporate income, license and withholding taxes (N.C. Revenue Laws, G.S. 105-122, G.S. 105-123, G.S. 105-163.2).

4.5 TAX STATEMENT SUBMITTAL

1. Tax statements (the State/County Sales/Use Tax Statement form at p. 36 of this Manual) must always accompany a payment request for the related project. All final construction payment requests must have a final tax statement regardless of whether any taxes have been paid during the period in question. If no taxes have been paid, the detail page should simply state "0", "None", or "No taxes paid this period."
2. All tax statement bodies and all signatures must be original. Photocopies of blank forms may be used, provided the document containing the information is original.
3. All tax statements must be signed by the Contractor/subcontractor's company officer submitting the statement and certified by a Notary Public. All tax statements must list in detail taxes paid by individual invoice. No lump sum, running total, or copies of previously reported statements will be accepted. Tax statements shall show North Carolina tax and Union County tax paid.
4. A tax statement showing detailed amounts with "amounts previously reported" noted on the face will be accepted if they are original. This is the equivalent of a statement indicating "no taxes paid this period." All subcontractors for whom tax statements are included must be certified as such on the face of the Contractor's tax statement.

4.6 PAYMENT FOR MATERIALS ON HAND

Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract Documents and are delivered to acceptable sites. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- A. The material has been stored or stockpiled in a manner acceptable to the Owner at or on an approved site.
- B. The Contractor has furnished the Owner with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- C. The Contractor has furnished the Owner with satisfactory evidence that the material and transportation costs have been paid.
- D. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.

- E. The Contractor has furnished the owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at anytime prior to use in the work.
- F. The value of the delivered material is to be used in one item of work exceeds \$3,000 and is not scheduled to be incorporated into the Work within 60 days after delivery.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his/her responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents.

In no case will the amount of partial payments for materials on hand exceed the Contract Price for such materials or the Contract Price for the pay items in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection.

4.7 ACCEPTANCE AND FINAL PAYMENT

When the Work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE, the Owner shall determine the actual quantities of the items of work actually performed. The Contractor shall approve the Owner's statement of actual quantities or advise the Owner of his/her objections which are based on disputes in measurements or computations of the final quantities. The Contractor and the Owner shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the Owner's final statement of actual quantities. If, after such 30-day period, a dispute still exists, the Contractor may approve the Owner's statement of actual quantities under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES.

After the Contractor has approved, or approved under protest, the Owner's statement of actual quantities, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

4.8 PROJECT CLOSEOUT DOCUMENTS

The Contractor shall provide the following documents with the final pay request:

1. Contractor's Affidavit Release and Waiver of Claim (p. 37 of this Manual)
2. State/County Sales/Use Tax Statement (p. 38 of this Manual)
3. Consent of Surety to Final Payment (contracts equal to or exceeding \$100,000) (AIA Document G707)
4. All required bonds

No final payment will be authorized until these documents have been properly completed and submitted by the Contractor.

4.9 LIENS

Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the Owner: (a) an affidavit stating, if that be in fact, that all subcontractors and suppliers have been paid in full, or if the fact be otherwise, showing the name of each subcontractor and supplier who has not been paid in full and the amount due or to become due each for labor, service or material furnished; (b) consent of surety, if any, to final payment; and (c) if required by Owner, other data establishing payment for satisfaction of all obligations, such as receipt, releases, and waivers of lien arising out of the Contract to the extent and in such form as designated by the Owner.

4.10 CLAIMS FOR ADJUSTMENT AND DISPUTES

If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided for in the Contract Documents or previously authorized as Extra Work, he shall notify the Owner in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Owner is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Owner has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit his/her written claim to the Owner and the Engineer. Failure to do so within the time specified will constitute a waiver by Contractor of the claim.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

The following documentation and information must be presented in order to properly evaluate such claim:

- A. Definition of the basis of the claim, including a detailed identification of which materials and what work is considered to represent a change to the original contract, an explanation of why the work or material is different than what was called for by the original Contract, and an identification of the contract provisions and anything else which the Contract relied upon;
- B. An explanation of how and why the work which is considered a change will result in any additional cost or performance time for the Contractor;
- C. An identification of the categories of additional costs which may be incurred, an estimate of the dollar magnitude of each, and a statement of the impact this work will have on the construction schedule, including the contract completion dates;
- D. An indication of how the additional costs which is believed that may be incurred can be, and are to be, quantified;
- E. Documentation of any actual additional costs and any actual impact to the construction schedule due to this work;
- F. Documentation of the cost of performing all similar "unchanged" work, to provide the Engineer a basis for comparison;
- G. All backup and other documentation which are believed to support or relate to the claim;
- H. Documentation quantifying the amount of work which is believed to constitute this "changed" Work, and the time period and the areas where such work was or is to be performed.

4.11 CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final certificate nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defect due thereto and pay for any damage to other Work resulting therefrom, which shall appear within a period of one year from date of final acceptance. Wherever the word "acceptance" occurs, it shall be understood to mean final acceptance.

The Owner shall give notice of observed defects with reasonable promptness. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after the receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. With respect to all warranties, expressed or implied, from subcontractors, manufacturer, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall:

- A. Obtain all warranties that would be given in normal commercial practice.

- B. Require all warranties to be executed, in writing, for the benefit of the Owner.

END OF MEASUREMENT AND PAYMENT

V. MISCELLANEOUS

5.1 VENUE

This Contract has been executed by, delivered to and accepted by the Owner in North Carolina, and the provisions hereof shall be governed by the laws of North Carolina. Any disputes arising out of or related to this Contract shall be resolved in accordance with said laws.

The parties agree that any action or legal proceeding arising out of or related to this Contract shall be brought in the state courts of Union County, NC, or in the U.S. District Court for the Western District of North Carolina; and the parties hereby consent to and waive any objection to jurisdiction or venue in said courts.

5.2 INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent contractor and not as the agent of Owner in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and Owner.

5.3 LAWS AND REGULATIONS

Contractor and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules or regulations in effect at the time Work is performed under this Contract.

5.4 INDEMNITY

Contractor agrees to defend, indemnify and hold harmless the Owner, its officers, employees and agents from any and all claims, suits, actions, damages, expenses, costs (including attorneys' fees if applicable) or fines, arising from Contractor's performance of this Contract; provided that Contractor shall not be liable for any injury, damage or loss occasioned by the sole negligence of Owner, its officers, employees or agents. Contractor shall purchase insurance, as described in this Section, which insurance shall provide coverage for this contractual liability. In any case in which Contractor provides a defense to the Owner, its officers, employees or agents, pursuant to his indemnity, the defense will be provided by attorneys reasonably acceptable to the Owner. The provisions of this Section shall survive the expiration or early termination of this Agreement.

5.5 INSURANCE

- 5.5.1 Commercial General Liability Insurance. Contractor shall maintain in force during the term of this Contract commercial general liability insurance, in an amount acceptable to Owner but no less than One Million Dollars (\$1,000,000) per occurrence. This insurance shall include coverage for products/completed operations, bodily injury, personal injury, property damage and the contractual liability assumed under the indemnity provision of the Contract. The policy shall be occurrence-based and name the Owner as an additional insured.
- 5.5.2 Vehicle Liability Insurance. Contractor shall maintain in force during the term of this Contract liability insurance covering the operations of Contractors' owned, non-owned and hired automobiles and other ground vehicles, for limits satisfactory to Owner but not less than One Million Dollars (\$1,000,000) bodily injury and property damage each occurrence. The policy shall be occurrence-based and name the Owner as an additional insured.
- 5.5.3 Worker's Compensation and Employer's Liability Insurance. Contractor shall maintain worker's compensation and employer's liability insurance in the amounts and form required by the laws of the State of North Carolina.
- 5.5.4 A certificate evidencing all insurance coverage required of Contractor shall be filed with the Owner at the execution of this Contract, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) day's prior written notice to the Owner. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such coverage has been renewed shall be filed with the Owner. If such insurance coverage is

anceled or reduced, the Contractor shall within fifteen (15) days after receipt of written notice from the Owner of such cancellation or reduction in coverage, file with the Owner a certificate showing the required insurance has been reinstated or provided through another insurance company or companies. The company or companies furnishing insurance shall be qualified to issue insurance effective in the State of North Carolina.

5.5.5 Builder's Risk Insurance. The Owner shall purchase builder's risk insurance for the Project. Coverage does not apply to Contractor's tools or equipment.

5.5.6 Payment and Performance Bonds. Contemporaneously with Contractor's execution of the Contract Documents, Contractor shall supply the Owner with a performance bond in an amount equal to the estimated Contract Price. The performance bond will be held an effective through the warranty period.

5.6 WARRANTY/GUARANTY OF NO LEAKS

The Contractor shall warrant all materials and workmanship for a period of twelve (12) months from the date of acceptance by the Town and shall replace any portions that fail because of faulty materials or workmanship at no additional cost to the Town. A six (6) month and eleven (11) month inspection will be held during the warranty period. The Contractor shall immediately repair all defective items upon notification. Items repaired under the provisions shall have an extended warranty period of twelve (12) months from the date of repair of the item.

The performance bond, equaling 100 percent of the contract price, will be held as the security for the twelve (12) month warranty period following acceptance by the Town.

Contractor shall provide a maintenance bond equaling five thousand dollars (\$5,000), which the Town will hold for four (4) years as a guarantee of no leaks in the finished roof.

5.7 CONTRACT MEETINGS

The Contractor shall, as requested by Owner, attend any and all meetings called by Owner to discuss the Work. Such meetings shall be conducted and recorded by the Contractor with minutes of each meeting distributed to Owner and Contractor.

5.8 SUCCESSORS, ASSIGNEES AND ASSIGNMENT

Contractor shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof, without previous written consent of the Owner and concurred to by the sureties.

5.9 AUDIT RIGHTS

The Owner shall have the right to inspect, examine and make copies of any and all books, accounts, records, and other writings of contractors relating to the performance of the Work under the Contract, including change orders. Such audit rights shall be extended to any duly authorized representatives designated by the Owner. Audits shall take place at times and locations mutually agreed upon by both parties, but not later than one week following the date of a request for an audit.

END OF MISCELLANEOUS

CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM

STATE OF _____ COUNTY OF _____

_____, of
(Name) (Title)

_____, being first duly sworn, deposes and says that:
(Contractor)

The undersigned is authorized to execute this Affidavit, Release and Waiver of Claim on behalf of the Contractor and that he has personal knowledge of all facts set forth herein;

This Affidavit, Release and Waiver of Claim is made concerning the construction of the following;

Project: _____ Project No.: _____

All payrolls, material bills, sales tax, social security tax, state and federal unemployment insurance, and all other liabilities and taxes owed by the Contractor and arising in any manner from the above-described project have been paid in full;

No claim or lien exists in favor of any supplier of materials or labor or in favor of any subcontractor furnishing materials or labor on the above-described project;

Notwithstanding the foregoing, if the Town of Indian Trail, or property of the Town of Indian Trail, is subject to any claim or lien that arises in any manner from the failure of the Contractor to pay any liability described above, the Contractor will indemnify and hold the Town of Indian Trail harmless for any amount that the Town of Indian Trail is required to pay to discharge such lien or settle such claim and, further, will pay the Town of Indian Trail's expenses, costs, and attorney fees incurred in connection therewith;

All claims, suits, and proceedings of every name, description, or nature arising out of the above project against the Town of Indian Trail, its officers, employees, and agents have been settled;

The Contractor releases and waives any and all claims of every type and description that the Contractor may have against the Town of Indian Trail arising in any manner from the construction of the above-described project.

By: _____ Date: _____

Title: _____

Sworn to and subscribed before me this _____ day of

_____, 201_____

Notary Public

My commission expires _____

V. PROJECT SPECIAL PROVISIONS

SCOPE OF WORK

This work is all labor supervision, equipment and materials necessary for the removal of existing roof shingles and underlay, adjusting gutters and downspouts, replacing failed soffit and fascia where necessary, installing a new roof, miscellaneous related work including clean up and disposal of all old materials, as further described in Section VI, Specifications.

LOCATION OF THE PROJECT

1. 130 Blythe Drive, Indian Trail, NC

CONTRACT PERIOD

The Contract period will begin upon the issuance of the Notice to Proceed, with a completion of all work no more than fourteen (14) calendar days after the Notice to Proceed.

LIQUIDATED DAMAGES

Liquidated Damages will be assessed at the rate of **\$1000** per calendar day for failure to complete the Project within the Contract Period.

VI. SPECIFICATIONS

SP – 1: MAIN COMPOSITION SHINGLE ROOF:

1. Removal of all existing roofing and flashing membranes to the plywood deck surface.
2. Replacement of any damaged or deteriorated plywood decking. Decking will be replaced in whole sheets only in accordance with recommendations by both the National Roofing Contractors Association (NRCA) and the American Plywood Association (APA). New decking shall be APA rated for structural use. Deck fastening will meet or exceed local building code requirements and H-clips will be used between all rafters.
3. Replacement of following flashing materials: step flashings, collars, pipe jacks, perimeter drip edge material. All materials to meet or exceed manufacturer's requirements and to be installed "hidden nail" fashion so that no "shiners" are present.
4. One row of ice and water protection membrane shall be installed along all eaves and shall extend past the interior wall line a minimum of 24 inches to provide protection against damage from ice dams.
5. Installation of one layer of #15 asphalt saturated roofing underlayment on deck surface not covered with ice and water protection material. Felt will be fastened using 1 inch plastic-capped nails with a 1 inch diameter head. Fasteners shall be at 12 inch centers along the side and end laps and at 24 inch centers in two staggered rows in the center of the row. Each center row will be approximately 12 inches from the side of the sheet.
6. Installation of new 30 year, laminated, architectural-style algae-resistant shingles. Shingles will be installed in strict accordance with the manufacturer's specifications and shall be fastened using four nails per shingle. Selection of shingle style and color must be approved by the Town prior to any work beginning.
7. Paint all vent flashings, roof penetrations, chimney flashings and drip edge. Drip edge shall match fascia color. Color of roof penetrations and flashings to be chosen by owner.
8. Installation of a shingle-over ridge vent with a Net Free Vent Area of 18 square inches per lineal foot. Building currently has a vented soffit underneath the eaves. Vent in this area is continuous and will provide maximum intake ventilation for the full attic ventilation system.
9. Installation of manufacturer's pre-made hip and ridge material. Hip and ridge rows will be run straight and shall be installed according to manufacturer's instructions.
10. Replacement of any damaged roof decking. Decking would consist of 4' x 8' 7/8" exterior grade plywood. Any decking replaced would be approved by the Town Engineer or his designee at a payment of \$35.00 (Thirty-Five dollars) per sheet. This payment would include proper remove, disposal and replacement.

SP-2: GUTTER:

1. Inspect, clean, and seal all gutter and downspouts.
2. Replace any damage fascia or soffit. New fascia or shall be primed and painted to match the existing.
3. Existing gutter and downspouts to be reused unless need for replacement is determined.

All grounds to be cleaned up on a daily basis. All bushes, shrubs, and flowers to be protected. Owner will supply electrical power if needed.

