

STREET RESURFACING GENERAL CONDITIONS

1. DEFINITIONS

Whenever used in the CONTRACT DOCUMENTS, the following terms shall have the meaning indicated and shall be applicable to both the singular and plural thereof:

- 1.1 **ADDENDA** – Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS AND SPECIFICATIONS, by additions, deletions, clarifications, or corrections.
- 1.2 **BID** – The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.3 **BIDDER** – Any person, firm, or corporation submitting a BID for the WORK.
- 1.4 **CHANGE ORDER** – A written order to the CONTRACTOR authorizing an addition, deletion, or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.5 **COMPLETION DATE** – The date specified in the CONTRACT DOCUMENTS on which all WORK as specified in the CONTRACT DOCUMENTS must be completed and accepted by the OWNER.
- 1.6 **CONTRACT DOCUMENTS** – The contract, including Advertisement for Bids, Information for BIDDERS, BID, Agreement, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.
- 1.7 **CONTRACT PRICE** – The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.8 **CONTRACT TIME** – The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.9 **CONTRACTOR** – The person, firm, or corporation with whom the OWNER has executed the Agreement.
- 1.10 **DRAWINGS** – The parts of the CONTRACT DOCUMENTS, which show the characteristics, and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.
- 1.11 **ENGINEER** – Town of Southern Pines, Director of Public Works. Whenever the term “Engineer” appears herein, it shall be deemed to read “Director of Public Works.”
- 1.12 **FIELD ORDER** – A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

- 1.13 **NOTICE OF AWARD** – The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.
- 1.14 **NOTICE TO PROCEED** – Written communication issued by the OWNER to the CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.
- 1.15 **OWNER** – A public or quasi-public body or authority, corporation, association, partnership, or an individual for whom the WORK is to be performed.
- 1.16 **PROJECT** – The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- 1.17 **RESIDENT PROJECT REPRESENTATIVE** – The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.
- 1.18 **SHOP DRAWINGS** – All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- 1.19 **SPECIFICATIONS** – A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.20 **SUBCONTRACTOR** – An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.
- 1.21 **SUBSTANTIAL COMPLETION** – That date certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- 1.22 **SUPPLIER** – Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.23 **WORK** – All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.
- 1.24 **WRITTEN NOTICE** – Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service whereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.
- 2.2 The additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENT. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

- 3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are requested by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which the CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:
 - 3.2.1 The dates at which special detail drawings will be required; and
 - 3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- 3.3 The CONTRACTOR shall also submit a schedule of payments that the CONTRACTOR anticipates will be earned during the course of the WORK.

4. DRAWINGS AND SPECIFICATIONS

- 4.1 The Intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.
- 4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over general DRAWINGS.
- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after discovery of discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SHOP DRAWINGS

- 5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWINGS shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING, which substantially deviates from the requirement of the CONTRACT DOCUMENTS, shall be evidenced by a CHANGE ORDER.
- 5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each SHOP DRAWING and each approved sample shall be available to the ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

- 6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment's, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.
- 6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.
- 6.5 Materials, supplies, or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

- 7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 7.3 The CONTRACTOR shall provide at the CONTRACTOR'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests, or approvals by the ENGINEER or others shall not relieve the CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6 The ENGINEER and the ENGINEER'S representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all WORK, materials, payrolls, records or personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.
- 7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for the ENGINEER'S observation and be replaced at the CONTRACTOR'S expense.
- 7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

8.1 Whenever a material, article, or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

- 10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.
- 10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply will all laws, ordinances, rules and regulations bearing on the

conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

- 11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR will take all necessary precautions for the safety of, will provide the necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and order of any public body having jurisdiction. The CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. The CONTRACTOR will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone of whose acts any of them be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.
- 11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. The CONTRACTOR will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviation involved.

12. SUPERVISION BY CONTRACTOR

- 12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

- 13.1 The OWNER may at any time, as the need arises, order changes within the space of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.
- 13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes such FIELD ORDER entitles the CONTRACTOR to a change in CONTRACT PRICE or TIME, or both, in which event the CONTRACTOR shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

- 14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:
- a) Unit prices previously approved.
 - b) An agreed lump sum.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.
- 15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.
- 15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly give WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of GOD, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of the contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from its premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially form those indicated in the CONTRACT DOCUMENTS; or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially form those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUEMNTS.

17.2 The OWNER shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless the required WRITTEN NOTICE has been given; provided that the OWNER may, if the OWNER determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

- 18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.
- 18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or makes general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or order of any public body having jurisdiction of the WORK or disregards the authority of the ENGINEER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its Surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method the OWNER may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 18.3 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- 18.4 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the OWNER and the ENGINEER stop the WORK until paid all amounts

then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

- 18.5 If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENT TO CONTRACTOR

- 19.1 At least ten days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect the OWNER'S interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until 50% of the WORK has been completed. At 50% completion, further partial payments shall be made in full to the CONTRACTOR and no additional amounts may be retained unless the ENGINEER certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the CONTRACTOR. At 50% completion or any time thereafter when the progress of the WORK is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the WORK, any amount retained may be paid to the CONTRACTOR. When the WORK has been substantially completed except for WORK which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the OWNER are valid reasons for noncompletion, the OWNER may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the WORK still to be completed.
- 19.2 The request for payment may also include an allowance for the cost of such major materials and equipment, which are suitably stored either at or near the site.
- 19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

- 19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.
- 19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.
- 19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions this sentence be construed to impose any obligations upon the OWNER to any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.
- 19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

- 20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS.

21. INSURANCE

- 21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from, the CONTRACTOR'S execution of the WORK, whether such execution be by the CONTRACTOR, any SUBCONTRACTOR, or by anyone for whose acts any of them may be liable.
- 21.1.1 Claims under workmen's compensation, disability benefits and other similar employee benefit acts;
 - 21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;
 - 21.1.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than employees;
 - 21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and
 - 21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- 21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverage's afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.
- 21.3 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT TIME, Liability insurance as hereinafter specified;
- 21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by the CONTRACTOR or by any SUBCONTRACTOR employed by the CONTRACTOR or anyone directly or indirectly employed by the CONTRACTOR. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage Insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTOR as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S Surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the WORK is performed. Workmen's Compensation Insurance, including occupational disease provisions, for all of the CONTRACTOR'S employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions, for the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this CONTRACT at the site of the PROJECT is not protected under Workmen's Compensation Insurance, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide adequate and suitable insurance for the protection of its employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR and the OWNER.

22. ASSIGNMENTS

22.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign, or otherwise dispose of the CONTRACT or any portion thereof, or of any right, title or interest herein, or any obligations thereunder, without written consent of the other party.

23. INDEMNIFICATION

23.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss or use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

- 23.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by an limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under Workmen's Compensation acts, disability benefit acts or other employee benefit acts.
- 23.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, its agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

24. SEPARATE CONTRACTS

- 24.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.
- 24.2 The OWNER may perform additional WORK related to the PROJECT or the OWNER may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such CONTRACTS (or the OWNER, if the OWNER is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and equipment and the execution of the WORK, and shall properly connect and coordinate the WORK with theirs.
- 24.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, WRITTEN NOTICE thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves it in additional expense or entitles it to an extension of the CONTRACT TIME, the CONTRACTOR may make a claim thereof as provided in Sections 14 and 15.

25. SUBCONTRACTING

- 25.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 25.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR (S), in excess of fifty percent (50%) of the CONTRACT PRICE, without prior written approval of the OWNER.

25.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

25.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

25.5 Noting contained in this CONTRACT shall create any contractual relation between the SUBCONTRACTOR and the OWNER.

26. ENGINEER'S AUTHORITY

26.1 The ENGINEER shall act as the OWNER'S representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

26.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be at the factory or fabrication plant of the source of the material supply.

26.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

26.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

27. LAND AND RIGHTS-OF-WAY

27.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

27.2 The OWNER shall provide to the CONTRACTOR information, which delineates and describes the lands owned and rights-of-way acquired.

27.3 The CONTRACTOR shall provide at its own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

28. GUARANTEE

28.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defect including the repairs of the damage or other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

29. TAXES

29.1 The CONTRACTOR will pay all sales, consumer, use, and other similar taxes required by the laws of the place where the WORK is performed. Sales tax records will be required prior to mailing monthly payments for WORK completed.

**STREET RESURFACING
SPECIAL PROVISIONS**

1. **INTENT**

It is the intention of these plans and specification to cover the resurfacing of street and new paving in the Southern Pines street system as follows:

The North Carolina State Department of Transportation’s “**Standard Specifications for Roads and Structures**” dated July 1995 is incorporated herein by reference and will apply in its entirety unless specifically contradicted herein.

2. **SURFACE PREPARATION:**

It will be the responsibility of the Contractor to suitably blade all grass from the edge of the existing pavement. Following the blading, the Contractor will brush or blow any other debris or surface contaminates from the existing surface leaving the surface ready to receive the tack. All cracks will be blown clean.

3. **TACK COAT:**

All surfaces to be resurfaced will receive a tack coat of Bituminous Material Grade Ac-20 or RE-111 applied at a rate of not more than 0.05 gallons per square yard. Material and application will be specified in Sections 605 and 920 of the D.O.T. specifications.

There will be no direct payment for the Tack Coat. The cost of the Tack Coat will be included in the unit price for Bituminous Concrete.

4. **BITUMINOUS CONCRETE SURFACE COURSE:**

The Bituminous Concrete Surface Course shall be in accordance with Section 640 or 645 as appropriate of the D.O.T. specifications and shall have a final thickness of 1 inch, 1 ¼ inch, or as directed by the engineer. All provisions of Section 609 and 610 will be adhered to.

Payment will be on a per ton basis. The Town will furnish a full-time inspector. The inspector will collect load tickets from every truck delivering any asphalt or stone. The contractor will insure that no asphalt is delivered and placed unless the observer is present. Load tickets not collected by the resident observer will not be paid for.

5. **MANHOLE AND VALVE BOX ADJUSTMENT:**

Structures required within the pavement shall conform to grade and crown for a smooth riding surface. Castings shall be embedded in mortar spread on top of solid masonry. Shims causing small bearing areas will not be tolerated. True bond between like materials shall be obtained. Valve box and ring and covers broken or missing prior to construction will be replaced by the Town, where so authorized by the Inspector.

6. **BITUMINOUS SURFACE TREATMENT:**

The specific streets indicated will receive a “straight seal coat” as specified in Sections 669-9-b of the N.C.D.O.T. specifications. The cost will consist of one application of CRS-2 asphalt at the rate of 0.27-0.34 gallons per square yard and aggregate size 78-M at the rate of 15 to 17 pounds/per square yard. Asphalt CRS-2 shall meet Sections 912-2 and table 905-1. Both will meet table 660-1.

Payment for the Bituminous Surface Treatment will be on a per square yard basis at the unit price bid. The contractor will provide suitable devices for measuring the quantity of CRS-2 actually applied and the Town Inspector will collect aggregate trip tickets to verify the application rates of each.

7. **BITUMINOUS CONCRETE WEDGE CURBING:**

Bituminous Concrete Wedge Curbing 18 wide X 1-1/2 to 7-1/2 thick. All cost for Bituminous Concrete Wedge Curbing will be included in the unit price bid for Bituminous Concrete Surface SF 9.5.

8. **SURVEYS – MEASUREMENTS AND STAKING:**

The General Contractor will furnish all stakes and furnish the Inspector with suitable assistance for making any required surveys in connection with location structures and final measurements of quantities of items installed.

9. **FINAL CLEANING UP:**

Upon completion of the work, the Contractor shall remove all materials not required on the job, and shall leave all disturbed areas in as good or better condition than when he began construction.

10. **BASIS OF PAYMENT:**

The price bid by the Contractors under each item in each section shall include all costs of completing the construction, the furnishing, and the installations of all equipment called for in the plans and specifications.

11. **TRAFFIC CONTROL:**

The Contractor will be required at all times to maintain traffic flow. He will cooperate complete with the Owner, Inspector, and the North Carolina Department of Transportation. He will place and maintain proper signs, markers, warning devices, and flagmen in accordance with the North Carolina Department of Transportation Manual or Uniform Traffic Control Devices.

12. **COMPLETION DATE:**

The Contractor will commence the work as required in these specifications in sufficient time after receiving a Purchase Order from the Town to complete the same by the completion date. The completion date for this project is _____.