

TOWN OF CHAPEL HILL, NORTH CAROLINA
CONTRACT BETWEEN OWNER AND CONTRACTOR
WITH PERFORMANCE & PAYMENT BONDS
FOR ROOF REPLACEMENT – TRANSIT CAMPUS

THIS CONTRACT BETWEEN OWNER AND CONTRACTOR (the “Agreement”), is made and entered into as of the date set forth below, between the Town of Chapel Hill (the “Owner”), and **{Insert Contractor’s Full Legal Name}** (the “Contractor”), a duly licensed contractor authorized and qualified to do business in North Carolina.

Section 1. For and in consideration of the payments and mutual promises made by the Owner and Contractor, and under the penalty expressed in the bond bearing even date with these presents, and hereunto annexed, the Contractor agrees with the Owner, at the Contractor’s own proper cost and expense and with skill and diligence, to provide the labor and furnish all the materials for performance of the work (the “Work”) necessary to construct and complete ready for use, Roof Replacement – Transit Campus (the “Project”) or such portion thereof as may be awarded to said Contractor, or to furnish such materials as may be awarded, as herein set forth, all in conformity with the Instructions to Bidders, Plans and Specifications, Detail of Bid Items, insurance requirements and the Contractor's proposal dated _____ attached hereto, and incorporated herein by reference, and such detailed directions, drawings, and similar information as may be given by the Owner from time to time during the construction, and in full compliance with this Agreement.

Section 2. The Contractor agrees to accept the sum of \$_____ (the “Contract Sum”) in full compensation for furnishing materials and for all labor in performing all the Work contemplated in this Agreement.

Section 3. For the purpose of this Agreement, all directions from the Owner to the Contractor shall be made by _____ (the “Designer”), whose address is _____. No change orders shall be valid unless signed by the Designer, Town Manager, Department Director, Town Attorney and the Town Finance Officer, and, if required by Town ordinance or resolution, approved and executed by the Town Council.

Section 4. The Work will be staked out by the Contractor, as necessary, and reviewed by the Designer at the appropriate stages and times prior to placement of materials. The Contractor will be required to carefully preserve all stakes and grades until authorized to remove them. Construction staking is not a pay item.

The Contractor shall also furnish all proper and necessary assistance and access for reviewing and inspecting the Work.

Section 5. The Contractor agrees to substantially complete the Work within _____ (_____) calendar days following receipt of a written Notice to Proceed and to fully and finally complete the Work, including all punch list items, within _____ (_____) calendar days after Substantial Completion. Furthermore, the Owner and Contractor acknowledge that because the damages and losses to the Owner in the event of the Contractor's failure to perform the Work within the time set forth herein will be difficult to ascertain and quantify, that there will be \$ _____ per calendar day assessed against the Contractor as liquidated damages for losses sustained by the Owner for the Contractor's failure to substantially complete the Work within the time established herein, and that the amount of the liquidated damages as provided herein is a reasonable estimate of the Owner's losses. The Owner will hold retainage, in accordance with the General Conditions.

Section 6. The Contractor agrees not to employ any incompetent or disorderly person on the Work, and will employ competent, experienced foremen to be in charge of their respective work.

Section 7. The Designer, shall in all cases determine the quality and quantity of the Work, including the materials, furnished by the Contractor under this Agreement, and also shall determine all questions in relation to lines, levels, and dimensions of the work, and as to the interpretation of the plans and specifications and as to all time extension requests.

Section 8. The grand total of unit price extensions for the Work is \$ _____. The sum may be modified by valid change orders as provided in the Contract Documents.

Section 9. The Contractor agrees that the Contractor's Superintendent, Project Manager, or Foreman in charge of the Work or any part thereof, shall have authority to receive information or instructions regarding the Project and to act on behalf of the Contractor with respect to such information or instructions.

Section 10. The Owner may require the Contractor to furnish additional materials, and to do additional work not provided in this Agreement or in the specifications, but which may be found necessary to the proper prosecution and completion of the Work as set forth in Article 19 of the General Conditions of the Agreement (the "General Conditions"). Said General Conditions are attached hereto and incorporated by reference. **No work other than that included in this Agreement shall be done and no additional material shall be furnished by the Contractor without a written Change Order or Construction Change Directive signed by the Designer, Town Manager, Town Department Director, Town Attorney and the Town Finance Officer, and, if required by ordinance or resolution, approved and executed by the Town Council.** In the absence of such written Change Order or Construction Change Directive, the Contractor shall not be entitled to the payment for any additional work.

Section 11. The Owner reserves the right to place inspectors on the Work or at the place of shipment, or delivery of materials, or at factory or works of the Contractor, to observe the quality and character of the Work performed and materials used, and the Contractor agrees to afford such inspectors all proper access and facilities for carrying out their duties.

It is agreed and understood that the right of the Owner to review or inspect the Work or materials is retained in order to secure the completion of the Work in conformity with the plans, specifications,

and the contract documents, and without unnecessary inconvenience to the public, but nothing contained in the plans, specifications, and the contract documents shall be taken or understood to authorize control by the Owner of any of the Contractor's obligations, or of the means or methods for performance of the Work, or as to make the Contractor an agent of the Owner.

Section 12. The Contractor acknowledges and agrees that **no employee of the Owner or the Designer HAS ANY POWER TO VARY THIS CONTRACT without a written Change Order or Construction Change Directive** as set forth in Article 19 of the General Conditions and that any variation from this Agreement shall be at the Contractor's own risk.

Section 13. The Contractor and Owner agree that this Agreement may not be assigned or transferred, including any assignment by operation of law, without the consent of the other. The assignment or transfer, including any assignment by operation of law, of any part of the Work by the Contractor shall not in any way relieve the Contractor of the Contractor's obligations, and the Owner will look to the Contractor, and not the subcontractor, for the faithful performance of the Work.

Section 14. The Contractor agrees to immediately remove and reconstruct at the Contractor's own expense all work or materials not in conformity with this Agreement, and any failure on the part of the Designer or Owner to reject nonconforming work or material before the final completion and acceptance of the entire Work or material, shall not be considered an acceptance of the Work or material, or any part of it, notwithstanding that such Work or material previously may have been paid for.

Section 15. On the final completion of the work, the Owner shall proceed with due diligence and in accordance with the General Conditions to pay or cause to be paid within thirty (30) days thereafter the Contract Sum as modified by valid change orders signed as provided herein, less progress payments previously made, in legal tender of the United States and the acceptance of payment of such final amount shall release the Owner from all claims by the Contractor for Work done, materials furnished, or any other claims under or relating to this Agreement.

Section 16. The Owner may at any time require full release of all claims for materials or labor furnished for the Work and may withhold payments of amounts reasonably adequate to pay such claims until the Contractor has produced evidence reasonably sufficient to establish that such claims have been resolved.

Section 17. The Contractor agrees to perform the Work in such a manner as to be of least inconvenience to the Owner and public. The Contractor agrees to comply with all ordinances and regulations affecting the Work in any manner, and with all sanitary rules and regulations, taking precaution to avoid creating unsanitary conditions.

Section 18. The Contractor further agrees that if there is a material breach of this Agreement by the Contractor as provided in Article 29 of the General Conditions, the Owner shall have the right to notify the Contractor of the Contractor's default. Upon notification of such a default, the Contractor shall discontinue said work or such part of parts thereof as the Owner may designate, and the Owner shall thereupon have the power and the right to proceed as provided in Article 27 or other applicable provision of the General Conditions.

Section 19. The Contractor shall maintain worker's compensation, general and automobile liability and property damage insurance as set forth in the General Conditions. The Contractor shall indemnify and save harmless the Owner from all costs, damages, expenses, suits, actions, proceedings of every name and description in law or equity, including reasonable attorneys' fees, brought against it or its officers, agents or employees arising out of or related to the performance of the Work, arising out of or related to infringement of any patent, or due to or in consequence of any negligence or any action, error or omission of the Contractor, where Contractor's actions are the proximate cause of the loss, damage or expense.

Section 20. The Contractor must be in full compliance with all applicable federal and state laws, including those on immigration.

Section 21. The Contractor contractually agrees to administer all functions pursuant to this Contract without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.

Section 22. The Contractor shall furnish the Owner certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, the Contractor's certified statement shall indicate the invoice number, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina sales and use taxes paid thereon. The Contractor's certified statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim by the Owner for sales or use taxes. The Contractor shall obtain and furnish to the Owner similar certified statements by the subcontractors. The certified statements to be furnished shall be in the form of the standard CONTRACTOR'S SALES TAX REPORT and shall be submitted with each request for payment. The Owner will not make payment to the Contractor until the CONTRACTOR'S SALES TAX REPORTS ARE SUBMITTED. Any and all refunds received by the Owner of said taxes shall remain with the Owner, and the Contractor shall not be entitled to such refund.

Section 23. The Contractor hereby agrees that the Contractor has read each and every clause of this Agreement and fully understands the meaning of the same, and that the Contractor will comply with all the terms herein. This Agreement is to be executed in two copies, one copy to be delivered to the Contractor and the other to be retained by the Owner.

Section 24. This Agreement is subject to the terms of all federal, state, and local requirements for the Work whether or not such requirements are set forth in the body of this contract.

Section 25. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

Section 26. This agreement may be amended or modified only by a writing signed by the Owner and Contractor.

Section 27. This Contract is subject to the provisions of the North Carolina General Statutes regarding the dispute resolution process. Accordingly, the following procedure shall be used to resolve any disputed issues, where the amount in controversy exceeds \$10,000, arising out of this contract or the construction process thereunder. If a dispute occurs between the Owner and Contractor arising out of or relating to the Contract or an alleged breach thereof, the Owner and Contractor agree to attempt to resolve the dispute by engaging in good faith negotiations. If the dispute cannot be resolved by negotiation, the Owner and Contractor agree as a condition precedent to commencing a lawsuit to submit the dispute to non-binding mediation under the construction mediation rules of the American Arbitration Association. The parties agree to exercise good faith efforts to complete any such mediation within ninety (90) days after the demand for resolution has been delivered. The work shall proceed as required by the contract documents during the pendency of any mediation or litigation. In the event a dispute cannot be resolved through non-binding mediation, the courts and the authorities of the State of North Carolina shall have exclusive jurisdiction over all controversies between the parties which may arise under or in relation to this Contract. Venue is properly laid in Orange County, North Carolina for any state court action and in the Middle District of North Carolina for any federal court action.

Section 28. E-Verify: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, should Contractor utilize a subcontractor(s), Contractor shall require the subcontractor(s) to comply with the requirements of Article 2, Chapter 64 of the General Statutes.

Section 29. Contractor's Affidavit: The final payment of retained amount due the Contractor on account of the Contract shall not become due until the Contractor has furnished to the Owner directly or through the Designer an affidavit signed, sworn and notarized to the effect that all payments for materials, labor, services or subcontracted Work in connection with this Contract have been satisfied, and that no claims or liens exist against the Contractor in connection with this Contract.

[SIGNATURES ON FOLLOWING PAGE]

This Contract is between the Town of Chapel Hill and **{Insert Contractor's Full Legal Name}** for **Roof Replacement – Chapel Hill Transit Campus**.

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed in their respective names.

{INSERT CONTRACTOR'S FULL LEGAL NAME}

SIGNATURE

PRINTED NAME & TITLE

WITNESS

PRINTED NAME & TITLE

TOWN OF CHAPEL HILL

DEPARTMENT HEAD/EXECUTIVE DIRECTOR OR DEPUTY/TOWN MANAGER

PRINTED NAME & DEPARTMENT

ATTEST BY TOWN CLERK:

TOWN CLERK

TOWN SEAL

Town Clerk attests date this the _____ day of _____, 20____.

Approved as to Form and Authorization. This is to certify that I have examined the attached Contract Documents, other than the Detailed Specifications and Appendices thereto; that after said examination I am of the opinion that such documents conform to the Laws of the State of North Carolina and that execution of the Contract and the Performance and Payment Bonds are in due and proper form and; that the Owner signatures are duly authorized to execute said Contract.

ATTORNEY FOR TOWN

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

FINANCE OFFICER

DATE