

UNION COUNTY BOARD OF EDUCATION CONTRACT ROUTING SHEET

Contractor Name: Shelco LLC
 Address: 2539 Perimeter Pointe Blvd., Suite 600
 City, State, Zip: Charlotte, NC 28208
 Contact Name: Justin Heitz
 Telephone Number: 704.367.5618

UCPS Contract Number: _____

Purpose of Contract (location and brief description): Forest Hills High School GMP

Submitting Department: Facilities Department

Date Submitted: 5.23.2023

Budget Account Number: FHHSBOND-FHHS316-CONSTRUCT

Funding Source: DS DM

Contract Amount: \$ 88,649,972

Contract Period: 812 calendar days

UCPS Employee to Contact: Penny Helms, Maurice Brown

Phone Number: 704-296-3160

NOTE: Individuals listed below should initial, date, and forward this form after completing their responsibilities relating to this Contract.

1. Approved by Fund Owner/Acquire Vendor Signature and proper
Insurance Certificate with UCBOE NAMED as
CERTIFICATE HOLDER.

A. Insurance Certificate Reviewed/Approved by Risk Management

2. Approved by Appropriate Representative(s) of UCPS:

- ☒ UCPS Project Coordinator
☒ UCPS Department Head/School Principal
☒ Asst. Supt. for Administration & Operations
☐ Asst. Supt. for Human Resources
☐ Asst. Supt. for Instructional Programs Asst.
☐ Asst. Supt. of Student Support
☐ Chief School Performance Officer
☐ Chief Technology Officer

INITIAL

DATE

DS
SH

DS
MB

DS
CM

FORWARD TO UCPS GENERAL COUNSEL OFFICE

DS
SS

DS
KB

DS
MM

3. Approved by Legal Counsel

FORWARD TO SUPERINTENDENT/BOARD OF EDUCATION

4. Approved by Superintendent/Board of Education

FORWARD TO FINANCE

6. Pre-audited by Representative of Finance Officer

DS
SM

FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT FIXED GUARANTEED MAXIMUM PRICE

THIS FIXED GUARANTEED MAXIMUM PRICE AGREEMENT (the “Agreement”), made to be effective 2nd Day of May 2023 for Forest Hills High School Project (the “Project”) by and between Shelco, LLC located at 2539 Perimeter Pointe Blvd, Suite 600, Charlotte, North Carolina 28208 (hereinafter called the “Construction Manager at Risk” or “CM”), and the Union County Board of Education, located at 400 N Church Street, Monroe, North Carolina 28110 (hereinafter called the “Owner”).

BACKGROUND

Whereas, the Owner published a Request for Qualifications on August 31, 2022 seeking the submission of qualifications to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Qualifications; and,

Whereas, the undersigned Construction Manager at Risk submitted its qualifications and a competitive proposal that were evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award of the construction management services to the undersigned Construction Manager at Risk; and

Whereas Owner and Construction Manager at Risk entered into that certain Pre-construction services Agreement dated December 6, 2022 and

Whereas, Design and Preconstruction Services of the Project are now completed and the Owner and Construction Manager at Risk now are ready to memorialize the contractual relationship between the parties as set forth herein.

AGREEMENT

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. PROJECT OVERVIEW

The Project is the Forest Hills High School located in Marshville, North Carolina and described in more detail in the Owner’s Request for Qualifications published August 31, 2022, the Construction Manager at Risk’s Project proposal September 22, 2022, and in the CM’s Project Proposal Presentation dated October 21, 2022.

This Agreement incorporates by reference the General Conditions of the Contract attached hereto as Exhibit 1 and the documents referred to and incorporated therein.

2. OWNER'S ROLE

- a. DESIGN SERVICES – The Owner has retained the firm of LS3P Architects Ltd. As the Project Designer. The Project Designer will provide all design services throughout the duration of the Project.
- b. DESIGNATED REPRESENTATIVE – Mr. Maurice Brown shall be the Owner's contact, shall be the primary channel of communication to the Owner, and shall act as the Owner's liaison with the CM. The Owner may designate multiple representatives responsible for defined aspects of the Project, and may replace or re-designate any or all representatives in the Owner's sole discretion.

3. CONSTRUCTION MANAGER-AT-RISK ROLE (OVERVIEW)

- a. The Owner is employing a Construction Manager-at-Risk contracting system to aid the Owner in the review and management of the design and to effect the construction of this Project. In broad terms, the CM will perform the following:
 - i. Pre-construction services in accordance with the previously approved Pre-construction services Agreement and, to the extent any such pre-construction services remain to be performed after the execution of this Agreement, in accordance with this Agreement. The CM shall publicly advertise bids as prescribed in N.C.G.S. §143-129; and shall pre-qualify and accept bids from first-tier subcontractors (the "Principal Trade and Specialty Contractors") for all construction work.
 - ii. Construction services, on the condition that the Owner accepts the submitted GMP, which will include the CM's Project Costs and the CM Management Fee as set forth herein, and all construction being accomplished through Principal Trade and Specialty Contractors and others as provided herein. Accordingly, without limiting the guaranty given by the CM with respect to the GMP, the primary duties of the CM also include the proper and timely completion of the construction of the Project through the employment of the best construction management practices.
- b. The requirements for the CM's services set forth in this section supplement the requirements of the General Conditions of the Contract that are attached hereto as Exhibit 1 and are incorporated herein by reference.

4. RELATIONSHIP OF OWNER AND CONSTRUCTION MANAGER

- a. The CM project records will be an "open book". The Owner may attend any and

all meetings and the Owner or its designated auditors or accountants and the Project Designer shall have access to any and all records maintained by the CM that relate to the Project. Owner's auditors shall not have a contingency based fee structure.

- b. The CM's employees and personnel assigned to provide services with respect to the Project shall be as identified in the CM's response to the Owner's Request for Qualifications published **August 31, 2022** and in the CM's Project proposal dated **September 22, 2022**. The CM agrees not to change its employees or personnel assigned to the Project without the Owner's approval, which approval will not be unreasonably withheld.

5. CONSTRUCTION MANAGER-AT-RISK PROJECT COSTS ALLOWANCE AND FEES

- a. Pre-Construction Phase (the "Pre-Construction Phase" or "Design Phase").
[intentionally deleted; see Pre-construction services Agreement]
- b. Construction Phase (the "Construction Phase"). The CM's Project Cost Allowance & Construction Phase Fee (the "CM Fee") for construction management services shall be an all-inclusive management fee which will include all CM home office, Project site and Project related costs, including all CM overhead costs and profit. There are two "components" of the CM Fee: the management fee (the "CM Management Fee") and the CM's Project costs fee ("CM Project Costs"). The CM Management Fee shall be a "flat fee" fixed amount as set forth in Section 9 below. The CM Project Costs shall be Fixed Lump Sum "General Conditions" as set forth in Section 9, below, and shall include the following:
 - i. Project and home office staff costs for all CM's Project executives, superintendents, Project managers and Project assistants performing work or services in connection with the Project consisting of direct salary or wages plus customary labor burden (which is defined to mean 49% of actual costs paid or incurred by Construction Manager at Risk for taxes, insurance, contributions, assessments and benefits required by law and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions), transportation, vehicle, and/or subsistence allowances, cell phones & travel expenses related to the Project.
 - ii. Mobilization – establishment of job site including office & storage trailer set-up & utility connections, and CM's Project signage.
 - iii. Temporary Field Office Facilities, Utilities, and Controls – rental of field office facilities including a conference room; utilities costs for field office; rental (or purchase) of field office furniture & equipment; field office telephone(s) with voice mail, telephone service, dedicated fax lines and high speed internet connections; field office operation cost (i.e. stationary,

postage, shipping, equipment maintenance, etc); temporary construction utilities (if required); small tools, first aid and safety gear, safety inspections, photography, storage yard rental, parking lot rental, and parking fees.

- iv. Plans/Surveys/Permits – reproduction of Construction Documents during the construction phase and all appropriate contractor and equipment licenses and permits.
- v. Safety/Cleanup – establishment and maintenance of an on-site safety program; installation and maintenance of temporary facilities (safety barricades, partitions, fences, ladders, stairs, safety signage, first aid, traffic control devices, etc.); dust control and pavement cleaning; trash collection and removal; maintenance of work area security; site snow removal as required; temporary weather and/or dust protection as required, vehicle wash stations as may be required; fire extinguishers and fire watch as required; safety harnesses, lanyards and fall arrest equipment as required.
- vi. Close-out/Demobilization – final site/facility clean-up; final release of bond/lien claims for all subcontractors; an as-built set of drawings in hard copy to the Project Designer for preparation of record as-built drawings; one copy of Project files and records for the Owner’s archives.
- vii. Quality Control/Project Documentation – monthly reports, photographs, inspection reports, logs (RFIs, submittals, change orders, etc.)
- c. All CM Project Costs shall be paid by the CM and shall not be passed down to the Principal Trade and Specialty Contractors or any subcontractor.
- d. The CM Project Costs shall not include costs for the following:
 - i. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract;
 - ii. The costs of tap and impact fees and site security;
 - iii. Third party inspections, special inspections, and soils and materials testing as identified or required by the drawings and specifications (reference drawing S0.1).
 - iv. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract shall be carried in the GMP as a separate line item, but not as part of the CM Fee or Cost of the Work. Reimbursement for insurance shall be calculated as follows and shall not exceed:

General Liability Insurance:	1% of the Cost of the Work
Builder's Risk Insurance:	0.25% of the Cost of the Work
Performance & Payment Bond	1% of the Cost of the Work
Errors and Omissions Insurance	1%.

Applies to subcontract scopes for work requiring delegated design/calculations and/or sealed shop drawings/documents

- v. The costs of tap and impact fees and site security shall be carried in the GMP as a separate line item and included in the Cost of the Work but not as part of the CM Fee.
- vi. The cost of the testing as identified above in 5.d.iii shall not be carried in the GMP but shall be paid for separately and directly by Owner.

6. PAYMENTS TO THE CONSTRUCTION MANAGER-AT-RISK

- a. Payment of the CM's Pre-Construction Fee shall be in accordance with the Pre-construction services Agreement.
- b. Payments of the Construction Management Fee shall be made in conformance with Article 31 of the General Conditions to the Contract.

7. PRE-CONSTRUCTION SERVICES & CONTINGENCIES

- a. The Pre-construction Services shall be provided in accordance with the previously approved Pre-construction services Agreement and, to the extent any such pre-construction services remain to be performed after the execution of this Agreement, in accordance with this Agreement.
- b. Construction Manager-at-Risk GMP Contingency
 - i. The GMP shall include a CM Contingency in an amount approved by the Owner not to exceed **3%** of the total Cost of the Work contemplated by the GMP [note that total Cost of the Work includes the CM Project Costs and costs for tap and impact fees and site security], to help reduce the risks assumed by the Construction Manager-at-Risk in providing the GMP for the Project. The Owner and the CM acknowledge that the CM Contingency is included to accommodate eventualities not taken into precise account in the CM's establishment of the GMP that are not reasonably anticipated by the CM including (1) scope gaps between trade contractors which a prudent CM could not have reasonably detected during the discharge of its Pre-construction services, (2) contract default by Principal Trade and Specialty Contractors or other subcontractors. It is understood that the amount of the CM Contingency is the maximum sum available to cover costs incurred as a result of such unanticipated causes

and that cost overruns in excess of the amount of this CM Contingency will be borne solely by the CM. CM Contingency to be controlled by the CM. Project will be bid as unclassified to designed sub grade for mass grading and classified below sub grade with associated unit prices. CM to include Allowances for unsuitable soils and rock in GMP. Cost overruns of Allowances shall be paid for by Owner. However, in the event that CM's construction means or methods result in defective construction due to unsuitable soils after construction begins, the CM shall be responsible for removal and, as necessary, replacement or rehabilitation of any unsuitable soils.

- ii. The CM Contingency may be applied to any items within the Cost of the Work or CM Project Costs without resulting in any change in the GMP. The CM will obtain written approval by the Owner and Project Designer prior to applying any part of this CM Contingency to any item within the Cost of the Work or CM Project Costs and prior to any such application per the "Change Order" process set forth in Article 19 of the General Conditions. The CM shall fully document the application of any part of the CM Contingency by submission of a written Change Order.
- iii. Any unapplied CM Contingency ("Project Savings") shall be split 70/30 between Owner and Construction Manager. Seventy (70%) of savings to Owner, Thirty (30%) to Construction Manager.
- iv. The amount of the CM Contingency is to be reviewed by the Owner as part of the review of the GMP. The Owner retains the right to specifically request revisions to the amount of the CM Contingency prior to the Owner's acceptance and approval of the GMP.
- v. Owner to receive one hundred (100%) of all funds remaining from project allowances.

8. CONSTRUCTION PHASE SERVICES

- a. Construction Phase services provided by the CM shall be in accordance with this Agreement and shall be as required to effect the complete construction of the Project and to maintain the established GMP of the Project. The CM undertakes to act as the Owner's fiduciary pursuant to N.C.G.S. §143-128.1 and to furnish professional construction management services during the construction of the Project. The providing of the CM services shall be in compliance with the requirements of the "Contract Documents". To the extent that any terms, requirements, or specifications in the Contract Documents are inconsistent, the terms, requirements, and specifications most favorable to the Owner shall control.
- b. The CM shall commence provision of construction phase services under this Agreement on a date to be specified in a written order of the Owner (the "Notice

to Proceed”) and shall accomplish substantial completion of the Project within 812 (eight hundred twelve) consecutive calendar days from the date of the Notice to Proceed. For each day in excess of the above number of days that the Project remains substantially incomplete, the Owner shall be entitled to liquidated damages from the CM in the sum of One Thousand Dollars (\$1,000.00) per day as damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to substantially complete the Project within the time specified.

- c. The CM shall fully complete all services hereunder and accomplish final completion of the Project within 60 consecutive calendar days from the date of the Substantial Completion. For each day in excess of the 60 days the Project remains incomplete, the Owner shall be entitled to liquidated damages from the CM in the sum of Five Hundred Dollars (\$500.00) per day as damages reasonably estimated in advance to cover the losses to be incurred by the Owner by any reason of failure of the CM to finally complete the Project within the time specified. Work must be closely coordinated with the assigned UCPS Project Manager to ensure no disruption to school activities. Any punchlist items requiring materials and/or replacement parts not readily available shall not apply to liquidated damages. CM to communicate with Owner of any punchlist items requiring parts and/or material requiring to be ordered.
- d. The CM shall furnish to the Owner various schedules and updates as provided in the Contract Documents setting forth planned progress of the Project broken down by the various activities, divisions, or parts of the work and by calendar days, and shall fully complete all work hereunder within the time of completion specified.
- e. Without limiting the foregoing, CM Construction Phase services shall include:
 - i. Consultation During Continuing Project Development: Upon acceptance of the GMP, the CM shall continue to advise and assist the Owner and Project Designer during any continuing Design Activities included in the GMP Scope of Work.
 - ii. Principal Trade & Specialty Contracts
 - A. One or more Principal Trade and Specialty Contract packages shall be prepared for each of the general construction, grading, electrical, mechanical, fire protection, and plumbing divisions of the work of the Project. The CM may at any time prior to the prequalification of bidders, identify and define other Principal Trade and Specialty Contract packages which the CM determines may be helpful in the timely, cost-effective construction of the Project, such as surveying, site fencing, and progress and final cleaning, with or without barrier reduction. Each Principal Trade and Specialty Contractor shall provide such bonds and insurance as the CM may require in the contract package.

- B. In addition to Principal Trade and Specialty Contract packages including general construction, grading, plumbing, fire protection, mechanical, and electrical divisions of the work, the CM may advertise for one or more combinations of one or more Principal Trade and/or Specialty contract packages, and may prequalify and accept bids from first-tier subcontractors who wish to submit such combined bids which fully and completely incorporate the Project specifications for two or more of the bid packages advertised to bid at a single bid opening. All requirements of N.C.G.S. §§143-128, 143-128.1, 143-128.2, and 143-129, as well as all advertised conditions for bidding, must be satisfied for such a combination bid to be considered responsive.
- C. In conformity with the public policy set forth in N.C.G.S. §143-128, no Trade Contract Package, including RBP's, may be awarded other than to the responsible bidder submitting the lowest verified responsive bid.
- D. After the CM has prequalified Principal Trade and Specialty Contractors, the CM shall advertise for receipt of bids as directed by the Owner. Bids will be received from all prequalified contractors for each Trade & Specialty Package in a public venue and publicly opened at the time specified. The CM shall tabulate the bids received on each package. Next, the CM shall determine the apparent low bidder for each package. Upon this determination, the CM shall have the right to review all bid documentation from the apparent low bid contractor to verify the scope of the bid. If this review shows that the low bid contractor fully accounted for all costs associated with the scope of the work on which he was bidding, then the contract shall be awarded to the low bid contractor. If, however, this review shows that the low bid contractor failed to account for all costs associated with the scope of the work on which he was bidding, then the bid may be disqualified at the discretion of the CM. The CM shall have the right as outlined above to verify the scope of each low bid in the same manner until he determines the lowest verified responsive bid.
- E. The CM may repeat the bidding for a Principal Trade or Specialty Contract only if 1) the initial bidding produces no responsible, responsive bids for that portion of the work, or 2) no responsible, responsive bidder will execute a contract for the bid portion of the work, or 3) in the judgment of the CM the bids represent an excessive cost based on current market value and 4) the Owner approves of such a re-bid.

- F. The CM will require the Principal Trade & Specialty Contractors to provide the applicable contract documents including insurance certificates, Historically Underutilized Businesses (HUB) and Minority Business Enterprise (MBE) participation schedules, and verification of HUB and MBE participation (by submission of MWSBE Identification of Minority Business Participation Form, Affidavit A, B, C, and D. Appendix E shall be submitted with each monthly pay application.
 - G. All contract documents between the CM and the Principal Trade and Specialty Contractors and other subcontractors shall be made available for review by the Owner. The CM shall provide to Owner the proposed terms and conditions it intends to utilize in the subcontracts for Owner's input regarding those terms and conditions that impact the Owner's risk of additional costs.
- iii. Project Control & Management
 - A. The CM shall accept delivery and arrange for storage, protection and security for any Owner purchased materials, systems and equipment to be incorporated in the Project until such items are turned over to the respective Principal Trade & Specialty Contractors. All Owner supplied materials, systems, equipment shall be identified by the Owner prior to final bid and execution of GMP.
 - B. The CM shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the CM shall conduct bi-weekly Owner's meetings and other meetings as may be directed by the Owner, at which Principal Trade and Specialty Contractors, Owner, Project Designer, and other designated representatives, and the CM can discuss jointly such matters as progress, scheduling, and construction-related problems. The CM shall prepare and distribute complete minutes of meetings to all attendees and others as directed by the Owner or Project Designer within three (3) days of such meetings. Representatives of the Owner may attend meetings and shall in any case receive all notices and minutes of meetings.
- iv. Requests for Information (RFI)

The CM will be responsible for developing and implementing an RFI process for use on the Project and shall be responsible for tracking and monitoring all RFI's throughout the Construction Phase.
- v. Claims Avoidance/Resolution

The North Carolina State Building Commission's rules implementing mediated settlement conferences in North Carolina public construction contracts, issued pursuant to N.C.G.S. §142-135.26(11) shall be followed for mediation of claims or disputes between the parties. If mediation is unsuccessful, parties shall enter arbitration.

vi. Reports

- A. The CM shall keep accurate and detailed written records of Project progress during all stages of construction.
- B. The CM shall maintain a detailed daily diary of all events, which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, Project progress. The diary shall be available to the Owner at all times and shall be turned over to the Owner upon final completion of the Project. Upon request, the CM shall provide copies of the diary on a weekly basis. CM shall provide access to Owner for Daily Logs through project documentation software "Procore".
- C. The monthly report by the CM shall include the following items: Project status, schedule update, cost status, change order summary, shop drawing/submittal/RFI summary, quality control/inspection summary, any current construction and/or cost issues with proposed solutions for resolution, an accident report, and a 30 and 60 day look ahead report. In the event the progress of the Project falls behind the approved schedule, the CM shall provide written weekly schedule updates until such time as the progress of the Project is in accord with the approved schedule.

vii. Contract Close-Out

- A. The CM is responsible for compliance with all Contract Close Out items per the Contract Documents and shall obtain data from Principal Trade & Specialty Contractors and maintain a current set of record drawings, specifications and operating manuals.
- B. With mechanical and electrical equipment, the CM will obtain the Operating and Maintenance (O&M) manuals at least four (4) months prior to the demonstration for such equipment. These O&M manuals are to be sent to the Owner for review prior to the equipment demonstration.
- C. At the completion of the Project and before final payment, the CM shall deliver all such records to the Owner along with a complete

set of as-built drawings for use by the Project Designer in preparing Record Drawings. Closeout documents, O&M Manuals, Warranties shall be provided in digital Bookmarked PDF Format. As built Drawings shall also be provided in CAD Version 2015.

viii. Separate Contracts

Without invalidating the relationship with the CM, the Owner reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the work of the CM. The CM shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the CM shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the CM from carrying out his work according to the Project plans and specifications, the CM shall immediately notify the Project Designer and the Owner upon discovering such conditions. Owner provided subcontractors shall cooperate, coordinate with CM and its subcontractors, attend weekly coordination meetings while onsite, follow CM safety protocol at a minimum and maintain project schedule not to cause delays. Owner shall be responsible for their Subcontractors project delays. Owner subcontractor shall provide full time supervision for their scope of work.

9. GUARANTEED MAXIMUM PRICE (GMP)

The Fixed Guaranteed Maximum Price shall be as follows:

Cost of the Work (excluding CM Project Costs, tap and impact fees, and site security)	\$ 79,132,472
CM Management Fee (fixed fee per section 5.b)	\$ 2,507,885
CM General Conditions (fixed fee per Section 5.b)	\$ 3,303,834
CM's Bonds and Insurance (not to exceed per Section 5.d.iv.)	\$ 1,925,609
Tap/impact fees (allowance) and site security (not to exceed per Section 5.d.v.)	\$ 200,000
CM Contingency (not to exceed per Section 7.b)	\$2,338,100
Approved Bid Alternates (5,7,8,9,10,13, P1 thru P8)	
See Exhibit A	(\$190,010)
Approved VE See Exhibit A	(\$567,918)
Total Fixed Guaranteed Maximum Price	\$88,649,972

10. DEFAULT

- a. If the CM fails to commence providing the construction phase services within the time specified, or the progress of the Project is not maintained on schedule, or the Project is not completed within the time above specified, or if the CM shall allow

the work to be performed unsuitably or shall discontinue the prosecution of the work, or if the CM shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice of such event in writing, sent by overnight mail or by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not correct or cure such event, then the Owner shall declare this Agreement in default, and, thereupon, the CM's surety shall promptly take over the work and complete the performance of this Agreement in the manner and within the time frame specified. In the event the CM's surety shall fail to take over the work to be done under this Agreement within fifteen (15) days after being so notified and shall fail to notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating this Agreement, to take the prosecution of the work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under this Agreement, shall be deducted from any monies due or which may become due said CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by said CM, then the CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of said excess.

- b. It is further mutually agreed between the parties hereto that if at any time after the execution of this Agreement and the surety bonds hereto attached for its faithful performance, (i) the Owner shall reasonably deem the surety or sureties upon such bonds to be unsatisfactory, or (ii) if, for any reason, such bonds cease to be adequate to cover the performance of the work, the CM shall, at its expense, within five (5) days after the receipt of notice from the Owner so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be reasonably satisfactory to the Owner. In such event no further payment to the CM shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first above written in four (4) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager at Risk:

[CM]

DocuSigned by:
Justin Heitz
By: _____
Title: _____ 5/26/2023 | 5:26 AM PDT

Attest: (Corporation)

Sydney Kessel

Administrative Assistant
Title: _____

(CORPORATE SEAL)

56-1190111

Vendor's Federal Identification #

[if Contract is with Organization or Social Security Number if individual]

THE UNION COUNTY BOARD OF EDUCATION

DocuSigned by:
Kathy Heintel
Authorized Representative
Date 5/26/2023 | 10:29 AM EDT

This instrument has been preaudited
in the manner required by the School
Budget and Fiscal Control Act.

DocuSigned by:
Shanna McLamb
Finance Officer
Date 5/26/2023 | 6:17 AM PDT

LIST OF EXHIBITS

- Exhibit 1: General Conditions of the Contract**
- Exhibit 2: Owner's Request for Qualifications published August 31, 2022**
- Exhibit 3: CM's Response to Request for Qualifications dated September 22, 2022**
- Exhibit 4: CM's Project Proposal Presentation dated October 21, 2022**
- Exhibit 5: Pre-Construction Services Agreement dated December 6, 2022**
- Exhibit 6: CM's HUB Plan approved by Owner**
- Exhibit 7: Project Manual (including by reference all Designer's drawings and specifications provided therein) dated August 31, 2022.**
- Exhibit 8: CM Payment and Performance Bonds**
- Exhibit 9: Detailed Budget and Statement of GMP including schedule of values for cost of the work (Approved by both CM and Owner)**
- Exhibit 10: Contractor's Certificate of Insurance**

**EXHIBIT 1 TO FIXED GUARANTEED MAXIMUM PRICE AGREEMENT BETWEEN
UNION COUNTY BOARD OF EDUCATION AND SHELCO LLC.**

FOREST HILLS HIGH SCHOOL

**GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION MANAGER-AT-RISK PROJECT**

GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE 1 – DEFINITIONS

In addition to other definitions as set forth in the Contract Documents, the following are definitions of words and phrases used in the Contract Documents:

- a. The **Contract Documents** consist of the Owner's Request for Qualifications published August 31, 2022, Construction Manager at Risk's response to Request for Qualifications dated September 22, 2022, Pre-Construction Services Agreement dated December 6, 2022, Construction Manager at Risk's HUB plan approved by Owner, Project Manual including Designer's drawing and specification lists dated August 31, 2022 (including the drawings and specifications listed therein), Construction Manager at Risk's payment and performance bonds with Power of Attorney, Construction Manager at Risk's Insurance Certificate Detailed Budget and Statement of GMP including schedule of values for cost of the work, As used herein the term "Agreement" means the Contract Documents.
- b. The **Owner** is the Union County Board of Education
- c. The **Designer** or **Project Designer** means the firm of LS3P Ltd. which have undertaken to design the Project pursuant to a contract with the Owner, (hereinafter, the "design contract").
- d. The **Construction Manager-at-Risk** or **CM** means Shelco, LLC.
- e. A **subcontractor**, shall mean an entity or individual who has entered into a direct contract with the CM to construct a portion of the Work, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the Contract Documents, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include services, materials, equipment, labor, and workmanship of the appropriate contractor to construct the Project in accordance with the plans and specifications prepared by the Designer and as supervised by the CM or as provided by the CM.
- h. The **"Cost of the Work"** means the cost of the Work inclusive of the CM's Project Cost, but exclusive of the CM Management Fee.
- i. The **Project** is the Forest Hills High School project and is the total construction work and services to be performed under the contract documents.
- j. **Change Order** shall mean a written amendment subsequent to the signing of the Agreement authorizing (i) a change in scope of the Work and (ii) either a change in the GMP or use of the CM Contingency. The Change Order shall be signed by the CM, Designer, and the Owner.
- k. **Field Order**, as used herein, shall mean a written approval from the Owner for the CM to proceed with the work requested by Owner prior to issuance of a formal Change Order. The Field Order shall be signed by the CM, Designer, and Owner.

- l. [intentionally deleted]
- m. **Liquidated Damages**, as stated in the Contract Documents, is an amount reasonably estimated in advance to cover the losses incurred by the Owner by reason of failure of the CM to complete the Work within the time specified.
- n. **Surety**, as used herein, shall mean the bonding company or corporate body which issues the performance bond and payment bond for the Project.
- o. **Routine written communications between the Designer and the Construction Manager** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".
- p. **Clarification or Request for Information (RFI)** is a request from the CM seeking an interpretation or clarification by the Designer relative to the Contract Documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the CM's interpretation or understanding of the Contract Documents requirements in question, along with reasons for such an understanding.
- q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the Work.
- r. **Inspection** shall mean examination or observation of Work completed or in progress to determine its compliance with the Contract Documents.
- s. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the Contract Documents.
- t. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the CM would improve competition and/or enhance the finished installation.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The Designer's Project drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

- a. In such cases where the nature of the Work requires clarification by the Designer, such clarification shall be furnished by the Designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of the Contract Documents, and shall become a part thereof.
- b. The CM and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the Work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The CM shall not proceed with the Work without such detail drawings and/or written clarifications.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

The Designer shall furnish free of charge to the CM copies of plans and specifications as follows: The CM shall receive up to five (5) sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the CM shall clearly and legibly record all work-in-place that is at variance with the Contract Documents. Additional sets shall be furnished at cost, including mailing, to the CM at the request of the CM.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

- a. Within thirty (30) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the CM and provided to the Designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the Designer.
- b. The CM will be responsible for logging all shop drawings/submittals prior to submission to the Project Designer and Owner. The CM is to ensure that shop drawings/submittal packages are submitted in an appropriate manner and, if not, return them to the Principal Trade or Specialty Contractor for proper submission.
- c. The CM shall develop and implement a system for the processing of all shop drawings/submittals and shall be responsible for tracking and monitoring all shop drawings/submittals until all have been approved by the Project Designer & Owner.
- d. Approval of shop drawings by the Designer shall not be construed as relieving the CM from responsibility for compliance with the design or terms of the Contract Documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the Designer in writing by the CM.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- a. The CM shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for the Work including all shop drawings. Such drawings and specifications shall be available for use by the Designer or his authorized representative.
- b. The CM shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the Contract Documents. Such variations shall be fully noted on Project drawings by the CM and submitted to the Designer upon project completion and no later than thirty (30) days after acceptance of the project.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the Owner. The use of these instruments on work other than pursuant to this Agreement without permission of the Owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the Owner upon request after completion of the Work.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The CM shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water in connection with the Work and shall require the Principal Trade and Specialty Contractors to supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of the Work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The CM shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the Contract Documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice from the Owner, the CM shall require the Principal Trade and Specialty Contractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CM through the Principal Trade or Specialty Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CM through the Principal Trade or Specialty Contractor has the option of using any product and manufacturer combination listed. However, the CM through the Principal Trade or Specialty Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The CM will be responsible for reviewing all substitution requests from Principal Trade or Specialty Contractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the Designer prior to the opening of bids.
- e. The CM shall obtain written approval from the Designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.

- g. If at any time during the construction and completion of the Work covered by these Contract Documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any workman be considered detrimental to the Work, the CM shall order such parties removed immediately from grounds.

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the Contract Documents that the Work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The CM shall protect and save harmless the Owner against suit on account of alleged or actual infringement but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. The CM shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the CM observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the CM performs any Work or authorizes any Work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All Work shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the CM unless otherwise specified.
- c. The Project is subject to county and municipal building codes and inspection by local authorities. The CM shall pay the cost of these permits and inspections unless otherwise specified.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The CM shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or Designer, and by laws or ordinances governing such conditions. The CM shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The CM shall be responsible for and pay for any damages caused to the Owner. The CM shall have access to the Project at all times.
- b. The CM shall provide cover and protect all portions of the structure when the Work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the Work on the building. Any Work damaged through the lack of proper protection, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.

- d. The CM shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded as proposed by the CM and approved by Owner to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the Work shall be well barricaded and properly lighted at night.
- e. The CM shall develop and implement a Project safety plan that provides all necessary safety measures for the protection of all persons on the Project in accordance with applicable laws, regulations, and construction industry safety standards and practices, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the Work. The CM shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The CM shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the Work.
- f. The CM shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.
- g. The CM shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the Project. The name of the safety inspector shall be made known to the Project Designer at the time the Work is started. The CM shall conduct daily safety and health inspections of the construction site and, on a weekly basis, report to the Owner and Project Designer, in writing, the results of such inspections, all workplace hazards identified during such inspections, and corrective action taken to correct such hazards.
- h. In the event of an emergency affecting the safety of life, the protection of Work, or the safety of adjoining properties, the CM is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the CM on account of such action shall be determined as provided for under Article 19(b).
- i. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the CM or its Principal Trade or Specialty Contractors, the CM shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Owner and Designer in writing. The Owner shall take responsibility for remediating the material or substance from the site. If the CM's progress in completing the Project is delayed as a result of the Owner's having to remediate the site, the Owner shall issue a change order to the CM in accordance with Article 19.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the CM or any Principal Trade or Specialty Contractor in connection with the Project shall comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the Project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code,

Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the CM shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said act are promptly taken.
- c. The CM shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 of the North Carolina Sedimentation Pollution Control Act against any party or persons described in this article.
- d. To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, the Designer and the agents, consultants and employees of the Owner and Designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of Work or failure of performance of Work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act (but such indemnity does not include indemnification for improper or inadequate design of any pollution control measures, it being understood that design is the responsibility of the Designer). Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Article.

ARTICLE 13 - INSPECTION OF THE WORK

- a. It is a condition of this contract that the Work shall be subject to inspection during normal working hours by the Designer, designated official representatives of the Owner, and those persons required by state law to test special work for official approval. The CM shall therefore provide all equipment necessary and safe access to the Work at all times for such inspections.
- b. All instructions to the CM will be made only by or through the Designer or his designated project representative. Observations made by official representatives of the Owner shall be conveyed to the Designer for review and coordination prior to issuance to the CM. Owner's Geotechnical Engineer shall serve as Owner representation in regards to all inspection, direction, classification and quantification of soils, unsuitable soils and rock
- c. The CM shall perform quality control inspections of the Work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the Work and shall coordinate this activity with the on-site duties of the Project Designer. The CM shall advise the Project Designer of any apparent variation and/or deviation in the Work from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. Where special inspection or testing is required by virtue of any state laws, instructions of the Designer, specifications or codes, the CM shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the CM's responsibility to serve ample notice of such tests. All third-party special inspections and building envelope consultants shall be paid for by the Owner. CM to coordinate all inspections.

- e. All testing required by the Contract Documents shall be paid by the Owner. If additional testing is ordered by the Owner or Project Designer and such additional testing is not due to the negligence of the CM or its subcontractors, Owner shall reimburse CM for the cost of such additional testing.
- f. Should any Work be covered up or concealed prior to inspection and approval by the Project Designer such Work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the Work will be made promptly upon notice from the CM. All cost involved in uncovering, repairing, correcting, replacing, recovering and restoring to design condition the Work that has been covered or concealed will be paid by the CM.
- g. If any other portion of the Work has been covered which the Designer has not specifically requested to observe prior to being covered, the Project Designer may request to see such Work and it shall be uncovered by the CM. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the CM shall pay such costs.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

- a. On-site representatives of the CM shall manage the Work of the Principal Trade and Specialty Contractors and coordinate the Work with the activities of the Owner and Project Designer to complete the Project with the Owner's objectives of cost, time and quality. Throughout the progress of the Work, the CM shall maintain a competent and adequate full-time staff approved by the Owner. It is understood that the designated and approved on-site representative of the CM will remain on the job and in responsible charge as long as those persons remain employed by the CM unless otherwise requested or agreed to by the Owner. The CM shall establish an on-site organization with appropriate lines of authority to act on behalf of the CM. Instructions, directions or notices given to the designated on-site authority shall be as binding as if given to the CM. However, directions, instructions, and notices shall be confirmed in writing.
- b. The CM shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the Work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the Designer without delay. The CM will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. {NOT USED}
- d. The CM shall call and preside over monthly job site progress conferences. All Principal Trade and Specialty Contractors shall be represented at these job progress conferences by both home office and Project personnel. The CM shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified contract time. The CM shall be prepared to assess progress of the Work and to recommend remedial measures for correction of progress as may be appropriate. The CM with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman. CM shall include any subcontractors and/or specialty contractor on as needed basis at CM's discretion

- e. The CM shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the Work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. {NOT USED}
- g. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages. After contract award but prior to thirty (30) days from the date of the notice to proceed, the CM shall obtain from the Principal Trade and Specialty Contractors their respective work activities and integrate them into a baseline project construction schedule in CPM form. The resulting baseline CPM schedule shall show all salient features of the Work required for construction of the Project from start to finish within the time allotted by the contract. The time in days between the CM's early completion date and the contractual completion date is project float time and shall be used as such by the CM unless amended by change order. The CM shall submit to the Project Designer an electronic and paper copy of the final baseline CPM schedule after contracts are executed but within fifteen (15) days prior to the written notice to proceed. The Project Designer after reviewing and commenting on the project CPM schedule shall submit it to the Owner for approval. No application for payment will be processed until the project CPM schedule is approved by the Owner. No monthly application for payment will be processed without the submission of an electronic and paper copy of the CPM schedule attached.
- h. The CPM schedule shall be a complete computer-generated Gantt Chart CPM showing the complete sequence of construction activities, identifying the Work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- i. The CM shall distribute to the Principal Trade and Specialty Contractors the approved baseline project CPM schedule and shall display same at the Project site.
- j. The CM shall maintain and regularly update the baseline project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the Project within the time allotted by the contract. In doing so, the CM shall keep the Designer and Owner as well as all Principal Trade and Specialty Contractors fully informed as to all changes and updates to the schedule. The CM shall submit to the Project Designer and Owner a monthly report of the status of all Work activities. The monthly status report shall show the actual Work completed to date in comparison with the original amount of Work scheduled. If the Work is behind schedule, the CM must indicate in writing what measures are being taken to bring the Work back on schedule and ensure that the contract completion date is not exceeded, and the CM shall provide written weekly schedule updates so long as the Work remains behind schedule. If the Work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the CM shall prepare and submit to the Project Designer and Owner a recovery schedule for review and approval. Failure of the CM to abide by the directives in this paragraph will give the Owner cause to exercise the remedies set forth herein and pursue any other legal remedies allowed it by law.

ARTICLE 15 – {NOT USED}

ARTICLE 16 - PRINCIPAL TRADE AND SPECIALTY CONTRACTS AND CONTRACTORS

- a. Principal Trade and Specialty Contractors shall be pre-qualified by the CM. The prequalification criteria shall be determined by the CM and approved by the Owner to address quality, performance, the time specified in the bids for performance of the Work, the cost of construction oversight, time for completion, capacity to perform, and any other factors deemed appropriate by the Owner and/or CM. Only pre-qualified contractors are allowed to bid to and contract with the CM on the Project.
- b. All bids for Principal Trade and Specialty Contracts shall be publicly advertised and shall be opened publicly in a public venue, and once opened, shall be public records under N.C.G.S. 132. The CM shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. 143-128.2, and other factors deemed appropriate by the Owner and/or CM and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. 143-128(f1). Once Principal Trade and Specialty Contractors are in place, upon request the CM shall provide copies of the contracts to the Project Designer and also provide a list of equipment and material suppliers.
- c. The CM may perform a portion of the Work only if (a) bidding produces no responsible, responsive bidder for that portion of the Work, or (b) the lowest responsible, responsive bidder will not execute a contract for the bid portion of the Work, or the Principal Trade or Specialty Contractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (c) the Owner approves performance of the Work by the CM.
- d. The Designer will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the CM on account of the Work of the Principal Trade or Specialty Contractor.
- e. The CM is and remains fully responsible for his own acts or omissions as well as those of any Principal Trade or Specialty Contractor or of any employee of either. The CM agrees that no contractual relationship exists between the Principal Trade and Specialty Contractors and the Owner in regard to the contract, and that the Principal Trade and Specialty Contractors act as agents, subcontractors, or employees of the CM with respect to the Work. The Principal Trade and Specialty Contractors are not intended third-party beneficiaries of this contract.

ARTICLE 17 - CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS

The CM agrees that the terms of these Contract Documents shall apply equally to each Principal Trade and Specialty Contractor as to the CM, and the CM agrees to take such action as may be necessary to bind each Principal Trade and Specialty Contractor to these terms. The CM further agrees that payments to Principal Trade and Specialty Contractors shall be made in accordance with the provisions of N.C.G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

- a. The final balance of the contract amount due the CM from the Owner shall be paid in full within 45 days after the Project has been accepted by the Owner, certified by the architect, engineer or Designer to be completed in accordance with terms of the plans and specifications, or occupied by the Owner and used for the purpose for which the Project was

constructed, whichever occurs first. Provided, however, that whenever the Designer determines that delay in completion of the Project in accordance with the plans and specifications is the fault of the CM, the Project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. Should final payment to the CM beyond the date the Project been certified to be completed by the Project Designer, accepted by the Owner, or occupied by the Owner and used for the purposes for which the Project was constructed, be delayed by more than 45 days, CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the Contract Documents or CM shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. In the event of a conditional acceptance of the Project, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

- b. Within seven days of receipt by the CM of each periodic or final payment from the Owner, the CM shall pay the Principal Trade and Specialty Contractors based on Work completed or service provided under their contract with the CM. Should any periodic or final payment to a Principal Trade or Specialty Contractor be delayed by more than seven days after receipt of periodic or final payment by the CM, the CM shall pay the Principal Trade or Specialty Contractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
- c. The percentage of retainage on payments made by the CM to the Principal Trade and Specialty Contractors shall not exceed the percentage of retainage on payments made by the Owner to the CM. Any percentage of retainage on payments made by the CM to the Principal Trade or Specialty Contractors that exceeds the percentage of retainage on payments made by the Owner to the CM shall be subject to interest to be paid by the CM to the Principal Trade or Specialty Contractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent the CM at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Principal Trade or Specialty Contractor for unsatisfactory job progress; defective construction not remedied; disputed Work; third-party claims filed or reasonable evidence that claim will be filed; failure of the Principal Trade or Specialty Contractor to make timely payments for labor, equipment and materials; damage to CM or another subcontractor; reasonable evidence that a Principal Trade or Specialty Contract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

ARTICLE 18 - DESIGNER'S STATUS

- a. The Project Designer shall provide liaison and necessary inspection of the Work to ensure compliance with the Project plans and specifications. He is the agent of the Owner only for the purposes and to the extent stipulated in the Contract Documents. He has authority to stop work or to order Work removed, or to order corrections of faulty Work where such action may be necessary to assure successful completion of the Work.
- b. The Project Designer is the impartial interpreter of the Contract Documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the CM, taking sides with neither.

- c. Should the Project Designer cease to be employed on the Work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic site visits and observations of the Project at intervals appropriate to the stage of construction. He will review the progress, the quality and the quantity of the Work.
- e. The Project Designer and the Owner shall have access to the Work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the Designer may perform his functions under the Contract Documents.
- f. Based on the Project Designer's inspections and evaluations of the Project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the administration of the Project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the Contract Documents. The CM's decisions, however, relating to means and methods, and administration of the contracts the CM holds are final.

ARTICLE 19 - CHANGES IN THE WORK

- a. The Owner may have changes made in the Work. These changes will not invalidate and will not relieve or release the CM from any guarantee given by him pertinent to the Contract Documents. These changes will not affect the validity of the surety bonds and will not relieve the surety or sureties of said bonds. All extra work shall be executed under conditions of the original Contract Documents.
- b. Except in an emergency endangering life or property, NO CHANGE IN THE GMP CONTRACT SHALL BE MADE BY THE CM EXCEPT UPON RECEIPT OF APPROVED CHANGE ORDER OR WRITTEN FIELD ORDER FROM THE DESIGNER, AND COUNTERSIGNED BY THE OWNER AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE GMP OR CONTRACT PRICE SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.

A FIELD ORDER, TRANSMITTED BY FAX OR HAND DELIVERED MAY BE USED WHERE THE CHANGE INVOLVED IMPACTS THE CRITICAL PATH OF THE WORK. A FORMAL CHANGE ORDER SHALL BE ISSUED WITHIN THE TIME STATED ON THE FIELD ORDER FOR ANY CHANGE IN THE CONTRACT TIME FOR FINAL COMPLETION OF THE PROJECT.

- c. A "Change Order" refers to changes in the Work that (i) result in a change to the GMP and/or and, if additive, will be funded by the Owner's Contingency or (ii) will be funded by the CM Contingency.
- d. In the event of emergency endangering life or property, the CM may be directed to proceed on a time and material basis with a change in the Work by a Field Order whereupon the CM shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the Work the change order will be prepared as outlined under either Method "e(1)" or Method "e(2)" below or both. Any failure of the CM or its subcontractors to keep detailed cost records for time and material work shall constitute a waiver of the right to additional compensation.

- e. In determining the values of changes, either additive or deductive, for purposes of a Change Order or Field Order the CM and Principal Trade and Specialty Contractors are restricted to the use of the following methods:
 1. Where the extra work involved is covered by unit prices in a subcontract, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed, of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the subcontract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
 2. Otherwise, the CM and Principal Trade and Specialty Contractors shall negotiate and agree upon the equitable value of the change prior to issuance of the Change Order or Field Order, and the Change Order or Field Order shall stipulate the corresponding lump sum adjustment.
- f. Under Method "c(2)" above, the allowance for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of **net cost** of the Work. No change to the CM Management Fee will be allowed for the CM until the change orders aggregate to a sum in excess of five percent (5%) of the Cost of the Work portion of the GMP (if a change order results in an increase to the CM's actual Project Cost then the "cap" on CM's Project Cost may be increased by the amount of such increase). Once this threshold is met the CM may add an amount to the CM Management Fee not to exceed four percent (4%) of the net cost of the change order. In the case of deductible change orders, there shall be no change to the CM Management Fee.
- g. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
 1. The actual costs of materials and supplies incorporated or consumed as part of the Project;
 2. The actual costs of labor expended on the Project site;
 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;
 4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
 5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the Project.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner.

- h. Should concealed conditions other than unsuitable soils be encountered in the performance of the Work below grade, the time for completion may be equitably adjusted by Change Order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

All Change Orders shall be supported by a breakdown showing method of arriving at net cost as defined above.

- i. In all Change Orders, the procedure will be for the Project Designer to request proposals for the Change Order work in writing. The CM will require the Principal Trade and Specialty Contractors to provide such proposals and supporting data in suitable format and will review and approve such Change Orders prior to submission to the Designer. The Project Designer shall verify correctness. Within fourteen (14) days after receipt of the CM's proposal, the Project Designer shall prepare the Change Order and forward to the CM for his signature or otherwise respond, in writing, to the CM's proposal. Within seven (7) days after receipt of the Change Order executed by the CM, the Project Designer shall certify the Change Order by his signature and forward the Change Order and all supporting data to the Owner for the Owner's signature. The Owner shall execute the Change Order and upon approval by the Owner, one copy remains with the Owner, and the remaining copies are sent to the Project Designer for distribution to the CM and the CM shall forward a copy to its surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal change order procedure.
- j. A Change Order, when issued, shall be full compensation, or credit, for the Work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the Project as a result of the change in the Work.
- k. If, during the progress of the Work, the Owner requests a Change Order and the CM's terms are unacceptable, the Owner may require the CM to perform such changed Work on a time and material basis in accordance with paragraph 19(e) above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the Work requested in the Change Order.

ARTICLE 20 - CLAIMS FOR EXTRA COST

- a. Should the CM consider that as a result of any instructions given in written form by the Designer, he is entitled to extra cost above that stated in the Contract Documents, he shall give written notice thereof to the Designer within seven (7) days without delay, and shall not proceed with the Work affected until further advised, except in emergency involving the safety of life or property. No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.
- b. The CM shall not act on instructions received by him from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer will not be responsible for misunderstandings claimed by the CM of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a properly authorized Change Order.
- c. Should a claim for extra compensation in excess of \$5,000 by the CM be denied by the Project Designer or Owner, and cannot be resolved by negotiation, the CM may request a

mediation in connection with N.C.G.S. 143-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, or if the claim was not subject to mediation on the ground it was not in excess of \$5,000, then the CM may pursue his claim as follows:

1. If the CM has not completed this Agreement with the Owner and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the UCPS Assistant Superintendent of Operations and Administration for the amount the CM claims is due. The UCPS Assistant Superintendent of Operations and Administration may elect to hold an informal hearing at which the CM will be allowed an opportunity to explain its position. The UCPS Assistant Superintendent of Operations and Administration may deny, allow or compromise the claim, in whole or in part. For claims not in excess of \$5,000, the UCPS Assistant Superintendent of Operations and Administration shall act as the final arbitrator of the claim and the decision of the UCPS Assistant Superintendent of Operations and Administration shall be final and binding on the parties.
2. (a) If the CM has completed this Agreement and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the UCPS Assistant Superintendent of Operations and Administration for the amount the CM claims is due. The claim shall be submitted within sixty (60) days after the CM receives a final statement of the Project Designer's disposition of his claim and shall state the factual and legal basis for the claim.
- (b) The UCPS Assistant Superintendent of Operations and Administration shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the UCPS Assistant Superintendent of Operations and Administration and the CM agree. The CM may appear before the UCPS Assistant Superintendent of Operations and Administration either in person or through counsel, to present facts and arguments in support of his claim. The UCPS Assistant Superintendent of Operations and Administration may allow, deny or compromise the claim, in whole or in part. The UCPS Assistant Superintendent of Operations and Administration shall give the CM a written statement of the Director's decision on the CM's claim. For claims not in excess of \$5,000, the UCPS Assistant Superintendent of Operations and Administration shall act as the final arbitrator of the claim and the decision of the UCPS Assistant Superintendent of Operations and Administration shall be final and binding on the parties.
- (c) If the CM is dissatisfied with the UCPS Assistant Superintendent of Operations and Administration's decision on a claim in excess of \$5,000 submitted under this subsection, the CM may institute a civil action for the sum he claims to be entitled to hereunder by filing a verified complaint for a non-jury trial and the issuance of a summons in the Superior Court of Union County. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

ARTICLE 21 - MINOR CHANGES IN THE WORK

The Project Designer will have the authority to order minor changes in the Work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, copied to the Owner, and shall be binding on the Owner and the CM.

ARTICLE 22 - UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged Work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be reimbursed by the CM. A change order will be issued to reflect a reduction in the contract sum.

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

a. Substantial Completion.

- i. Substantial Completion is when the Work has been sufficiently completed in accordance with the Contract Documents so that Owner can occupy or utilize such Work for its intended use. Owner and Construction Manager at Risk, in conjunction with Architect, may agree that a designated portion of the Work has reached Substantial Completion.
- ii. The CM shall commence the Work to be performed under this Agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall substantially complete all Work hereunder within the time of completion specified. For each day in excess of the substantial completion date that the Work remains incomplete, the CM shall pay the Owner the sum stated as Liquidated Damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to complete the Work within the time specified, such time being in the essence of this Agreement and a material consideration thereof.
- iii. When Construction Manager at Risk considers that the Work is substantially complete, Construction Manager at Risk shall prepare and submit to Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Construction Manager at Risk to complete all Work in accordance with the Contract.

Upon receipt of the Construction Manager at Risk's list, Architect will observe to determine whether the Work is substantially complete. If Architect's observation discloses any item, whether or not included on Construction Manager at Risk's list, which is not sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use, Construction Manager at Risk shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Architect. In such case, Construction Manager at Risk shall then submit a request for another inspection by Architect to determine Substantial Completion.

When the Work is substantially complete, Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, responsibilities of Owner and Construction Manager at Risk for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which Construction Manager at Risk shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

The Certificate of Substantial Completion shall be submitted to Owner and Construction Manager at Risk for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, Owner shall make payment of retainage applying to such Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract.

- iv. If the CM is delayed at any time in the progress of the Work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in the Work; by labor disputes at the Project site; by abnormal weather conditions not reasonably anticipated for the locality where the Work is performed; by unavoidable casualties; by any causes beyond the CM's control; or by any other causes which the Designer and Owner determine may justify the delay, then the contract time for final completion may be extended by Change Order for the time which the Designer and Owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of **normal intensity** for the locality where the Work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where the Work is performed and on daily weather logs kept on the job site by the CM reflecting the effect of the weather on progress of the Work and initialed by the Designer's representative. Time extensions for weather delays do not entitle the CM to "extended overhead" recovery.

- v. Request for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the CM shall notify the Project Designer of the commencement of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- vi. The CM shall notify his surety in writing of extension of time granted and a change in the final completion date shall be memorialized in a written Change Order prepared and executed as set forth in Article 19 above.
- vii. No claim shall be allowed on account of failure of the Project Designer to furnish drawings, clarifications or instructions until ten (10) days after demand for such drawings, clarifications and/or instructions.

b. FINAL COMPLETION AND FINAL PAYMENT

i. Upon receipt of Construction Manager at Risk's written notice that the **Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment**, Architect will promptly make such inspection and, when Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, Architect will promptly issue a final Certificate for Payment stating that to the best of Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and observations, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager at Risk and noted in the final Certificate is due and payable.

Architect's final Certificate for Payment will constitute a further representation that conditions precedent to Construction Manager at Risk's being entitled to final payment have been fulfilled.

ii. Neither final payment nor any remaining retained percentage shall become due until Construction Manager at Risk submits to Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid up to those amounts that Owner has paid to Construction Manager at Risk, (2) a certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that Construction Manager at Risk knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract, (4) consent of surety, if any, to final payment and (5), if required by Owner, other data establishing payment or satisfaction of obligations, such as releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Construction Manager at Risk may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Construction Manager at Risk shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

iii. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Construction Manager at Risk or by issuance of Owner requested Change Orders affecting final completion, and Architect so confirms, Owner shall, upon application by Construction Manager at Risk and certification by Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager at Risk to Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

iv. Acceptance of final payment by Construction Manager at Risk, a Subcontractor or material supplier shall constitute a waiver of claims by that payee.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the Project when the Work is substantially complete.
- b. Prior to the final payment, the Owner may request the CM in writing, through the Project Designer if applicable, to permit the Owner to use a specified part of the Project which the

Owner believes may be used without significant interference with construction of the other parts of the Project. If the CM agrees, the Project Designer will schedule a beneficial occupancy inspection after which the Project Designer may issue a certificate of substantial completion. The certificate shall include the following documentation:

1. Date of substantial completion.
 2. The part of the Project that is substantially complete and a tentative list of items to be completed or corrected before final payment.
 3. Establishing responsibility between the CM and Owner for maintenance, heat, utilities and insurance for the part of the Project occupied by the Owner.
 4. Consent of surety.
 5. Endorsement from insurance company permitting occupancy.
- c. The Owner shall have the right to exclude the CM from any part of the Project which the Project Designer has so certified to be substantially complete, but the Owner will allow the CM reasonable access to complete or correct Work to bring it into compliance with the Contract Documents. Project Designer shall provide a punch list prior to Owner's use of any portion of the project. Construction manager shall be provided time to complete punch list items.
- d. Occupancy by the Owner under this Article will in no way relieve the CM from his contractual requirement to complete the Project within the date for final completion.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. Upon notification from the CM that the Project is complete and ready for inspection, the Project Designer shall make a preliminary final inspection to verify that the Project is complete and ready for final inspection. Prior to final inspection, the CM shall ensure that all items requiring corrective measures noted at the preliminary inspection are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner and the CM.
- b. {NOT USED}
- c. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Contract Documents. At the conclusion of the final inspection, the Project Designer shall make one of the following determinations:
1. That the Project is completed and accepted.
 2. That the Project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within sixty (60) days of acceptance or the Owner may invoke Article 28, Owner's Right to Do Work. Punchlist items requiring ordering of materials and/or equipment not readily available. The CM shall provide such documentation and weekly updates to Owner and Project Designer.
 3. That the Project is not complete and another date for a final inspection will be established.

- d. Within ten (10) days of acceptance of the Project or within ten (10) days after completion of punch list items as described above, the Project Designer shall certify the completion of the Work and issue applicable certificate(s) of compliance.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance of the Project shall be handled in accordance with Article 42.
- f. The date of acceptance will establish the following:
 - 1. The beginning of the guarantees and warranties period are based upon Substantial Completion.
 - 2. The date on which the CM's insurance coverage for public liability, property damage and builder's risk may be terminated.
 - 3. That no Liquidated Damages (if applicable) shall be assessed after this date.
 - 4. The termination date of utility cost to the CM (if applicable). Owner shall transfer and assume ownership of all utilities starting at the date of substantial completion. All utility costs post substantial completion billed to the Construction Manager shall be compensated by Owner via change order

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any Work, materials, fabricated items or other parts of the Work which have been condemned or declared not in accordance with the Contract Documents by the Project Designer shall be promptly removed from the Work site by the CM, and shall be immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty Work, shall be made good at the expense of the CM.
- b. Correction of condemned Work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and shall make satisfactory progress until completed.
- c. Should the CM fail to proceed with the required corrections, then the Owner may complete the Work in accordance with the provisions of Article 28.

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of this Agreement, nor any other act or instrument of the Owner, nor the Project Designer, shall relieve the CM from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The CM shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the Work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the CM and establish a time limit for completion of corrections by the CM. The Owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

If, during the progress of the Work or during the period of guarantee, the CM fails to prosecute the Work properly or to perform any provision of this Agreement, the Owner, after fifteen (15)

days written notice sent by overnight mail or by certified mail, return receipt requested, to the CM from the Project Designer, may perform or have performed that portion of the Work. The cost of the Work may be deducted from any amounts due or to become due to the CM, such action and cost of same having been first approved by the Project Designer. Should the cost of such Work performed by the Owner exceed the amount due or to become due the CM, then the CM or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 29 - ANNULMENT OF CONTRACT

If the CM fails to begin the Work within the time specified or fails to establish a GMP or obtain bids from or enter into contracts with qualified Principal Trade or Specialty Contractors within the GMP, or the progress of the Work is not maintained on schedule, or the Work is not completed within the time above specified, or fails to perform the Work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of the Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work, or if the CM shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this Agreement in default, and, thereupon, the surety shall promptly take over the Work and complete the performance of this Agreement in the manner and within the time specified. In the event the surety shall fail to take over the Work to be done under this Agreement within fifteen (15) days after being so notified and diligently pursue and complete the same, the Owner shall have full power and authority, without violating the Agreement, to take the prosecution of the Work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the Work, shall be deducted from any monies due or which may become due the CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by the CM, then the CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of such excess.

ARTICLE 30 – CONSTRUCTION MANAGER'S RIGHT TO STOP WORK OR TERMINATE

- a. Should the Work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the CM, or if the Owner should fail or refuse to make payment on account of a certificate issued by the Project Designer within thirty (30) days after receipt of same, then the CM, after seven (7) days' written notice sent by overnight mail or certified mail, return receipt requested, to the Owner and the Project Designer, may suspend the Work or terminate this Agreement.
- b. The Owner shall be liable to the CM for the cost of all materials delivered and Work performed under this Agreement and shall make such payment. The Project Designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT

- a. Based on applications for payment submitted to the Project Designer by the CM and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the Contract Documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Provided an application for payment is received by the Project Designer not later than the 25th day of the month, the Owner shall make payment to the CM not later than the 15th day of the following month. If an application for payment is received by the Project Designer after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Project Designer certifies the application for payment.
- c. Prior to submitting the first payment request, the CM shall prepare a schedule of values showing a breakdown of the contract price into values of the various parts of the GMP. The Cost of the Work breakdown will be arranged so as to facilitate payments by the CM to the Principal Trade and Specialty Contractors. The combined CM Management Fee, CM's Project Costs, Bonds & Insurance, CM Contingency, and Project Reserve (if any) will be shown on the schedule of values as separate lines. The values for the CM Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Designer and Owner may require.
- d. Applications for payment shall be in a form agreed upon by the CM, Project Designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the Project Designer may require.
- e. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion Cost of the Work and CM's Project Costs by the share of the GMP allocated to that portion of the Work in the schedule of values.
 2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
 3. Subtract the aggregate of previous payments made by the Owner.
 4. Subtract the amount, in any, by which the CM has been previously overpaid, as evidenced by the Owner's review of the CM's documentation.
 5. Subtract amounts, if any, for which the Project Designer has withheld or nullified a certificate of payment.
 6. Subtract retainage as per paragraph (f) below.

7. Add the amount due for the CM Management Fee based on the percentage completion of the Project or on a schedule of payment negotiated with the Owner less five percent (5%) retainage and less previous payments for CM Management Fee.
- f. Payment allocated to Principal Trade and Specialty Contractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and with written consent of the surety, further requirements for retainage will be waived only so long as the Work continues to be completed satisfactorily and on schedule. Satisfactory completion and close out of the Project means that the Owner and Project Designer are satisfied that the Project has been fully and finally completed in accordance with the plans and specifications and within the GMP, all requirements of the Contract Documents pertaining to close out have been satisfied, and all Principal Trade and Specialty Contractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance.
- g. Except with the Owner's prior approval, the CM shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the Project site. Offsite material approval shall require photos, documentation, insurance certificate stating location and value in letter form.
- h. The Project Designer shall take action on the CM's application for payment in accordance with this Agreement. The Project Designer's certification for payment shall be based upon the Project Designer's on-site observation and the documentation submitted by the CM with the application for payment.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the CM, the Project Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the Project Designer. If the certificate is not approved by the Project Designer, he shall state in writing to the CM and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the Work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
 1. Claims arising from unsettled liens or claims against the CM.
 2. Faulty Work or materials appearing after final payment.
 3. Failure of the CM to perform the Work in accordance with the Contract Documents, such failure appearing after payment.
 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the CM except those claims previously made as provided in the Agreement and remaining unsettled.
- d. Prior to submitting a request for final payment to the Project Designer for approval, the CM shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but are not limited to the following:

1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The Project Designer must approve the Manuals prior to delivery to the Owner).
 2. Transfer of required attic stock material and all keys in an organized manner.
 3. Record of Owner's training.
 4. Resolution of any final inspection discrepancies.
- e. The CM shall forward to the Project Designer, the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of the contract amounts.
 2. Affidavit of Release of Liens.
 3. Affidavit from CM of payment to material suppliers and subcontractors.
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.
- f. The Project Designer will not authorize final payment until the Work has been certified by Project Designer, certificates of compliance issued, and the CM has complied with the closeout requirements. The Project Designer shall forward the CM's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD

- a. The Project Designer and the Owner may withhold payment for the following reasons:
1. Faulty Work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the Work in the judgment of the Designer.
 3. To provide for sufficient contract balance to cover Liquidated Damages that will be assessed against the CM.
 4. Claims filed against the CM or evidence that a claim will be filed.
 5. Evidence that Principal Trade or Specialty Contractors have unjustifiably not been paid the amounts equal to those paid to the CM by the Owner.
- b. When grounds for withholding payments have been removed, payment will be released.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The Work shall not commence until the CM has verified to the Owner that all required insurance and verifying certificates of insurance have been obtained and approved in writing by the Owner. These certificates shall contain a provision that coverages afforded under the policies will not be

cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Owner of such alteration or cancellation.

a. Worker's Compensation and Employer's Liability

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of at least \$100,000.

b. Public Liability and Property Damage

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury:	\$1,000,000 per occurrence
Property Damage:	\$1,000,000 per occurrence

In lieu of limits listed above, a \$2,000,000 combined single limit shall satisfy both conditions.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work.

c. Property Insurance (Builder's Risk/Installation Floater)

The CM shall ensure that it shall purchase and maintain property insurance during the life of this Agreement, upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the CM, and subcontractors in the Work and shall insure against the perils of fire, extended coverage, and vandalism and malicious mischief. If the Owner is damaged by failure of the CM to purchase or maintain such insurance, then the CM shall bear all reasonable costs properly attributable thereto; the CM shall affect and maintain similar property insurance on portions of the Work stored off the site when a request for payment includes such portions.

d. Deductible

Any deductible, if applicable to a loss covered by insurance provided, is to be borne by the Owner.

e. Other Insurance

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall obtain such additional insurance as may be required by the Owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

f. **Proof of Carriage**

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall furnish the Owner with satisfactory proof of carriage of the insurance required before written approval is granted by the Owner.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. The CM shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina with an A.M. Best Company financial strength rating of "A" or better. The bonds shall be in the full contract amount, which shall be in the amount of the GMP for the entire project. Bonds shall be executed in the forms attached as Exhibit A.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONSTRUCTION MANAGER'S AFFIDAVIT

The final payment of retained amount due the CM on account of this Agreement shall not become due until the CM has furnished to the Owner through the Project Designer an affidavit signed, sworn and notarized to the effect that (i) all payments then due to all Subcontractors for materials, services or subcontracted Work have been satisfied; (ii) all final payments due to all Subcontractors for materials, services or subcontracted Work will be paid and satisfied by CM promptly upon CM's receipt of final payment., (iii) no claims or liens exist against the CM in connection with this Agreement, and (iv) that the CM shall defend, indemnify, and save the Owner harmless from any and all claims of Subcontractors

ARTICLE 37 - ASSIGNMENTS

The CM shall not assign any portion of this Agreement nor subcontract in its entirety. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the CM under this Agreement may be assigned.

ARTICLE 38 - USE OF PREMISES

- a. The CM shall confine his apparatus, the storage of materials and the operations of his workmen to limits of the Project indicated by law, ordinances, permits or directions of the Project Designer and shall not exceed those established limits in his operations.
- b. The CM shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The CM shall enforce the Owner's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

- a. The CM shall ensure that all cutting, fitting or patching that may be required to make the Work come together properly and fit it to receive or be received by Work of other

contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the Project Designer may direct.

- b. Any cost brought about by defective or ill-timed Work shall be borne by the party responsible therefor.
- c. No Principal Trade or Specialty Contractor shall endanger any Work of another such contractor by cutting, digging or other means, nor shall he cut or alter the Work of any other such contractor without the consent of the Project Designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

- a. The CM shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the CM is to pay all utilities, any permanent meters installed shall be listed in the CM's name until the Work is fully accepted by the Owner. The Owner will reimburse the CM for the actual cost of temporary utilities as part of CM's Project Costs. The Owner or CM, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in Project completion.
- b. If applicable Meters shall be relisted in the Owner's name on the day following and the Owner's acceptance of the Work, and the Owner shall pay for services used after that date.
- c. {NOT USED}
- d. Prior to the operation of permanent systems, the CM will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. The CM shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the CM and the Designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CM.
- f. The CM shall coordinate the Work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- g. The CM shall coordinate the Work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. The CM shall be responsible for his permanently fixed service facilities and systems in use during progress of the Work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of Work by the Owner, the CM shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.

2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the Work.
 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site Work operations are creating dust in excess of what would be considered normal if the building were occupied.
 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of Substantial Completion. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 5. The CM shall ensure that all lamps are in proper working condition at the time of final acceptance of the Project.
- i. The CM shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets, chemical toilets, and facilities required for a complete and adequate sanitary arrangement. These sanitary facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times.
 - j. The CM shall provide or erect a temporary field office, complete with lights, telephone, heat and air conditioning and shall be reimbursed for the costs thereof as part of CM's Project Costs.
 - j. On multi-story construction projects, the CM shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall either be included in the CM Project Costs or specified as part of the Work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
 - k. The CM will erect one sign on the Project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the Project, and the CM's name, and the name of the Project Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the CM and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

- a. The CM shall ensure that the building and surrounding Project area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the Project Designer. The CM shall provide an on-site refuse container(s) for the use of all Principal Trade and Specialty Contractors. The CM shall ensure that each Principal Trade and Specialty Contractor removes their rubbish and debris from the building on a daily basis. The CM shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The CM shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the CM shall ensure that all portions of the Work are clean, including glass, hardware, fixtures, masonry, tile and marble (using

no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

- a. The CM shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of Substantial Completion of the Work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The CM shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.
- c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the CM, which are hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS

Wherever reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina State Building Codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the Contract Documents.

ARTICLE 44 - INDEMNIFICATION

To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the CM, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party of person described in this Section.

The CM and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. Damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents. Nothing contained in this

section shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents

ARTICLE 45 - TAXES

- a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).
- b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the GMP.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the GMP.
- e. Accounting Procedures for Refund of County Sales & Use Tax

Amount of county sales and use tax paid per CM's statements (to be included in each pay application):

The CM shall ensure that the Principal Trade and Specialty Contractors provide information to allow the CM to give the Owner a signed statement containing the information listed in N.C.G.S. 105-164.14(e), the North Carolina Sales and Use Tax Act, for purposes of the Owner obtaining a sales tax refund.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use.

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from warehouse stock and the amount of county sales or use tax paid thereon by the CM.

Principal Trade and Specialty Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

ARTICLE 47 - EMPLOYMENT OF THE HANDICAPPED

The CM agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is

qualified. The CM agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

{NOT USED}

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

The CM shall identify and define contract packages (the value of which shall total to at least ten percent (10%) of the GMP) that remove barriers to participation commonly experienced by Historically Underutilized Businesses and Minority Business Enterprises as those terms are defined in North Carolina General Statute 143-128.2, hereinafter referred to as Reduced Barrier Packages (RBP). Such contract packages will be submitted to the Owner for review. As an example, RBP's may require no performance or payment bond, or may offer the participation of the CM as a guarantor or surety in the financing of material purchases by the Principal Trade and/or Specialty Contractors, provided that the CM may condition such financing participation upon the issuance of joint checks or other similar arrangements to allow the CM to verify that timely payments are made to suppliers furnishing credit. The CM may propose other and/or additional provisions for reducing barriers to participation.

The Owner shall require the CM to submit a plan for compliance with N.C.G.S.143-128.2 by approval by the Owner prior to soliciting bids for the Principal Trade and Specialty Contracts. The CM and Principal Trade and Specialty Contractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to N.C.G.S. 143-128.2. CM shall provide Minority Business Participation breakout costs with each submitted pay application.

ARTICLE 50 – CONTRACTOR EVALUATION

{NOT USED}

ARTICLE 51 – GIFTS

CM shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Agreement or in connection with a subcontract relating to this Agreement. When CM has grounds to believe that a violation of this clause may have occurred, CM shall promptly report to Owner in writing the possible violation. The right of CM to proceed may be terminated by written notice if Owner determines that CM, its subcontractors, subcontractor employees, agent or another representative offered or gave a gratuity to an official or employee of Owner in violation of policies of Owner.



GMP BREAKDOWN

Exhibit A

Bid Package	Base Bid	Sub
General Requirements	\$ 644,000	
CTE Move Allowance	\$ 15,000	
BP-1 Final Clean	\$ 136,860	Pro Klean
BP-2A Demolition	\$ 76,500	EMR Services
BP-2B Sitework	\$ 11,994,000	Blythe Development
BP-2C Asphalt	\$ 3,485,452	Abernathy
BP-2D Landscaping	\$ 632,783	Champion
BP-2E Fencing	\$ 476,000	Catawba LLC.
BP-3A Footings/Foundations	\$ 1,084,988	American Builders Services
BP-3B Concrete Slabs	\$ 1,712,731	American Builders Services
BP-3C Concrete Sidewalks & Paving	\$ 1,315,535	LA Concrete
BP-3D Concrete Contingency	\$ 350,000	Risk Management (American Builders Services)
BP-4 Masonry	\$ 7,204,000	Vega
BP-5 Steel	\$ 4,594,000	Steel Specialty
BP-6 Millwork/Casework	\$ 845,323	Masterkraft
BP-7A Waterproofing & Damproofing	\$ 166,000	Swanger
BP-7B Spray Foam	\$ 231,000	Prime Energy
BP-7C Roofing & Skylights	\$ 2,870,700	Piedmont
BP-7D Metal Wall Panels	\$ 873,310	Eastern Cladding
BP-7E Fireproofing	\$ 237,261	Architectural Coatings
BP-8A Doors & Hardware	\$ 980,890	Cook & Boardman
BP-8B Overhead & Coiling Doors	\$ 65,000	Allowance
BP-8C Glass & Glazing	\$ 993,525	A1 Glass
BP-9A Drywall	\$ 1,824,000	NC Interiors
BP-9B Acoustical Ceilings & Systems	\$ 1,734,269	Acousti
BP-9C - Ceramic Tile	\$ 445,771	Lomax
BP-9D Wood Flooring Systems	\$ 205,635	Superior Court Systems
BP-9E Resilient & Carpet Flooring	\$ 1,132,000	Bonitz
BP-9F Painting	\$ 455,820	Rollin on
BP-10A Misc. Specialties	\$ 664,900	Warco
BP-10B Signage	\$ 212,820	AOA
BP-10D Lockers	\$ 56,000	McDonald
BP-10E Walkway Coverings	\$ 202,470	East coast TVM
BP-11A Athletic Equip & Scoreboards	\$ 422,000	Scott Equipment and Surfacing
BP-11B Food Service Equipment	\$ 1,175,700	11400
BP-12A Window Treatments	\$ 28,895	Contract Window Treatments
BP-12B Fixed Audience Seating	\$ 184,000	Blankenship
BP-12C Telescoping Stands	\$ 62,800	Learning Environments
BP-13A Manufactured Greenhouses	\$ 206,243	Greenhouse of SC
BP-13B Grandstands	\$ 235,500	Southern Bleacher
BP-13C Metal Bldg. Systems	\$ 51,216	Vulcan
BP-14 Elevator	\$ 195,500	Otis
BP-21 Fire Protection	\$ 860,800	Elite
BP-22 Plumbing	\$ 4,891,906	Southeastern
BP-23A Mechanical	\$ 8,900,000	LB Mechanical
BP-23B Geothermal Systems	\$ 1,761,107	Allied Environmental
BP-26A Electrical Systems	\$ 9,691,000	Hinson
BP-26C Theatrical Lighting	\$ 421,138	Imagine Design & Production
BP-27A Tel/Data	\$ 391,204	CSI
BP-27B AV & Sound Systems	\$ 200,000	B&K Audio
BP-27C IP Communication & Program Sys	\$ 359,570	Carolina Fire
BP-28A Access Control	\$ 89,650	Lefler
BP-28B Video & Intrusion Systems	\$ 138,000	Carolina Fire
BP-28C Fire Alarm & BDA	\$ 309,650	Carolina Fire
BP-32A - Tennis Court Surfacing	\$ 101,250	Geo Surfaces
CM Contingency 3%	\$ 2,338,100	
Permits	\$ 80,000	Allowance (need county approval)
Tap/Impact Fees	\$ 200,000	Allowance (need county approval)
Subcontractor Bonds	\$ 456,800	
Cost of Work	\$ 81,670,572	
E&O Insurance (Steel, Drywall & FP)	\$ 74,813	
General Liability	\$ 816,706	
Bldrs Risk	\$ 206,405	
P&P Bond	\$ 827,685	
CM Fixed Fee	\$ 2,507,885	
Lump Sum General Conditions	\$ 3,303,834	
Projected Total	\$ 89,407,900	

*Per agreement with UCPS - fixed fee reduced to 3% and project savings to be split between UCPS and CM 70/30. 70% to UCPS and 30% to CM. All remaining funds from allowances shall be returned to UCPS. General Conditions are fixed lump sum.

Alternates

Alternate 1 - Area D Photovoltaic system	\$31,688
Alternate 2 - Area F Photovoltaic system	\$112,710



GMP BREAKDOWN

Exhibit A

Alternate 3 - Area D & F Photovoltaic system	\$409,155
Alternate 4 - Delete grasspaver add LD paving	\$44,545
Alternate 5 - 8" stone base in lieu of grass paver	(\$37,026)
Alternate 6 - HDPE storm pipe in lieu of RCP	\$388,247
Alternate 7 - PVC Roof System	(\$258,993)
Alternate 8 - Epoxy Flooring in lieu of hard tile - toilet rooms	(\$2,065)
Alternate 9 - Urethane floor in lieu of hard tile - kitchen	(\$23,523)
Alternate 10 - Rectangular duct in lieu of Spiral	(\$31,737)
Alternate 11 - Aluminum main electrical feeder	(\$58,184)
Alternate 12 - Aluminum feeder 100 amps and above	(\$158,684)
Alternate 13 - Cat6 A Data Cabling	\$9,728
P1 - HVAC Vanguard Controllers	In base Bid
P2 - Samsung/Hanwha Security Cameras	In base bid
P3 - Bosch Security (keypad & Panel)	In base bid
P4 - Honeywell Card Access Control	In base bid
P5 - Aiphone Video Doorbell	In base bid
P6 - Bogen Intercom	In base Bid
P7 - Firelite Fire Alarm System	In base bid
P8 - Door Hardware (LCN Closers, Yale Cylinders, Precision Panics	\$153,606.00

Unit Prices

Unit Price 1 - Mass Rock Excavation and Disposal On-site	\$70.00 / CY
Unit Price 2 - Mass Rock Excavation and Disposal Off-site	\$125.00 / CY
Unit Price 3 - Utility Trench Rock Excavation and Disposal On-site	
BP2B Sitework	\$120.00 / CY
BP22 Plumbing	\$1,500.00 / CY
BP26A Electrical	\$400.00 / CY
Unit Price 4 - Utility Trench Rock Excavation and Disposal Off-site	
BP2B Sitework	\$200.00 / CY
BP22 Plumbing	\$1,500.00 / CY
BP26A Electrical	\$600.00 / CY
Unit Price 5 - On-site Structural Fill/Backfill In-Place for Replacement of Removed Rock or Unsuitable Soil.	
BP2B Sitework	\$6.25 / CY
BP22 Plumbing	\$1,500.00 / CY
BP26A Electrical	\$600.00 / CY
Unit Price 6 - Imported / Off-site Structural Fill/Backfill In-Place for Replacement of Removed Rock or Unsuitable Soil.	
BP2B Sitework	\$22.00 / CY
BP22 Plumbing	\$2,000.00 / CY
BP26A Electrical	\$800.00 / CY
Unit Price 7 - Unsuitable Soil Removal and Disposal On-site	\$4.50 / CY
Unit Price 8 - Unsuitable Soil Removal and Disposal Off-site	\$62.50 / CY
Unit Price 9 - No. 57 Stone Washed Crushed Stone	\$64.00 / TON
Unit Price 10 - Aggregate Base Course (ABC)	
BP2B Sitework	\$45.00 / TON
BP2C Asphalt Paving	\$55.00 / TON
Unit Price 11 - Geosynthetic Fabric for Foundation Bridging of Alluvial Soils	\$6.00 / SQYD
Unit Price 12 - Silt Fence	\$2.50 / LF
Unit Price 13 - Electrical Outlets	\$525.00 / EA
Unit Price 14 - Data Outlets	
BP26A Electrical	\$250.00 / EA
BP27A Tele/Data	\$550.00 / EA
Unit Price 15 - Light Fixtures	
Type A6	\$670.00 / EA
Type A7	\$690.00 / EA
Type OWP1	\$910.00 / EA
Unit Price 16 - Exit Sign Type X1	\$560.00 / EA
Unit Price 17 - Pull Stations	
BP26A Electrical	\$250.00 / EA
BP28C Fire Alarm	\$580.00 / EA
Unit Price 18 - Wall-Mounted Speakers/Strobes	
BP26A Electrical	\$250.00 / EA
BP28C Fire Alarm	\$680.00 / EA
Unit Price 19 - Smoke Detectors	
BP26A Electrical	\$250.00 / EA
BP28C Fire Alarm	\$530.00 / EA
Unit Price 20 - Duct Detectors	
BP26A Electrical	\$250.00 / EA
BP28C Fire Alarm	\$1,086.00 / EA
BP23A HVAC	\$1,100.00 / EA
Unit Price 21 - Fire Extinguishers and Cabinets	\$400.00 / EA
Unit Price 22 - French Drains	\$60.00 / LF
Unit Price 23 - Light Duty Pavement	\$44.00 / SQYD
Unit Price 24 - Heavy Duty Pavement	\$54.00 / SQYD

FOREST HILLS HIGH SCHOOL							
VALUE ENGINEERING							
ITEM	DESCRIPTION	Estimated Value	PENDING	APPROVED	REJECTED	VE Value	COMMENTS
1	Standard MB's in lieu of glassboards	\$ (25,000.00)		Y		\$ (25,000.00)	(LS3P) Acceptable. Shelco to vet out
2	Delete stone backfill over geothermal horizontal piping.	\$ (162,357.00)		Y		\$ (162,357.00)	Review with Geotech
3	CM go direct with sports lighting and not include in EC scope.	\$ (50,000.00)		Y		\$ (50,000.00)	Shelco to review with Torrence S/C bond etc... Torrence cannot provide proper insurance and bonds.
5	Section 260519 - 3.3 - K - Allow MC Cable in concealed spaces where applicable per National Electric Code in a workman like manner.	\$ (115,000.00)		Y		\$ (115,000.00)	Confirm/Clarify Areas. Confirm with Hinson electrical are piped to panel
6	Section 260533 - 3.1 - B (5) - Allow EMT conduit in masonry walls.	\$ (40,000.00)		Y		\$ (40,000.00)	(CMTA) Acceptable
8	Section 260533 - 3.2 - P - Allow for PVC conduit to be installed under concrete slab wherever possible and that it be acceptable to stub up in PVC within all concealed walls.	\$ (75,000.00)		Y		\$ (75,000.00)	(CMTA) Acceptable
9	Section 260543 - 3.2 - C - Allow PVC to stub up where concealed under equipment (i.e. switchboards, transformers).	\$ (10,000.00)		Y		\$ (10,000.00)	(CMTA) Acceptable
27	Replace accent wall tile CTW-2,3,4 with CTW-1 field tile	\$ (8,161.00)		Y		\$ (8,161.00)	(LS3P) Acceptable
28	Delete canvas wrap requirement in Mechanical Rooms.	\$ (38,400.00)		Y		\$ (38,400.00)	(CMTA) Acceptable
33	Use plenum rated HVAC control cabling in lieu of conduit raceways.	\$ (36,000.00)		Y		\$ (36,000.00)	
34	Remove AWI certification requirement for casework. Low Bidders shop is AWI certified and will be constructed accordingly. This avoids paying a fee to AWI.	\$ (8,000.00)		Y		\$ (8,000.00)	(LS3P) Acceptable
						\$ (567,918.00)	

GMP with Current Approved Alternates & Value Engineering

Base GMP	\$ 89,407,900.00
Approved Alternates (5, 7, 8, 9, 10, 13, P1 thru P8)	\$ (190,010.00)
Approved VE	\$ (567,918.00)
GMP Total with Approved Alternates & VE	\$ 88,649,972.00