
AGENDA
CUMBERLAND COUNTY BOARD OF COMMISSIONERS
REGULAR AGENDA SESSION
JUDGE E. MAURICE BRASWELL
CUMBERLAND COUNTY COURTHOUSE - ROOM 564
NOVEMBER 14, 2019
1:00 PM

APPROVAL OF AGENDA

1. APPROVAL OF MINUTES

- A. October 10, 2019 Agenda Session Regular Meeting Minutes

2. PRESENTATIONS

3. CONSIDERATION OF AGENDA ITEMS

- A. Reimbursement Resolution for Fayetteville Technical Community College (FTCC) Fire Training Facility Project
- B. Approval Threshold for Workers Compensation Claims
- C. Contracts for Architectural and Engineering Services and Construction Management for 500 Executive Place Renovation Project
- D. Re-establishing Community or Town Hall Meetings
- E. Composition of Fayetteville-Cumberland Parks and Recreation Advisory Commission
- F. Commissioner-Liaison and Committee Structure
- G. Community Mission
- H. Juvenile Crime Prevention Council Request to Remove Two At-Large Positions
- I. Determination of Boundary with Harnett County as Resurveyed by N.C. Geodetic Survey
- J. Declaring Foreclosed Real Properties as Surplus
- K. Authorization of Litigation to Set Aside a Deed
- L. Acceptance of Settlement Proposed by Blue Cross Blue Shield
- M. Approval of Engaging Outside Counsel to Represent Staff in Gun Range Cases Heard by the Board of Adjustment
- N. Increase to Tax Software Implementation Contract With Farragutt Systems, Inc.
- O. McCauley Convenience Site Relocation to Tom Starling Road/Production Drive Intersection
- P. Approval for Prospective Lease Property
- Q. Contract for Repairs at Crown Coliseum West VIP Entrance

R. Contract for Law Enforcement Center Elevator Modernization & Fire Alarm System Upgrades and Budget Ordinance Amendment #200009

4. OTHER ITEMS

5. MONTHLY REPORTS

A. Community Development Block Grant - Disaster Recovery (CDBG-DR) Update

B. Financial Report - Fiscal Year 2020, September Year-to-Date

C. Project Updates

D. Health Insurance Update

6. CLOSED SESSION:

A. Attorney-Client Matter(s) Pursuant to NCGS 143.318.11(a)(3)

ADJOURN

AGENDA SESSION MEETINGS:

December 12, 2019 (Thursday) 1:00 P.M.

January 9, 2020 (Thursday) 1:00 P.M.



FINANCE OFFICE

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: VICKI EVANS, FINANCE DIRECTOR

DATE: 11/5/2019

**SUBJECT: REIMBURSEMENT RESOLUTION FOR FAYETTEVILLE TECHNICAL
COMMUNITY COLLEGE (FTCC) FIRE TRAINING FACILITY
PROJECT**

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): VICKI EVANS, FINANCE DIRECTOR

BACKGROUND

The Board of Commissioners has agreed to provide funding in the amount of \$10 million to support the FTCC Fire Training Facility project. The County's contribution of funding for this project has been prioritized within the governmental capital planning model with the takeout of debt tentatively planned for late summer of 2020. In anticipation of that debt takeout, bond counsel has advised that it is best practice to have a reimbursement resolution in place well ahead of the financing. Please note that prior to any expenditure of funds on this project, a capital planning budget ordinance requires Board of Commissioner approval.

United States Treasury regulations and guidelines that involve debt financing transactions require that a governmental entity declare its intent to use debt financing for a given project before expenses are incurred. In accordance with this requirement, the County must adopt a resolution of intent to use installment financing for the capital improvement project in order to reimburse itself for any costs incurred before the financing is executed from the proceeds of the installment contract.

The attached resolution would satisfy the federal reimbursement requirements by declaring the County's intent to finance a portion of the FTCC Fire Training Facility capital project from an installment contract in an amount not to exceed \$10 million.

RECOMMENDATION / PROPOSED ACTION

Management recommends the following proposed action be placed on the November 18, 2019 Board of Commissioners' agenda as an item of business:

Approval of the resolution of official intent to pursue tax exempt financing and to reimburse expenditures with proceeds of a borrowing for the FTCC Fire Training Facility project in an amount currently not expected to exceed \$10,000,000.

ATTACHMENTS:

Description	Type
Reimbursement Resolution	Backup Material

BOARD OF COMMISSIONERS
OF CUMBERLAND COUNTY, NORTH CAROLINA

Excerpt of Minutes
of Meeting on
November 18, 2019

Present: Chairman _____ presiding, and

Commissioners _____

Absent: _____

* * * * *

The following resolution was discussed and its title was read:

RESOLUTION OF OFFICIAL INTENT TO PURSUE
TAX EXEMPT FINANCING AND TO REIMBURSE
EXPENDITURES WITH PROCEEDS OF A BORROWING

WHEREAS, the Board of Commissioners of Cumberland County, North Carolina (the “County”) intends to provide a portion of the financing of the acquisition, construction and equipping of a fire training facility to be operated by Fayetteville Technical Community College (the “Project”); and

WHEREAS, the County may advance its own funds to pay expenditures related to the Project, may borrow funds on a short term taxable or tax-exempt basis in order to pay such expenditures or may enter into contracts obligating third parties to make certain expenditures relating to the Project (the “Expenditures”) prior to incurring indebtedness and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds or taxable debt, or both;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CUMBERLAND COUNTY, NORTH CAROLINA:

1. The County intends to utilize the proceeds of tax-exempt indebtedness (the “Indebtedness”) or to incur other debt, to pay the costs of the Project in an amount not currently expected to exceed \$10,000,000.

2. The County intends that the proceeds of the Indebtedness be used to reimburse the County for Expenditures with respect to the Project made on or after the date that is no more than 60 days prior to the date of this resolution. The County reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Indebtedness or other debt. The County understands that it may reimburse itself for certain preliminary expenditures (as defined in Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as

amended (the "Code")) relating to the Project in an amount not to exceed 20% of the aggregate issue price of the Indebtedness regardless of when such expenditures were incurred or paid.

3. The County intends that the adoption of this resolution confirms the "official intent" within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Code.

4. This resolution shall take effect immediately upon its passage.

Commissioner _____ moved the passage of the foregoing resolution, Commissioner _____ seconded the motion, and the resolution was passed by the following vote:

Ayes: _____

Nays: _____

Not Voting: _____

* * * * *

I, Candice White, Clerk for the Board of Commissioners of Cumberland County, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the Board of Commissioners for the County at a regular meeting duly called and held on November 18, 2019, as it relates in any way to the resolutions hereinabove referenced and that such proceedings are recorded in the minutes of the Board. Pursuant to G.S. § 143-318.12, a current copy of a schedule of regular meetings of the Board of Commissioners for the County is on file in my office.

WITNESS my hand and the common seal of the County, this ____ day of November, 2019.

Clerk to the Board of Commissioners
Cumberland County, North Carolina

(SEAL)



RISK MANAGEMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: VICKI EVANS, FINANCE DIRECTOR

DATE: 11/5/2019

SUBJECT: APPROVAL THRESHOLD FOR WORKERS COMPENSATION CLAIMS

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): VICKI EVANS, FINANCE DIRECTOR

BACKGROUND

Staffing changes in the area of Workers Compensation have led staff to review internal processes to ensure compliance with the law. An outcome of that review is the attached draft policy which establishes approval thresholds for workers compensation claims settlements.

Prior to developing the attached draft policy, staff sought input from the County's third party administrator (TPA) who also contracts with numerous other local governments throughout the state. The TPA provided different perspectives that aided in the development of this new draft policy. Levels of threshold approval were recommended as they aid in the timely processing of settlements when in the best interest of the County. The dollar amount thresholds assigned within the draft policy very closely reflect the approval thresholds established in the County's Purchasing Policy - Contracts section.

In addition, prior to writing the draft policy, staff received guidance from the County Attorney.

RECOMMENDATION / PROPOSED ACTION

Management recommends the following proposed action be placed on the November 18, 2019 Board of Commissioners' agenda as a consent item:

Approve Policy No. 3-7: Approval Thresholds for Workers Compensation Claims Settlement.

ATTACHMENTS:

Description

Type

Policy-Approval Thresholds for WC Claims

Backup Material

Cumberland County

Section I – Board Approved Policies

Subsection 3: Cumberland County Financial / Audit

Policy No. 3-7: Approval Thresholds for Workers Compensation Claims Settlement Policy

The following policy was approved at the [insert date] Board of Commissioners Meeting.

1.0 PURPOSE

The purpose of this policy is to formalize the workers compensation claims settlement approval threshold levels while also increasing transparency by reporting workers compensation settlements.

2.0 SCOPE

Workers compensation claims settlements include all accepted settlements that may occur through mediation or otherwise in any dollar amount.

3.0 STATEMENT OF THE POLICY

The County contracts with an external third-party administrator (TPA) who provides advisement and expertise in the area of workers compensation. The TPA employs claims examiners and defense attorneys who have multiple years of experience, expertise, and extensive knowledge and focus in this field and with the North Carolina Industrial Commission (NCIC). The TPA uses this background to project potential claims settlement amounts that may be financially beneficial to the County or advises against settlement when not financially beneficial to the County. The projection of the estimated total claim valuation is based on future medical procedures and costs, future indemnity, assigned permanent ratings, historical trends, and other factors.

Upon a claims' settlement recommendation from the TPA, approval will be requested for a settlement dollar range to each respective County authority based on the dollar thresholds shown below:

Approval Threshold Amount

Less than \$5,000
\$5,000 - \$49,999
\$50,000 - \$99,999
\$100,000+

Authority

Workers Comp Supervisor
Finance Director
County Manager
Board of County Commissioners

The dollar threshold amounts exclude court costs and NCIC fees.

Any claims settlement requests that are \$100,000 and above will be brought before the Board of Commissioners in closed session. The TPA defense attorney handling the case will present the recommendation to the Board at that time. The Board will act by deciding on an amount or a range of amounts to authorize (or refuse) settlement of the claim.

Upon settlement agreement between the parties, approval is required from the NCIC. Once the County is notified of that approval, general information regarding the settlement will be provided to the Clerk to the Board for addition to the minutes of the next available Board of Commissioners' meeting.

4.0 IMPLEMENTATION

Implementation and enforcement of this policy shall be the responsibility of the Finance Officer.

<END>



ASSISTANT COUNTY MANAGER - ENVIRONMENTAL/ COMMUNITY SAFETY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER OF ENVIRONMENTAL AND COMMUNITY SAFETY

DATE: 11/1/2019

SUBJECT: CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION MANAGEMENT FOR 500 EXECUTIVE PLACE RENOVATION PROJECT

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): TRACY JACKSON, ASSISTANT COUNTY MANAGER OF ENVIRONMENTAL AND COMMUNITY SAFETY

BACKGROUND

The respective scope of work and contracts from the firms proposing to provide services to the County for the renovation of 500 Executive Place have been reviewed by staff, Legal, and the County 9-1-1 Committee.

AECOM is the firm recommended to provide architectural and engineering services for the project while Balfour-Beatty is proposed to serve as the County's Construction Manager-at-Risk (CMAR) for the project.

The total fees for AECOM's services are \$1,066,849. Balfour-Beatty proposes a fixed fee of 4.25% of the cost of the guaranteed maximum price initially accepted by the County for the project plus \$83,095 for pre-construction and bidding services.

The services provided will ultimately lead to a renovation and small expansion of 500 Executive Place for use as an Emergency Services Center to include a new County 9-1-1 Communications Center and Emergency Operations Center. The early cost estimate for this work was \$11,291,494. This estimate was provided by AECOM after visiting and evaluating the facility and developing a conceptual design. Actual construction costs will not be known however until bids are received. A Capital Project Fund has been established for this

project for \$16 million.

RECOMMENDATION / PROPOSED ACTION

Staff requests this item be moved forward to the November 18, 2019 Board of Commissioners regular meeting as a Consent Agenda Item for:

- 1) Approval of the AECOM services agreement for architectural and engineering services in the amount of \$1,066,849
- 2) Approval of the Balfour-Beatty services agreement for CMAR services for a fixed fee of 4.25% of the cost of the guaranteed maximum price initially accepted by the County for the project plus \$83,095 for pre-construction and bidding services

ATTACHMENTS:

Description	Type
AECOM SA-SOW	Backup Material
Balfour- Beatty Services Agreement	Backup Material

01 November 2019

Amy H. Cannon
County Manager
Cumberland County
117 Dick Street, P.O. Box 1337
Fayetteville, NC 28301

Reference: Design Scope of Services (Exhibit A1)
Cumberland County 911 Center

Dear Ms. Cannon:

AECOM Services of NC, Inc. (AECOM) is pleased to present the Design Scope of Services to Cumberland County (the Owner/County) to provide Design and Construction Contract Administration Services associated with the referenced project. See the AECOM Design Engineering Services Agreement for proposed terms and conditions.

Attached to this exhibit is a detailed scope of work for the Technology Systems services included as part of these services.

A. SCOPE OF WORK – Design Services

AECOM's professional services will develop the Concept Design from the Cumberland County, North Carolina Emergency Management and 911 Communication Center Feasibility Study (the Study) dated November 30, 2018, to the Schematic Design (30%), Design Development (60%) and Construction Documents (100%) deliverables and limited construction contract administration services. AECOM and our subconsultants will provide professional services for architectural, interior design, and civil, structural, geotechnical, mechanical (HVAC and Plumbing), fire protection/life safety, electrical engineering and technology integration.

The building design is based on the Study and will be further developed during the Program Verification Workshop. The design includes the interior renovation of a 17,000 square foot, one story building and will incorporate a small building addition of approximately 2,000 SF, a new roof, and a new communications tower. The project goals are to reuse the existing facility to the greatest extent possible while creating a high-quality work environment and optimizing operational workflows. The new facility will provide a long-term solution for the County to respond to natural disasters and other emergency conditions while maintaining critical operations.

Basic services will consist of Schematic Design, Design Development, Construction Documents, and Construction Contract Administration Services.

1. Program Verification Workshop

AECOM staff will attend a one-and-a-half-day meeting on site with County Stakeholders in which the team will:

- a. Review the project scope and schedule
- b. Confirm the Threat and Risk Strategies
- c. Document and program changes since the Feasibility Study.
- d. Present revised conceptual plan and gain Owner approval.

- e. Prior to the Program Verification Workshop, AECOM staff will conduct field investigations to visually document existing conditions. No destructive testing will be performed. This effort will be one day (8 hours) for the architecture and engineering team.
2. Schematic Design (SD) - 30%
- Basis of Design will be based on the approved conceptual plan from the Program Verification Workshop. Documentation will be developed to define the basic layout, form, scope, materials and systems of the project so that the design concept of the project can proceed forward and develop in subsequent phases.
- a. A Schematic Design Basis of Design narrative describing major building systems and materials will be developed.
 - b. Architectural drawings will include: existing and new work architectural site plan, demolition and new work floor plans, demolition and new work roof plan, elevations, building section, and a typical wall section. Materials will be identified on the drawings. Engineering plans will include diagrammatic plans and general layouts, including equipment, piping and ductwork.
 - c. Prepare preliminary code analysis/life safety plans showing fire rated walls, required means of egress, paths of egress, occupant loads, and other pertinent code related information.
 - d. Provide a property and topographic survey of the project site. Surveys will be provided by the subconsultant and their work includes researching the subject property, updating and recording the above-mentioned boundary survey, conducting a topographic survey of the site,
 - e. Geotechnical will include two (2) soil test borings, one (1) for the addition and one (1) for the tower to explore subsurface conditions on the project site. Selected soil samples will be subjected to geotechnical index testing. At the completion of the field and laboratory testing, the results will be evaluated by a geotechnical engineer and a report will be prepared by a registered Professional Engineer. A Shear Wave Velocity Test to establish seismic parameters will be included.
 - f. Provide a narrative describing the fire protection systems including: the extension of existing systems and modifications of the existing clean agent system.
 - g. Provide an outline specification list of all sections to be incorporated into the Design Development documents and the Construction Documents.
 - h. Provide a parametric cost estimate reflecting the current scope.
 - i. Up to 2 AECOM employees will participate in one (1) presentation to the Board of Commissioners. AECOM shall provide site plans and architectural floor plans via PowerPoint.

- j. Up to 3 AECOM employees will participate in a one-day schematic design review meeting. At this meeting, AECOM will review Owner's Schematic Design.
3. Design Development (DD) – 60%
- Based on the Owner's approval of the Schematic Design documents, AECOM will prepare Design Development documents for approval by the Owner. The DD documents will consist of drawings and other documents to fix and describe the size and character of the entire project as to civil, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
- a. A Basis of Design narrative describing major building systems and materials will be developed.
 - b. Further develop the Architectural drawings including: floor plans, elevations, sections, and wall sections as required. Enlarged plans, Reflected Ceiling Plans (RCPs), interior elevations, casework elevations, partition schedules, preliminary finish schedules, preliminary hardware schedules, window elevations, and preliminary specifications will be included as part of this submittal. Develop engineering plans. Prepare and submit plans and sections showing the engineering system layouts, including equipment, piping and ductwork. Plans, sections, and details will demonstrate the intent and show adequate access and clearances for maintenance. Prepare basic structural foundation and framing plans based on Geotechnical Report findings.
 - c. Prepare security concept/coordination plan showing the security barrier locations, levels of security, locations of intercoms, cameras, remotely unlocked and operable doors, remotely unlocked and operable gates, duress alarm receivers and other similar information. This will be coordinated with our Technology Solutions team.
 - d. Development of the site drawings will include grading, erosion control, and landscape plan for permit.
 - e. Prepare two (2) interior design options, of loose materials, to the Owner, including wall, floor, and ceiling finishes, and millwork.
 - f. Provide marked-up specifications to be incorporated into the final documents.
 - g. Up to 3 AECOM employees will participate in a one-day design development review meeting.
4. Construction Documents (CD) – 100%
- Based on the approved Design Development documents and further refinements in the scope or quality of the project, the Architect shall prepare for approval by the Owner, Construction Documents consisting of sealed drawings and specifications setting forth, in detail, the requirements for construction of the project which are in compliance with federal, state, and county codes.
- a. Final development of the Architectural drawings will include: code analysis, site plan, demolition drawings, floor plans, roof plan, exterior elevations, reflected ceiling plans,

enlarged plans, building sections, wall sections, finish schedule, finish plans, partition schedule, interior elevations, door and hardware schedules, window schedule, and interior and exterior details. Prepare final engineering drawings, including: plans, sections, and details to provide a complete set of construction documents.

- b. Design for code required site, interior, and exterior signage.
- c. Prepare complete construction specifications using Standard “MasterSpec” format including a submittal register.
- d. Up to 3 AECOM employees will participate in a one-day construction document review meeting. Comments will be incorporated into the Permit Set.

5. Permitting

An electronic set of Construction Documents will be provided to the Construction Manager at Risk (CMAR).

- a. (The submission of these documents is not inclusive of permit fees.)
- b. AECOM will provide revisions to documents when required by City of Fayetteville Building Officials to comply with local and state building codes to secure permits.

6. Technology Integration

AECOM Technology Solutions team will prepare documents for technology integration and 9-1-1 cut over services. The specific systems and scope are included in the Exhibit A2 – Technology Systems – Scope of Work

7. Console and Office Furniture Design

AECOM will design console and office furniture in conjunction with the construction documents.

- a. Conceptual Design: Present concepts including office furniture and technical consoles for incorporation with the AV and technology infrastructure. This will be coordinated with our Technology Solutions Team.
- b. Design Development: Based on approved concepts, AECOM will provide preliminary furniture layout plans with loose & fixed furniture, fixtures and equipment (FF&E) and signage schedules. Furniture design is included in Supplemental Services
- c. Construction Documents: Prepare final furniture layouts and specifications for office furniture and technical consoles. Including coordination with Electrical, Technology, and AV integration where required

B. SCOPE OF WORK – Construction Contract Administration Services (CA)

AECOM will provide Construction Contract Administration services for the Cumberland County 911 Center located in Fayetteville, NC.

1. Bidding/Award

- a. Assist the CMAR with questions from potential subcontract bidders.
- b. Provide clarifications of the bid documents, and document clarifications via a single addendum.
- c. Subsequent to all building and site plan permit approvals and prior to the CMAR's notice-to-proceed date, the Architect shall prepare and issue an Issued for Construction (IFC) set of documents for use by the Contractor and Owner that compiles a single addendum of revisions and final permit review comments into a single coordinated set of plans and specifications to provide a single comprehensive set of Construction Documents. The IFC set shall include annotations to reflect the source of changes to the format of the Construction Documents.

2. Construction Contract Administration

Design office support such as review of shop drawings and other contractor submittals, responding to requests for information (RFIs) (assumes no more than 50), and preparing clarification sketches, as well as the basic site services such as field observations.

- a. Attendance by one (1) AECOM employee at up to 20 (two (2) per month for ten (10) months) on-site construction meetings.
- b. Review and approve the CMAR's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking such submittals for conformance with the information contained therein and the design concept expressed in the Construction Documents. Such reviews will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and programs incident thereto.
- c. Submittals shall be limited to the items listed on the submittal register included with the bid specifications. Estimating approximately 200 submittals with a resubmittal rate of no more than 25%. Additional reviews in excess of these will be charged back to the CMAR.
- d. Up to 8 AECOM employees will perform initial punch list walkthrough at substantial completion and one back check punch list walk through after receipt of the General CMAR's open item list at final completion.

3. Post Construction Services

- a. AECOM will prepare record drawings based on the contractor's mark-ups of the construction documents.
- b. AECOM will review the CMAR provided warranties and conduct an eleven (11) month warranty walk-thru with the Owner. Up to four (4) AECOM employees for one (1) day will attend the walk-thru and provide a written summary to the Owner.

C. CLARIFICATIONS

General

1. The project will be designed in accordance with NC Building Code, Motorola standard R56 and NFPA 1221 Standards.
2. Any changes to the Concept Design/Feasibility Study recommendations after Project Kick-off/Program Verification meeting may be handled as an Additional Service.
3. AECOM's proposal is generally based on the floor plan from the Study. Any increase in the facility size may be handled as an Additional Service.
4. The CMAR will provide the opinion of probable construction cost after the Schematic Design phase.
5. AECOM will design the facility to generally meet the budget established by the County at the project kick off. AECOM will participate in teleconference meetings with the CMAR to determine value engineering alternatives to align with project scope and budget. Revisions to the documents to reflect accepted value engineering items will be incorporated in the subsequent submittal. No separate submittals will be required for budget compliance.
6. No third-party certification for sustainability or other requirements is included.
7. AECOM will make recommendations to the Owner based on visual observations of the condition of existing material and systems and suitability for reuse within the new facility, but AECOM does not guarantee that these existing materials and systems will operate as intended.
8. AECOM's proposal is based on the existing facility being unoccupied at the start of construction and that no construction phasing is required.
9. The Owner shall be responsible for turning over the building to the contractor free of asbestos, lead paint and any other hazardous materials.
10. AECOM's proposal is based on the existing services to the building and the building's current infrastructure for HVAC, plumbing, electrical and fire protection are adequate to serve the requirements imposed upon the building in its new function. AECOM will visually document the existing systems in further detail during the Program Verification. While we anticipate a rework of the systems for the new configuration, we don't anticipate upgrades to the primary infrastructure of the systems serving the existing building.
11. The Owner shall directly engage the construction materials testing and Special Inspections agent.
12. The Owner shall directly engage the commissioning agent.

Architecture

1. The design and scope are based on the existing building plus the 2,000 SF addition. Any changes to the size of the addition may be handled as Additional Services.
2. The construction of the existing to remain walls are assumed not hardened and will not be altered.
3. The intention of the new roof membrane is to meet current uplift requirements.
4. It is the intent of the design team to conform to the greatest extent possible with NFPA 1221.
 - a. This includes only ballistic resistant glass at the dispatch center only.
5. Existing blocked up windows will remain in place, material will be removed to allow direct light into the building. The existing windows will remain as is. Previous openings where no window existed will be designed to include new windows or other windows that require modification will be designed in accordance with the project study.
6. Interior partition walls will be used to the greatest extent possible.
7. The access flooring system will be salvaged and reused.

Structural

- a. The existing exterior walls will remain as is. The existing roof structure will remain as is.
- b. A hardened enclosure will be designed around the mechanical equipment yard and will include a grated cover.

Fire Protection

1. The existing clean agent system will be utilized to the extent possible.
2. It is assumed that the current fire water supply to the building will be sufficient for the modifications. A fire pump is not anticipated for this building and therefore the design effort is not included in this scope.
3. It is assumed that the dry pipe pre-action sprinkler system, clean agent systems, and fire alarm panel have capacity and are in good condition and are in compliance with required codes. AECOM will visually document these systems during Program Verification. All fire protection systems design will be based on performance-based specifications.
4. AECOM will coordinate with the County during Program Verification to perform flow tests at the two closest fire hydrants to the site for the purpose of fire protection calculations.

Electrical

1. Provide feeder power for the 911 tower system and equipment.
2. The project will include a complete interior power renovation.
3. The interior lighting system will be completely renovated.
4. Outside lighting systems will be existing to remain, except that the parking lot lighting will be modified to meet current zoning requirements.
5. To meet NFPA 1221 for emergency 911 operations, the electrical system must have a normal power company power supply and an emergency power supply (the existing generator) and a temp power supply input connection point.
 - a. The existing generator is to remain and be reused and assumed to have sufficient capacity and be emergency system rated to support this project. AECOM sent the County a contact with the generator manufacturer to test the generator and certify that it is emergency-rated. AECOM will verify the capacity of the generator for the revised configuration and use. AECOM will verify if there is a temporary power supply connection point during the detailed field investigation phase. While included in NFPA 1221 this is an option since this is a non-mandatory standard.
6. Reference grounding system in accordance with Motorola Standard R56 will be provided.
7. A lightning protection system will be provided for the building.
8. Electrical coordination study/short circuit analysis/arc flash study in accordance with NFPA 70 will be delegated to the CMAR. AECOM will provide the specification to be coordinated by the CMAR.

Plumbing

1. AECOM will design all the plumbing fixtures included in the concept plan and other requirements determined in the program verification phase.

HVAC

1. Verify that the existing chiller and redundant HVAC air handling units (AHU) will serve the new loads in the building. A new duct distribution system complete with new VAV boxes will be designed. If the new occupancy exceeds the capacity of the existing chiller or AHUs this

- may be handled as an Additional Service.
2. New Computer Room Air Conditioners (CRACs) will be provided to condition the server room. These will utilize the existing chilled water system. They will be designed for redundancy in accordance with the Study. The existing rack mounted chilled water units will be removed.
 3. The new building addition will be provided with a separate variable air volume DX air handling unit located outside on grade within the equipment enclosure to supply the heating and cooling for the addition. The spaces will be provided with VAV boxes with electric reheat coils to provide the heating for the new addition.

E. ADDITIONAL SERVICES

1. The following list of services is not included in the basic design, construction administration, or supplemental services. AECOM can provide a proposal for these additional services upon request.
 - a. Design Phase
 - a. Traffic Studies
 - b. Stormwater design
 - c. Permitting for wetlands
 - d. Land Acquisition Documents – Subdivision Plats
 - e. Environmental Site Assessments
 - f. Hazmat Investigation of the Site
 - g. Cost estimates – after SD
 - h. Specialized Acoustical Studies
 - i. Building Wayfinding or Monument / Signage
 - j. Building models
 - k. Additional Parking
 - l. Mechanical / electrical / plumbing / fire services five feet beyond the building
 - m. Clash detection report
 - n. Project Color Board of final interior finish selections.
 - o. Customer Sites and/or Showrooms visits with County to evaluate furniture.
 - p. Parking Lot Cleaning and Restriping
 - b. Construction Phase
 - a. Full-time On-Site Staff
 - b. Move Assistance

E. DELIVERABLES

1. One (1) Electronic PDF file and one (1) hard copy will be transmitted to County.
 - a. Schematic Design
 - b. Design Development
 - c. 100% Construction Documents (Permit Set)
 - d. Issued for Construction Set (to include one Addendum)

DESIGN ENGINEERING SERVICES AGREEMENT

This Design Engineering Services Agreement ("Agreement") effective this November 01, 2019, is by and between Cumberland County, North Carolina, ("Client"), and AECOM Services of NC, Inc., a North Carolina corporation, ("AECOM"); each also referred to individually as ("Party") and collectively as ("Parties").

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. SCOPE OF SERVICES

1.1 AECOM shall perform the services set forth in **EXHIBIT A** ("Services"), incorporated herein by reference.

1.2 AECOM will provide the work products specifically commissioned by Client for delivery by AECOM to Client and listed in **EXHIBIT A** ("Deliverables") in accordance with the schedule ("Project Schedule").

2. **TERM OF AGREEMENT** Upon execution by the Parties, this Agreement shall have the effective date set forth above. This Agreement shall remain in force until all obligations related to the Services, other than those obligations which survive termination of this Agreement under Article 27, have been fulfilled, unless this Agreement is sooner terminated as set forth herein.

3. **COMPENSATION AND PAYMENT** AECOM shall be paid for the performance of the Services in accordance with **EXHIBIT B** ("Compensation and Payment"), incorporated herein by reference.

4. **NOTICE** All notices, requests, claims, demands and other official communications herein shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the following addresses:

TO CLIENT:

130 Gillespie Street
Fayetteville, NC 28301
Attn: Jeffrey Brown, PE

TO AECOM:

440 Monticello Avenue, Suite 1500
Norfolk, VA 23510
Attn: Paul Garrison, Project Manager

Claims-related notices shall be copied to:
AMER-DCSProjectClaimNotices@aecom.com

or to which address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept, or inability to deliver. Claims-related notices need to include the AECOM project name and number found in this Agreement as well as contact information of the person submitting the notice.

5. AECOM'S RESPONSIBILITIES

5.1 AECOM shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. The full extent of AECOM's responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at AECOM's own expense, provided that AECOM is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after AECOM's completion or termination of the Services. AECOM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT OR OTHERWISE.

5.2 AECOM will endeavor in good faith, as needed, to obtain from the appropriate authorities their interpretation of applicable codes and standards, listed below, and will apply its professional judgment in interpreting the codes and standards as they apply to the Project at the time of performance of the Services. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from AECOM's original interpretation through no fault of AECOM and that additional costs necessary to conform to such changes or interpretations during or after execution of the Services will be subject to an equitable adjustment in the Compensation and Project Schedule. Any adjustments will be set forth in a mutually agreeable written amendment executed by both Parties.

Codes

North Carolina Building Codes

09 NCAC 06C.0402 Grants for Construction or Renovation

09 NCAC 06C.0210 Public Safety Answering Point (PSAP) Facilities

Standards

National Fire Protection Association (NFPA) 1221 Standard for the Installation, Maintenance, and Use of Emergency Communication Systems, 2019

Motorola Publication R56 Standards and Guidelines for Communication Sites

5.3 AECOM shall be responsible for its performance and that of AECOM's lower-tier subcontractors and vendors. However, AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or operations or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). AECOM shall have no responsibility for (i) construction means, methods, techniques, sequences or procedures; (ii) the direction of Contractors' personnel; (iii) selection of construction equipment; (iv) coordination of Contractors' work; (v) placing into operation any plant or equipment; or (vi) Contractors' failure to perform the work in accordance with any applicable construction contract. AECOM shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client, Contractors or others at the project site ("Project Site") other than AECOM's employees, subconsultants and vendors. So as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does identify such issues by making observations, reports, suggestions or otherwise, AECOM shall have no authority to direct the actions of others not under AECOM's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of AECOM's actions or forbearance.

5.4 Notwithstanding anything contained in this Agreement, AECOM shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project. AECOM shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of AECOM.

5.5 In the event that the Services include construction observation or similar field services, AECOM's responsibility shall be limited to determining general conformance with AECOM's design. Visits by AECOM to

the Project Site and observations made by AECOM shall not relieve the Contractors of their obligation to conduct comprehensive inspections of the construction work sufficient to ensure conformance with the intent of the construction contract documents, and shall not relieve the Contractors of their responsibility for means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work and for all safety precautions incidental thereto.

5.6 Any opinions of probable construction costs provided by AECOM represent AECOM's good faith professional judgment in light of its experience, knowledge and the information reasonably available to AECOM at the time of preparation of the opinion. However, since AECOM has no control over the market, economic conditions or the bidding procedures, AECOM, its directors, officers and employees and subconsultants do not make any guarantees or warranties whatsoever, whether express or implied, with respect to such opinions and accept no responsibility for any loss or damage arising therefrom or in any way related thereto. Any reliance upon such opinions, whether by Client or third parties, do so at the relying party's own sole risk.

6. CLIENT'S RESPONSIBILITIES

6.1 Client has provided their requirements and criteria for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. Such requirements and criteria are incorporated in the Cumberland County, North Carolina Emergency Management and 911 Communication Center Feasibility Study dated November 30, 2018 and the Scopes of Work attached hereto as Exhibit A1 and A2.

6.2 Client has furnished AECOM all information and technical data in Client's possession or control reasonably required for the proper performance of the Services including copies of the Original Design Documents dated 3/30/92, and the Renovation Documents dated 11/25/09. AECOM shall be entitled to rely without independent verification upon the accuracy and completeness of information and data provided by Client or obtained from generally accepted sources within the industry, except to the extent such verification by AECOM is expressly required as a defined part of the Services. AECOM shall not be responsible for defects in its Services attributable to its reliance upon or use of information provided by Client.

6.3 Client shall arrange for access and make all provisions necessary for AECOM to enter upon public and/or private property as required for AECOM to properly perform the Services. Client has stated they are not aware of any known or suspected hazards at the Project Site which may pose a threat to human health, property or the environment.

6.4 If any document or inquiry requires Client to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.

7. INDEPENDENT CONTRACTOR Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between Client or Client's Contractors and AECOM.

8. CONFIDENTIALITY

8.1 Client declares the detailed plans and drawings to be developed for this public building by AECOM to be confidential as sensitive public security information pursuant to N.C.G.S. § 132-1.7(a). AECOM shall only provide these plans and drawings to third parties as is necessary to design and construct the project. AECOM shall mark such plans and drawings as "CONFIDENTIAL," shall maintain a list of all third parties to whom the plans and drawings are distributed, and shall make reasonable efforts to retrieve all plans and drawings at such time as they are no longer needed by any third party. AECOM shall not be responsible for any misuse or disclosure of the plans and drawings distributed to any third party in accordance with this subsection 8.1 by that third party or for any third party's failure to return such plans and drawings upon AECOM making reasonable efforts to retrieve the plans and documents.

8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information which (i) is already known to AECOM at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of AECOM; (iii) is communicated to a third party with the express written consent of Client and not subject to restrictions on further use or disclosure; (iv) is independently developed by AECOM; or, (v) to the extent such Confidential Information is required by Law to be disclosed; provided that the information required for disclosure shall remain Confidential Information as to all other persons or entities pursuant to the terms of this Agreement, and provided further that AECOM shall promptly provide Client with written notice of such requirement.

8.3 Upon termination of this Agreement or upon Client's written request, AECOM shall return the Confidential Information to Client or destroy the Confidential Information in AECOM's possession or control. Notwithstanding the above, AECOM shall not be required to destroy Confidential Information held electronically in archive or back-up systems in accordance with general systems archiving or backup policies or required for preservation by law, regulation, audit, data retention or corporate archival purposes or per regulatory, judicial or governmental order. All such retained Confidential Information shall be kept confidential by AECOM subject to and in accordance with the terms of this Agreement.

9. DATA RIGHTS

9.1 All right, title and interest in and to any Deliverables, and excluding any AECOM Intellectual Property, shall be assigned by AECOM to Client upon full payment for the Deliverables. Client acknowledges and agrees that AECOM is the author of, and retains all rights, title and interest in all other intellectual property, including work papers, templates, details, designs, drawings, plans, renderings, analyses, calculations, models, software, macros, applications, specifications, processes, procedures, interim or draft documents, methodologies, know-how, and any other instruments of service: (a) belonging to AECOM or its consultants prior to the effective date of this Agreement; (b) developed by AECOM or its consultants outside the scope of, or not exclusively pursuant to, this Agreement; (c) licensed by AECOM or its consultants from a third-party; and (d) included within the Deliverables but which are generic, generally applicable to or standard in AECOM's business (collectively, "AECOM Intellectual Property"). To the extent the Deliverables contain, or Client's receipt of the Services require the use of AECOM Intellectual Property, to the extent of AECOM's ownership and control thereof, AECOM hereby grants to Client, upon full payment for the Deliverables and Services, a limited, non-exclusive, non-assignable, royalty-free license to use and sublicense said AECOM Intellectual Property solely and to the extent necessary to achieve the purposes stated in **EXHIBIT A**.

9.2 Nothing in this Agreement shall be construed to prohibit AECOM or its consultants from using for other purposes, clients or projects the skills, knowledge and experience gained by AECOM or its consultants in the performance of the Services and provision of the Deliverables pursuant to this Agreement, provided that AECOM and its consultants do not use Client's Confidential Information.

9.3 AECOM, in developing solutions, testing hypotheses, or documenting designs, may employ advanced technologies for simulation, information modeling, generative design, and the development of project documentation ("Technical Tools"). While these Technical Tools may result in digital files and/or simulations or models ("Datasets"), when not specifically defined within this Agreement, these Datasets will not constitute a Deliverable or portion thereof. Rather, the Technical Tools and Datasets will be a byproduct of AECOM's internal processes and will be AECOM's sole proprietary information. Notwithstanding anything to the contrary in this Agreement, other than any Confidential Information as described in Section 8 above, any ownership and data rights provisions will not apply to such Technical Tools and Datasets and AECOM will remain the sole owner of such Technical Tools and Datasets.

9.4 Client understands and accepts that the Services and Deliverables provided by AECOM pursuant to this Agreement are intended by AECOM for the sole use by Client for the specific purpose stated in **EXHIBIT A**. AECOM shall have no responsibility for, and the Client hereby releases AECOM from liability resulting from, any deliverables provided by AECOM that: 1) are modified by someone other than AECOM; 2) are modified at the direction of someone other than AECOM; 3) there is an unlicensed use of such deliverables not under the custody and control of AECOM after transmission; 4) have not been formally finalized by AECOM; or 5) there is a use of such deliverables by the Client or any third party for any purpose or project other than that for which the deliverables were originally developed.

10. RECORD DRAWINGS Client shall direct the Contractors to provide AECOM with updated red-line documentation which accurately and completely reflects any changes between the original design and the final construction. Record drawings to be delivered by AECOM to Client as a part of the Services ("Record Drawings") reflect the design provided by AECOM as modified by such updated information. Consistently with AECOM's defined Services, AECOM shall not have an obligation to independently validate such information related to the actual construction. AECOM makes no warranty or guarantee with regard to the accuracy or completeness of the information provided by the Contractors and third parties and shall bear no responsibility for any errors or omissions arising from or related to any defects or deficiencies in such information.

11. ELECTRONIC FILES

11.1 Electronic files to be delivered under this Agreement, if any, contain information to be used for the production of contract documents for the Project and are provided solely as an accommodation to Client. The official Contract Documents of Record ("Contract Documents") are those documents produced by AECOM which bear seals and/or signatures. Unless otherwise expressly set forth in the Services, no electronic files delivered under this Agreement are Contract Documents.

11.2 The electronic files, if any, were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise; or that the information contained in these files can be used in a manner for which they were not originally intended; or that electronic data may be corrupted by electronic transmission, AECOM makes no representation that the files, after delivery, will remain an accurate representation of the source data in AECOM's possession, or are suitable for any other purpose or use.

11.3 All indications of AECOM's and AECOM's subconsultants' involvement, including but not limited to seals and signatures, shall be removed from each electronic display and shall not be included in any prints produced therefrom.

11.4 Client understands and agrees that the right to use the electronic files, if such are provided under this Agreement, is specifically limited to the Project and the purpose defined by AECOM and is conditioned upon proper payment for such use.

11.5 If a third-party license is required to access or use electronic files, Client acknowledges its responsibility at its own expense to obtain all applicable hardware and software needed to legally access the electronic files. AECOM shall have no liability for third parties' use of or reliance on such files. AECOM can provide Contract Documents that are produced under this Agreement in PDF format if requested by the Client.

12. NOT USED

13. CHANGED SITE CONDITIONS The discovery of hazardous materials, hazardous wastes, pollutants, contaminants or concealed obstructions or utilities that could not reasonably have been anticipated from information provided to and reasonably apparent to AECOM constitutes a changed site condition. To the extent that such changed site condition increases the health and safety risks associated with the Services or requires AECOM to perform services different or in excess compared to those set forth in the Services, AECOM may, at its sole discretion, elect to suspend and/or terminate the related Services and shall be paid for the related Services up through the date of such termination. To the extent that the changed site conditions impact the cost, level of effort or schedule of the Services, equitable adjustments shall be made to the Services, schedule and fee under this Agreement. Any adjustments will be set forth in a mutually agreeable written amendment executed by both Parties.

14. MATERIALS AND SAMPLES Any items, substances, materials or samples removed from the Project Site for testing, analysis, or other evaluation will be returned to the Project Site unless otherwise agreed to by the Parties in writing. Client recognizes and agrees that AECOM is acting as a bailee and at no time assumes title to said items, substances, materials or samples.

15. COMPLIANCE The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services ("Law").

16. FORCE MAJEURE Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of Hazardous Materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. AECOM shall be entitled to an equitable adjustment to the Project Schedule and compensation in the foregoing circumstances. Any adjustments will be set forth in a mutually agreeable written amendment executed by both Parties.

17. INSURANCE

17.1 AECOM will maintain the following insurance coverages and amounts:

- 17.1.1 Workers Compensation insurance as required by Law;
- 17.1.2 Employer's Liability insurance with coverage of \$1,000,000 each accident/employee.
- 17.1.3 Commercial General Liability insurance with coverage of \$2,000,000 per occurrence/aggregate;
- 17.1.4 Automobile Liability insurance with coverage of \$1,000,000 combined single limit; and
- 17.1.5 Professional Liability insurance with coverage of \$2,000,000 per claim/aggregate.

18. INDEMNITY

18.1 AECOM agrees to indemnify Client, its officers, directors and employees, from third party claims of loss or damage, exclusive of defense obligations, for bodily injury or property damage ("Claims"), to the proportional extent caused by AECOM's negligence or willful misconduct.

18.2 If Services include AECOM's performance during the construction phase of the Project, Client shall require Client's Contractors working on the Project Site to include AECOM, its directors, officers and employees in any indemnity and in any insurance benefits that Client requires such Contractors to provide to Client.

19. CONSEQUENTIAL DAMAGES WAIVER NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY, ITS PARENTS, AFFILIATES AND SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND AECOM HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES AECOM FROM ANY SUCH LIABILITY.

20. RISK ALLOCATION AND RESTRICTION OF REMEDIES THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO

THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED \$250,000 OR THE ACTUAL PAID COMPENSATION FOR THE SERVICES, WHICHEVER IS GREATER. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

21. DISPUTES RESOLUTION

21.1 Either Party may initiate a dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the Claim.

21.2 If the Parties cannot resolve the dispute through negotiation, either Party may refer the claim, dispute or controversy to a panel ("Panel") consisting of a designated senior representative from each Party ("Representative"), who shall have the authority to resolve it. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any Panel proceeding or other settlement negotiations shall be deemed to be a Party's admission. If the representatives are unable to resolve the dispute within 15 business days, either Party may pursue its respective legal and equitable remedies.

22. GOVERNING LAW All contract issues and matters of law will be adjudicated in accordance with the laws of the state where the Project is located, excluding any provisions or principles thereof which would require the application of the laws of a different jurisdiction.

23. TERMINATION

23.1 This Agreement may be terminated for convenience by either Party upon 30 days advance written notice. On termination, AECOM will be paid for all Services performed up through the termination date.

23.2 This Agreement may be terminated for cause by either Party if the other Party materially fails to perform its obligations under this Agreement, does not commence correction of such non-performance within 10 business days of receipt of written notice and/or fails to diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

24. ASSIGNMENT

24.1 Neither Party may assign this Agreement without the written consent of the other Party, which unconcented-to assignment shall be void ab initio.

24.2 Notwithstanding Section 24.1 above, the Parties recognize that AECOM has affiliated companies who have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the Services. AECOM shall be entitled, without additional consent, to assign this Agreement or performance of the Services, in whole or in part, to any of AECOM's subsidiaries or affiliates upon written notice to Client.

25. PARTIES IN INTEREST Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Agreement. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns.

26. WAIVER Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.

27. SEVERABILITY AND SURVIVAL The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provisions were omitted. Articles 4 (Notice), 5 (AECOM's Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 10 (Record Drawings), 11 (Electronic Records), 12 (Certification), 14 (Materials and Samples), 17 (Insurance), 18 (Indemnity), 19 (Consequential Damages Waiver), 20 (Risk Allocation), 21 (Disputes Resolution), 22 (Governing Law), 24 (Assignment), 25 (Parties in Interest) and 27 (Severability and Survival) shall survive termination of this Agreement. To the extent any provision of this Agreement violates any law, or is otherwise invalid or unenforceable, said provision shall be revised to the limited extent necessary to make that provision legal and enforceable and, to the fullest extent permitted by law, consistent with Parties' original intent.

28. PREPARATION OF AGREEMENT Each Party has had the opportunity to avail itself of legal advice and counsel. Neither Party shall be deemed to be the drafter or author of this Agreement. In the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement, or any portion hereof, against either Party as the drafter of this Agreement.

29. SIGNATURES Each person executing this Agreement warrants that he/she has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

30. ORDER OF PRECEDENCE

Executed Change Orders
Design Engineering Services Agreement Article 31 "Special Terms and Conditions"
Design Engineering Services Agreement Articles 1 through 30 and 32
EXHIBIT B Compensation and Payment
EXHIBIT A Services

31. SPECIAL TERMS AND CONDITIONS

<i>None</i>

32. ENTIRE AGREEMENT This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties. The attached **EXHIBIT C** ("Change Order"), incorporated herein by reference, is the preferred form for such use.

AECOM Services of NC, Inc.



Signature

Lewis Robinson, AIA

Printed Name

Vice President

Printed Title

1 Nov. 19

Date

Address

440 Monticello Avenue, Suite 1500
Norfolk, VA 23510

CLIENT: Cumberland County, NC

Signature

Amy H. Cannon

Printed Name

County Manager

Printed Title

Date

Address

P.O.Box 1829
Fayetteville, NC 28302

(End of page)

EXHIBIT A

SERVICES

Services:

See attached Exhibit A1 - Design Scope of Services
See attached Exhibit A2 – Technology Systems Scope of Work

Schedule:

Assumed Notice To Proceed	Nov 18, 2019
Project KickOff / Program Verification Workshop	Nov. 22, 2019
Schematic Design - 30% 1 month	Dec. 20, 2019
Owner Review	Jan. 06, 2020
Design Development -60% 2 months	Feb. 24, 2020
Owner Review	Mar. 09, 2020
Construction Documents – 100% 3 months	May. 25, 2020
Owner Review / Permit - 1 month	June 2020
Issued for Construction Set	July 2020
Construction Begins	July 2020
Substantial Completion	May 2021
Technology - Burn In / Hot Cut Over 2 months	July 2021

Deliverables:

Schematic Design - 30%
Design Development -60%
Construction Documents – 100% (Permit Set)
Issued for Construction Set including Bid Addenda

AECOM Project Manager

Name	Paul Garrison
Title	Sr. Project Manager
Address	440 Monticello Avenue, Suite 1500, Norfolk, VA 23510
Phone Number	757-306-6723
Email Address	paul.garrison@aecom.com

Client Project Manager

Name	Jeffery Brown
Title	Engineering and Infrastructure Director
Address	130 Gillespie Street, Fayetteville, NC 28302
Phone Number	910-678-7633
Email Address	jbrown@co.cumberland.nc.us

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EXHIBIT B

COMPENSATION AND PAYMENT

- 1 COMPENSATION** The Services set forth in **EXHIBIT A** will be compensated on the following basis:

Basic Services \$ 731,753:

Deliverable & Date	Payment Amount
Program Verification	\$ 46,094
Schematics	\$ 94,889
Design Development	\$ 145,946
Construction Documents	\$ 151,422
Permitting	\$ 11,728
Bidding and Award	\$ 17,080
Construction Contract Administration	\$ 217,094
FFE and Technical Furniture	\$ 35,000
Record Drawings	\$ 5,000
Warranty Review	\$ 7,500

Supplemental Services and Other Direct Costs \$335,096

	All Items Below are Included in the Lump Sum
Technology Systems Design	\$ 271,600
Tower Foundation Design	\$ 10,000
Geotechnical (Sub)	\$ 11,176
Boundary and Topo Survey (Civil Sub)	\$ 12,320
Other Direct Costs Design	\$ 10,500
Construction Admin	\$ 19,500

Lump Sum Total

\$1,066,849

2.2 ANNUAL HOURLY LABOR RATE ADJUSTMENTS The Hourly Labor Rate Schedule is adjusted each calendar year to reflect updated labor cost categories. Labor cost of Services authorized in subsequent calendar years will be based on the applicable Hourly Labor Rate Schedule for those years.

3. REIMBURSEABLE EXPENSES Reimbursable expenses are expenditures made by AECOM for goods, travel expenses and vendor services in support of the performance of the Services. Such expenditures will be billed at the actual cost to AECOM.

4. CHANGE ORDERS The Parties may at any time and by written agreement make changes in the Services, Project Schedule, Deliverables, Compensation or other terms and conditions in this Agreement. The Parties shall effect such change through the use of a written Change Order. **EXHIBIT C** is the preferred form for such use.

5. INVOICING AECOM will invoice Client on a monthly basis unless otherwise set forth herein.

6 PAYMENT

6.1 If payment is based on Time and Materials with a NTE, once AECOM reaches the NTE, AECOM will stop further Services pending a Change Order to adjust the budget and schedule for the continued performance of the Services.

6.2 Timely payment is a material term of this Agreement. Client shall pay all undisputed portions of AECOM's invoices within 30 days of receipt without holdback or retention. Client shall notify AECOM within fourteen (14) days of the receipt of the invoice of any disputed items. Such notice must be accompanied by a detailed description of any disputed items and include supporting documentation as well as references to the provision(s) of this Agreement which permit a holdback or retention. If such notice is not provided within fourteen (14) days, Client waives its rights to dispute the invoice. Undisputed amounts remaining unpaid 30 days after the invoice date shall bear interest at the rate of 1.5% per month on the unpaid balance and AECOM may suspend the Services pending receipt of such payment. In addition, AECOM retains its unrestricted rights under Article 23 (Termination) of the Agreement.

6.3 If the Project is suspended by Client for more than 30 days, AECOM shall be paid for all Services performed prior to the effective date of suspension within 30 days of such suspension. Upon resumption of the Project, AECOM shall be entitled to an equitable adjustment in cost and schedule to compensate AECOM for expenses incurred as a result of the interruption and resumption of the Services. Any adjustments will be set forth in a mutually agreeable written amendment executed by both Parties.

6.4 To the extent that completion of the Services is delayed beyond the original scheduled completion date and such delay is not the fault of AECOM, an equitable adjustment shall be made to AECOM's Compensation and Project Schedule. Any adjustments will be set forth in a mutually agreeable written amendment executed by both Parties.

6.5 Except as otherwise specifically provided herein, Client shall pay or reimburse AECOM, as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.

6.6 Client shall make payments to AECOM using one of the following methods:

6.6.1 AECOM LOCKBOX:

AECOM Technical Services, Inc.
1178 Paysphere Circle
Chicago, IL 60674

6.6.2 ELECTRONIC FUNDS TRANSFER/ACH PAYMENT:

Account Name: AECOM Services of NC, Inc.
Bank Name: Bank of America
Address1: Building D
Address2: 2000 Clayton Road
City/State/Zip: Concord, CA 94520-2425
Account Number: 5800937020
ABA Routing Number: 071000039

6.6.3 WIRE TRANSFER:

Account Name: AECOM Services of NC, Inc.
Bank Name: Bank of America
Address: 100 West 33rd St
City/State/Zip: New York, NY 10001

Account Number: 5800937020
ABA Routing Number: 026009593
SWIFT Code: BOFAUS3N

6.6.4 Questions related to payment can be sent to:

AECOM Cash Applications Supervisor by phone at (804) 515-8490 or by email at
cashappsremittance@aecom.com

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AECOM Project Name: Cumberland County 911 Center
AECOM Project No.: _____
Change Order No.: _____

EXHIBIT C

SAMPLE CHANGE ORDER FORM

In accordance with the Consulting Services Agreement dated ____ 20____ between _____("Client"), and _____, a _____ corporation, ("AECOM"), this Change Order, with an effective date of _____, 20____ modifies that Agreement _____ as follows:

1. Changes to the Services:

2. Change to Deliverables:

--

3. Change in Project Schedule (attach schedule if appropriate):

--

4. Change in CONSULTANT's Compensation:

The Services set forth in this Change Order will be compensated on the following basis:

☐ No change to Compensation

☐ Time & Material (See **EXHIBIT B** for the Hourly Labor Rate Schedule)

☐ Time and Materials with a Not-to-Exceed amount of \$_____. The Hourly Labor Rate Schedule is set forth in **EXHIBIT B** (if applicable). Reimbursable expenses are included in the overall Not to Exceed cap.

☐ Lump Sum \$ _____

Milestone/Deliverable & Date	Payment Amount
	\$ _____

☐ **Cost Plus Fixed Fee:** Cost \$ _____ and Fee \$ _____

Therefore, the total authorized Compensation, inclusive of this Change Order is \$ _____.

5. Project Impact:

--

6. **Other Changes** (including terms and conditions):

7. All other terms and conditions of the Agreement remain unchanged.

8. Each Party represents that the person executing this Change Order has the necessary legal authority to do so on behalf of the respective Party.

AECOM Services of NC, Inc., Inc.

CLIENT:

Signature

Signature

Printed Name

Printed Name

Lewis Robinson, AIA

Printed Title

Printed Title

Vice President

Date

Date

Address

**440 Monticello Avenue, Suite 1500
Norfolk, VA 23510**

Address

[End of Agreement]

SCOPE OF WORK TECHNOLOGY SYSTEMS

500 Executive Place Renovation Project
Emergency Management
and
9-1-1 Communications Center
Cumberland County, North Carolina
AECOM Technology Solutions Proposal for Design and Construction Services

Project Understanding:

It is AECOM's understanding that Cumberland County is relocating its County Emergency Management and Communications Center operations from its current location to an existing one-story 17,000 square foot facility at 500 Executive Place in Fayetteville, North Carolina.

AECOM has based its scope of work upon the Feasibility Study (hereinafter "Study") of the 500 Executive Place dated November 30, 2018, the initial concept design plans included within the report, and our experience in designing similar facilities. Per the Study, it is AECOM's understanding that the renovation of the existing facility will require extensive modifications to building systems and reconfiguration of spaces to meet the programmatic and NFPA 1221 requirements. In addition, it is also AECOM's understanding that the County desires to leverage the 500 Executive Place existing network and telecommunications infrastructure to the greatest extent possible to support the new operations. AECOM assumes the County will determine which existing fibers will be utilized and AECOM will design under the assumption of what County has provided.

As part of the renovation, the existing Cumberland County emergency communications call taker and dispatch operations located at the Cumberland County Sheriff's office will be transitioned to the 500 Executive Place facility.

The new facility will now house call taker and dispatch operations for the Sheriff, Fire and Rescue and the Emergency Management Services. Because of the nature of the operation of 9-1-1 services, all dispatch and radio operations must remain in operation during the move. The existing emergency communications center will remain operational and configured as a backup facility.

The technology systems integration and 9-1-1 cutover of this project will include gathering data and background information regarding the existing 9-1-1 communications equipment, new equipment to be purchased, existing equipment to be relocated, if any, as well as gathering valuable information about existing 9-1-1 operations and proposed operational changes when the Sheriff, Fire and Rescue and Emergency Management are co-located in the new facility. An integration plan will assimilate this information, address potential issues involved, strategies to mitigate these issues, coordinate technology systems and infrastructure, explore potential improvements for technology and operations, and document the cutover process for each system and each step of the cutover. The documentation of the systems integration and cutover plan will provide the County with a means to understand the various emergency communication technical aspects, technology infrastructure, relationships of the various systems that serve these three co-located agencies. While most importantly provide a means for the project team to examine and improve the efficiency and effectiveness of the 9-1-1 operations in the new facility.

The 500 Executive Place Renovation Project will contain the following areas:

1. Waiting/Briefing area (Media)
2. Joint Information Center (JIC)
3. Training
4. Emergency Communication Center (ECC) Administration
5. ECC Operations
6. ECC Staff Support
7. Emergency Operations Center (EOC)
8. Information Technology (IT) Systems, Network and Security Offices
9. Administrative and Support Staff Spaces
10. Building Systems and Support Spaces
11. Radio Antenna System, in building DAS, and Communications Tower

This proposal describes the scope of services that will be provided for the design, engineering, and construction administration of the structured cabling and outside plant infrastructure, audio-visual, radio, and security systems required to support the technology for the above project, and the development of an integration and cutover plan. It is AECOM's understanding that the design will be comprised of the following phases/tasks:

1. Project Kick-off/Program Verification Workshop
2. Schematic Design (30% SD)
3. Design Development (60% CD)
4. Construction Documents (100% CD)
5. Bid Support
6. Construction Administration (CA)
7. Witness Systems Acceptance Testing
8. Cutover Services

Scope of Services

Design:

Task 1: Schematic Design (30% SD)

1. AECOM Technology Solutions team will participate in the Schematic Design Workshops to further assess the technology infrastructure needs and to identify goals and objectives.
2. Through the workshops and interviews, identify data, communications, radio, security, audiovisual and other special system requirements and concerns with the County stakeholders.
3. During the Schematic design phase the details of the following mission critical systems will be gathered for inclusion into the Schematic design.
 - a. Radio Systems and any required microwave links
 - b. Voice/Data structured cabling for ECC, EOC, and Data Center
 - c. Data Center systems
 - d. Telephone systems
 - e. Redundant Voice and Data Circuit cabling design
 - f. Logger recorder relocation/replacement
 - g. Communications infrastructure/cabling design and coordination for general non ECC offices and conference spaces.
 - h. Infrastructure related to Audiovisual Systems
 - i. EOC and ECC video walls
 - j. Links to County CCTV system
 - k. Paging
 - l. Clock systems
 - m. Security Systems, develop design plan in coordination with existing County security systems. Intent will be to extend the County security systems to the facility Systems to include, but not be limited to, cameras, access control, alarms, building systems annunciators, etc.
4. In conjunction with the project stakeholders, AECOM will develop an inventory of emergency communication system needs, identifying new and existing equipment that will be located at the new facility, including environmental, electrical and telecommunications connectivity requirements of each piece of equipment; downtime criticality of each system; and AECOM will coordinate with the vendors of the equipment supporting the ECC for approval of their relocation/cutover plans. The systems integration documentation and cutover plan will account for the supporting power, communications, grounding and other related infrastructure requirements. AECOM will develop with the County a comprehensive cutover plan to ensure continuing operation during the relocation to the new facility.
5. Develop a technology program requirements/cutover spreadsheet for the technology systems.
6. AECOM Technology Solutions team will work closely with its architects and engineers to coordinate space, mechanical and electrical requirements for the ECC, EOC, and Server Room technology systems requirements. AECOM team will work closely with

the County's stakeholders and vendors to obtain information related to the systems that will be purchased and those that will be moved to the new facility and translate these into the building infrastructure requirements. AECOM team will coordinate with the County the multiple communications cabling and fiber pathways between the Main Points of Entry (MPOE) and manhole/handhole locations at the property boundary.

7. Collect site information on the existing equipment as required.
8. Identify any County system standards to be utilized during the design process.
9. Verify the program of requirements after data collection.
10. It is AECOM's understanding that the County's IT Department is evaluating the existing GPON fiber cabling infrastructure of 500 Executive Place in order to determine if it meets program requirements. AECOM will review the findings and provide recommendations.
11. Establish system functional requirements.
12. Identify backup and redundancy requirements (define what equipment must be put in place before existing equipment can be taken off line).
13. Identify cutover requirements (define what equipment must be put in place before existing equipment can be taken off line).
14. Meetings with project vendors and consultants to obtain and document relevant information for systems integration and the relocation and coordination equipment during the cutover.
15. Preliminary development of an integrated communications cabling plan to accommodate connectivity, diversified growth, and support of the data/voice, radio, IT, security, CCTV and audiovisual systems for the ECC, EOC, and Server Room.
16. Assist with identification of space requirements for technology and telecommunications equipment, demarcations, IT operations, security, and A/V head-end equipment spaces.
17. Identify space and functionality requirements for EOC as well as interfaces to ECC.
18. Determine acceptable service levels to be maintained throughout transition and develop a plan that minimizes the downtime of critical applications.

The AECOM Technology team (3 people) will attend (1) kickoff workshop that will include time for site documentation and interviews. AECOM Technology lead and Cutover Planner (2 people) will attend and one (1) SD review meeting / building systems workshop to review schematic design and cutover approach based on data gathered at prior workshop.

The deliverable for this phase will be a report that will include documentation of the existing ECC, EOC and Server Room/IT operations and communications equipment; goals and objectives for the technology systems mentioned above; summaries of the stakeholder requirements obtained from interviews and workshops; standards that the systems and facility will be designed to; functional requirements; preliminary schemes for integrating new communications and technology systems as well as equipment that may be relocated; projections of space requirements including space for growth.

Task 2: Design Development (DD)

With the information gathered from above, AECOM will develop an audio visual, communications

and security systems design for the required systems in the project facilities identified during Schematic Design. This phase formulates a plan for the development of infrastructure planning for a structured cabling system utilizing new data/voice/video jack locations including telecommunications and equipment room locations, audiovisual device locations, access control device locations and security camera locations. The purpose of the design effort is to define the topology, physical, engineering, and functional characteristics of the recommended systems. General items associated with the systems that will be considered during the design include the following:

1. Coordination of site telecommunications Out Side Plant (OSP) duct bank and conduit.
2. Building physical infrastructure, including telecommunications rooms, equipment rooms, control room, patch rooms, conduit, and raceway and other pathway systems.
3. Telecommunications grounding, bonding, and surge/electrical protection for all systems
4. Recommendations and coordination regarding building conduit, riser sleeves, telecommunications rooms modifications, etc.
5. Building network topology risers for voice, data, LAN/WAN, security, video and wireless
Infrastructure and location for devices such as card readers, cameras, intrusion detection sensors, biometrics, video walls, DAS, etc.
6. Providing audiovisual infrastructure and device locations and elevations in support of these systems.
7. Recommendations regarding the move of existing systems

The deliverable from this Phase will be preliminary specifications as required supporting infrastructure requirements for each system to be installed in the facilities, as well as diagrammatic design drawings that provide locations of all voice and data outlets, A/V device locations, security device locations, as well as the telecommunication system supporting drawings to ensure a complete and proper installation. Documents will be delivered at the 60% DD level.

AECOM will also provide the County with a draft of the cutover plan. The draft emergency communications systems cutover plan will outline the systematic relocation and cutover of the technology systems utilizing new data/voice/video jack locations and telecommunications and equipment room locations for local and wide area electronics, LAN/WAN/WLAN communications, radio and antenna systems, and security devices. The plan will coordinate the physical, functional and technical characteristics of the systems to eliminate downtime. The plan will consider aspects of the operation such as CAD operation; 9-1-1 call taking; public safety unit dispatching and monitoring; recording; radio operations; staffing and others. The plan when fully developed will also detail power, cooling, data, and connectivity requirements as well. The draft plan will also form the initial step of the integrated development process for the scope, scale and relationships between systems and components.

The County stakeholders will have an opportunity to review the draft plan, comment and modify the basic concepts.

AECOM team (2 people) will conduct one (1) Technology integration workshop with vendors and stakeholder to coordinate necessary tasks for Stakeholders, Vendors, and AECOM team to complete prior to cutover. This meeting will be held prior to the (60%) DD review meeting to further develop the cutover plan. AECOM's Cutover Planner will attend one (1) 60% DD review

meeting during this phase to review the draft cutover plan. The cutover planner will represent Technology team at this meeting.

Task 3: Construction Documents (CD)

From the data developed in the DD phase the next Phase is to provide final specifications and drawings that meet the requirements for the facility. Specific items that will be considered include the following:

1. An integrated conduit back box and pathway system that will support all IT services and facilities.
2. Consideration of the requirement for redundancy to critical systems.
3. Conduit back box and pathway system for physical security systems linking devices such as card readers, cameras, intrusion detection sensors, biometrics, gates, control rooms, etc.
4. Infrastructure requirements and drawing details for the interconnection of Local Service Providers Outside Plant telecommunication system with building facilities utility entrance.
5. Conduit back box and pathway system for audiovisual systems including devices such as large format video displays, video walls, projectors and screens, loudspeakers, A/V control room equipment.

A final set of bid documents will include: specifications, a comprehensive set of CAD drawings showing all cabling and equipment locations, as well as riser diagrams and other detailed drawings to ensure a complete and proper installation. Documents will be delivered at the 100% CD level.

The cutover plan will be prepared in parallel with the construction documents. The plan will incorporate pre-cutover checklists for each item of the cutover plan as well as cutover procedures, schedules and contingency plans. Contingencies will be developed for possible failures and potential external threats and risks. The cutover plan documentation is a living document and will be adjusted as the project moves forward until after cutover is complete.

AECOM Technology team (1 person) will attend one (1) Construction Document review meeting during this phase.

Task 4: Bid Phase

1. Respond to requests for clarification and requests for information (RFI) regarding technology systems, through the Architect from the construction manager and contractors.
2. Make necessary corrections to original drawings through bulletin drawings for inclusion into addenda. Coordinate issuing addenda as required with Consultant.

Task 5: Construction Administration

1. AECOM Technology team will assist the architect and engineers with answering contractor RFI's and reviewing submittals pertaining to interface of the emergency communications equipment and its building infrastructure.
2. AECOM Technology Solutions team will provide three (3) site visits during construction to review: Pathways, Cabling (installation and testing), IT infrastructure, AV systems, tower construction and security installations. These visits will be done by 3 different specialists and may occur simultaneously depending on the construction schedule.
3. AECOM will update the cutover plan with any equipment or infrastructure revisions that occurred during construction as well as revise any procedures or cutover activities that have been affected by these changes. The updated cutover plan will be submitted for review at building substantial completion.

Task 6: Witness Systems Acceptance Testing

Once the systems have been installed and tested by the vendors, AECOM will provide post-installation validation of the testing for the AV, security, and data cabling installed under this project for the ECC, EOC and Server Room.

1. The building contractor and systems' vendors must install fully operational communications systems as required by the drawings and specifications.
2. AECOM will review the contractor-provided proposed acceptance and test plans of all emergency communications systems being installed and witness the final acceptance testing of each system.
3. AECOM will review 100% of voice/data cabling test data. AECOM will provide test witnessing of contractor performed testing on 5 to 10% of voice/data cabling.
4. AECOM will update the cutover plan, if required, depending on acceptance testing results.
5. AECOM will provide two people for one (1) site visit to witness performance.

Task 7: Cutover Services – Emergency Communication Center

1. AECOM system integrator and cutover planner will be on site during the cutover to aid the County in the implementation of the cutover plan.
2. AECOM will then finalize the cutover plan with documentation of the actual cutover, including contingencies that were utilized and lessons learned.
3. The AECOM Team will provide two people for five (5) days during the cutover.

Assumptions and Exceptions

1. AECOM's scope and professional fees are based on sufficient review and information gathering meetings in Cumberland County to obtain the necessary information and make the necessary decisions pertaining to the cutover of the project.
2. Development of the cutover plan will follow along the same schedule as the schematic design and design development phases of this project in assessing systems that will be incorporated into the ECC. The draft cutover plan will be completed and reviewed on the same schedule as the completion of the Construction Documents. The final cutover plan will be completed and reviewed prior to substantial completion of the ECC construction and will incorporate the any equipment or infrastructure revisions that may have occurred during the construction.
3. Excluded from these services is the design and engineering of any active network electronic such as network switches, routers, servers, PC or workstations, etc.
4. No Protected Distribution System design or associated work as defined by DCID 705 is included in this scope of work.
5. Reference grounding, UPS and lightning protection systems will be included in Design Scope of Services.
6. In-Building wireless communications design will be included.
7. Test witnessing will be performed on 5 to 10% of voice/data cabling after contractor has provided an approved test plan and entire test result documentation
8. All trades work will be performed by awarded contractors, AECOM personnel will not be responsible for furnishing, installing or physically relocating equipment.
9. Any work outside this scope and price proposal will be subject to the fair negotiation as additional services based upon approved hourly rates.
10. AECOM assumes the final construction documents and specifications will be created and assembled as one (1) bid package. Integration services for multiple bid packages may be provided as additional services.
11. Excluded from these services is the provisioning of incoming or outgoing voice and data circuits provided by the local service provider.
12. Excluded from these services are any hands-on installation and or software programming services of any equipment associated with this project.
13. AECOM's scope of services is limited to those services and deliverables identified in this Scope of Work. AECOM neither warrants nor guarantees the performance of any manufacturer, vendor, supplier, contractor or any other third party, nor assumes responsibility for any such person's or entity's failure to furnish and perform its work in accordance with the Contract Documents.
14. The County will provide review and approval of the draft and final cutover report and respond with consolidated comments.

15. The number of meetings/site visits included in our scope are listed below:

Phase	Technology team		Cutover Planner		Duration in days
	Meetings/ Trips	# on site	Meetings/ Trips	# on site	
Program Verification Workshop – Site investigation/inventory	1	2	1	1	1.5
Schematic Design Review meeting	1	1	1	1	1
Integration technical meeting	1	1	1	1	1
Design Development review meeting			1	1	1
Construction Documents review meeting	1	1			1
Construction Administration	2	1	1	1	1
Witness Systems Acceptance Testing	1	1	1	1	2
Cutover Services	1	1	1	1	5



**CUMBERLAND COUNTY AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR THE CONSTRUCTION OF THE CUMBERLAND
COUNTY 500 EXECUTIVE PLACE RENOVATION**

This AGREEMENT is made and effective on this date: November __, 2019

BETWEEN The Owner: CUMBERLAND COUNTY

And the Construction Manager (hereinafter referred to as the “CM”):

BALFOUR BEATTY CONSTRUCTION, LLC.

For services in connection with the Project known as:

CUMBERLAND COUNTY 500 EXECUTIVE PLACE RENOVATION.

As further described in Article 2

For which the Designer is: AECOM, along with its sub-consultants.

TABLE OF CONTENTS:

1. AUTHORIZATION AND STATEMENT OF INTENT.....	3
2. DEFINITIONS AND GENERAL REQUIREMENTS	3
3. RESPONSIBILITIES OF THE OWNER.....	5
4. RESPONSIBILITIES OF THE DESIGNER.....	7
5. SEPARATE CONTRACTS BY OWNER	7
6. CM SERVICES	8
7. CM COMPENSATION.....	13
8. GUARANTEED MAXIMUM PRICE	16
9. PAYMENT PROVISIONS	17
10. CM CONTINGENCY	23
11. BONDS REQUIRED FROM THE CM	24
12. DESIGN SUPPORT BY THE CM.....	24
13. PERMITS AND APPROVALS BY REGULATORY AGENCIES.....	25
14. PROCUREMENT OF CONTRACTS WITH CONTRACTORS	26
15. WORK BY CM	28
16. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS	28
17. OWNERSHIP OF DOCUMENTS.....	29
18. CONTRACTOR SUBMITTALS AND REQUESTS FOR INFORMATION.....	30
19. USE OF PREMISES, SITE CONDUCT, AND SAFETY AND PROTECTION OF PROPERTY	30

20.	ENVIRONMENTAL PROTECTION	32
21.	INSURANCE AND INDEMNITY	32
22.	TIME FOR PERFORMANCE, SCHEDULING AND PROGRESS MAINTENANCE	38
23.	SUSPENSION OF THE WORK BY THE OWNER	44
24.	COST CONTROL	45
25.	CHANGES TO THE GUARANTEED MAXIMUM PRICE	48
26.	TERMINATION OF THE WORK FOR THE CONVENIENCE OF THE OWNER.....	49
27.	NON-APPROPRIATION OF FUNDS.....	50
28.	TERMINATION OF THE AGREEMENT DUE TO DEFAULT	51
29.	ADDITIONAL TERMINATION PROVISIONS	51
30.	OCCUPANCY AND USE BY THE OWNER; SUBSTANTIAL COMPLETION	52
31.	FINAL INSPECTION AND ACCEPTANCE	53
32.	QUALITY ASSURANCE, WARRANTIES AND GUARANTEES	53
33.	TESTING AND INSPECTIONS.....	54
34.	CORRECTION AND COMPLETION OF WORK BY THE OWNER	55
35.	DISPUTE RESOLUTION.....	56
36.	MISCELLANEOUS PROVISIONS	56

APPENDICES

A -- Dispute Resolution Procedures

B – General List of Cost Elements

C – Balfour Beatty Minority Participation Plan

D – Outline of Summary Report for Guaranteed Maximum Price Package

E – CM RFQ

F – Balfour Beatty RFQ Response

G --Balfour Beatty Preconstruction Proposal

H -- Guaranteed Maximum Price Flow Diagram

I – Agreement for Transfer of Documents in Machine Readable Form When the Owner Owns the Instruments of Service.

The Owner and CM, in consideration of their mutual covenants herein, agree as set forth below:

1. Authorization and Statement of Intent

- 1.1. Statutory Authority: This Agreement is entered into in accordance with and shall be governed by N.C. Gen. Stat. § 143-128.1 and other sections of Chapter 143, Article 8 of the North Carolina General Statutes relating to construction management at risk contracts.
- 1.2. Management Services: The CM covenants with the Owner to furnish professional construction management services during the Project. In broad terms, the CM will perform preconstruction and construction services, which will include preparation and coordination of bid packages, scheduling, cost control, change order proposal and payment application reviews, efficient value engineering reviews and project management, business administration, field supervision and all other services required by this Agreement. The CM further covenants that it will strive to put the interests of the Project first and finish the Project on time and within budget. Reports and reviews required of the CM under this Agreement will be performed rigorously and will be presented in formats approved by and acceptable to the Owner. Notwithstanding the foregoing, CM shall have no obligation to provide professional design or engineering services for the Project except as expressly and specifically provided herein.
- 1.3. Guaranteed Maximum Price: The CM shall, in accordance with law and this Agreement, guarantee the cost of the Project by giving a Guaranteed Maximum Price on the terms and by the dates set forth in this Agreement. Once the Guaranteed Maximum Price is fixed by the CM, the Guaranteed Maximum Price may only be changed in accordance with the terms of this Agreement.
- 1.4. Codes and Standards: The CM shall use its best efforts to complete the Work of the Project in the best and most expeditious, economical manner consistent with the interests of the Owner, and in strict conformity with the Contract Documents, including all reasonable implications therein, and to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect during the term of this Agreement and govern performance of the Work by the CM.
- 1.5. Licenses: The CM represents and warrants that it is qualified and in good standing to do business in the State of North Carolina, and that it possesses all of the licenses and permits required to provide the services required by this Agreement, including without limitation an unlimited North Carolina General Contractors License that is either unclassified or is classified for the Work undertaken by the CM pursuant to this Agreement.

2. Definitions and General Requirements

- 2.1. Terms used in this Agreement shall have the meanings given below, unless the context requires a different interpretation or meaning. Additional terms are defined elsewhere in the Agreement as they occur.
- 2.2. Agreement: This Agreement between the Owner and the CM, including all modifications and addenda to this Agreement during the course of the Project.
- 2.3. Bid Packages: Documents prepared by the CM in cooperation with the Designer and the Owner for the purpose of accurately and completely defining and procuring portions of the Work to be performed by Contractors. Such documents may include invitations to bid, instructions to bidders, forms of proposals, contract terms and conditions, forms of bonds, drawings and specifications that describe the scope of Work for a particular portion of the Work, plus any other documents that the CM believes are appropriate for a bid package.

- 2.4. Contract Documents: The Contract Documents include this Agreement, plus the Drawings and Specifications prepared by the Designer, plus allowable modifications to the Contract Documents. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CM finds a conflict, error or discrepancy in the Contract Documents, the CM shall notify the Designer in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given preference in the following order: Modifications to the Agreement, the Agreement, Addenda, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which, so applied, have a well-known technical trade meaning shall be deemed to refer to such meaning and to incorporate any recognized standards which are a part of such meaning.
- 2.5. Contractors: Contractors include all persons, including contractors, subcontractors, material suppliers and equipment lessors, who enter into contracts with the CM to provide and perform portions of the Work.
- 2.6. Cost of the Work: The term “Cost of the Work” shall include all amounts paid by the CM for the Work of the Project as described in the Drawings and Specifications developed by the Designer, excluding only CMs Fee (no fee on Fee). The Cost of the Work shall be adjusted for all discounts obtained on payments by the CM or any Contractor, which shall be for the benefit of the Project and the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus or salvaged materials and equipment shall accrue to the Owner, and the CM shall make provisions so they can be secured and will reduce the Guaranteed Maximum Price accordingly. Amounts which accrue to the Owner in accordance with this paragraph shall be accounted for and credited to the Owner as a deduction from the Cost of the Work. The Cost of the Work shall not include the following:
- 2.6.1. The CM’s Fee;
 - 2.6.2. All professional fees paid by the Owner to the Designer or other consultants retained directly by the Owner;
 - 2.6.3. All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price.
- 2.7. Designer: Designer refers to the prime architect for the Project, collectively with all sub-consultants retained by the Designer to perform the services required of the Designer under its contract with the Owner.
- 2.8. Drawings and Specifications: Drawings and Specifications are the graphical and textual work product of the Designer that describes the Project and the Work of the Project. Unless the context clearly indicates that a reference to Drawings and Specifications means draft or preliminary Drawings and Specifications, the term shall refer to Drawings and Specifications that bear the seal of the Designer and have been released for permitting and construction. Drawings and Specifications includes all addenda and revised Drawings and Specifications issued during the course of the Project.
- 2.9. Final Completion: Final Completion refers to that stage in the Project when the Owner has taken beneficial occupancy, all punch lists have been completed, all as-built drawings, operations and maintenance manuals, warranties and other Project records have been delivered, all waivers and releases have been negotiated and executed, all consents of surety to final payment have been delivered, and all other requirements of this Agreement relating

to Final Completion have been met, so that Final Payment to the CM can be made by the Owner.

- 2.10. Guaranteed Maximum Price or GMP: The GMP is the sum of the Cost of the Work, the CM General Conditions, the CM Contingency, and the CM Fee. The procedure for fixing the GMP shall be as set forth in this Agreement.
- 2.11. Program: The Program is the document entitled “Cumberland County 500 Executive Place Renovation”
- 2.12. Project: The term “Project” when used in this Agreement shall mean the total construction of the Cumberland County 500 Executive Place Renovation. The Project is defined in more detail in the Request for Qualifications referred to herein as the “RFQ” and in the Program.
- 2.13. Request for Qualifications or RFQ: The RFQ is the Request for Qualifications - Construction Manager at Risk, for the Project. The RFQ is incorporated into this Agreement for the sole purpose of identifying the Project, identifying the general program for the Project, and identifying the general scope of services required of the CM as part of the Project. To the extent anything in the RFQ contradicts or conflicts with the provisions of this Agreement, the provisions of this Agreement will govern.
- 2.14. Substantial Completion: Substantial Completion is the point in time when the Work, as determined by the Designer, is sufficiently complete in accordance with the Contract Documents that it can be utilized by the Owner for its intended use, and all necessary permits, certifications and permissions for beneficial occupancy and utilization having been obtained by the CM.
- 2.15. Value Engineering: Value Engineering is the process of reviewing the cost of major construction components of the Project and evaluating the cost savings that might be achieved by substituting alternative materials and systems while still achieving stated design, engineering, and functional objectives and requirements. Value engineering proposals and other substitution proposals are not a substitute for properly documented and executed change orders or other modifications of the Contract Documents. In providing “value engineering”, CM shall not be obligated to provide professional design or engineering services, such services to be provided by the Designer.
- 2.16. Work: The term “Work” required for the Project used in this Agreement shall mean the various parts of total construction to be performed under this Agreement, generally including labor, materials, supplies equipment and related services provided by Contractors or, in appropriate circumstances as defined in this Agreement and N.C. Gen. Stat. § 143-128.1, by the CM.

3. Responsibilities of the Owner

- 3.1. In addition to the other responsibilities assumed by the Owner under this Agreement, the Owner shall have the following responsibilities:
- 3.2. Program: The Owner shall provide to the CM complete information regarding the Owner’s requirements for the Project.
- 3.3. Decisions: The Owner shall examine information submitted by the CM and shall render decisions thereon so as not to delay the progress of the Work.
- 3.4. Approvals: The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner so as not to delay the progress of the Work and to facilitate orderly progress of the Work in cooperation with the CM, consistent with

this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project.

- 3.5. Designer: The Owner shall retain a Designer whose services, duties and responsibilities shall be described in a written agreement between the Owner and Designer. The services, duties, and responsibilities of the Designer set out in the agreement between the Owner and Designer shall be compatible and consistent with this Agreement and the Contract Documents. The Owner shall, in its agreement with the Designer, require that the Designer perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the Owner. The terms and conditions of the agreement between the Owner and the Designer shall not be changed or waived without written notice to the CM provided at the time of the change or revision.
- 3.6. Funding and Budget: The Owner has established a preliminary Project and Construction Budget and has included this information in the Program provided to the CM. Cash flow available for the Project was provided to the CM in the RFQ. Subsequent revisions deemed acceptable to the Owner will be approved as provided in this Agreement.
- 3.7. Milestone Schedule: In addition to the Project program and budget, the Owner will provide the CM with lists or schedules of any dates that are critical to the Owner, such as vacancy and occupancy dates, meeting dates and funding deadlines.
- 3.8. Permits and Approvals: Except as set forth in Article 13, with the cooperation and assistance of the CM and the Contractors as set forth in this Agreement, the Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.
- 3.9. Communication with Contractors: The Owner, its representatives and consultants, including Designers, shall communicate with the Contractors only through the CM.
- 3.10. Copies of Notices and Communication: The Owner shall send to the CM and shall require the Designer to send to the CM copies of all notices and communications sent to or received by the Owner or Designer relating to the Project that are pertinent to the CM's ability to perform its obligations under this Agreement.
- 3.11. Owner's Representative: The Owner designates its County Engineer to serve as the Owner's point of contact and to act on the Owner's behalf with respect to the Project. This representative shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner. The Owner's Representative shall have access to the site of the Project at all times, subject only to any safety and security plan implemented by the CM with the approval of the Owner. The CM acknowledges that more than one individual might be designated as the Owner's Representative at different times and for different purposes. The CM also acknowledges that some changes to this Agreement and to the Project might require authorization by the County Commissioners and execution by the County Manager in addition to authorization by the Owner's Representative.
- 3.12. Payments to CM: The Owner shall make payments to the CM on the basis of the Contractor's payment applications that are certified by the Designer. The Owner shall not be bound by the payment certifications by the Designer, and retains the right to make its own determinations as to whether payment is due and in what amount.

4. Responsibilities of the Designer

- 4.1. In providing construction management services described in this Agreement, the CM shall maintain a working relationship with the Designer. The Designer is solely responsible for the Project design and shall perform in accordance with the Designer agreement with the Owner. Nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Designer or any other persons or parties not specified by this Agreement. The CM and the Designer shall each be provided with a copy of the other's contract with the Owner.
- 4.2. Drawings and Specifications: The Designer shall prepare the overall Drawings, and
- 4.3. Specifications for the Project. The Designer shall cooperate with the CM to divide the Drawings and Specifications for the CM's bid packages for the Contractors.
- 4.4. Shop Drawings and Special Systems Calculations: As more fully set forth in this Agreement and the Contract Documents, the Owner and the Designer may delegate responsibility to the CM and its Contractors to submit fabrication, erection and other such shop drawings, and to provide detailed designs for specific systems and building components, including generally and without limitation fire protection shop drawings, curtain/window wall calculations, precast connection and panel design drawings and structural connection design drawings from the Contractors and their duly licensed design professionals as required by the Contract Documents. The CM and its Contractors shall provide professional liability insurance as required by Section 21.17.
- 4.5. Minor Changes: The Designer shall have the authority to order minor changes in the Project consistent with the intent of the Drawings and Specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only.
- 4.6. The Designer shall have the other duties and responsibilities described in this Agreement and in the agreement between the Owner and the Designer.

5. Separate Contracts by Owner

- 5.1. Tests and Inspections: The Owner reserves the right to retain the services of geotechnical engineers, environmental engineers or geologists, testing and materials inspectors, special inspections inspectors, and commissioning agents (generally referred to in this Agreement as "Consultants") to help the Owner meet its responsibilities under the Agreement and to monitor the quality of construction by the CM and the Contractors.
- 5.2. Work of the Project: The Owner reserves the right to contract separately with other entities to complete portions of the Work of the Project, or to deploy its own employees to complete portions of the Work.
- 5.3. Furniture, Fixtures, Equipment and Signage: The Owner may elect to contract separately for furniture, fixtures, equipment, signage, and other similar building components. Plans and specifications for furniture, fixtures, equipment, signage and other such components shall be prepared by the Designer in conjunction with the Owner, and communicated to the CM.
- 5.4. If the Owner contracts separately with any other parties, the Owner shall cause all such agreements to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation as required herein. The CM agrees to cooperate with the Owner and its separate contractors and coordinate the Work of all parties, including the Owner's forces or separate contractors. Provided the CM has reasonable advance notice of the identity and duties of separate contractors, the CM agrees to include coordination and support of the Owner's separate contractors in the Master Schedule and in its General

Conditions costs. Disputes or conflicts between the CM, the Owner and any separate contractors shall be subject to dispute resolution in accordance with the dispute resolution provisions in Appendix A.

6. CM Services

- 6.1. The CM shall perform the services described in this Agreement. The sequence in which the services are provided shall be as set forth in the approved Construction Management Plan.
- 6.2. General Scope of Services: The general scope of services required of the CM is described in Section V of the RFQ.
- 6.3. Duration: The commencement date for the CM's services shall be the date of execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with services, whichever is earlier. The duration of the CM's services under this Agreement shall be from the date of this Agreement through the issuance of the certificate of Final Completion, or to the end of the one-year CM warranty phase services, whichever is later.
- 6.4. CM Staffing: The services to be provided by the CM under this Agreement shall be performed by personnel identified by the CM, and approved by the Owner, before commencing services. The furnishing of services by such personnel throughout the duration of the Project, and any individuals approved by the Owner to replace them, is of the essence to this Agreement.
 - 6.4.1. Additions, Removals, Replacements: From time to time, personnel may be added as necessary and appropriate to the stage of planning, programming, designing and constructing the Project. The CM shall not, for so long as any approved person is employed by the CM, remove, substitute or reduce the time devoted to the Project by such person without the Owner's prior written approval, which may be granted or withheld in its sole discretion. If the Owner is for any reason dissatisfied with the services rendered by any approved person, the CM shall promptly remove such person and recommend a replacement. If any approved person ceases employment with the CM, or if the Owner requests the removal of any such person, then the CM shall promptly notify the Owner of a proposed substitute of at least equal qualifications to perform the same functions, and provide a resume for the substitute. Each substitute must be approved by the Owner prior to commencing performance of any services for the Project, which approval shall not be unreasonably withheld. The CM shall bear, at its own expense and without reimbursement by the Owner, all costs associated with replacing, for any reason, any approved personnel. The CM shall remain solely responsible to the Owner, notwithstanding the Owner's approval of any approved personnel, for the quality and performance of all services provided by such personnel.
 - 6.4.2. CM's Project Representative: The CM shall designate a Project Representative who has the authority to act on behalf of the CM in respect to all matters that are the subject of this Agreement, including without limitation the power and authority to enter into agreements or modifications that contractually bind the CM. The Project Representative shall be available at all times during all phases of performance of services under this Agreement to consult with the Owner on matters pertinent to design and construction of the Project.
 - 6.4.3. The CM shall be an independent contractor, not an employee, agent, joint venturer, or partner of the Owner, and shall not have authority to act on behalf of the Owner. The CM shall have complete and sole responsibility for and control over its employees, agents, representatives, and subcontractors, and the means and methods of providing

the Work. The CM shall employ no person whose employment on or in connection with the Project may be objectionable to the Owner and shall remove any such person when objected to by the Owner; all upon reasonable grounds.

- 6.4.4. The Owner and the Owner's Representative shall not be responsible for the acts of the CM or the CM's representatives while performing under this Agreement, whether on the site or elsewhere, and the CM shall not have authority to speak for, represent, or obligate the Owner in any way without additional prior written authority.
- 6.4.5. CM's Employees: None of the persons employed by the CM shall be considered employees of the Owner. The CM shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance, compliance with immigration and licensing laws, and any other employer obligations with respect to all of their employees.
- 6.5. Consultants to the Owner: If requested by the Owner, the CM shall assist the Owner in the selection of the Owner's Consultants by developing lists of potential firms, developing criteria for selection, preparing and transmitting the requests for proposal, assisting in reviewing written proposals, assisting in conducting interviews, evaluating candidates and making recommendations. If requested by the Owner, the CM shall conduct or assist the Owner in conducting orientation sessions during which the Consultants shall receive information regarding the Project scope, schedule, budget, and administrative requirements.
- 6.6. The CM shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the Project as reasonably required by the Owner.
- 6.7. Inspection of the Project Site and Site Logistics: The CM represents that it has examined the site of the Project, as well as the surrounding area, and is informed regarding all of the conditions affecting the services to be furnished under this Agreement, including the existence of all utilities and other structures of municipal and other public service corporations to the extent the information was provided by the Owner.
 - 6.7.1. Prior to commencement of demolition on the site, the CM will develop a plan for site logistics, including plans for ingress and egress, street right-of-way encroachments (including lane and sidewalk closures), signage, storage of materials and equipment, site offices, temporary utilities, staging, hoists and cranes, waste disposal, security, and any other logistical issues that could affect performance of the Work and General Conditions to be provided by the CM.
 - 6.7.2. The CM accepts a continuing duty during the course of the Project to make reasonable inquiry and inspection of information relevant to the site of the Project. The CM shall make reasonable inquiry, based on the CM's best knowledge and judgment as to the reasonableness of any data it is provided for its use in performing the services required by this Agreement. The CM shall be responsible for the accuracy of the data it generates and all interpretation and recommendations it makes, based on data the CM has generated or otherwise relied upon, no matter its source.
- 6.8. Design Support: The CM shall only provide design services and design support as expressly and specifically stated in this Agreement and the Contract Documents.
- 6.9. Construction Management Plan: Within thirty (30) days after execution of this Agreement, the CM shall present to the Owner a Construction Management Plan for the Project, including dates by which deliverables required by the Construction Management Plan will be completed. The CM shall make recommendations for revisions to the Construction Management Plan throughout the duration of the Project, as may be appropriate. In

preparing the Construction Management Plan, the CM shall consider the Owner's schedule, budget, and design requirements for the Project. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the Owner for acceptance. Revisions approved by the Owner and the CM shall be incorporated into the Construction Management Plan.

6.10. Budgeting and Financial Forecasts

- 6.10.1. Project Funding: The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on Project funding. The documents shall be prepared in a form approved by the Owner.
- 6.10.2. Construction Market Survey: In accordance with the Construction Management Plan, the CM shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project. A report of the Construction Market Survey shall be provided to the Owner and the Designer.
- 6.10.3. Project and Construction Budget: Prior to soliciting bids for construction of each GMP Package, the CM shall update the Project and Construction Budget and prepare a detailed cost estimate based on separate divisions of the Work for each GMP Bid Package required for the Project and shall identify contingencies for design and construction. The CM shall submit the updated Project and Construction Budget and detailed cost estimate(s) to the Owner for acceptance. If the CM believes that additional surveys, geotechnical investigations, environmental assessments or other testing or investigation is necessary and reasonable to fashion a reliable Project and Construction Budget and cost estimate, the CM shall make recommendations to the Owner for such services, with an explanation of why the CM believes that the services are reasonable and necessary. The decision to procure such services shall be solely in the discretion of the Owner, and shall be at the Owner's expense.
- 6.10.4. Preliminary Estimate and Budget Analysis: The CM shall analyze and report to the Owner the cost of various design and construction alternatives, including the assumptions by the CM in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.
- 6.10.5. Cost Control: Following the completion of each design phase milestone, the CM shall prepare an estimate of the construction cost for the Drawings and Specifications furnished by the Designer. Each estimate shall be accompanied by a report to the Owner and Designer identifying variances from the Project and Construction Budget as well as the assumptions made by the CM in preparing the estimate. The CM shall reconcile its estimates with the Project and Construction Budget, and with any independent estimates obtained by the Owner. The CM shall coordinate the activities of the Owner and Designer and provide cost estimating and value engineering studies when changes to the design are required to remain within the Project and Construction Budget.
- 6.10.6. Project and Construction Budget Revision: The CM shall make recommendations to the Owner concerning design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

- 6.10.7. Value Engineering Studies: The CM shall provide value engineering recommendations to the Owner and Designer for major construction components, including cost evaluations of alternative materials and systems.
- 6.10.8. Budgets, budget revisions, financial forecasts, value engineering studies, GMP proposals and recommendations concerning design changes to maintain the budget shall not constitute binding changes to the Work of the Project. The scope of Work may only be changed by change orders or other approved modifications to this Agreement and the Drawings and Specifications. In the event the Owner intends to accept a value engineering proposal or other recommendation for a design change, the Owner shall direct the Designer to incorporate the recommended changes into Drawings and Specifications that the Designer is willing to issue and seal as part of a change order, addendum or other modification of the Contract Documents under the terms of this Agreement.
- 6.11. Management Information Control System (MICS): The CM shall develop a web-based MICS to establish communication between the Owner, CM, Designer, and other parties on the Project. The MICS proposed by the CM requires approval of the Owner prior to implementation. In developing the MICS, the CM shall interview the Owner's and the Designer's key personnel and others to determine the type of information for reporting, the reporting format, and the desired frequency for distribution of the various reports. At a minimum, the MICS shall include the elements described in this Section 6.11. The CM shall submit an acceptable MICS within forty-five (45) days after execution of this Agreement, designed to include the following elements:
 - 6.11.1. Pre-construction Procedures: As part of the MICS, the CM shall establish procedures for reporting, communication, and administration during the Design Phase and regulatory permitting.
 - 6.11.2. Project Master Schedule (Master Schedule): A computer-generated schedule using the critical path method that is generated from the use of Primavera scheduling software recommended by the CM, approved by the Owner, and specified in all contracts with Contractors.
 - 6.11.3. Schedule Maintenance Reports: The CM shall prepare and distribute schedule maintenance reports on a monthly basis that shall contrast actual progress against scheduled progress for each phase of the Project and the overall Project and shall make recommendations to the Owner for corrective action to maintain the Master Schedule and all design and construction schedules. During the Construction Phase the reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.
 - 6.11.4. Project Cost Reports: The CM shall prepare and distribute project cost reports on a monthly basis that shall indicate estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action to maintain all budgets and the Guaranteed Maximum Price. During the Procurement Phase, the reports shall specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget. During the Construction Phase the reports shall specify actual Project and construction costs compared to the Project and Construction Budget.
 - 6.11.5. Cash Flow Report: The CM shall periodically prepare and distribute a cash flow report. The reports shall be based on actual award contract prices and on actual design and

construction costs for the Project. The reports shall specify the actual cash flow compared to the projected cash flow.

- 6.11.6. Change Order Report: The CM shall prepare and distribute Design Phase reports on a monthly basis that shall list all Owner-approved addenda, substitutions and change orders as of the date of the report and shall state the effect of the changes on the Project and Construction Budget and the Master Schedule. The CM shall continue to prepare and distribute monthly change order reports during the Construction Phase. The report shall include logs of all requests for information, requests for interpretation of the design documents, requests for proposals, and notices of events that might justify an adjustment in the Guaranteed Maximum Price or Master Schedule, and status of critical decisions to be made by the Owner or the Designer. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders or impact on the Guaranteed Maximum Price of which the CM may be aware.
- 6.11.7. Project and Construction Budget Revisions: The CM shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.
- 6.11.8. Progress Payment Reports (Each Contract): The CM shall prepare and distribute progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage, sales and use tax paid, and actual amounts owed for the period covered by the report. A portion of this report shall be a certificate of payment that shall be signed by the CM and delivered to the Designer and the Owner.
- 6.11.9. CM's Safety Program: On a monthly basis, the CM shall review the safety programs of each Contractor and confirm that each Contractor has established and implemented safety programs consistent with CM's safety programs required by the Contract Documents.
- 6.11.10. Final Inspections and Commissioning: The CM shall schedule final inspections and, if required by the Contract Documents, commissioning of systems in the Project, and shall compile and organize all inspection reports for the Project records.
- 6.11.11. Closeout Reports: At the conclusion of the Project, the CM shall prepare final project accounting and closeout reports.
- 6.11.12. MICS Reports for Move-in and Occupancy: In consultation with the Owner, the Designer and appropriate regulatory agencies, the CM shall prepare and distribute reports associated with the Occupancy Plan.
- 6.12. The CM agrees to perform all tasks and functions reasonably necessary to complete the services described in the preceding paragraphs in this Article of the Agreement, subject to its right to compensation in accordance with Articles 7 through 10. Without limiting the foregoing description of the services of the CM, it is reiterated and agreed that the following services are specifically required:
 - 6.12.1. Services related to investigation or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner;

- 6.12.2. Services related to coordination and scheduling of the procurement, storage and installation of Owner-furnished equipment, materials, supplies and furnishings with the Work of the Contractors;
- 6.12.3. Warranty inspections during the warranty period of the Project;
- 6.12.4. Services made necessary by the failure to perform by, or bankruptcy of, a Contractor;
- 6.12.5. Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding relating to the Project, excluding claims and disputes relating to the Work;
- 6.12.6. Assisting the Owner in public relations activities and preparing information for and attending public meetings; and
- 6.12.7. Services related to coordination of the Work of the Contractors with move-in by the Owner in accordance with the Master Schedule, including conducting pre-moving conferences and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress.

7. CM Compensation

- 7.1. The CM shall be entitled to compensation for its services as set forth in this Section. During the construction and post-construction phases of the Project, the CM shall be entitled to reimbursement of defined direct costs and expenses, described in this Agreement as “General Conditions”, and in addition shall be entitled to fees for services rendered, described in this Agreement as “Fixed Fees”. In addition to General Conditions and Fixed Fees, the CM shall be entitled to reimbursement for the Cost of the Work, as set forth in this Agreement.
- 7.2. Pre-construction and Bidding Services Phase Compensation: The CM shall be paid a lump sum fee of Eighty Three Thousand Ninety Five Dollars (\$83,095.00) for the pre-construction and bidding phases of the Project. In addition to this lump sum fee, the CM shall be reimbursed the actual direct cost of the following, without markups:
 - 7.2.1. Building information models, other models and mockups of building components or elements requested in writing by the Owner.
 - 7.2.2. All other expenses for the pre-construction and procurement phase of the Project are included in and covered by the lump sum fee.
- 7.3. Construction and Post-construction Phase Compensation to the CM:
 - 7.3.1. Fixed Fee: The Fixed Fee payable to the CM shall equal Four and One Quarter Percent (4.25%) of the Cost of the Work set forth in the Guaranteed Maximum Price initially accepted by the Owner. In the event the agreed Guaranteed Maximum Price is adjusted between the time it is fixed and the end of the Project, the Fixed Fee shall be adjusted in accordance with Section 7.5 of this Agreement.
 - 7.3.2. General Conditions: General Conditions costs shall include the categories of costs described as General Conditions costs in the List of Cost Elements contained in Appendix B, and shall be at least as detailed as the cost elements in Appendix B. At the time the Guaranteed Maximum Price is fixed, General Conditions Cost Elements to be included in the Guaranteed Maximum Price shall generally be fixed as a lump sum, based on detailed estimates tabulated and presented to the Owner. With the approval of the Owner, upon the recommendation of the CM, certain General Conditions Cost Elements may be included in the budget and in the GMP as allowances or as unit

prices or rates. Otherwise, the guidelines set forth below shall generally apply when calculating the lump sums for General Conditions.

- 7.3.3. Unless a schedule of personnel rates are agreed to in writing in an amendment to this Agreement, field personnel costs shall be based on direct personnel expenses/employee costs (direct salary) plus all customary payroll benefits [including but not limited to FICA, SUTA, FUTA, 401K, vacation leave, sick leave, holidays, jury duty leave and bereavement leave] with no employee overhead mark up. The on-site field staff is limited to staff which includes the project manager, project engineer, field engineer, superintendent(s) actually furnishing services to the Project, and field clerical staff, as amended from time to time by agreement of the parties as reflected in Appendix B hereto.
- 7.3.4. Independent engineers, architects and other consultants employed by the CM and deemed necessary by the Owner at the reasonable prevailing hourly rates for such services, which shall be considered Cost of the Work. Any consultants employed by the CM for the Project must be approved in advance by the Owner prior to performing work.
- 7.3.5. Travel Expenses: All travel, by any conveyance, required for the Project will be compensated at actual direct cost provided that the expenses are approved in advance by the Owner.
- 7.3.6. Temporary Facilities: Field office(s) with telephone service and high-speed Internet connections and field office computers, as needed, for Project tracking purposes, shall be budgeted at direct cost without markups. All software for use on computers (accounting, tracking, scheduling, word processing, AutoCAD, Project management etc.), shall be properly licensed and included in General Conditions. Field office temporary electric, heating, water, sanitation, and electronic equipment maintenance and field office operation costs, e.g., stationary, postage, etc., shall be incurred judiciously. General Conditions shall include maintenance of an appropriate shipping and receiving system.
- 7.3.7. Plans/Surveys: Surveyor's services (site layout, etc.), as required and reproduction of Construction Documents as needed by the CM, if approved in advance by the Owner, may be budgeted at direct cost, which shall be considered Cost of the Work.
- 7.3.8. Safety/Cleanup: Temporary facilities, as required, shall be budgeted as Cost of the Work, including: safety barricades, partitions, ladders, stairs, site fencing, signage, first aid, traffic control devices, daily site cleanup, trash collection, and removal. Site security shall be maintained throughout Project construction phases. Site snow removal shall be provided as may be required throughout Project construction phases.
- 7.3.9. General: Temporary weather and dust/silica protection (that which must practically remain outside of Contractor contracts) as may be required during construction phases, may be budgeted at direct cost as Cost of the Work. Field personnel pagers and two-way radio may be budgeted throughout the construction phases, as applicable, at direct cost without markup. Include travel expenses for field personnel related to off-site equipment/materials survey and inspections.
- 7.3.10. Insurance/Bond: 100% CM performance and payment bonds at the rate of 0.78%, liability insurance at the rate of 1.04%, builder's risk insurance at the rate of 0.175% and other insurance with limits and fixed rates as set forth in this Agreement shall all be provided at the agreed fixed rates on the Final Contract Value. Contractor default

insurance (i.e., Subguard ©) shall be provided at the fixed rate of 1.30% on the aggregate of Contractors' contract values.

- 7.3.11. Close-Out/De-Mobilization: Final site/facility clean up and preparation of final close-out documents for all contracts shall be budgeted at direct cost as Cost of the Work. Sets of all Contractors as-built drawings to be delivered to the Owner and Designer for use by the Designer to prepare as-built drawings shall be included in General Conditions.
- 7.4. Construction Manager's Accounting Records: Records for the Cost of the Work, excluding General Conditions, bonds and insurances, shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the Owner and the Designer at mutually convenient times throughout the duration of the Project and for a period of three years after completion of the CM's Services.
- 7.5. Adjustments to CM Compensation: The Owner, without invalidating this Agreement, may make changes in the CM's services specified in this Agreement. The CM shall within seven (7) days notify the Owner of any changes or other events which in the opinion of the CM entitle the CM to an increase or decrease in the Guaranteed Maximum Price, the CM's compensation, the duration of the CM's services, or any of them, pursuant to the terms of this Agreement.
 - 7.5.1. Changes in the CM's Services: Changes in the CM's services may be directed by the Owner in writing, and if so directed to provide different or Additional Services the CM shall comply with the directions of the Owner. Additional compensation shall be settled by a written amendment to this Agreement executed by the Owner and the CM, or as otherwise provided herein. If possible, the amendment shall be executed by the Owner and the CM prior to the CM performing the services required by the amendment, but failure to agree on compensation for a change in services shall not be grounds for the CM to cease or refuse to provide the services reasonably requested by the Owner. The CM shall proceed to perform the services required by the amendment only after receiving notice directing the CM to proceed.
 - 7.5.2. Additional Compensation and Extended Duration: The CM shall be entitled to receive additional compensation and additional time when the scope or planned duration of services is increased or extended through no fault of the CM or its Contractors. The CM shall notify the Owner within seven (7) days after changes to the scope of the Project or a part thereof or after delays caused in whole or in part by the Owner or Designer increase or extend the scope or duration of the CM's services.
 - 7.5.3. Fixed Fee: The CM shall not be entitled to an increase in the Fixed Fee unless and until it is finally determined at the completion of the Project that the approved cumulative Cost of the Work for the entire Project exceeds one hundred and two percent (102%) of the cumulative Cost of the Work set forth in the original agreed Guaranteed Maximum Price or Prices. If an increase in the Fixed Fee is justified, the CM shall be entitled to an increase in the Fixed Fee equal to four and one quarter percent (4.25%) of the amount by which the final approved Cost of the Work exceeds one hundred and two percent (102%) of the cumulative Cost of the Work set forth in the original agreed Guaranteed Maximum Price or Prices, together with insurance and bonds at the respective fixed rates. The Owner may in its discretion approve adjustments to the Fixed Fee prior to the end of the Project.
 - 7.5.4. General Conditions: The amount of additional General Conditions costs to be paid to the CM and the amount of extension of the duration of this Agreement shall be

determined on the basis of the CM's reasonable additional General Conditions costs after determining the increased services and length of the extensions of the duration of this Agreement. A change in the Drawings and Specifications or other change in the scope of the Work shall not automatically entitle the CM to an increase in compensation. Increases in the compensation payable to the CM shall only be payable upon proof of an increase in the actual duration or level of services being provided by the CM, or both.

8. Guaranteed Maximum Price

- 8.1. The Guaranteed Maximum Price shall be documented by the CM as defined in this section and, once established, the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.
- 8.2. Guaranteed Maximum Price Proposal: A Final Guaranteed Maximum Price will be provided after 100% Construction Documents have been permitted, approved by Cumberland County, issued to CM for bidding, and CM has received bids from Contractors for the Work. If the Owner does not accept a Guaranteed Maximum Price within the time period herein provided, such price shall be presumed to be rejected by the Owner.
- 8.3. Acceptance of Drawings and Specifications: The CM understands, confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the Drawings and Specifications. It is recognized that each Guaranteed Maximum Price will be based on design documents specifically identified and accepted by the CM and certified by the CM to be sufficient in detail and clarity to calculate a binding Guaranteed Maximum Price. The CM shall notify the Owner if the CM believes that it is being asked to fix the Guaranteed Maximum Price on incomplete, ambiguous or under-developed drawings and specifications. In those instances in which the Drawings and Specifications are not fully developed at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction, materials, and finishes that can be reasonably inferred from the design documents or other specified sources.
- 8.4. Elements of the Guaranteed Maximum Price: The Guaranteed Maximum Price shall be the sum of the Cost of the Work, the CM Fixed Fee, the General Conditions provided by the CM, and the CM Contingency, all as defined herein. The Guaranteed Maximum Price includes the cost of all labor, equipment, supplies, materials, services and allowances to complete the Project. The Guaranteed Maximum Price shall be directly correlated to the specific design Drawings and Specifications in existence and identified by the CM at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM in its Guaranteed Maximum Price proposal. The CM shall determine unit prices and the Cost of the Work and shall make those reasonable assumptions regarding the project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The use of allowances and other estimates for the cost of specific components of the Work is discouraged and shall be kept to a minimum.
- 8.5. Consideration of Proposal: In the event the Owner does not accept the CM's proposed Guaranteed Maximum Price, the Owner may terminate the Agreement in accordance with Section 26. Alternatively the Owner may require the CM to recalculate the Guaranteed Maximum Price after making any changes to the scope of the Work, accepting value engineering proposals, or obtaining further development of the drawings and specifications from the Designer.

8.6. Documentation

- 8.6.1. The Guaranteed Maximum Price documentation shall be prepared by the CM and submitted to the Owner with the Guaranteed Maximum Price Proposal. The documentation shall at a minimum describe the Contract Documents on which the Guaranteed Maximum Price Proposal is based, and set forth the cost elements of the Guaranteed Maximum Price in detail. The documentation may include drawings, sketches, specifications, calculations or other data used to identify the basis of the Guaranteed Maximum Price. Documentation of the Guaranteed Maximum Price shall be developed by the CM from the design Drawings and Specifications and such other documents as may be described in the Proposal, and shall include a Listing of the Key Divisions of the Work correlated with budget and cost estimate for the GMP on a line item basis in at least as much detail as is contained in Appendix D.
- 8.6.2. Summary Report of Guaranteed Maximum Price: The documentation of the Guaranteed Maximum Price shall be summarized in a report that contains, at a minimum, all of the items outlined in Appendix D.
- 8.7. The CM shall, as part of cost control, report the adjusted final actual price of the Work the price of which was based on estimated quantities, allowances or other conditional pricing and, when the final price is determined, adjust the Guaranteed Maximum Price as follows:
 - 8.7.1. If the final adjusted price of the Work is less than the amount reflected in the approved Guaranteed Maximum Price, as determined in accordance with the terms of this Agreement, the amount indicated in the Guaranteed Maximum Price shall be reduced by an amount equal to the difference between the final adjusted cost and the original amount indicated in the Guaranteed Maximum Price. The resulting reduction in the Guaranteed Maximum Price shall be for the benefit of the Owner, and the CM Contingency shall not be increased by the amount of the reduction.
 - 8.7.2. If the final adjusted price of the Work is greater than the amount reflected in the approved Guaranteed Maximum Price, as determined in accordance with the terms of this Agreement, to the extent that the CM Contingency is sufficient, the amount indicated in the Guaranteed Maximum Price shall be increased by an amount equal to the difference between the final adjusted cost and the original amount indicated in the Guaranteed Maximum Price, and the CM Contingency shall be decreased by the same difference subject to and in accordance with Article 10 of this Agreement, unless otherwise explicitly agreed to or approved by the Owner by change order.
 - 8.7.3. Regardless of the final adjusted price that differs from the amount reflected in the approved Guaranteed Maximum Price, the total Guaranteed Maximum Price shall not be adjusted, except pursuant to an approved change order.

9. Payment Provisions

- 9.1. Review of Payment Applications by the Designer and Owner: After considering applications for payment submitted to the Designer by the CM and certificates for payment issued by the Designer, the Owner will make progress payments to the CM as provided below and elsewhere in the Contract Documents. The Designer shall take action on the CM's application for payment within seven (7) calendar days of receipt which shall be in accordance with the agreement between the Owner and Designer. The Designer's certification for payment shall be based upon the Designer's on-site observation and the documentation submitted in accordance with this Article 9 and the CM's application for payment.

- 9.2. Payments due to the CM that unjustifiably remain unpaid for more than thirty (30) days from the date of receipt by the Owner and certification by the Designer of the CM's acceptable invoice shall bear simple interest at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.
- 9.3. Fixed Fee and General Conditions Costs: The Owner shall compensate the CM for the CM's Fixed Fee and General Conditions Costs generally in accordance with the terms and conditions of this Agreement, including Appendix B, and specifically as follows:
 - 9.3.1. Progress payments to the CM shall be made monthly, not later than thirty (30) days after receipt of the CM's acceptable invoice by the Owner and the Designer.
 - 9.3.2. Seventy-five percent (75%) of the Fixed Fee shall be paid monthly in amounts prorated equally over the scheduled duration of the CM's Services. The remaining twenty-five percent (25%) of the Fixed Fee shall be payable in full upon final completion of the Project.
 - 9.3.3. Payment of lump sum General Conditions Costs shall be based on the cash flow schedule of payments prepared by the CM and submitted with the General Conditions cost proposal, which shall be converted to a fixed schedule of payments when the total Guaranteed Maximum Price is fixed. The cash flow schedule of payments for General Conditions Costs must be reviewed by the Designer and approved by the Owner prior to any payment for General Conditions under the GMP.
 - 9.3.4. General Conditions Costs included in the budget and in the GMP as allowances, or at unit prices or rates, or as items to be reimbursed on a direct cost basis, shall be paid monthly based on receipt of documentation suitable to the Owner and the Designer evidencing the costs incurred or the quantity of services provided, without any hold back or retention from the amounts properly invoiced.
- 9.4. Cost of the Work: Payment for the Cost of the Work shall be by monthly periodic payments based on Work completed then to date and not previously invoiced and paid, less retainage withheld from the Contractors, in accordance with the following procedures:
 - 9.4.1. Schedule of Values: The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be used to determine the Work completed by the Contractors. Each Schedule of Values will be submitted to the Owner and the Designer within twenty (20) days after execution of the contract by the Contractor and is subject to approval by the Owner. The CM's Schedule of Values will be based on the Trade Bid Packages/Contractors lump sum amount. The CM will obtain a schedule of values from each Contractor and attach the Contractor's Schedule of Values and payment application to the CM's monthly billing.
 - 9.4.2. Within seven days of receipt by the CM from the Owner of each periodic payment, the CM shall pay each Contractor based on work completed or service provided under the Contractor's contract. No payment to a Contractor shall be delayed because of the failure of another Contractor on the Project to complete its contract. If any periodic payment to a Contractor is delayed by more than seven days after receipt of periodic payment by the CM, the CM shall pay the Contractor simple interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.
 - 9.4.3. Except with the Owner's prior approval, periodic payments to the Contractors shall be subject to retainage of five percent (5%) of the value of Work completed then to date

and not previously invoiced and paid. When a Contractor's contract is fifty percent (50%) complete, the CM, with written consent of the Contractor's surety if the Contractor's contract is bonded, shall not retain any further retainage from periodic payments due the Contractor if the Contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the Designer or Owner has been corrected by the Contractor and accepted by the Owner. The Contractor shall be deemed fifty percent (50%) complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Contractor's contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the Contractor's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete.

- 9.4.4. Notwithstanding Section 9.4.3 above, following fifty percent (50%) completion by a Contractor, the Owner may require the CM to withhold additional retainage from a subsequent periodic payment to a Contractor, not to exceed five percent (5%) of the Work completed then to date and not previously invoiced and paid, in order to protect the Owner from unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed or threatened to be filed against the Owner. The existence of any third-party claims against the CM or any additive change orders to a construction contract shall not be a basis for reinstating retainage or delaying the release of any retainage on payments to Contractors.
- 9.4.5. 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 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 Contractor to make timely payments for labor, equipment, and materials; damage to the CM or another Contractor; reasonable evidence that the Contractor's Contract cannot be completed for the unpaid balance of the contract sum; or a reasonable amount for retainage not to exceed the percentage that the CM is required to retain by the Owner.
- 9.4.6. No reduction in the amount of retainage on payments to Contractors shall affect any applicable warranties on work done by the CM or the Contractor, and the warranties shall not begin to run any earlier than either the Owner's receipt of a certificate of substantial completion from the Designer covering the entire Project, or the Owner receives beneficial occupancy of the entire Project.
 - 9.4.6.1. Upon notice from the CM that the Work of a Contractor is substantially complete and ready for final inspections, the Designer shall inspect the Work and prepare lists describing Work that is absent, incomplete or otherwise not in compliance with the Construction Documents. The Designer shall determine independently whether the Work is substantially complete, and provide a certificate to the Owner and the CM that the Work is substantially complete. The Designer shall continue to inspect the Work until satisfied that all identified non-conforming Work has been completed, corrected or accepted by the Owner as is.
- 9.4.7. Once all of the Work by a Contractor is substantially complete, all remaining funds owed to that Contractor shall be paid in full, except that the Owner may retain sufficient funds from the CM and the individual Contractor to secure completion of the Work or to correct or complete any nonconforming or incomplete Work. If the Owner retains funds, the amount retained shall not exceed two and one-half (2.5) times the

estimated value of the Work to be completed or corrected by the Contractor. Payment under this section shall be conditional upon receipt of a properly completed payment application from the CM, certification by the Designer that the Work of that Contractor is substantially complete, and consent of surety from each surety for each bonded Contractor and from the surety for the CM.

- 9.4.8. If the Work of a Contractor includes demolition, pilings, caissons or structural steel, once all of the Work by that Contractor is one hundred percent (100%) complete, the remaining unpaid balance of that Contractor's Contract Price, less a sum equal to five-tenths percent (0.5%) of the Contract Price, shall be paid within sixty days following receipt of a properly completed payment application from the CM, certification by the Designer that the Work of that Contractor is substantially complete, and consent of surety from each surety for each bonded Contractor and from the surety for the CM.
- 9.4.9. Final Payment: Their remaining Contract Price, less authorized deductions, shall be made to all Contractors once the Project reaches Final Completion. Final payment to each Contractor is contingent upon consent by the Contractor's surety, if any, the Owner's receipt of a properly prepared payment application from the CM including final payment to the Contractor, and an approval or certification from the Designer that the work performed by the Contractor is acceptable and in accordance with the Contract Documents. Payments to which Contractors are entitled under this subsection shall be made no later than sixty (60) days following receipt of the Contractor's final payment request by the CM or immediately upon receipt of the surety's consent, whichever occurs later. Each Contractor's contract shall list the inspections required by the Owner before accepting the Work, and any submittals, manuals, warranties or financial information required by the Owner to release payment to the Contractor. The failure of the contracts to contain this information shall not obligate the Owner to release the retainage if the Owner has not received the required certification from the Designer. The Designer may withhold certification of final payment to a Contractor for unsatisfactory job progress by the Contractor, defective construction not remedied by the Contractor, disputed work by the Contractor, or third-party claims filed against the Owner or reasonable evidence that a third-party claim will be filed against the Owner because of a breach of duty by the Contractor.
- 9.4.10. Final Payment Audit: The Owner reserves the right, prior to making final payment to the CM, to conduct audits or a final audit of the expenditures by the CM on the Project for assurances that the final payment to the CM does not exceed the amounts properly payable to the CM for the Cost of the Work, excluding General Conditions, insurance and bond costs, but including any special allowances, and CM-GMP Contingency savings. If the Owner decides to exercise its right to a final payment audit, the Owner will notify the CM in writing of its decision to conduct the audit within thirty (30) days after issuance of the Certificate of Final Completion by the Project Designer. The CM shall then promptly provide all accounting records reasonably requested by the Owner that relate to the Cost of the Work, CM General Conditions and CM Contingency on the Project. Once the CM has provided all accounting records reasonably requested by the Owner to complete such an audit, the Owner agrees to complete the audit within one hundred twenty (120) calendar days. In the event an audit determines that the CM has been paid more than it is entitled to be paid under the Contract, the CM will refund the overpayment to the Owner.
- 9.4.11. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:

- 9.4.11.1. Claims arising from unsettled liens or claims against the CM.
- 9.4.11.2. Faulty Work or materials appearing after final payment.
- 9.4.11.3. Failure of the CM to perform the Work in accordance with Drawings and Specifications, such failure appearing after payment.
- 9.4.11.4. As conditioned in the performance bond and payment bond.
- 9.4.12. Prior to submitting 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 not limited to the following:
 - 9.4.12.1. 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).
 - 9.4.12.2. Transfer of required attic stock material and all keys in an organized manner.
 - 9.4.12.3. Record of Owner's training.
 - 9.4.12.4. Resolution of any final inspection discrepancies.
- 9.4.13. The CM shall forward to the Designer the final application for payment along with the following documents:
 - 9.4.13.1. List of minority business Contractors showing breakdown of contracts amount.
 - 9.4.13.2. Affidavit of Release of Liens.
 - 9.4.13.3. Affidavit of Contractors of payment to material suppliers and subcontractors.
 - 9.4.13.4. Consent of Surety to Final Payment.
 - 9.4.13.5. Certificates of state agencies required by state law.
- 9.4.14. The Designer will not authorize final payment until the Work under this Agreement has been certified by the Designer, certificates of compliance issued, and the CM has complied with the closeout requirements. The Designer shall forward the CM's final application for payment to the Owner along with respective certificate(s) of compliance required by law.
- 9.5. Grounds for Withholding Payment: Notwithstanding anything to the contrary in this Section, the Designer may withhold a certificate for payment from the CM and the Owner may withhold payment from the CM, in whole or in part, to the extent reasonably necessary to protect the Owner. If the Designer is unable to certify payment in the amount of the application, the Designer will notify the CM and the Owner in writing. If the CM and Designer cannot agree on a revised payment amount, the Designer will promptly issue a certificate for payment for the amount for which the Designer is able to make such representations to the Owner. The Designer may also withhold a certificate for payment, in whole or in part, to such extent as may be necessary in the Designer's opinion to protect the Owner from loss for which the CM or the Contractor(s) is responsible, including loss resulting from acts and omissions, because of:
 - 9.5.1. Defective Work not remedied after notice in accordance with this Agreement;
 - 9.5.2. Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CM;
 - 9.5.3. Failure of the CM or Contractor(s) to make payments properly to subcontractors or

- sub-subcontractors or for labor, materials or equipment;
- 9.5.4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the GMP;
- 9.5.5. Damage to the Owner or another Contractor;
- 9.5.6. Reasonable evidence that the Work will not be completed within the contract time, and that the unpaid balance of the GMP would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 9.5.7. Failure to carry out the Work in accordance with the Contract Documents;
- 9.5.8. Failure to provide sales tax documentation as required by the Owner;
- 9.5.9. Failure or refusal of the CM or Contractors to submit the required information on minority business enterprises;
- 9.5.10. Any other reason deemed necessary by the Designer to protect the Owner unless arbitrary and unreasonable; or
- 9.5.11. Subsequently discovered evidence that Work previously approved was not performed in accordance with the Contract Documents.
- 9.5.12. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- 9.6. The Owner's Representative may withhold a certificate for payment, in whole or in part, to the extent reasonably necessary to protect the Owner.
- 9.7. Sales and Use Taxes: Each Contract and each Guaranteed Maximum Price shall include those sales and use taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Sales and use taxes shall be accounted for separately in the Guaranteed Maximum Price and in the payment applications submitted by the CM. Any increase or decrease in such taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order. The CM shall maintain all tax records during the life of the Project and furnish the Owner with a complete listing of all taxes paid by taxing authority, invoice number, date, amount, etc. in a form acceptable to the Owner. The CM is required to maintain a file showing taxes paid on the Project for three (3) years after Final Payment or turn said documents over to the Owner for the Owner to maintain.
 - 9.7.1. The following is a list of requirements to be followed by the CM in maintaining proper records and reporting the North Carolina Sales and Use Tax and Local Sales and Use Tax. The CM shall comply fully with the requirements outlined below, in order that the Owner may recover the amount of the tax permitted under the law.
 - 9.7.1.1. It shall be the CM's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of his Subcontractors. Such evidence shall be transmitted to the Owner with each pay request regardless of whether taxes were paid in that period.
 - 9.7.1.2. The documentary evidence shall consist of a certified statement by the CM and each of the Contractors individually, showing total purchases of materials from each separate vendor and total sales and use taxes paid to each vendor. Certified statements must show the invoice number, or numbers, covered, and inclusive dates of such invoices.
 - 9.7.1.3. Materials used from Contractors' warehouse stock shall be shown in a certified

statement at warehouse stock prices.

9.7.2. The CM shall not be required to certify the Contractors' statements.

- 9.8. CM Right to Stop Work or Terminate the Agreement: Should the Owner fail or refuse without good cause to make payment of a payment application certified by the Designer within thirty (30) days after receipt of same, then the CM, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner and the Designer, may suspend operations on the Work or terminate the Contract. The Owner shall be liable to the CM for the cost of the Work delivered and performed to the date of termination plus all General Conditions costs incurred to date plus its CM Fixed Fee earned to date, plus reasonable termination and demobilization costs, as if the Agreement were terminated for convenience by the Owner hereunder. The Designer shall review and certify the correctness of such payment.

10. CM Contingency

- 10.1. Each Guaranteed Maximum Price shall include a contingency amount (the CM Contingency) for the use of the CM as allowed by this Agreement. The CM Contingency in GMP shall be fixed when the Guaranteed Maximum Price is first accepted and approved by the Owner, and shall not exceed five percent (5%) of the Cost of the Work included in the Guaranteed Maximum Price that is first accepted and approved by the Owner.
- 10.2. The CM Contingency is for the use of the CM to defray costs in excess of the Cost of the Work for which the CM is not otherwise entitled to an increase in the Guaranteed Maximum Price under the terms of this Agreement. The CM Contingency is not meant to add to the Fixed Fee of the CM. The CM Contingency may only be used to defray increases in the Cost of the Work caused by the following circumstances after exhausting all other remedies the CM might have:
- 10.2.1. To pay any costs incurred by the CM as a result of a Contractor default, to the extent the CM is unable to recover the costs from the Contractor, Contractor's surety (if any) or other guarantor or insurer;
- 10.2.2. To defray the cost of acceleration of the Work, tests or inspections to maintain the Master Schedule, to the extent the CM is unable to recover the costs from Contractors, Contractors' sureties or other guarantors or insurers;
- 10.2.3. To defray costs incurred to address differing or unforeseen site conditions for which the CM is not entitled to an adjustment under this Agreement;
- 10.2.4. To pay for quality assurance testing, inspections, or other investigations that the CM believes are necessary to substantiate that work of the Contractors meets the requirements of the Contract Documents, to the extent the CM is unable to recover the costs from Contractors, Contractors' sureties or other guarantors or insurers;
- 10.2.5. To pay for mediation and legal costs per Article 34 if a suit is initiated by a Contractor, to the extent the CM is unable to recover those costs from the Contractor, the Contractor's sureties or other guarantors or insurers.
- 10.3. The CM shall consult with the Owner and provide the Owner with reasonable documentation justifying every request for payment of any of the CM Contingency. All expenditures of CM Contingency are conditional upon receipt of such documentation and approval of the expenditure by the Owner. Expenditures of CM Contingency may not be used to reimburse the CM for liquidated damages payable to the Owner, for overruns in agreed sums or rates payable for General Conditions, for costs incurred because of any default by the CM in the performance of its own management services, including unjustifiable overpayments to

Contractors, or for any other circumstance not specifically covered in the preceding paragraphs.

- 10.3.1. If the CM Contingency is not exhausted during the Project, fifty percent (50%) of any unspent portion of the CM Contingency will remain with CM and be paid to the CM over and above the Cost of the Work, General Conditions and Fixed Fee otherwise due and payable the CM. The remaining fifty percent (50%) of any unspent portion of the CM Contingency will belong to and be returned to the Owner via change order adjustment.

11. Bonds Required from the CM

- 11.1. In accordance with N.C. Gen. Stat. §143-128.1, the CM shall provide a performance bond with a penal sum equal to one hundred percent (100%) of the cumulative Guaranteed Maximum Price for the Project to guarantee the faithful performance of the Work, in such form as may be required by law and approved by the Owner. Subject to prior approval by the Owner, the CM may provide a bond upon execution of this Agreement with a penal sum equal to the lump sum fee for the pre-construction and procurement phases of the Project, and then amend the bond to increase the penal sum of the bond as each GMP is approved and accepted by the Owner, so that at all times the penal sum of the bond equals the sum of the lump sum fee for the pre-construction and procurement phases of the Project plus all approved GMP.
- 11.2. In accordance with N.C. Gen. Stat. §143-128.1, the CM shall provide a payment bond with a penal sum equal to one hundred percent (100%) of the cumulative Guaranteed Maximum Price for the Project to guarantee the payment of all labor and material costs or claims in connection with compliance with the Contract, in such form as may be required by law and approved by the Owner. Subject to prior approval by the Owner, the CM may provide a payment bond upon execution of this Agreement with a penal sum equal to the lump sum fee for the pre-construction and procurement phases of the Project, and then amend the bond to increase the penal sum of the bond as each GMP is approved and accepted by the Owner, so that at all times the penal sum of the bond equals the sum of the lump sum fee for the pre-construction and procurement phases of the Project plus all approved GMP.
- 11.3. These bonds and all amendments to the bonds shall be dated or made effective the same date as this Agreement and must be accompanied by a current copy of the power of attorney for the attorney-in-fact executing such bond on behalf of a surety company licensed to do business in the State of North Carolina and reasonably acceptable to the Owner.

12. Design Support by the CM

- 12.1. Except for shop drawings and special systems calculations that are expressly and specifically delegated to the CM and its Contractors by the Owner and the Designer, all Drawings and Specifications shall be prepared by the Designer and submitted to the Owner for review and authorization to proceed with procurement and construction. The CM shall provide the following services related to design of the Project.
- 12.2. Planning Conferences: In accordance with the approved Construction Management Plan and Master Schedule, the CM shall conduct planning conferences attended by the Designer, the Owner and others as necessary. During the planning conferences, the CM shall review the Construction Management Plan, the Master Schedule, the Design Phase Milestone Schedule, the Project and Construction Budget, and the MICS. The CM shall conduct and prepare minutes of these meetings.

- 12.3. Design Phase Information: The CM shall monitor the Designer's compliance with the Construction Management Plan and the MICS, and the CM shall coordinate and expedite the flow of information between the Owner, the Designer, the CM and others as necessary.
- 12.4. Design Progress Meetings: The CM shall participate in regularly scheduled progress meetings attended by the Owner, Designer and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The Designer shall prepare and distribute minutes of these meetings to the Owner, CM and others.
- 12.5. Review of Design Documents: The CM shall thoroughly and completely review all design documents, including programming, drawings, specifications, addenda, and supplemental design information, for clarity, consistency, constructability and coordination among the Contractors. The results of the review shall be provided in writing as notations on the documents or in a written report. The CM is not responsible for providing, nor does the CM control, the Project design and contents of the design documents prepared by the Designer. By performing the reviews described herein, the CM is not acting in a manner so as to assume professional responsibility or liability, in whole or in part, for all or any part of the Project design and design documents prepared by the Designer or the Owner.
- 12.6. Design Recommendations: The CM shall make recommendations to the Owner and Designer with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work. In addition, the CM shall give to the Designer all data of which it is aware concerning patents or copyrights for inclusion in the Contract Documents.
- 12.7. Life Cycle Cost and Value Analyses: In accordance with the Construction Management Plan, the CM agrees to provide cost estimates and other input to assist the Designer in the preparation of reliable and valid life cycle cost and value studies. The Owner's intent is to have an energy efficient facility with reasonable and sustainable long-term operating and maintenance costs. The CM agrees to cooperate with the Owner and the Designer to achieve these goals.
- 12.8. Owner Design Reviews: The CM shall expedite the Owner's design reviews by compiling and conveying the Owner's comments to the Designer.

13. Permits and Approvals by Regulatory Agencies

- 13.1. The CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations that are enacted and enforced on the date of the Final Guaranteed Maximum Price and which are bearing on the conduct of the Work under this Agreement. If the CM observes that the Drawings and Specifications are at variance with any law, ordinance, rule or regulation, it shall promptly notify the Designer and Owner in writing. Any necessary changes required after contract award shall be made by change order. If the CM performs any Work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Designer and Owner, it shall bear all resulting costs of correction. If any laws, ordinances, codes, rules or regulations bearing on the conduct of the Work change after establishment of the GMP and the CM can demonstrate that such change will cause an increase in the GMP, the time for performance or both, such change will be grounds for equitable adjustments to the GMP and/or Contract Time.
- 13.2. All Work under this Agreement shall conform to the North Carolina State Building Code and other state, local and national codes as are applicable. The cost of all required regulatory

agency inspections under state, local and national codes shall be paid by the Owner, except as follows:

- 13.2.1. Costs for re-inspections by the City of Fayetteville, Cumberland County, or other regulatory agencies, to the extent attributable to the CM and its Contractors, shall be the responsibility of the CM.
- 13.2.2. Premium or additional fees or other costs paid to expedite or accelerate or otherwise alter the normal review process of authorities with jurisdiction to maintain the Project schedule or accommodate the wishes of Contractors shall be the responsibility of the CM.
- 13.3. The CM shall cooperate with the state, county and municipal authorities by applying for and obtaining all building and other required permits.
- 13.4. The CM shall assist the Designer with transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews.

14. Procurement of Contracts with Contractors

- 14.1. All construction contracts, labor, materials and services shall be procured in accordance with N.C. Gen. Stat. § 143-128.1 and other sections of Chapter 143 Article 8 of the North Carolina General Statutes relating to construction management at risk contracts. Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM shall request and receive bids for each contract and shall advise the Owner with respect to award of a contract to the lowest responsive and responsible bidder. The CM shall enter into a contract with that bidder after receipt of approval of award from the Owner.
- 14.2. Establishment of Bid Packages and Contract Scope: The CM shall recommend for approval by the Owner the appropriate Contractor bid packages. The CM shall take into account the needs of the Project, the Master Schedule, risk management, and the available resources, and divide the Work for the best benefit of the Project. The CM and the Designer shall collaborate on the preparation of bid documents consistent with the bid packages identified by the CM and approved by the Owner. Consistent with state law, one or more bid packages shall be prepared for each of the general construction, electrical, mechanical, fire protection, and plumbing divisions of the Work of the Project. The CM shall prepare any other contract packages for other divisions or subdivisions of the Work as agreed with the Owner. The form of agreement and general conditions for inclusion in all bid packages and use in the contracts between the CM and the Contractors for construction for the Project shall be based on the standard form of Agreement and General Conditions of the Cumberland County Contract for Construction. The requirements of this Agreement shall be included in each construction contract to the extent applicable to the construction contract. Supplementary General Conditions for Contractors shall be prepared by the CM and submitted to the Owner and the Designer with adequate time for review and comment before inclusion in bid packages. The Designer and the CM will collaborate on the preparation of the general Division One requirements of the Specifications. Separate General Conditions for materials and equipment procurement shall be prepared by the CM to meet the specific requirements of the Project using forms approved by the Owner. The CM shall be afforded a reasonable opportunity to review and comment on all special warranties and other obligations imposed on the Contractors by the Specifications.
- 14.3. Bidder's Interest Campaign: The CM shall conduct a telephonic and correspondence campaign to attempt to create interest among qualified bidders, both to foster competition for

the Work of the Project, and to satisfy the requirements of the Owner's Minority Business Enterprise Policy, attached to this Agreement as Appendix C.

- 14.4. Prequalification of Contractors: The CM shall develop lists of possible bidders and shall prequalify bidders. This service shall include the following: preparation and transmission of questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders, bonding agents, and financial institutions; and preparing summary reports regarding this activity to the Owner. The CM shall also prepare and transmit to the Owner and Designer a bidders list for each bid package. The Owner shall notify the CM promptly of any reasonable objections to a proposed bidder, and the CM shall remove that bidder from the bidders list.
- 14.5. Business Participation Goals and Standards: The CM shall comply with all of the requirements of the Owner's Minority Business Enterprise Policy, attached to this Agreement as Appendix C, and N.C. Gen. Stat. § 143-128.2.
- 14.6. Notices and Advertisements: The CM shall prepare and place notices and advertisements to solicit competitive bids for the Project.
- 14.7. Delivery of Bid Documents: The CM shall expedite the delivery of bid packages to the bidders. The CM shall obtain a full set of documents from the Designer and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a record of bidders receiving documents.
- 14.8. Pre-Bid Conference: In conjunction with the Designer, the CM shall conduct a Pre-Bid Conference. These conferences shall be forums for the CM and Designer to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, minority and women's business enterprise goals, the Project administrative requirements and technical information.
- 14.9. Information to Bidders: The CM shall develop and coordinate procedures to provide answers to bidders' questions.
- 14.10. Addenda: The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the design documents. The CM shall also distribute a copy of all addenda to each bidder receiving documents.
- 14.11. Requests for Clarifications and Substitutions: The CM will be responsible for logging all clarification and substitution requests that it receives, and forwarding them to the Designer. It is to be noted that the Owner discourages substitutions. The Owner's approval will be granted only upon the most persuasive arguments as to quality, function and financial merit regarding a substitution.
- 14.12. Bid Opening: The CM shall conduct bid openings in accordance with North Carolina General Statutes. The CM shall tabulate all bids received, provide a comparison of "budget to actual" amount for each trade package and evaluate the bids to determine the lowest responsive and responsible bidder for each trade package. The CM shall not award or enter into any contract for Work on the Project until the CM has provided the Owner with written notice of the intent to award the contract with reasons for awarding the contract to the successful bidder. This written notice shall also describe compliance by the bidder with the Owner's Minority Business Enterprise Policy. The Owner shall be given reasonable

opportunity to consider the qualifications of the successful bidder and the impact of award of the contract on the Project and Construction Budget, and to object to the award of the contract to the low bidder.

- 14.13. Change of Contractor Ordered by Owner: If the Owner directs the CM to award a contract to a bidder other than the lowest responsible and responsive pre-qualified bidder for any portion of the Project, the Guaranteed Maximum Price, if it has already been fixed, shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The CM Contingency shall not be changed.
- 14.14. Construction Contracts: Upon approval by the Owner, the CM shall prepare, execute, and deliver the Contract Documents between the CM and the Contractors. The CM shall also issue the notices to proceed.
- 14.15. Permits, Insurance and Labor Affidavits: The CM shall verify that all required building permits, bonds, insurance, labor affidavits, and waivers required for the Project have been obtained.
- 14.16. Bonds and Other Security for Performance by Contractors: In its Guaranteed Maximum Price Proposal, the CM shall recommend a program and costs for bonds or other security or insurance against default by Contractors as the CM deems appropriate to protect the CM and the Owner against such defaults. Such costs shall be included in the Guaranteed Maximum Price if approved by the Owner.

15. Work by CM

- 15.1. All of the labor and materials for the Work of the Project as described in the Drawings and Specifications developed by the Designer shall be performed by Contractors, except as specifically provided in this Article 15.
- 15.2. The CM may perform a portion of the Work only if (1) bidding produces no responsible, responsive bidder for that portion of the Work, no responsive, responsible bidder will execute a contract for the bid portion of the Work, or a Contractor defaults and a pre-qualified replacement cannot be obtained in a timely manner, and (2) the Owner approves performance of the Work by the CM.
- 15.3. In the event the CM performs a portion of the Work under this Article 15, the CM shall provide a lump sum price to the Owner or, in the event a lump sum price cannot be agreed upon by the CM and the Owner, the CM shall be entitled to its actual direct cost to perform the Work, which shall be limited to direct labor costs with reasonable burden, actual material costs without markup for overhead or profit, actual equipment costs without markup for overhead or profit, and actual subcontract payments without markup for overhead or profit. Any other direct costs of the Work performed by the CM will only be paid if approved by the Owner in advance of performing the Work.

16. Patents and Other Intellectual Property Rights

- 16.1. The CM shall secure all rights and pay all license fees, royalties, and costs arising from patents, trade secrets, copyrights, or other intellectual property rights that are in any way involved with the services or involved with or required for the services performed by or on behalf of the CM. The CM shall defend, indemnify, and save harmless the Owner and its present and future officers, employees, and agents from and against any and all liabilities (foreseeable or unforeseeable), penalties, fines, forfeitures, demands, claims, causes of actions, suits, judgments, and costs and expenses incidental thereto (including, without limitation, amounts paid pursuant to investigations, defense or settlements, and reasonable attorney's fees), which any or all of them may hereafter suffer, incur, be responsible for, or

pay out as a result of any violation or an alleged violation of any patent, trade secret, copyright, or other intellectual property right resulting, in whole or in part, from any act by the CM or anyone who performs work for the CM or for whose acts the CM may be liable in connection with the Project, regardless as to whether such violation or alleged violation occurs prior to, during or after the completion of the Project. The CM shall not be responsible for or be required to provide such indemnity or defense should such patent, trade secret, copyright, or other intellectual property right be infringed upon or violated by the Owner or the Designer in the Contract Documents, including any drawings or specifications.

17. Ownership of Documents

- 17.1. The CM shall be entitled to maintain possession of a reasonable number of sets of Contract Documents and record documents during and after the completion of the Project for its records. After completion of the Project, the CM shall destroy or return to the Owner all other copies of such documents as requested by the Owner. The CM shall not reproduce or distribute such documents to any third person or for any purpose other than bidding, permitting and construction of the Project.
- 17.2. All significant new information and all documents and other materials furnished to the CM or any Contractor by the Owner, and all information and all documents and other materials which the CM or any Contractor acquires or generates resulting from the Project, shall be the sole property of the Owner, and, except as specified otherwise in the next Section, shall be returned or furnished by the CM to the Owner or its designee upon demand by the Owner.
- 17.3. The CM and any Contractor or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with CM: (i) shall not have or acquire any copyright, title to or ownership rights in any Drawings, Specifications, or other documents (or copies thereof) prepared by or on behalf of the Owner, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without prior written consent of the Owner and specific written verification or adaptation by the Owner. This prohibition shall survive final payment and completion of the Project, or termination or completion of the Agreement. Nothing herein shall preclude the CM from retaining copies of the Contract Documents for record purposes.
- 17.4. The Designer shall provide electronic drawing files to the CM upon request for use in preparing estimates, survey control of the site and building, preparation of coordination drawings, and preparation of shop drawings, provided that the CM and each Contractor with access to electronic drawing files from the Designer executes an document acceptable to the Owner and the Designer substantially in the form of the Agreement for Transfer of Documents in Machine Readable Form When Owner Owns the Instruments of Service attached to this Agreement and labeled Appendix I.
- 17.5. The CM shall ensure that all documents and materials coming within the possession, custody, or control of the CM or any representative in connection with the Project are retained to the extent and as required by the Contract Documents and any other applicable legal requirements. The CM grants to and otherwise shall obtain for the Owner an irrevocable, exclusive, royalty-free right to copy, republish, distribute and use, in whole or in part, any material developed in connection with the Project, whether copyrighted or not, based on any information, conclusions, or developments resulting from or related to the services and Work performed for the Project.

18. Contractor Submittals and Requests for Information

- 18.1. The CM shall establish and implement procedures for expediting, reviewing, and processing requests for information and proposed substitutions and changes to the Work received from Contractors. All requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and other Contractor requests shall be submitted to the CM. The CM shall keep a log of all such requests, and the responses to such requests by the CM, the Owner and the Designer.
- 18.2. The CM shall establish and implement procedures for expediting, reviewing, approving, and processing all required Contractor submittals, such as material and equipment samples, mock ups, special systems calculations, fabrication, erection and other shop drawings, and operating and maintenance manuals. The CM shall be responsible for tracking and monitoring all such submittals throughout construction until all such submittals have been reviewed and finally approved by the Designer and reported to the Owner.
- 18.3. The CM shall include the status of submittals and shop drawings as an agenda item at all Owner meetings and advise the Owner reasonable promptness of any delays in the shop drawing and submittal process.
- 18.4. The CM shall develop a shop drawing and submittal aging report which is to be submitted to the Owner at each weekly progress meeting. The report must include anticipated and actual submittal dates and must be coordinated with the Master Schedule.
- 18.5. The CM is to ensure that shop drawing/submittal packages are submitted in an appropriate manner and, if not, return them to the Contractor for proper submission. All Contractor submittals shall be submitted initially to the CM for review, approval and appropriate routing to the Designer and, if appropriate, the Owner. The CM shall provide additional copies of any submittals or shop drawings requested by the Owner.
- 18.6. The Master Schedule for the Project shall include timeframes and dates for delivery and approval of submittals. A separate submittal schedule shall also be maintained and coordinated with the Master Schedule for ease of reference by the Contractors, Owner, and the Designer, which shall be consistent with the Master Schedule. The specific format and information to be provided in the submittal schedule must be reviewed and approved by the Owner and Designer prior to its use on the Project.
- 18.7. Approval of submittals, shop drawings or special systems calculations 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 details or shop drawings, unless such error has been called to the attention of the Designer in separate writing by the CM.

19. Use of Premises, Site Conduct, and Safety and Protection of Property

- 19.1. The CM shall be responsible for the entire site and shall provide all the necessary protections required by the Owner and by laws or ordinances governing safety and protection of property. Consistent with the indemnification provisions elsewhere in this Agreement, the CM shall be responsible for protecting the public and those on the site against all bodily injury or harm, and protecting against any damage to the Work, to adjacent property, and to property of others. The CM shall have access to the Project at all times. Subject to its ultimate contractual responsibility for protection of the Work, property and the public under this Agreement, and subject to any non-delegable duties imposed by law, the CM may delegate to Contractors these obligations of the CM under this Agreement, and may obtain indemnification and insurance from Contractors as the CM deems reasonable and prudent.

- 19.2. 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, barricades, and all other materials necessary to protect all the Work on the building, whether set by it, or any of the Contractors. Any completed Work or Work in progress damaged through the lack of proper protection or other act or omission of the CM or the Contractors shall be repaired or replaced without extra cost to the Owner.
- 19.3. No fires of any kind will be allowed inside or around the Project site during the course of construction without special written permission from the Owner.
- 19.4. In the event any artifacts or articles which appear to have archaeological or historical significance are discovered by the CM or any Contractors, the CM shall immediately provide Notice to the Owner before proceeding with any Work and before the conditions are further disturbed at the location of the discovery. Neither the CM nor any Contractor shall have any property rights to such artifacts or articles.
- 19.5. The CM shall protect all trees and shrubs designated to remain in the vicinity of the Project Site by building substantial protection around same. The CM shall barricade all walks, roads, etc., as authorized by the 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.
- 19.6. The CM shall develop and implement a Project Safety Program. The CM shall report to the Owner, as part of the MICS, any safety violations and actions taken to protect the safety of persons and property engaged in the Project. The CM shall require that all Contractors meet or exceed the Project Safety Program requirements including where those requirements meet or exceed State or Federal requirements.
- 19.7. In the event the Owner implements an Owner Controlled Insurance Program (“OCIP”), the CM agrees to cooperate and coordinate with any safety plan or risk management plan implemented in connection with the OCIP.
- 19.8. The CM shall implement the Project Safety Program for the protection of all persons on the job, including the requirements of the A.G.C. Accident Prevention Manual in Construction, as amended, 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, floor and wall openings and similar hazards. The CM shall protect against damage or injury resulting from falling materials and shall maintain all protective devices and signs throughout the progress of the Work.
- 19.9. The CM shall, at a minimum, 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.
- 19.10. As part of the Project Safety Program, the CM agrees to implement a Public Hazard Control Plan conforming to the standards set forth in ANSI A10.34-2005R. The Public Hazard Control Plan shall be submitted to the Owner for review and approval before construction begins on the Project.
- 19.11. The CM shall designate a responsible member of its organization as safety inspector, whose duties shall include accident prevention on the Project. The name of the onsite safety inspector shall be made known to the Designer and Owner at the time the Work is started. The CM will provide the Owner with the name of each Contractor’s onsite safety officer.

- 19.12. In the event of emergency affecting the safety of life, the protection of Work, or the safety of adjoining properties, the CM is hereby authorized to act at its 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 herein.

20. Environmental Protection

- 20.1. If demolition of existing structures is part of the scope of its Work on the Project, the CM acknowledges that the Project site may contain potentially hazardous substances and/or hazardous waste, including asbestos and lead paint, the exact extent, location and physical and chemical characteristics of which may be unknown or which may differ from the results of previous site investigations. The CM acknowledges that it has reviewed or had adequate opportunity to review various documents provided by the Owner concerning environmental investigations and hazardous substances, pollutants or contaminants, or solid wastes at the site. The CM has inspected the site and is fully aware of work, which has been performed at the site regarding hazardous substances, pollutants or contaminants, or solid wastes. The CM will develop a demolition and asbestos abatement plan with reasonable precautions to protect workers, visitors and the public from potentially hazardous substances and/or hazardous waste. This plan shall be part of the Construction Management Plan and shall be submitted to the Owner, the Designer and all necessary regulatory agencies before demolition begins.
- 20.2. If the demolition and asbestos abatement plan precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from an unforeseeable material or substance encountered but not created on the site by the CM or its 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 CM shall, if reasonable, revise its demolition and asbestos abatement plan to take into account the unforeseen material, substance or condition, and shall take responsibility for remediation of the material, substance or condition from the site in accordance with the revised plan. CM shall be entitled to recover all reasonably incurred extra costs.
- 20.3. The CM will take all measures necessary to prevent the release by the CM or any of its Contractors of any hazardous substances at the Project site or adjacent areas. The CM will immediately notify the Owner of any spills, emissions or other releases of hazardous or potentially hazardous substances at or adjacent to the Project site due to the CM or its Contractors. The CM will be responsible for removing from the Project site and areas adjacent thereto, and for properly disposing of, in compliance with the Contract Documents, all applicable laws and applicable permits, all hazardous or potentially hazardous substances generated or accumulated by the CM or any Contractor in the course of performing the Work.
- 20.4. Any land-disturbing activity performed by the CM 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).

21. Insurance and Indemnity

- 21.1. Insurance by Owner: The Owner shall not be required by this Agreement to procure or maintain any insurance for the Project or for the benefit of the Project participants. The only insurance maintained by the Owner will be such insurance as the Owner otherwise decides

to carry to cover liabilities or losses of the Owner and its agents and separate contractors during the timeframe of the Project. It is the intent of this Agreement that the CM will implement insurance plans and purchase insurance policies to protect the Work and to insure against liabilities of the CM and the Contractors. Such insurance shall be of the kinds and have limits of liability and coverages not less than the minimum limits hereinafter specified or required by law, whichever is greater. Notwithstanding the foregoing conditions, the Owner reserves the right to implement an Owner-Controlled Insurance Program ("OCIP") to provide any or all of the coverages otherwise required of the CM. The terms and conditions of any OCIP will be in the discretion of the Owner, provided the Owner will give the CM at least sixty days notice of the intent to implement the OCIP with an opportunity to comment on its terms. The CM shall be given at least fourteen days to comment on the OCIP terms and conditions. After the CM reviews the proposed coverage terms and limits of such OCIP, the parties agree that provisions of Article 21, including, but not limited to, matters addressing insurance required to be provided by CM, coverages, limits and indemnification by CM and Contractors, will be modified such that they are consistent with the OCIP and are mutually agreeable to both the Owner and the CM.

- 21.2. Insurance by the CM: The CM shall purchase and maintain builder's risk insurance and liability insurance that shall protect the CM from the claims set forth below that may arise out of or result from the CM's performance of services pursuant to this Agreement:
 - 21.2.1. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the Work performed;
 - 21.2.2. Claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees under applicable employer's liability law;
 - 21.2.3. Claims for damages because of bodily injury or death of any person other than CM's employees;
 - 21.2.4. Claims for damages insured by usual personal injury liability coverage that are sustained by any person as a result of an offense directly related to the employment of such person by the CM or by any other person;
 - 21.2.5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use therefrom;
 - 21.2.6. Claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle;
 - 21.2.7. Claims for damages because of bodily injury or property damage, including loss of use therefrom, arising out of consolidation, transfer, transport, disposal, storage or other handling of hazardous or toxic waste, material, chemicals, compounds or substances at any location; and
 - 21.2.8. Claims for professional liability against any design professional engaged by the CM or the Contractors as required by the Contract Documents for fabrication or installation of components of the Project.
- 21.3. The CM shall include similar requirements in all Contracts with Contractors, with limits and coverage terms acceptable to the Owner.
- 21.4. The Owner makes no representation as to the adequacy or sufficiency of any coverage required by this Agreement. Insurance coverage by the CM is subject to the following general requirements. The following requirements shall in no way be construed to limit or eliminate the liability of the CM that arises from performance of Work under the Agreement. The CM is strictly responsible for all deductibles, self-insured retention, co-pays, and any

losses, claims, and costs of any kind which exceed the CM's limits of liability, or which may be outside the coverage scope of the policies. The insurance specified shall be effected with an insurer approved by the Owner, authorized to do such business in the State of North Carolina, and on terms approved by the Owner. Insurance companies utilized shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. If the insurer has a Best Rating less than A- and Class VII, the CM must receive specific written approval from the Owner prior to proceeding with any Work under the Agreement. All agents and brokers shall hold valid licenses from the State of North Carolina. Before commencing mobilization to the Project site and not later than seven (7) days after the receipt of the Construction Agreement by the CM for signatures, the CM shall furnish to the Owner a certificate or certificates of insurance in a form satisfactory to the Owner. Upon request of the Owner, the CM shall provide the Owner with certified copies of the insurance policies required by this Article, including without limitation declaration pages, conditions, exclusions and endorsements, and confirmation that each policy premium has been paid for the required term of this Agreement. A copy of the umbrella policy shall be provided to the Cumberland County Risk Management Department. Certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance policies shall provide, as evidenced by Certificates of Insurance, that the insurance shall not expire, be canceled, reduced, restricted, or changed in any way without at least thirty (30) days prior written notice to the Owner. With regard to expiration, cancellation, reduction, restriction, or any other change, certificates shall state: "Should any of the following described policies be canceled before expiration date or be due to expire within thirty (30) days, the insurer shall mail thirty (30) days prior written notice to named certificate holder." In the event of any such cancellation, non-renewal, reduction, restriction, or change in any insurance, the CM is obligated to replace such insurance within seven (7) days without a gap in coverage and file accordingly such notice with the Owner, and other interested parties. Failing immediate receipt of evidence of such replacement of insurance, the Owner reserves the right to procure such insurance as the Owner considers desirable and the CM shall pay or reimburse the cost of the premium in respect thereof. It is expressly provided, however, that any action or inaction on the part of the Owner in this respect shall in no way change or reduce the CM's responsibilities and liabilities under this Agreement. Self-funded, policy fronting, or other non-risk transfer insurance mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of the Agreement, justifying termination for default.

- 21.5. The CM shall name the Owner as additional insured under all of its insurance contracts with respect to and including without limitation liability arising out of activities performed by or on behalf of the CM, products and completed operations of the CM, and automobiles owned, hired, leased, or borrowed by the CM. The coverages shall contain no special limitations on the scope of protection afforded to additional insureds.
- 21.6. For any claims related to this Project, the CM's insurance or self-insurance shall be primary and noncontributory with respect to the Owner's insurance. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the CM's insurance.
- 21.7. All policies of insurance shall contain a clause waiving rights of subrogation against the Owner, unless the Owner approves otherwise in writing.
- 21.8. The CM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 21.9. The claim provisions in the CM's insurance policies must specifically state the insurance company has both the right and duty to adjust a claim and provide defense.
- 21.10. The policies shall not contain any provision or definition which would serve to exclude or eliminate from coverage third party claims, including exclusions of claims for bodily or other injury to shareholders, partners, officers, directors, or employees of the CM or the Owner.
- 21.11. If the policies contain any condition stating that coverage is null and void (or words to that effect) if the CM does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the CM's willful or intentional noncompliance with applicable government regulations.
- 21.12. Any failure by any person to comply with reporting or other provisions of any insurance policy, including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees.
- 21.13. The insolvency or bankruptcy of the insured or of the insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.
- 21.14. Failure to comply with these requirements shall be a material breach of this Agreement justifying termination for default.
- 21.15. CM Insurance Coverage Limits
- 21.15.1. Workers' Compensation shall be maintained with at least the minimum statutory limits, and including Employer's Liability with limits of at least \$1,000,000.00. All Workers' Compensation policies provided by the CM and the Contractors shall contain a waiver of subrogation in favor of the Owner.
- 21.15.2. Commercial General Liability shall be maintained with at least the following minimum limits:
- 21.15.2.1. \$2,000,000 Bodily Injury and Property Damage for each occurrence
- 21.15.2.2. \$4,000,000 Products/Completed Operations Aggregate
- 21.15.2.3. \$4,000,000 General Aggregate
- 21.15.2.4. Coverage shall include, but not be limited to, the following supplementary coverages:
- Contractual Liability to cover liability assumed under this Agreement
- Product and Completed Operations Liability insurance
- Broad Form Property Damage Liability insurance
- Independent Contractors
- 21.15.2.5. Such policy shall include all of the coverages, which may be included in coverages A, B, and C contained in the Commercial General Liability Policy, without deletion. Such policy must be issued on an "occurrence" basis, as distinguished from a "claims made" basis.
- 21.15.2.6. Completed Operations shall extend six (6) years after final payment
- 21.15.2.7. If Contractors have design responsibility, endorsement CG22 80 and DIC for contractors' professional liability is required unless waived by the Owner.

- 21.15.3. Commercial Motor Vehicle Liability shall be maintained with at least the following minimum limits:
- 21.15.3.1. Minimum Combined Single Limit that shall not be less than \$1,000,000 per occurrence
 - 21.15.3.2. Commercial Automobile Liability insurance shall cover all vehicles owned by, hired by, or used on behalf of the Contractor.
- 21.15.4. For Contractors with remediation or abatement responsibilities, Contractors shall carry Contractor's Pollution Liability Coverage. Coverage must be sudden and non-sudden, and include:
- 21.15.4.1. Bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
 - 21.15.4.2. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; and
 - 21.15.4.3. Defense, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages.
 - 21.15.4.4. The Owner must be named as Additional Insured, and a Non-Owned Disposal Site Endorsement must be provided, scheduling the appropriate landfill.
 - 21.15.4.5. Minimum CPL limits of coverage shall be:

Per Loss	\$1,000,000
All Losses	\$2,000,000
- 21.15.5. Excess/Umbrella Liability shall be maintained with the following minimum limits:
- 21.15.5.1. \$5,000,000.00 per Occurrence
 - 21.15.5.2. \$5,000,000.00 Aggregate
- 21.16. Policies: Commercial general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy. The Owner shall be an additional insured on all commercial general liability policies and automobile liability policies submitted to comply with this Article. Commercial general liability and excess liability policies shall be endorsed with a schedule of underlying liability policies required and obtained from the Contractors. Coverage under the commercial general liability policies shall not be limited by any language in the contracts with the Contractors making the Contractors liable for losses in excess of the limits of coverage provided by the Contractors.
- 21.17. Professional Liability Policies: A policy for professional liability shall be provided by the CM for its services under this Agreement. In addition, the CM shall obtain from certain Contractors or design professionals retained by them, professional liability insurance as required by the Owner. The limits of coverage required for professional liability insurance shall be included in the CM proposal for insurance, and will be subject to approval by the Owner, taking into account among any other reasonable factors the risks insured against, the cost of the insurance, and the professionals providing the insurance.
- 21.18. Cancellation: The foregoing policies shall contain a provision that coverages afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice has been given to the Owner and shall include an endorsement covering this Agreement.

Certificates of Insurance showing such coverages to be in force shall be filed with the Owner contemporaneously with execution of this Agreement or any relevant Contractor contract.

- 21.19. Builder's Risk Insurance: The CM shall be responsible for purchasing and maintaining insurance satisfactory to the Owner to protect the Project from perils of physical loss.
 - 21.19.1. The Owner shall receive copies of the builder's risk insurance policies that satisfy this Article. The CM shall be responsible for any deductibles associated with this coverage.
 - 21.19.2. The builder's risk insurance shall provide for the cost of replacement of the Work, including materials stored off site, at the time of any loss. The insurance shall include as additional insureds the Owner, the CM, the Contractors and their subcontractors and shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, terrorism, transit, flood, mold, earthquake, testing, or damages resulting from defective design, negligent workmanship or defective material. The CM shall obtain approval from the Owner before increasing any coverage due to increases in construction costs.
- 21.20. Other Property Insurance: The CM and each Contractor shall purchase and maintain contractor's property insurance covering construction machinery, equipment, tools, construction trailers and their contents, and temporary scaffolding, whether owned, leased, rented, or borrowed and used by the CM or Contractor respectively in the performance of the Project Work. The CM and its Contractors shall be responsible for any deductibles associated with this coverage. The Owner will not be responsible for any loss or damage to tools and equipment belonging to the CM or its Contractors. Each insurance policy covering such tools and equipment will include a waiver of subrogation in favor of the Owner, Designer, engineers and other enrolled parties. Such coverage shall be written on a policy form at least equivalent to that provided by a "Contractor's Equipment Floater" as customarily defined within the insurance industry. The CM and Contractors also agree to notify all tiers of Contractors of their obligation to insure any machinery, equipment, and tools used by the Contractors in the performance of the Project Work.
- 21.21. Valuable Papers & Records: The CM shall provide valuable papers and records insurance with coverage in the amount of \$250,000 per occurrence.
- 21.22. The CM may, with the prior approval of the Owner, provide the insurance coverages required herein through either its enterprise insurance program or a Contractor Controlled Insurance Program (a "CCIP"), both meeting the coverages and limits described herein.
- 21.23. Partial Occupancy: If the Owner occupies or uses a part or parts of the Project prior to substantial completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the part or parts of the structure occupied by the Owner.
- 21.24. Notices and Recovery: If requested by the Owner, the CM shall provide the Owner with copies of all policies thus obtained for the Project. The CM shall provide the Owner with thirty (30) days advance notice of expiration, cancellation, non-renewal or endorsement reducing or restricting coverage.
- 21.25. Waiver of Subrogation: The Owner and the CM waive all rights against each other and against the Contractors, consultants, agents and employees of the other for damages occurring during construction and covered by builder's risk and any property insurance required for this Project, excluding the Owner's property insurance. The Owner and the CM shall each require appropriate similar waivers from their contractors, consultants and agents.

This waiver does not apply to any design liability, or to manufacturer's or installer's warranties.

- 21.26. CM As Joint Venture: If the CM is completing this Project on a joint venture basis, whether as a partnership, limited liability company, or any other form of business association or entity, the CM joint venture and each member of the joint venture retains all liabilities assumed by this Agreement, jointly and severally. This may include, but is not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder. For CM provided insurance, evidence of a blanket joint venture endorsement substantially similar to the following must be obtained from the general liability and pollution liability carriers of each joint venture partner and maintained for a period of 6 years after completion of the Project: *"With respect to "your work", and the "products-completed operations hazard", you are an insured for your liability arising out of the conduct of any partnership or joint venture of which you were a partner or member, even though this partnership or joint venture is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you."*
- 21.27. Indemnity: To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner and its employees of any of them from and against third party claims, demands, suits, damages, losses, costs and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the CM, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The CM shall not be required to indemnify any person against losses resulting from a breach of contract or resulting from negligence, misconduct or violation of laws on the part of any person indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of the CM, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CM or a Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 21.28. Indemnification by Designer: The Owner shall cause the Designer to indemnify and hold harmless the Owner, its employees, agents and representatives to the same extent and in the same manner that the CM has provided indemnification for the Owner under this Agreement.
- 21.29. Indemnification by Contractors: The CM shall cause each Contractor to indemnify and hold harmless the Owner, CM and Designer from and against any and all claims, demands, suits, damages, costs, expenses and fees that are asserted against the Owner, CM or the Designer and that arise out of or result solely from negligent acts or omissions or the breach of the Contractor's Contract by the Contractor, its employees, agents and representatives in performing the Work.

22. Time for Performance, Scheduling and Progress Maintenance

- 22.1. The CM shall be responsible for Project scheduling and efficient and timely prosecution and completion of the Work. The obligations and duties of the CM with regard to scheduling and progress maintenance shall be as follows:

- 22.2. Master Schedule: In accordance with the Construction Management Plan, the CM shall prepare a Master Schedule for the Project. The Master Schedule shall specify milestone dates and the proposed start and finish dates for each major project activity including all design and construction activities for the GMP. The Master Schedule shall consist of a critical path method (CPM) schedule utilizing accepted standard computer based software. The scheduling software shall allow for integration of all aspects of the Project and provide for coordination of all Work to be performed. The scheduling software used by the CM shall be capable of producing and coordinating logic developed network diagrams, and tabular format reports. The CM shall submit the Master Schedule to the Owner for acceptance.
- 22.3. Design Phase Milestone Schedule: In accordance with the Construction Management Plan, after the Owner accepts the Master Schedule the CM shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule shall be used for judging progress during the Design Phase. The Design Phase Milestone Schedule activities shall include schematic design documents, design development documents, construction documents, permitting, creation of separate specifications and bid packages, and selection and approval of long-lead-time components of the Project. The CM shall monitor compliance with the Design Phase Milestone Schedule, and promptly notify the Owner and Designer of any delay or change in the Design Phase Milestone Schedule.
- 22.4. Pre-Bid Construction Schedules: Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase. The CM shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents.
- 22.5. Contractors' Construction Schedules: The CM shall provide a copy of the Master Schedule to the bidders. As part of the notice of award of each contract, the CM shall inform each Contractor of the requirements for the preparation of a construction schedule. The Contractor shall prepare its own construction schedule in accordance with the requirements of the Contract Documents. The Contractor's Construction Schedule shall establish completion dates that comply with the requirements of the Master Schedule. The CM shall review each Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.
- 22.6. Master Schedule with Fixed Completion Dates: Substantial Completion, completion of all punch list items, and Final Completion of the entire Project shall be achieved by the dates reflected in Appendix F, Master Schedule. The CM represents that the Master Schedule has been reviewed in detail, that all of the activities which impact, limit, or otherwise affect the time of completion of the Work are shown in the Master Schedule and that all of the activities of others that impact, limit, or otherwise affect the start, duration, or completion of the CM's activities are also shown. The CM further represents that the CM can and will complete each activity within the time shown for that activity. Liquidated Damages shall be assessed based on the Master Schedule with Fixed Completion Dates. The CM shall develop the complete and final CPM schedule in the form of a CPM network arrow diagram using the CM's logic and time estimates for each segment of the Work. The CM scheduling obligation shall include tracking the progress of the Owner's and the Designer's tasks and activities in relation to the Master Schedule and promptly notifying the Owner of any delay that might impact construction. The arrow network diagram will be drawn in a level of detail suitable for display of salient features of the Work, including but not limited to the placing of orders for materials, submission of shop drawings for approval, approval of shop drawings by the CM, Designer and the Owner, delivery of material, and all Work activities inclusive

of punch list agreed to by the Owner. Each Work activity shall be assigned a time estimate by the CM. One day shall be the smallest time unit used. Data shall also be provided in Gantt form. Time is of the essence with respect to the Substantial and Final Completion dates for the Project.

- 22.7. Schedule Monitoring: The Designer and the Owner shall monitor progress of the Work and the CM shall cooperate with such monitoring and provide any and all information with respect to the progress of the Work and scheduling as the Owner or the Designer may reasonably require. The CM shall identify potential variances between scheduled and desired completion dates, review the schedule for Work not started or incomplete, review the status of submittals and delivery of long-lead-time deliveries, review the Owner's occupancy priorities, and take the action necessary to meet the required completion date. The CM shall furnish to the Owner various schedules and updates setting forth planned and completed progress of the Project broken down by the various divisions or parts of the Work and by calendar days. The CM shall ensure that all schedules are prepared and updated in strict conformance with the requirements of the Contract Documents for formatting of reports for the Owner. The CM shall keep the Owner, the Designer and all Contractors fully informed as to all changes and updates to the schedule. The CM shall ensure that all schedules incorporate necessary lead times for actions required by the Owner and regulatory agencies, by the Consultants, by the CM, by utility companies providing services or relocating service lines and facilities, by all Contractors, and for significant General Conditions events, including but not limited to submittals, permit and approvals applications and review of interim and final plans, specifications and bid packages.
- 22.8. Construction Schedule Report: The CM shall review the progress of construction of each Contractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. The monthly status report shall show the actual Work completed to date in comparison with the original amount of Work scheduled, inclusive of information on the Contractors' Work and the percentage of completion for the Project. The report shall describe major milestones achieved and slipped, including a discussion of each slippage. In addition to schedule information, the report shall contain an overall summary of the financial status of the Project with a cost control report with proposed solutions for resolution of any cost concerns or issues. The report shall contain a summary statement on the status of change orders for the Project inclusive of potential change orders, approved change orders and rejected/voided change orders as well as change orders that require the Owner's immediate attention. The report shall contain a summary statement as to the status of shop drawings, submittals and RFI's for the Project inclusive of items requiring the Owner, the CM or the Designer's immediate attention. The report shall contain a summary statement as to the status of quality control/inspections for the Project including, but not limited to, number and type of inspections made, overall Project quality to date, and recommendations. This evaluation shall serve as data for input to a monthly Construction Schedule Report that shall be prepared and distributed to the Owner and the Designer. The Construction Schedule Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the CM.
- 22.9. Progress Records: The CM shall keep accurate and detailed written records of Project progress during all stages of construction. 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 record weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities. The diary shall also record all visitors, number of on-site workers for each contract and

include a detailed list of all material deliveries to the site. The diary shall be available to the Owner at all times and shall be turned over to the Owner upon completion of the Project. The CM shall compile and submit to the Owner daily a summary report consisting of the CM's daily diary entry and each Contractor's daily report describing the construction activities of the day along with manpower and equipment usage, including that of the Contractors.

- 22.10. Project Site Meetings: The CM shall conduct weekly coordination meetings at the site with all Contractors at which the Owner, the Designer, other designated representatives, and the CM can discuss jointly such matters as progress, scheduling, and construction-related problems. All Contractors shall be represented at these coordination meetings by both home office and Project personnel, unless specifically excused by both the CM and the Owner. 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 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 lead the meeting. The CM shall take and distribute complete minutes of meetings to all attendees and others as directed by the Owner within three (3) days of such meetings. Representatives of the Owner may attend any or all meetings and shall in any case receive all notices and minutes of meetings. As set forth in the Master Schedule and the Contract Documents, the CM shall also conduct pre-installation and pre-construction meetings for key components of the Work. The CM shall conduct a separate monthly meeting with the Owner and the Designer to update them on progress of the Work.
- 22.11. Recovery Schedules: Should the CM fail to start a critical activity on the start date shown in the Master Schedule or otherwise become delayed, the CM and its Contractors shall, without being entitled to any increase in the Guaranteed Maximum Price or other compensation, work overtime, increase labor forces or take such other action as may be necessary or appropriate to complete the activity by the adjusted Completion Dates shown on the Master Schedule, unless the CM is entitled to an extension of the Completion Dates under this Agreement. The CM shall require each Contractor to prepare and submit a recovery schedule as specified in the Contract Documents. The CM shall review and ascertain that each Contractor is providing sufficient resources to regain lost time. In no event will the Guaranteed Maximum Price be increased or any expenses be paid to the CM or its Contractors for delays caused by the CM or any Contractor, even if there is a concurrent delay or suspension by the Owner, it being understood that the CM bears the risk of delays caused by its Contractors.
- 22.12. Updates and Revisions to Master Schedule: As necessary throughout the Project, the CM may make revisions to the Master Schedule so long as such revisions do not alter agreed milestone dates. All adjustments to the Master Schedule shall be for the benefit of the Project. The Owner shall issue change orders to the appropriate parties as required by this Agreement to implement justified revisions to the agreed milestone dates in the Master Schedule. During the construction phase, the CM shall update the Master Schedule and distribute copies to the Owner and the Designer on a monthly basis, showing any adjustments made by any change order, and showing any days gained or days lost with respect to any activity. The form used shall be approved by the Owner and shall be submitted with the monthly invoice. The CM shall also develop and submit a Work plan for a two week, thirty day and sixty day look ahead.

- 22.13. Non-waiver: If the CM submits a construction schedule, progress report, or any other document that indicates or otherwise expresses an intention to achieve completion of the Work prior to any established completion date, no liability of the Owner to the CM for any failure of the CM to so complete the Work shall be created or implied.
- 22.14. Schedule Adjustment: If the CM and its Contractors, for reasons beyond their control, are delayed in beginning or the continuing of any activity, the CM shall, nevertheless, have the same number of days as is shown in the Master Schedule for the activity, and the completion date of the affected activity and any succeeding activity that is dependent upon that activity shall be adjusted accordingly; provided that at any time the Owner, by means of a change order, may require the CM to work overtime, to increase labor forces or to take any necessary or appropriate action to decrease the time required for any activity, and the CM shall be entitled to an adjustment in the GMP computed in accordance with this Agreement. The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the request. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the Designer and the Owner for review, consideration and approval. The CM shall, prior to the issuance of a change order, determine the effect on the Master Schedule of time extensions requested by the Contractor. The Designer shall prepare the necessary change order documents for signing by the CM, Designer and Owner. The CM shall then prepare the necessary documents to effect a change to the contract with the Contractor.
- 22.15. Work by Owner: If the CM, within a period of seven (7) days after notice that it is behind in a critical activity or is otherwise in default under this Agreement, shall not proceed in good faith and with reasonable speed to correct such delay or default in accordance with such notice, the Owner shall have full power and authority to take the prosecution of the Work out of the hands of the CM, to appropriate or use any or all materials and equipment at the Project as may be suitable and acceptable, and to enter into other agreements for the completion of the Work or pursue such other methods as in the Owner's sole discretion and opinion shall be necessary or appropriate for the completion of the Work in an acceptable manner. The Owner shall have the right to perform Work, hire and employ labor and craftsmen, rent equipment, subcontract with other parties, or do anything that the Owner deems necessary or appropriate to remedy or cure any delay or default by the CM in the progress of the Work. Such action by the Owner shall not, in any way, affect, void or limit any warranty, guaranty or other responsibility of the CM under the Contract Documents. All costs incurred by the Owner in taking any such action shall be charged to the CM and deducted from any amounts remaining due under the Agreement.
- 22.16. Force Majeure: The CM may be entitled to an extension of the time for completion (but no increase in the Guaranteed Maximum Price) for delays arising from unforeseen causes beyond the control and without the fault or negligence of the Owner, the CM or the CM's Contractors as follows:
- 22.16.1. Acts of God, tornado, fire, hurricane or earthquake that damage completed Work or stored materials.
- 22.16.2. Acts of the public enemy; acts of the State, Federal, or local government in their sovereign capacities.
- 22.16.3. Abnormal inclement weather which shall mean the existence of hail, snow, extreme low or high temperatures, high wind, severe dust storm, or any combination thereof by virtue of which it is either not reasonable or not safe for employees exposed thereto to continue working whilst the same prevail.

- 22.17. Notice: The CM and the Contractors shall not be entitled to and hereby expressly waive any extension of time resulting from any condition or cause unless a claim for extension of time is made in writing to the Owner within seven (7) days of the first instance of delay for all delays, except abnormal inclement weather which shall be made in accordance with section 22.19. All claims not filed in accordance with this Article shall be waived by the CM. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected. In every such written claim, the CM shall provide the following information:
- 22.17.1. Nature of the Delay;
 - 22.17.2. Date (or anticipated date) of inception of delay;
 - 22.17.3. Activities on the Master Schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;
 - 22.17.4. Identification of person(s) or organization(s) or events(s) responsible for the delay;
 - 22.17.5. Anticipated extent of the delay; and
 - 22.17.6. Recommended action to avoid or minimize the delay.
- 22.18. Weather Delays: On any day the CM considers that the Project is delayed by adverse weather conditions, the CM shall identify in writing to the Designer and the Owner the adverse weather conditions affecting each activity, the specific nature of the activity affected, the number of hours lost, and the number of and identity (by responsibility or trade) of workers affected. The Designer shall subsequently provide written recognition of the delay. The time for performance of this Agreement includes an allowance for a number of calendar days which may not be suitable for construction Work by reason of adverse weather. The contract time will be extended only if the number of calendar days of adverse weather recognized by the Designer in a given month exceeds the number of inclement weather days set forth below, and the CM clearly demonstrates how this adverse weather negatively impacts activities on the critical path of the Master Schedule:

Month	Number of Inclement Weather Days
January	7
February	6
March	7
April	6
May	7
June	6
July	8
August	6
September	5
October	5
November	5
December	9

- 22.18.1. If the CM believes that the progress of the Work has been adversely affected by adverse weather recognized by the Designer during a particular month, the CM shall

submit a written request for extension of time to the Designer. Such a request for an extension of the contract time shall be submitted by the tenth (10th) day of the month following that month in which the adverse weather is encountered. The request shall include, but is not limited to, the following information:

- 22.18.1.1. Detailed description of weather's effect on scheduled activities and its net effect on the critical path of the Project, and
 - 22.18.1.2. Weather records from the official weather station nearest the Project site and records of actual observation as contained in daily reports, correspondence, or other contemporaneously prepared documentation.
- 22.19. Damages for Delay: The CM shall not be entitled to any adjustment in the Guaranteed Maximum Price or other compensation from the Owner for any delay in the completion of or progress on the Work that is caused by a force majeure condition or is otherwise not caused by the sole and direct act or omission of the Owner, Designer or their respective employees, or agents or others for which either is responsible.
- 22.20. Liquidated Damages for Delay: The CM specifically recognizes that a delay by the CM in achieving the Completion of the Project will necessarily cause damages, losses, and expenses to the Owner, including, but not limited to and by way of illustration only, increased capitalized costs and interests for the Project, increased and extended Project overhead, Designer's and Consultant's fees, increased costs of construction, increased and extended operation costs of other facilities, and inefficiency and loss of productivity, and that such damages, losses, and expenses may not be readily identifiable or ascertainable at the time they are incurred or at any later time. Therefore, and in recognition of these factors and the likelihood that actual damages from a delay will not be readily ascertainable, the CM agrees to pay to the Owner, as Step One Liquidated Damages and not as a penalty, the sum of Five Hundred Dollars (\$500) as the Liquidated Damages per day, for each day by which a failure by the CM to meet the Substantial Completion Date shown in the Master Schedule, adjusted in accordance with this Article, delays the Substantial Completion of the Project. Furthermore, the CM agrees to pay to the Owner, as Step Two Liquidated Damages and not as a penalty, the sum of two hundred Dollars (\$200) as Liquidated Damages per day, for each day by which the CM fails to achieve satisfactory completion and sign off of all punch lists or deficiency lists as shown in the Master Schedule, adjusted in accordance with this Article; provided, however, that no Step Two Liquidated Damages shall be assessed against the CM so long as Step One Liquidated Damages are being assessed. The sum for Liquidated Damages is the amount reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to complete the Project within the time specified, such time being in the essence of this Agreement and a material consideration thereof. This provision for liquidated damages does not bar the Owner's right to enforce its other rights and remedies under this Agreement, including without limitation the right to order the CM to accelerate the Work or the right to terminate the Agreement. Liquidated damages represent the Owner's sole and exclusive remedy for delayed completion and are the best effort at the commencement of the Agreement to estimate its reasonable anticipated damages for delay, and should not be construed as a penalty.

23. Suspension of the Work by the Owner

- 23.1. The Owner may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for the Project is suspended, an equitable adjustment in the CM's compensation shall be made and this Agreement shall be modified in writing accordingly.

- 23.2. Pre-construction and procurement phases: If the services for the Project are suspended during the pre-construction or procurement phases of the Project, the CM's lump-sum fee shall be equitably adjusted based on the length of the suspension, the ability of the CM to reasonably reallocate personnel and resources to other projects during the period of suspension, costs of remobilizing to the Project after suspension, and other similar factors affecting the cost of performance of the services by the CM.
- 23.3. Construction and Post-construction Phase Fixed Fees: If the services for the Project are suspended during the construction or post-construction phases of the Project, the CM's Fixed Fee shall be equitably adjusted based on the actual costs incurred by the CM for the Work and General Conditions during the period of the suspension.
- 23.4. Construction and Post-construction Phase General Conditions: In the event the CM's construction and post-construction phase services on the Project are suspended by the Owner, the Owner shall reimburse the CM for all of the General Conditions allowed for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of its staff for the remainder of the suspension period as directed by the Owner and during such period, the Owner shall reimburse the CM for all costs of reduced General Conditions. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size, with General Conditions adjusted accordingly.
- 23.5. Reassignment of Personnel: Persons assigned to another project during such suspension and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for reasonable costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.
- 23.6. Protracted Suspension: If the Project is suspended by the Owner for more than one hundred twenty (120) consecutive days, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.
- 23.7. Additional Compensation to Contractors: The CM shall include provisions in its contracts with Contractors substantially the same as this Article 23, allowing for suspension of the Project by the Owner, and providing that suspension shall not be grounds for termination of the contracts except on the terms set forth in this Agreement. If the Owner suspends the Project for reasons other than default by the CM or any of its Contractors, the Guaranteed Maximum Price will be adjusted by an amount sufficient to reimburse the reasonable and provable expenses incurred by the Contractors as a result of the suspension.

24. Cost Control

- 24.1. Cost Management: The CM shall be responsible for implementing a system of cost control, and for the completion of the Project within the Guaranteed Maximum Price agreed to by the CM and the Owner as set forth herein.
- 24.2. Budgets: The CM represents that before executing this Agreement it reviewed the Owner's funding plan for the Project and considers it reasonable given the planned scope and timeframe for the Project. The CM agrees to develop more detailed Project budgets on the following schedule:
 - 24.2.1. Schematic Design Phase: At the completion of schematic design of each major division of the Work, the CM shall prepare and submit to the Owner and the Designer a GMP based on the CM's best estimate of the Cost of the Work, without excessive or unnecessary contingencies or allowances. This GMP shall take into account the

Master Project Schedule, and the CM's studies of market conditions in the vicinity of the Project. This budget shall be in a format reasonably required by the Owner, and shall include at least the cost elements included in Appendix B.

- 24.2.2. Design Development Phase: At the completion of the design development phase of each major division of the Work, the CM shall prepare and submit to the Owner and the Designer a GMP true up budget illustrating a reduction in preconstruction contingency based on the CM's best estimate of the Cost of the Work, again without excessive or unnecessary contingencies or allowances. This budget shall take into account the Master Project Schedule and the CM's studies of market conditions in the vicinity of the Project. This budget shall be in a format reasonably required by the Owner, and shall include at least the cost elements included in Appendix B. This revised budget shall be compared and reconciled with the budget or budgets prepared at the conclusion of the schematic design phase.
- 24.2.3. Construction Documents Phase: When the Drawings and Specifications for each major division of the Work reach 90% complete for permitting and construction, the CM shall prepare another revised budget, except to the extent the GMP has been fixed. All assumptions, allowances and contingencies in this revised budget shall be noted and explained. The budget shall be compared with and reconciled to the budget created at the conclusion of the design development phase. The cost elements shall be based on recommendations by the CM, shall be explained to the Owner and the Designer, and shall be subject to approval and acceptance by the Owner.
- 24.2.4. Special Budgets: Upon reasonable request by the Owner, the CM shall prepare estimates and budgets for designated components or features of the Project to allow the Owner to compare systems or alternatives, to make life cycle cost choices, and to discuss bid packages and other project delivery issues.
- 24.3. Analyzing Bids: Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices, and before award of any construction contract shall provide the Owner and the Designer with a report summarizing the effect of the bids on the Project and Construction Budget.
- 24.4. Change Order Control: The CM shall establish and implement a change order control system.
 - 24.4.1. All proposed Owner-initiated change orders shall first be described in detail in writing by the Owner, or the Designer if so requested by the Owner, and forwarded to the CM. The CM shall then forward a request for proposal to the appropriate Contractor (or Contractors), accompanied by technical Drawings and Specifications prepared by the Designer. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. Pricing for the proposal shall be in accordance with the requirements for changes to the Guaranteed Maximum Price set forth in Article 25. The CM shall thoroughly, completely and critically review the Contractor's proposal, shall discuss the proposed change order with the Contractor and determine the Contractor's basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall present its findings to the Owner and the Designer in writing with a detailed explanation of why the CM believes the Contractor proposal or proposals should be accepted or rejected and explaining what the CM did to substantiate the pricing by the Contractor. Following acceptance of the proposal by the Owner, the Designer shall prepare the change order documents for signature by the CM and the Owner. Upon

execution of the change order documents by the CM and the Owner, the CM shall prepare change order documents for signature by the affected Contractor(s). The CM shall verify that any adjustment of time required by approved change orders has been incorporated into the Contractor's Construction Schedule.

- 24.4.2. The CM shall thoroughly, completely and critically review the contents of all Contractor-requested changes to the contract time or price, determine whether an adjustment to the Guaranteed Maximum Price or the Master Schedule is warranted under the Agreement, and determine the amount or length, if any, of the allowable adjustment to the Guaranteed Maximum Price and the Master Schedule. If the CM believes that an adjustment to this Agreement might be warranted by a Contractor change request, the CM shall provide the Designer with a copy of the change request, and the CM shall, in its evaluations of the Contractor's request, consider the Designer's comments regarding the proposed changes. The CM shall present its findings to the Owner and the Designer in writing with a detailed explanation of why the CM believes the Contractor proposal regarding the proposed changes should be accepted or rejected and explaining what the CM did to substantiate the pricing by the Contractor. If, after review by the Owner and the Designer, the Owner determines that an adjustment to the Guaranteed Maximum Price or Master Schedule is warranted, the Designer shall prepare the change order documents for signature by the CM, the Owner and the Designer. Upon execution of the change order documents by the CM and the Owner, the CM shall prepare change order documents for signature by each affected Contractor.
- 24.4.3. In instances where a lump sum or unit price is not authorized by the Owner in a change order prior to performing Work described in a request for proposal as provided in Section 25.1.3, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work. These cost records will be available to determine equitable compensation to the Contractor for the change order Work.
- 24.4.4. Trade-Off Studies: The CM shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the Owner and Designer.
- 24.4.5. Progress Payments: In consultation with the Designer, the CM shall inspect the Work to determine compliance with the Contract Documents, review the monthly payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Designer and the Owner a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the Owner.
- 24.5. Costs in Excess of Guaranteed Maximum Price: In the event that the sum of the Cost of the Work, the CM Fixed Fee, the reimbursable costs for General Conditions provided by the CM, and the CM Contingency exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and all Attachments hereto, is complete. The CM shall be responsible for paying all costs in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

25. Changes to the Guaranteed Maximum Price

- 25.1. Changes Initiated or Approved by the Owner: The Owner may, at any time and for any reason, by written notice or order, make changes or modifications to the Work or add Work within the general scope of the Project, including without limitation changes to the Drawings and Specifications, the Master Schedule, the sequence, manner or method of performing the Work, or the work being provided by the Owner or its separate contractors. The CM may propose changes to the Work, but no change to the Work shall be allowed unless and until the Owner by written notice or order authorizes the change. If at the time of a change to the scope of the Project the GMP has been fixed, the CM shall be entitled to seek an adjustment in the Guaranteed Maximum Price. The amount of adjustment to increase or decrease the Cost of the Work resulting from a change in the Project shall be determined in one or more of the following ways:
 - 25.1.1. By mutual acceptance of a lump sum, properly itemized and supported by cost data; or
 - 25.1.2. By unit prices defined in a contract with a Contractor; or
 - 25.1.3. By the cost of such Work determined on the basis of the cost records for the changed work. In the event actual costs are to be reimbursed, the CM shall keep and present in such form as may be agreeable to the Owner and the Designer an itemized accounting together with appropriate supporting data of the actual Cost of the Work.
- 25.2. Requests for Adjustment of the GMP by the CM: If the CM believes that the following grounds exist for an adjustment in the GMP, the CM shall promptly notify the Owner and the Designer.
 - 25.2.1. Unforeseen Conditions: Should the CM encounter unforeseen conditions at the Project site materially differing from those shown on the Drawings or indicated in the Specifications or differing materially from those that are reasonably foreseeable or ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the CM shall immediately, and in no event more than three (3) days later, give notice to the Owner of such conditions before they are disturbed. The Owner and the Designer shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the Drawings or indicated in the Specifications, they shall at once make such changes in the Drawings and/or Specifications as they may find necessary. Any increase or decrease in the Guaranteed Maximum Price resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. However, neither the Owner nor the Designer shall be liable or responsible for additional work, costs, or changes to the Work that could have been reasonably determined from any reports, surveys, and analyses made by the CM or made available for the CM's review.
 - 25.2.2. Design Errors, Omissions and Ambiguities: It is expected that all final Construction Documents prepared or signed by the Designer and submitted to governmental authorities and code officials shall be complete, coordinated and contain directions as will (i) enable a competent Contractor to carry them out; (ii) meet the requirements of governmental authorities and code officials; and (iii) be sufficiently complete and sufficiently free of conflicts so as to be capable of definitive pricing by the Contractors with a minimum of further clarifications or detailing by the Designer. It is also expected that the CM will perform its obligations under this Agreement, including its obligations to review the design documents, diligently and with reasonable care. Design errors, ambiguities, inconsistencies, or omissions that the CM could not in the

exercise of reasonable prudence have detected during the discharge of the CM's pre-construction duties will entitle the CM to seek an increase in the GMP.

- 25.3. Unit Prices: If unit prices are utilized in the Guaranteed Maximum Price, the Guaranteed Maximum Price Proposal shall document the estimates on which the unit prices are based. If the CM later determines that the quantities on which unit prices are based will vary from the quantities utilized by the CM to fix the unit prices and calculate the Guaranteed Maximum Price, the CM shall within three (3) days after determining that the quantities will vary from the estimates notify the Designer and the Owner in writing and forecast the amount of the variance. If the estimated quantities available to and used by the CM to establish the unit prices are so changed that application of the agreed unit prices to the quantities or Work proposed cause substantial inequity to the Owner or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.
- 25.4. Directive to Proceed: In the event the CM and the Owner cannot agree that an adjustment to the Guaranteed Maximum Price or the Master Schedule is warranted, or cannot agree on the compensation for a change in the Work or on an increase in the Guaranteed Maximum Price, the CM shall, if so directed by the Owner in writing, nevertheless proceed with the Work, and maintain cost-segregated cost records for all work for which the CM believes an adjustment might be warranted. Such cost records shall be provided to the Owner at least monthly. Any adjustment to the Guaranteed Maximum Price shall be negotiated by the parties at a later date utilizing the dispute resolution procedures under this Agreement if necessary.

26. Termination of the Work for the Convenience of the Owner

- 26.1. This Agreement may be terminated in whole or in part by the Owner for convenience after seven (7) days written notice to the CM.
- 26.2. In the event of termination for convenience of the CM's pre-construction and procurement phase services under this Paragraph 26.1, the CM shall be entitled to be paid a reasonable pro-rata portion of its pre-construction and procurement phase services fee, with no additional compensation for termination expenses or post-termination expenses.
- 26.3. In the event of termination for convenience during the CM's construction and post-construction phase services by the Owner, the CM shall either cancel or assign to the Owner all contracts with Contractors and other suppliers at the sole option of the Owner. The CM shall be paid for the Cost of the Work performed to the date of termination, plus reasonable termination expenses paid to Contractors under their respective contracts, which shall each contain a termination for convenience clause that limits the recovery of the Contractors in the event of a termination for convenience to the value of the work actually completed by the Contractor to the date of termination, with no recovery of lost profit or other damages for wrongful termination of contract. In addition, the CM shall be paid all of its allowable General Conditions costs to the date of termination, including all termination expenses. Termination expenses are defined as those expenses arising prior, during, and subsequent to termination that are directly attributable to the termination, excluding lost profits and overhead for uncompleted work upon termination. In addition, the CM shall be entitled to its full Fixed Fee for any phase of services completed prior to termination, plus a reasonable pro-rata portion of its Fixed Fee for any phase of services not completed at the time of termination, based on the percentage of such incomplete services actually completed prior to the date of termination; provided, however, that if it reasonably appears that the General Conditions costs being incurred by the CM would have exceed the not-to-exceed limit on General Conditions costs, then the Owner shall be entitled to reduce the amount of the Fixed Fee payable to the CM upon termination by the amount by which the General Conditions

would have exceeded the limit on General Conditions costs. After receipt of a notice of termination under this Article, the CM shall submit a claim for termination fees and expenses in a form and with certifications as are reasonably required by the Owner. The termination claim shall be submitted promptly, but in any event within sixty (60) days of receipt of a notice of termination unless extended by the Owner. The claim shall be subject to reasonable audit to the same extent as any other request for payment of General Conditions.

27. Non-Appropriation of Funds

- 27.1. The CM acknowledges that Owner is a governmental entity and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are not available and not appropriated for the performance of Owner's obligations under this Agreement, then this Agreement shall automatically terminate without penalty to County thirty (30) days after written notice to the CM of the non-appropriation of public funds.
- 27.2. In the event of termination for the non-appropriation of funds under this Paragraph 27.1, the CM shall be entitled to be paid a reasonable pro-rata portion of its pre-construction and procurement phase services fee, with no additional compensation for termination expenses or post-termination expenses.
- 27.3. In the event of termination for the non-appropriation of funds any time after CM commences with procurement of Contractors for the project, the CM shall either cancel or assign to the Owner all contracts with Contractors and other suppliers at the sole option of the Owner. The CM shall be paid for the Cost of the Work performed to the date of termination, plus reasonable termination expenses paid to Contractors under their respective contracts, which shall each contain a non-appropriation clause that limits the recovery of the Contractors in the event of a termination for the non-appropriation of funds to the value of the work actually completed by the Contractor to the date of termination, with no recovery of lost profit or other damages for wrongful termination of contract. In addition, the CM shall be paid all of its allowable General Conditions costs to the date of termination, including all termination expenses. Termination expenses are defined as those expenses arising prior, during, and subsequent to termination that are directly attributable to the termination, excluding lost profits and overhead for uncompleted work upon termination. In addition, the CM shall be entitled to its full Fixed Fee for any phase of services completed prior to termination, plus a reasonable pro-rata portion of its Fixed Fee for any phase of services not completed at the time of termination, based on the percentage of such incomplete services actually completed prior to the date of termination; provided, however, that if it reasonably appears that the General Conditions costs being incurred by the CM would have exceed the not-to-exceed limit on General Conditions costs, then the Owner shall be entitled to reduce the amount of the Fixed Fee payable to the CM upon termination by the amount by which the General Conditions would have exceeded the limit on General Conditions costs. After receipt of a notice of termination under this Article, the CM shall submit a claim for termination fees and expenses in a form and with certifications as are reasonably required by the Owner. The termination claim shall be submitted promptly, but in any event within sixty (60) days of receipt of a notice of termination unless extended by the Owner. The claim

shall be subject to reasonable audit to the same extent as any other request for payment of General Conditions.

28. Termination of the Agreement Due to Default

- 28.1. This Agreement may be terminated by either party hereto upon fifteen (15) days prior written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the terminating party or if the Project, in whole or substantial part, is stopped for a period of one hundred twenty (120) consecutive days under an order of any court or other public authority having jurisdiction or as a result of an act of government. Without in any way limiting the scope of this Article, the Owner may terminate this Agreement if the CM fails to begin or complete the Work within the time specified for completion in this Agreement, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work for three (3) consecutive days, or if the CM shall become insolvent, be declared bankrupt, commit any act of bankruptcy or insolvency, allow any final judgment to stand against the CM or its affiliated companies unsatisfied for a period of forty-eight (48) hours, make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner. Termination under this Article for failure substantially to perform in accordance with the terms of this Agreement shall be without prejudice to any other right or remedy that the terminating party has under the Agreement or at law. If the Owner terminates the Agreement pursuant to this Article and later it is determined that the CM had not substantially failed to perform in accordance with the terms hereof, then the termination will be considered a Termination for Convenience.
- 28.2. Notice and Time for Cure: Neither party to this Agreement may terminate this Agreement without first giving the other party fifteen (15) business days notice of the intent to terminate the Agreement, measured from actual receipt of the notice. If the grounds for termination stated in the written notice are removed or cured within fifteen (15) business days after receipt of notice, this Agreement may not be terminated for default.
- 28.3. Payment to the CM: In the event of termination pursuant to this Article, the CM shall be paid the Cost of the Work performed through the date of termination, plus allowable General Conditions costs incurred through the date of termination, plus its full Fixed Fee for any phase of services completed prior to termination, plus a reasonable pro-rata portion of its Fixed Fee for any phase of services not completed at the time of termination, based on the percentage of such incomplete services actually completed through the date of termination, less any amount by which the total cost paid by the Owner to complete the Work for which the CM is responsible, including General Conditions, exceeds the Guaranteed Maximum Price. In addition, the Owner may deduct from the final payment to the CM any liquidated damages or other damages for which the CM is liable under this Agreement. No payment shall be due under this Article until the Project is finally complete and all rights and claims by Contractors for work on the Project have been settled and paid.
- 28.4. Assignment of Contracts: In the event of termination pursuant to this Article, all construction and supply contracts between the CM and all Contractors and other suppliers for the Project shall be immediately assignable to the Owner, at the option of the Owner, on the same terms and conditions applicable to the CM under those contracts. The CM shall obtain the consent of each Contractor and supplier, in their respective contracts with the CM, to this assignment.

29. Additional Termination Provisions

- 29.1. In the event of any termination under this Agreement, the CM agrees to:

- 29.1.1. deliver to the Owner all Project as-built records, operation and maintenance manuals, warranties and other Project information generated to date;
- 29.1.2. deliver to the Owner copies of all shop drawings and other submittals received to date;
- 29.1.3. convey to the Owner or its designees title to all materials, supplies, partially or wholly fabricated parts and components, and any other property acquired by the CM for the Project; and
- 29.1.4. provide the Owner with copies of all pending claims under the CM builder's risk policy.

30. Occupancy and Use by the Owner; Substantial Completion

- 30.1. Occupancy Planning and Support: The CM, in consultation with the Owner, the Designer and appropriate regulatory agencies, shall prepare an occupancy plan for the Project. This plan shall be provided to the Owner at least ninety (90) days prior to Substantial Completion.
- 30.2. The Owner may desire to occupy or utilize all or a portion of the Project when the Work for that portion is substantially complete. If so, the Owner shall make a written request to the CM in writing, through the Designer if applicable, to permit the Owner to use a specified part of the Project that the Owner believes it may use without significant interference with construction of the other parts of the Project. If the CM agrees, the Designer will schedule a beneficial occupancy inspection after which the Designer may issue a partial certificate of substantial completion. The certificate shall include the following documentation:
 - 30.2.1. Date of substantial completion.
 - 30.2.2. A tentative list of items to be completed or corrected before final payment.
 - 30.2.3. Establishing responsibility between the CM and the Owner for maintenance, heat, utilities and insurance.
 - 30.2.4. Establishing the date for guarantees and warranties under the terms of the Agreement.
 - 30.2.5. Consent of surety.
 - 30.2.6. Endorsement from the CM's insurance company permitting occupancy shall not be a condition precedent to the Owner's occupancy of a part or parts of the Project, but may be requested by the Owner in its discretion.
- 30.3. The Owner shall have the right to exclude the CM from any part of the Project that the 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 Agreement. Contractors allowed to Work in substantially complete or occupied areas shall clean up after their operations daily or be subject to back charges for cleaning. Occupancy by the Owner under this Article will in no way relieve the CM from its contractual requirement to complete the Project within the specified time.
- 30.4. Operation and Maintenance Materials: The CM shall obtain from the Contractors and review, assemble, organize and index all operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents and the Master Schedule. It is expected that all operation and maintenance manuals will be compiled and delivered to the Owner before the Project is substantially complete, and generally when the Work is eighty percent (80%) complete.
- 30.5. Record Documents: The CM shall coordinate and expedite submittals of information from the Contractors for preparation of record Drawings and Specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.

- 30.6. The CM shall, prior to requesting a Certificate of Substantial Completion, prepare and submit to the Contractors lists identifying Work that does not conform to the Contract Documents. The CM shall not request a Certificate of Substantial Completion from the Designer until the CM believes that the Project is substantially complete and certifies to the Designer that all of the Work is substantially complete. The Designer shall then determine whether the Project is substantially complete. Should the Designer and the Owner determine that the Work or a designated portion thereof is not substantially complete, they shall provide the CM with written notice stating why the Work or designated portion is not substantially complete. The CM shall expeditiously complete the Work and shall re-request in writing that the Designer perform another substantial completion inspection. Costs, if any, associated with such re-inspection shall be assessed to the CM at the rates specified in the contract between the Owner and the Designer. Upon Substantial Completion, the Designer shall prepare and submit to the CM a deficiency list identifying all portions of the Work which are known by the Designer at that time to be incomplete or defective. The deficiency list shall be sufficiently detailed to describe deficiencies by floor, by occupancy departments, by building system, or by elevation for all rough-ins and finishes. Within sixty (60) days of receipt of this deficiency list, the CM shall complete and correct all items on that list along with all other Work required to achieve Final Completion of the Work.
- 30.7. At any time prior to completion of the one-year period of warranty, the Designer may submit to the CM a supplemental deficiency list, in which case the CM shall complete or correct any and all new items identified on the supplemental deficiency list.
- 30.8. Occupancy Permit: The CM shall assist the Owner and the Designer in obtaining an occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities. Receiving an occupancy permit is a condition precedent to substantial completion.

31. Final Inspection and Acceptance

- 31.1. In consultation with the Designer, the CM shall determine when the Project and the Contractor's Work are finally completed and, following completion of corrections, shall issue a Certificate of Final Completion to the Owner. Following the receipt of payment from the Owner, the CM shall make all remaining payments due to Contractors.

32. Quality Assurance, Warranties and Guarantees

- 32.1. The CM unconditionally warrants and guarantees all materials and workmanship against all defects arising from faulty materials, faulty workmanship or the negligence of the CM or the Contractors for a period of twelve (12) months following the date of substantial completion of the Work and shall replace such defective materials or workmanship without cost to the Owner.
- 32.2. In addition to the foregoing general warranty, the Contract Documents may require extended warranties for specified building components, including without limitation mechanical and electrical equipment, elevators and escalators, security equipment, roof, curtain walls, doors and waterproofing. Extended warranties shall be specified in the Contract Documents. All such extended warranties shall either be provided by the CM or by a Contractor or manufacturer as provided in the Contract Documents. Such warranties shall provide, at a minimum, for the repair or replacement of defective or non-conforming components within the warranty period. In the event any Work performed by a Contractor or manufacturer is defective or does not conform to the requirements of the Contract Documents ("Contractor's Defective Work"), and the Contractor's Defective Work is covered by a warranty given by

the Contractor, then the Owner agrees, provided that the CM warranty period under this Agreement has expired, that (i) the CM shall not be liable for such Contractor's Defective Work, and (ii) that the Owner will enforce the terms of the contract warranty directly against the Contractor responsible for the warranty. The CM agrees to execute such documents as may be necessary to ensure that any warranty given by any Contractor will inure to the benefit of the Owner.

- 32.3. The CM shall establish and implement a program to monitor the quality of construction. The purpose of the program shall be to guard the Owner against defects and deficiency in the Work of the Contractors. The CM shall transmit to the Designer and the Contractor a notice of nonconforming work and may require that the Contractors correct Work at no expense to the Owner when it is the opinion of the CM that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or waive any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.
- 32.4. Testing by the CM: The CM may recommend to the Owner tests and inspections beyond those required by this Agreement that the CM believes should be conducted to monitor the quality of construction and compliance with the Contract Documents. If the Owner declines to conduct the test or defray the costs of the test, the CM may nonetheless conduct the test, in which case the cost of such tests shall be borne by the CM. Notice of all such tests and inspections shall be provided to the Owner and the Designer, and copies of the results and reports of all such tests and inspections shall be provided to the Owner and the Designer.

33. Testing and Inspections

- 33.1. The Owner shall employ and pay for the services of independent testing firms to perform all inspections, tests, or approvals required by the Contract Documents except as otherwise specifically provided in the Contract Documents.
- 33.2. The Owner, other representatives and personnel of the Owner, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the Project at all reasonable times for their observation, inspecting, and testing. The CM shall provide all such persons proper and safe conditions for such access and advise them of the CM's Project safety procedures and programs so that they may comply therewith as applicable.
- 33.3. The Owner, other representatives and personnel of the Owner and independent testing laboratories may at all reasonable times visit, enter, and make inspections at any building, factory, workshop, work, or site where materials are being prepared, made, or treated, or where work is being done in connection with the Project.
- 33.4. Technical inspection and testing shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued.
- 33.5. The CM shall give timely notice of readiness for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 33.6. If laws or regulations of any public body having jurisdiction require any specific or regular inspection, test or approval by an employee or other representative of such public body, the CM shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, and furnish the Owner the required certificates of inspection or approval.

- 33.7. If any inspection or test must be repeated through no fault of the Owner, all fees and charges incurred by the Owner for repeating such tests or inspections will be charged against the CM, and deducted from any monies due or to become due the CM or, at the Owner's option, the CM shall promptly reimburse the Owner for such fees and charges (or such remaining fees and charges after such deduction).
- 33.8. No review or inspection by the Owner shall relieve the CM of its obligations under the Contract Documents. The Owner does not have a duty to the CM to perform reviews or inspections, and the Owner shall not be deemed responsible for the CM'S failure to perform in accordance with the Contract Documents based on any failure of the Owner to conduct tests or inspections. Rights hereunder of the Owner, other representatives and personnel of the Owner and independent testing laboratories to make inspections, conduct tests or reviews, take samples, give instructions, raise objections, or the like shall not give rise to any duty to do so for the benefit of the CM or any other person or entity.

34. Correction and Completion of Work by the Owner

- 34.1. **Owner May Stop the Work:** If the CM fails to perform the Work or its services in conformity to the Contract Documents, the Owner may order the CM to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the CM, any Contractor, any other individual or entity, or any surety for, or employee or agent of any of them.
- 34.2. **The Owner May Perform Services:** If the CM fails within a reasonable time after written notice from the Owner to perform the Work in accordance with the Contract Documents, or if the CM fails to comply with any other provision of the Contract Documents, the Owner may, after seven (7) days written notice to the CM, correct and remedy any such deficiency. In connection with such corrective and remedial action, the Owner may exclude the CM from all or part of the Project, take possession of all or part of the Project and suspend the CM's services related thereto, take possession of the CM's offices, facilities and equipment at the Project, and incorporate into the Project all materials and equipment stored at the Project or for which the Owner has paid the CM but which are stored elsewhere. The CM shall allow the Owner, the Owner's representatives, agents, and employees, other Contractors, and other representatives access to the Project to enable the Owner to exercise the rights and remedies under this Article.
- 34.3. All claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Owner in exercising the rights and remedies under this Article will be charged against the CM, and deducted from any monies due or to become due the CM or otherwise available to pay such claims, costs, losses, or damages or, at the Owner's option, the CM shall promptly reimburse the Owner for such claims, costs, losses, or damages (or such remaining claims, costs, losses, or damages after such deduction).
- 34.4. The Owner shall have no duty to undertake any such action, and no such action taken by the Owner shall relieve the CM from any obligations under the Contract Documents or otherwise. Failure or omission on the part of the Owner or its agents to reject nonconforming Work shall not release the CM from the obligations of correcting same, as directed by the Owner at the CM's expense and at no additional cost to the Owner, at any time, notwithstanding that such services may have been estimated for payment or that payments may have been made on the same.

35. Dispute Resolution

- 35.1. Governing Law: The laws of the State of North Carolina shall apply to the formation, interpretation and enforcement of this Agreement.
- 35.2. Mediation: Appendix A to this Agreement shall be a part of the Contract Documents. As a condition precedent to initiating a civil action under this Agreement, any party to this Agreement shall initiate the mediation process as provided in Appendix A to this Agreement. Any person or firm that expressly or impliedly agrees to perform labor or services or to provide material, supplies, equipment, work, performance or payment bonds, insurance or indemnification for the construction of the Project or the Work shall be deemed a party to this Agreement solely for the purpose of this Article 34. The CM, by means of its Contracts, shall specifically require its Contractors to be bound by this Article.
- 35.3. Jurisdiction and Venue: Any and all suits or actions to enforce, interpret, or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Cumberland County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

36. Miscellaneous Provisions

- 36.1. Confidentiality: The CM will keep confidential and not disclose to any third party all information designated and marked by the Owner as “Confidential” unless required to disclose the information by law. Furthermore, the CM shall not disclose publicly information concerning the Project, except for communications incident to completion of the Project between the CM, Designer, and Contractors, and their independent professional engineers, architects and other consultants and subcontractors, and except for information publicity approved by the Owner and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.
- 36.2. Signs: The CM shall be permitted to erect one sign to identify the CM and other Project participants. The identification sign shall be of sound construction, shall be neatly lettered, and shall be subject to approval by the Owner. The CM may only erect other identification signs if approved by the Owner. In addition to the identification sign, directional signs may be erected on the property to facilitate deliveries and the movement of personnel and materials about the site. Any directional signs shall be subject to approval of the Owner with respect to size, style and location of such directional signs, which approval shall not be unreasonably withheld. Such signs may bear the name of the CM and a directional symbol. All signs must comply with City of Fayetteville and Cumberland County sign, appearance and traffic ordinances. No other signs will be permitted except by permission of the Owner.
- 36.3. Limitation and Assignment: The Owner and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement. Neither the Owner nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the Owner. However, nothing contained in this Section will prevent the CM from employing Contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder in accordance with this Agreement.
- 36.4. Joint Ventures: If the CM is completing this Project on a joint venture basis, whether as a partnership, limited liability company, or any other form of business association or entity, the CM joint venture and each member of the joint venture retains all liabilities assumed by this Agreement, jointly and severally. If the CM is a single purpose joint venture partnership

or a single purpose limited liability company, each member of the joint venture shall execute and agree to be bound by this Agreement jointly and severally with the joint venture entity. If requested by the Owner, each member of a single purpose joint venture partnership or single purpose limited liability company agrees to sign such reasonable guarantees of performance of this Agreement as Owner requires.

- 36.5. Minority Business Enterprise Program: The CM shall at all times comply with the latest edition of the Cumberland County Minority Business Enterprise Policy. All documentation substantiating compliance with the requirements of this program shall be delivered to the Owner as stipulated in the Contract Documents. A copy of the Cumberland County Minority Business Enterprise Policy is attached to this Agreement as Appendix C, and shall be included in the bid documents submitted to potential Contractors for bids.
- 36.6. Extent of Agreement: This Agreement represents the entire and integrated agreement between the Owner and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written directives, change orders and other instruments signed by the Owner and the CM as expressly set forth in this Agreement. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Designer are not intended third-party beneficiaries of this Agreement.
- 36.7. Severability: If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.
- 36.8. Meaning of Terms: References made in the singular shall include the plural and the masculine shall include the feminine or neuter. To the greatest extent possible, the meaning of terms used herein shall be consistent with the definitions expressed in the Contract Documents, the contract between the Owner and the Designer, and the Contractor contracts.
- 36.9. Authority: The persons who execute this Agreement on behalf of the CM and its partners or members represent that they have full authority to bind the CM and their respective companies, and they agree to provide such proof of authority as the Owner may reasonably require.
- 36.10. E-Verify Compliance: CM understands that E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with §64-25(5) of the North Carolina General Statutes.

Provided that CM is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State, then CM understands that it shall verify the work authorization of its employees through E-Verify in accordance with §64-26(a) of the North Carolina General Statutes, and that it shall provide a written certification to that effect promptly upon request by the Owner. CM further agrees that it shall contractually obligate its subcontractors to comply with E-Verify pursuant to federal law, and CM will endeavor to ensure compliance with E-Verify by any subcontractors subsequently hired by CM, which shall be satisfied by such subcontractors furnishing CM with a written certification in a form substantially similar to the certification provided to Owner by CM for the same purpose.

- 36.11. Notices: Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual

or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, addressed as follows:

To the Owner:

By Mail:

Cumberland County, c/o Engineering &
Infrastructure Department
Attn: Jeffrey Brown, PE
130 Gillespie Street; Suite 214
Fayetteville, NC 29301

By Delivery:

Cumberland County, c/o Engineering &
Infrastructure Department
Attn: Jeffrey Brown, PE
130 Gillespie Street; Suite 214
Fayetteville, NC 29301

To the CM:

By Mail:

Balfour Beatty Construction
Attn: Tony Stoneking
406 S. McDowell St; Suite #200
Raleigh, NC 27601

By Delivery:

Balfour Beatty Construction
Attn: Tony Stoneking
406 S. McDowell St; Suite #200
Raleigh, NC 27601

This Agreement is executed the day and year first written above.

CM: Balfour Beatty Construction, LLC.

By: _____

On behalf of Balfour Beatty Construction

Title: _____

Attest:

By: _____

Title: _____

Owner: Cumberland County

By: _____

Title: _____

Attest:

By: _____

Title: _____

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

Cumberland County Finance Officer

This instrument is approved as to Form.

Cumberland County Attorney

APPENDIX A
DISPUTE RESOLUTION PROCEDURES

Table of Rules

Rule

- 1. Initiating Mediated Settlement Conferences**
 - A. Purpose of Mandatory Settlement Conferences
 - B. Initiating the Dispute Resolution Process
 - C. Condition Precedent to Litigation
- 2. Selection of Mediator**
 - A. Mediator Listing
 - B. Selection of Mediator
 - C. Disqualification of Mediator
- 3. The Mediated Settlement Conference**
 - A. Where Conference is to be Held
 - B. When Conference is to be Held
 - C. Request to Accelerate or Extend Deadline for Completion
 - D. Recesses
 - E. Project Delay
- 4. Duties of Parties and Other Participants in Formal Dispute Resolution Process**
 - A. Attendance
 - B. Finalizing Agreement
 - C. Payment of Mediation Fee
 - D. Failure to Compensate Mediator
- 5. Authority and Duties of Mediators**
 - A. Authority of Mediator
 - B. Duties of Mediator
- 6. Compensation of the Mediator**
- 7. Rule Making**
- 8. Definitions**
- 9. Time Limits**

RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

A. Purpose of Mandatory Settlement Conferences. Pursuant to G.S. §143-128(f1) and 143-135.26(11), these Rules are promulgated to implement a mediated settlement program designed to focus the parties' attention on settlement rather than on claim preparation and to provide an opportunity for orderly settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

B. Initiating the Dispute Resolution Process

1) Any party to a County public construction contract (referred to herein generally as the "Contract") governed by Article 8. Ch. 143 of the General Statutes and identified in G.S. § 143-128(f1) and who is a party to a dispute arising out of the Contract and the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the County for mediation of the dispute.

2) Prior to submission of a written request for mediation to the County, the parties should give notice of any and all claims in accordance with their respective contracts, obtain decisions on the claims as required or allowed by their respective contracts, and attempt to resolve the dispute according to the terms and conditions in their respective contracts. The Mediator may adjourn any mediated settlement conference if the Mediator believes, in his or her sole discretion, that the parties have not satisfied all of the terms and conditions of their respective contracts and that doing so will enhance the prospects for a negotiated settlement.

C. Condition Precedent to Litigation. Before any party to a Contract may commence a civil action against the County seeking remedies for breach or non-performance of the Contract by the County, said party must first initiate the dispute resolution process under these rules and attend the mediated settlement conference.

RULE 2. SELECTION OF MEDIATOR

A. Mediator Listing. A list of Mediators acceptable to the County is maintained by the County Attorney and that list is incorporated by reference into these Rules. The party requesting mediation shall select a Mediator from the designated list. If the County fails to provide a list of acceptable mediators, the list of Mediators shall be deemed to be the list of mediators certified by the North Carolina Dispute Resolution Commission to conduct mediated settlement conferences in the North Carolina Superior Courts.

- B. Selection of Mediator.** The party requesting mediation shall select a Mediator and shall file, with the County, a Notice of Selection of Mediator within 21 days of the request for mediation. Such notice shall state the name, address, and phone number of the Mediator selected. If the Mediator selected is not available or declines to participate for any reason, the requesting party shall select another person from the County's list of Mediators. If the party requesting mediation does not select and designate a mediator within 21 days of the request for mediation, the County shall have the right in its absolute discretion to appoint a mediator from its list of Mediators. Nothing in this Section shall preclude the parties from mutually agreeing to an acceptable mediator prior to the 21 day notice of selection period.
- C. Disqualification of Mediator.** Any party may request replacement of the Mediator for good cause. Nothing in this provision shall preclude Mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

- A. Where Conference is to be Held.** Unless all parties and the Mediator otherwise agree, the mediated settlement conference shall be held in Harnett County. The Mediator shall be responsible for reserving a place, making arrangements for the conference, and giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons or entities required to attend.
- B. When Conference is to be Held.** The mediation shall be completed within 90 days after selection of the Mediator unless all parties to the mediation agree to a different schedule.
- C. Request to Accelerate or Extend Deadline for Completion.** Any party or the Mediator may request the County to accelerate or extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the Mediator. Objections to the request must be promptly communicated to the County and to the Mediator.

The County, with the concurrence of the designated Mediator, may grant the request by adjusting the time for completion of the conference.

- D. Recesses.** The Mediator may recess the mediation conference at any time and may set times for reconvening. If the Mediator determines the time and place

where the conference is to reconvene before the conference is recessed, no further notice is required to persons present at the conference.

- E. Project Delay.** The mediated settlement conference that results from a construction contract dispute shall not be cause for the delay of the construction project.

RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

A. Attendance.

1. All parties to the dispute must designate an official representative to attend the mediation.
2. “Attendance” means physical attendance, not by telephone or other electronic means. Any attendee representing a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
3. Attorneys representing parties may attend the mediation, but are not required to do so.
4. Sureties and insurance company representatives are required to physically attend the mediation unless the Mediator and all of the other parties to the mediation excuse their attendance or consent to their attendance by telephone or other electronic means.
5. The parties who attend a duly scheduled mediation conference shall have the right to recover their share of the Mediator’s compensation from any party or parties who fail to attend the conference without good cause.

- B. Finalizing Agreement.** If an agreement is reached in the conference, the terms of the agreement shall be confirmed in writing and signed by all parties.

- C. Payment of Mediation Fee:** Mediation Fees charged by the Mediator shall be paid in accordance with G.S. § 143-128(f1).

- D. Failure to Compensate Mediator.** Any party’s failure to compensate the Mediators in accordance with G.S. § 143-128(f1) shall subject that party to a withholding of said amount of money from the party’s monthly payment by the County.

Should the County fail to compensate the Mediator, it shall hereby be subject to a civil cause of action from the Mediator for the County's portion of the Mediator's total fee as required by G.S. § 143-128(f1).

RULE 5. AUTHORITY AND DUTIES OF MEDIATORS

A. Authority of Mediator.

1. Control of Conference. The Mediator shall at all times be in control of the conference and the procedures to be followed.
2. Private Consultation. The Mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
3. Scheduling the Conference. The Mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and Mediator. In the absence of agreement, the Mediator shall select the date for the conference.
4. Determining good cause for a party's failure to appear at a scheduled mediation conference.

B. Duties of Mediator.

1. The Mediator shall define and describe the following at the beginning of the conference:
 - a. The process of mediation.
 - b. The difference between mediation and other forms of conflict resolution.
 - c. The costs of the mediated settlement conference.
 - d. That the mediated settlement conference is not a trial, the Mediator is not a judge, and the parties retain their legal rights if they do not reach settlement; however, the Mediator will advise all parties that failure to appear at mediation without good cause may result in imposition of sanctions and may be asserted as a bar to lawsuits by claimants who have failed to exhaust this administrative remedy.

- e. The circumstances under which the Mediator may meet and communicate privately with any of the parties or with any other person.
 - f. Whether and under what conditions communications with the Mediator will be held in confidence during the conference.
 - g. The inadmissibility of conduct and statements as provided by G.S. §7A-38.1(1).
 - h. The duties and responsibilities of the Mediator and the participants.
 - i. That any agreement reached will be reached by mutual consent.
- 2. Disclosure: The Mediator has a duty to be impartial and to advise all participants of any possible bias, prejudice or partiality.
 - 3. Declaring Impasse: The Mediator may determine at any time during the mediation conference that an impasse exists and that the conference should end.
 - 4. Reporting Results of Conference. The Mediator shall submit a written report to the County and the other parties within 10 days of the conference stating whether or not the parties reached an agreement. The Mediator's report shall indicate the absence of any party from the mediated settlement conference without permission or good cause.
 - 5. Scheduling and Holding the Conference. It is the duty of the Mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. The Mediator shall strictly observe deadlines for completion of the conference unless said time limit is changed by agreement of the parties.

RULE 6. COMPENSATION OF THE MEDIATOR

- A. The parties shall compensate the Mediator for mediation services at the rate proposed by the Mediator and agreed to by the parties at the time the Mediator is selected.

RULE 7. RULE MAKING

- A. These Rules may be amended by the County at any time. Amendments will not affect mediations where claims and/or requests for mediation have been filed at the time the amendment takes effect

RULE 8. DEFINITIONS

- A.** “County” shall mean the County of Harnett, North Carolina
- B.** “Project Designer” is that person or firm stipulated as project designer in the Contract Documents for the project.
- C.** “Claim” is a demand or assertion by a party seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the parties to a Contract involved in the County’s building construction renovation and repair projects arising out of or relating to the Contract or the construction process. Claims must be initiated by a written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- D.** “Good Cause” generally includes any circumstance beyond the control of a party, which prevents that party from meeting obligations. When good cause is asserted as an excuse for a party’s failure to appear at a mediation conference or to otherwise comply with the requirements of these Rules, the Mediator, in his or her sole discretion, will determine whether good cause exists to excuse the party’s failure to appear or otherwise comply with these rules.

RULE 9. TIME LIMITS

- A.** Any time limit provided for by these Rules may be waived or extended at the sole discretion of the County, if no Mediator has been selected, and at the discretion of the County with concurrence of the Mediator if a Mediator has been selected.

APPENDIX B
LIST OF COST ELEMENTS

I. CONSTRUCTION MANAGEMENT SERVICES				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Project Superintendent(s)				
Assistant Superintendent(s)				
Project Manager				
Assistant Project Manager				
Field Engineer				
Site Safety Director				
Safety Manager				
On-Site Clerical				
On-Site Receptionist				
Project Engineer				
Superintendent's Transportation				
Assistant Supt's Transportation				
Project Engineer's Transportation				
Project Manager's Transportation				
Assistant Project Manager Transportation				
Corporate Executive				
Principal in Charge				
Operations Manager				
Legal Services				
Accounting (Check Distribution & Insurance Manager)				
Master Project Scheduling				
Management of Schedule				
Life-Cycle Analysis Support				
Energy Management				
Production Engineering				
Purchasing				
Value Engineering				
Systems Development				
Estimating				
Cost Engineers / Change Management				
Project Coordinator				
Project Expeditor				
Drafting Detailer				
Drawing Checker				
Safety Officer (Corporate)				
E.E.O. Officer				
Time Keeper/Checker				
Safety Engineer (On-Site)				
Off-Site Staff Travel Costs (Outside Triangle Region)				
Project Staff Transportation				
Project Staff Moving Expense				
Project Staff Subsistence Costs				
Project Budget Estimating				
Project Phasing/Logistics Planning				

II. SAFETY, SECURITY AND SERVICES				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Safety Equipment PPE for CMAR				
First Aid Supplies				
Handrails and Toe Boards				
Opening Protection				
Fire Extinguishers				
Security Guard/Watchman Svcs., if required				
Weekly Cleanup				
Final Cleanup				
Temporary Fencing				
Covered Walkways				
Barricades				
Safety Nets				
Dumpster Rental/Removal				
Public Traffic Control				
Construction Roadway Maintenance				
Dust Controls				
2-Way Radios				
Trash Chute & Hoppers				
III. FACILITIES, EQUIPMENT AND SERVICES				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Office Trailer Rental for CM				
Tool/Utility Trailer Rental For Trades				
Trailer Amenities				
Temporary Lighting/Wiring				
Power Expenses - Trailer and Building Construction				
Permanent Power Expense - Service to Site				
Temporary Water Services - Usage Costs				
Temporary Water Services - Connections and meters				
Temporary Heat Expenses				
Temporary Cooling Expenses				
Temporary Toilets/Sewer Services (Portajons)				
Temporary Stairs				
Temporary Enclosures/Partitions				
Project Signs/Bulletin Boards				
Telephone Expenses/Communications for Computer Systems (on-site)				
Temporary Roads Construction				
Utility Trucks				
Air Compressors				
Dewatering Equipment				
Generators				
Miscellaneous Equipment				
Fuel/Repairs/Maintenance				

IV. REPRODUCTION AND PRINTING				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Design Phase Documents				
Bid Package Documents				
Post Bid Construction Documents				
Accounting Forms				
Field Reporting Forms				
Contract Agreements				
Schedule Report Forms				
Estimating Forms				
Cost Reporting forms				
Presentations Charts and Graphics				
Value Analysis Studies				
Data Processing				
Reference Materials				
Duplication Expense (Misc.)				
Shop Drawing Printing				
Special Forms				
Postage and Delivery Expense - Construction Phase				
Postage and Delivery Expense - Bid Documents				
Legal Advertisements - Bid Notices				

V. QUALITY CONTROL				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Special Inspection Consultants				
Special Testing Consultants				
Concrete Testing				
Masonry Testing				
Compaction Testing				
Welding Inspections				
Soils Investigations				
Special Testing Services				
Third Party Commissioning				
Warranty Inspection Coordination				
Air & Water Balancing				
Operator On-Site Training				
Operation & Maintenance Manuals - Production				
Operation & Maintenance Manuals - Assembly				

VI. PERMITS AND SPECIAL FEES				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Storage Yard Rental				
Staking & Layout Fees/Costs				
Building Permits				
Plan Check Fees				
Contractors' Licenses				
Royalties				
Construction Equipment Licenses				
Construction Equipment Permits				
VII. INSURANCE AND BONDS				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Builder's Risk Insurance				
General Liability Insurance				
Completed Operations Liability insurance				
Automobile Liability Insurance				
Workman's Compensation Insurance				
Excess Liability Insurance				
CMAR Payment / Performance Bond				
Subcontractor Payment / Performance Bond / Subguard				
Subcontractor Insurance				

VIII. OTHER COSTS				
DESCRIPTION	BASIC and/or PRECON FEE	LUMP SUM / GENERAL CONDITIONS	COST OF THE WORK	OWNER
Project Taxes				
Construction Equipment				
Construction Labor Costs				
Construction Materials				
Cost of Design & Engineering (As stipulated in Contract Documents)				
A/E Cost of Bid Packages				
Preliminary Soils Inspections				
Field Office Supplies/Materials				
Project Photographs				
Owner Change Contingency				
Building Operation after Move-in				
Building Maintenance After Move-in				
Moving Coordination				
Moving Costs				
Corrective Work				
Asbestos Abatement				
Lead Abatement				
C.M. General Overhead Cost				
C.M. Profit				
Costs Over GMP				
Computer, Cell phone, ipad Hardware (on-site)				
Computer Software, support, licenses (on-site)				
MWSBE Coordinator				
Meeting Accommodations				
Notary Fees				
Jobsite Office Supplies & Equipment				
Monthly Report Manuals (on-site)				
Temporary Elevator Use				

APPENDIX C
BALFOUR BEATTY MINORITY PARTICIPATION PLAN



Cumberland County 500 Executive Place Renovation
MWBE Participation Plan

Our team is committed to maximizing utilization of diverse businesses on all of our projects. Maximum opportunity on all of our projects and meeting established goals is a non-negotiable standard of performance along with cost, schedule, quality, and safety. By actively supporting, mentoring diverse groups, and creating broader networking opportunities, we continue to see the fruits of our efforts demonstrated by the high participation percentages achieved on our projects.

HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISE STRATEGIC PLAN OBJECTIVES:

The plan objectives are:

- Increase the overall participation of MWBE on this project and exceed 10% MWBE participation.
- Make a strategic effort to support the recruitment and utilization of firms owned by ethnic minorities due to the residential aspect of this construction project.
- Provide the list of prequalified bidders to Cumberland County Project Manager and MWBE Coordinator for their review prior to publishing in newspaper or websites
- Balfour Beatty will have one (1) MWBE Subcontractor Opportunity Session. This session will be coordinated with the Cumberland County for location, date/time at least three (3) weeks before the proposed date.
- We will send an electronic copy of the MWBE report which we created that is now used by all Universities.
- Provide Bidders list (with associated 2nd and 3rd tier Subcontractors) to all firms who have prequalified to bid this project required by Cumberland County.
- Post in the advertisement for bids with a complete list of prequalified 1st tier subcontractors (Company Name, Contact Name, Telephone, and Email Address) as required by Cumberland County.
- Review Good Faith effort documentation of apparent low responsible bidders at post-bid interviews and provide Cumberland County HUB Coordinator with copies of all 1st tier subcontractors MWBE documentation (Identification form, Affidavit A or B and Affidavit C or D).

To accomplish this, the following six (6) step approach will be implemented:

1. Extensive outreach and contracting opportunity conferences: Our outreach effort is aggressive, comprehensive, targeted and continuing. We will identify all applicable MWBE Contractors, effectively communicate project opportunities, encourage MWBE Contractors to submit information regarding their services, and we will support their participation throughout the

project. We also understand that there are MWBE Contractors which may not have been successful in assuring a subcontract directly with Balfour Beatty Construction or subcontractors who feel they can better serve as tiered subcontractors due to their operating capacities should have opportunities to participate on the project.

2. Subcontractor Opportunity Sessions: Balfour Beatty Construction will conduct one opportunity session. The Contracting Opportunity Conference will be held to provide detailed information regarding the project and give interested HUB Contractors an opportunity to meet one-on-one with the Balfour Beatty Construction project team.
3. Technical assistance: Bid Bonds, and Performance and Payment Bonds will be waived for Trade Packages under \$500,000, with the exception of the extended warranty and/or critical path schedule Trade Packages. If submitting on multiple Trade Packages and the aggregate of the packages meets or exceeds \$500,000, a Bid, Payment and Performance Bond will be required for each Trade Package.
4. Contract compliance: We are committed to comply with and exceed the Cumberland County's goals and expectations. Our project manager, along with our Coordinator, will review the progress of the MWBE Contractors effort to ensure compliance and review the monthly Appendix E Forms from our 1st tier subcontractors to ensure contract compliance is maintained.
5. Certification assistance: We have personnel trained to assist subcontractors with applying for Statewide Uniform Certification with the State of North Carolina.
6. Preparation of reports: We will prepare monthly reports on contracts awarded to MWBE Contractors and payments to MWBE Contractors. We will also send an electronic copy of the MWBE report monthly with the pay applications. As well as Appendix E from each first tier subcontractor to be submitted with every pay application even if the quantity to report is Zero forms shall still be submitted.

Identification and Recruitment

To promote awareness among the MWBE contractors contracting community, we feel that the qualified MWBE contractors should be identified very early in the development, design, and procurement process. The 1st tier subcontractors who may be MWBE firms will still need to meet 2nd and 3rd tier subcontractor goals, they cannot just rely on their MWBE status.

- Solicit interest from trade contractors, subcontractors, vendors, and suppliers by placing advertisements in the area newspapers and media outlets.

Recruitment

During the prequalification process, significant subcontractor/vendor data is obtained from each respective entity. The second phase evaluates this information to verify subcontractor/vendor capability to meet performance, schedule and financial requirements. During this process it will also let our team understand which submitting firms might be better suited to be 2nd and 3rd tier subcontractors, which we can take this list and publish to bidders to help them in selecting Hub firms.

APPENDIX D

DIVISIONS OF THE WORK FOR GUARANTEED MAXIMUM PRICE

- A. GMP Breakdown Summary Sheet
 - 1. Trade Package Breakdown
 - 2. Lump Sum General Conditions
 - 3. Fee
 - 4. Bonds and Insurances
- B. List of GMP Alternates (by Trade Package)
- C. List of GMP Approved Value Engineering Items, if any (by Trade Package)
- D. List of GMP Allowances
- E. List of GMP Unit Prices (by Trade Package)
- F. GMP Document Log
- G. GMP Master Schedule
- H. GMP MWBE Participation Reporting
- I. Certified Bid Tabulation

APPENDIX E

CM RFQ dated June 25, 2019

APPENDIX F

CM RFQ RESPONSE dated July 22, 2019

APPENDIX G

CM PRECONSTRUCTION PROPOSAL

Exhibit G

Balfour Beatty Construction Preconstruction Proposal Breakdown

Project	
Project Name	Cumberland County 500 Executive Place Renov.
Owner PM	Jeffrey Brown
Designer	AECOM
Location	Fayetteville NC
Estimated Project Value	\$8,300,000

Precon Duration		
Start Date		10/01/2019
Completion Date		04/01/2020
Months		6

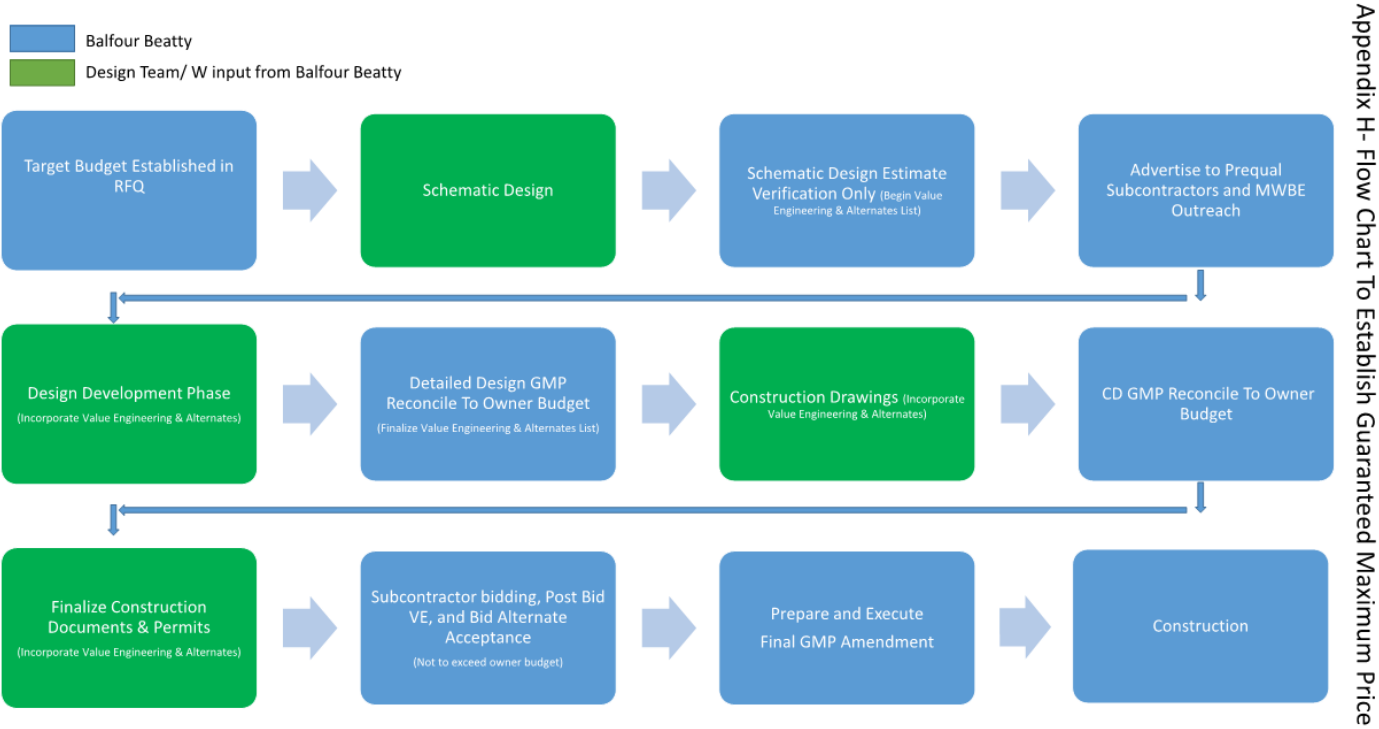
Note: Contract references are indicated in parenthesis ()

LUMP PRECONSTRUCTION AGREEMENT BREAKDOWN PER SECTION V OF RFQ

Administrative				SO Estimate (A.1) Review of Current Conceptual Budget Only			
Predesign package verification - N/A	0 ls	\$2,500	\$0	Preconstruction Manager	18 hrs	\$123	\$2,214
Design Meeting Attendance (A.5)	6 mos	\$500	\$3,050	Sr. Preconstruction Estimator	0 hrs	\$109	\$0
MWBE Outreach Event (B.10)	1 ea	\$250	\$250	Preconstruction Estimator	0 hrs	\$95	\$0
Plans/Specs Costs, Deliverables, and Advertisement Fees	1 lump sum	\$5,000	\$5,000	MEP Preconstruction Estimator	8 hrs	\$112	\$896
		\$8,300		Subtotal	26		\$3,110
Schedule Development (A.2, A.3, A.6, A.7, and A.8)				DD Estimate (A.2) / Value Analysis (A.4, A.10, and A.11)			
SD Schedule - N/A	0 ea	\$2,500	\$0	Preconstruction Manager	24 hrs	\$123	\$2,952
DD Schedule (A.2) and Adherence Procedure (A.8)	1 ea	\$2,500	\$2,500	Sr. Preconstruction Estimator	16 hrs	\$109	\$1,744
CD Schedule (A.3, A.6, and A.7) and Bid Schedule (B.4 and B.9)	1 ea	\$5,000	\$5,000	Preconstruction Estimator	40 hrs	\$95	\$3,840
	0 ea	\$0	\$0	MEP Preconstruction Estimator	24 hrs	\$112	\$2,688
		\$7,500		Subtotal	104		\$10,824
Phasing + Logistics Plans				CD Estimate (A.3) / Value Analysis (A.10 and A.11)			
Project Manager	0.5 wks	\$4,776	\$2,388	Preconstruction Manager	24 hrs	\$123	\$2,952
Superintendent	0 wks	\$4,845	\$0	Sr. Preconstruction Estimator	16 hrs	\$109	\$1,744
BIM	0 wks	\$3,975	\$0	Preconstruction Estimator	40 hrs	\$95	\$3,840
		\$2,388		MEP Preconstruction Estimator	24 hrs	\$112	\$2,688
Constructability (A.9)				Subtotal	104		\$10,824
Project Manager (SD) - N/A	0 wks	\$4,776	\$0	Prepare GMP (B.11 and B.13) and Reconcile to Budget (B.12)			
Project Manager (DD)	1 wks	\$4,776	\$4,776	Project Manager (prepare GMP Deliverable, Bonds, and Insurances)	24 hrs	\$117	\$2,808
Superintendent (DD)	0 wks	\$4,845	\$0	Preconstruction Manager	24 hrs	\$123	\$2,952
Project Manager (CD)	0.3 wks	\$4,776	\$1,194		0 hrs	\$109	\$0
Superintendent (CD)	0.3 wks	\$4,845	\$1,211		0 hrs	\$95	\$0
					0 hrs	\$112	\$0
Project Engineer - Review 100% CD comments incorporation into final bid documents	0.5 wks	\$2,672	\$1,336	Subtotal	24		\$5,760
BIM	0 wks	\$3,975	\$0				
		\$8,517					
Bidder Call Lists / MWBE Prequalification (B.2)							
Project Engineer - Bidder / MWBE Prequalification	2 wks	\$2,672	\$5,344				
MWBE Plan	0 ls	\$500	\$0				
	0 ea	\$0	\$0				
			\$5,344				
Bidding - Bid Manual Prep., Prebid, Addenda, Plan Distribution, Bid Openings, Post Bid Interviews (B.1, B.3, B.5, B.6, B.7 and B.8)							
Project Manager	3 wks	\$4,776	\$14,328				
Project Engineer	2 wks	\$2,672	\$5,344				
	0 wks	\$4,423	\$0				
			\$19,672				
Subtotal Preconstruction Services Fee			\$82,239				
General Liability Insurance (1.04%)			\$865				
Total Preconstruction Services Fee			\$83,095				
% of Preconstruction Fee to Estimated Project Budget			1.0%				

APPENDIX H

GUARANTEED MAXIMUM PRICE FLOW DIAGRAM



APPENDIX I

AGREEMENT FOR TRANSFER OF DOCUMENTS IN MACHINE READABLE FORM WHEN THE OWNER OWNS THE INSTRUMENTS OF SERVICE

1. Limitation on Use. Documents in machine-readable form (the “E-Documents”) are instruments of service prepared by THE ARCHITECT in furtherance of its work on the project identified above (the “Project”). Recipient acknowledges that, as an instrument of service for the specific Project, the E-Documents are not suitable for use on any other project, and that use of the E-Documents on any other project is prohibited. *Recipient agrees to indemnify and hold harmless THE ARCHITECT from and against all claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting from the use of the E-Documents, or any hard copy generated from the E-Documents, on any other project by Recipient, Recipient’s successors and assigns, or any third party to whom Recipient intentionally or unintentionally transfers the E-Documents.*

2. Reliance on E-Documents. The E-Documents are not signed, sealed, and certified documents. The E-Documents are being transferred to Recipient at Recipient’s request and solely for the convenience and benefit of Recipient. Recipient acknowledges that data, plans, specifications, reports, documents or other information transmitted in machine readable form are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, software or hardware incompatibility, and human error. Due to this inability of THE ARCHITECT to control the accuracy and integrity of the E-Documents after transfer to Recipient, THE ARCHITECT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AS TO THE ACCURACY, RELIABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE E-DOCUMENTS, AND ANY RELIANCE ON OR USE OF THE E-DOCUMENTS BY RECIPIENT SHALL BE AT RECIPIENT’S SOLE RISK. The signed and sealed hard copies of THE ARCHITECT’S instruments of service (“Certified Documents”) are the only true contract documents of record, and Recipient is solely responsible for verifying that the information contained in the E-Documents is identical in all aspects to the Certified Documents, confirming that the information is current, and, if applicable, requesting from THE ARCHITECT updated E-Documents reflecting any changes in the design subsequent to the above date of transfer. If there is a discrepancy between the Certified Documents and the E-Documents, the Certified Documents govern. *Recipient agrees to Indemnify and hold harmless THE ARCHITECT as well as THE COUNTY OF CUMBERLAND, NORTH CAROLINA from and against all claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting from the use and reliance upon the E-Documents by Recipient, Recipient’s successors and assigns, and any third party to whom Recipient, intentionally or unintentionally, transfers the E-Documents.*

3. No Modification or Transfer of E-Documents. Except for modifications made for the purpose of creating “as-built” or record drawings, or for the purpose of adding information on separate layers, Recipient shall not modify the E-Documents in any way. THE ARCHITECT reserves the right to retain the machine readable media upon which the E-Documents were originally prepared, and retain paper or reproducible copies of all E-Documents delivered to Recipient in machine readable form; such media and copies shall govern in the event of any inconsistency or any dispute regarding the contents of the E-Documents. Recipient shall not transfer the E-Documents to any other person or entity. *Recipient agrees to indemnify and hold harmless*

THE ARCHITECT as well as THE COUNTY OF CUMBERLAND, NORTH CAROLINA from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the modification, whether permitted or unpermitted under this paragraph, or transfer of the E-Documents by Recipient or Recipient's successors and assigns.

4. Transfer to Party other than Owner. If Recipient is not the owner of the Project (THE COUNTY OF CUMBERLAND, NORTH CAROLINA), Recipient hereby warrants and represents to THE ARCHITECT that Recipient has received authorization from THE COUNTY OF CUMBERLAND, NORTH CAROLINA to obtain and use the E-Documents, and that the transfer of the E-Documents is for the sole benefit of THE COUNTY OF CUMBERLAND, NORTH CAROLINA.

5. Ownership of E-Documents. Recipient acknowledges that THE ARCHITECT is the owner of the E-Documents and all copyrights thereto, as well as any documents based on or derived from the E-Documents; provided, however, the foregoing shall not be construed to create any right of Recipient to rely on the information provided or that the use of the E-Documents implies the review and approval by THE ARCHITECT of any drawing based on the E-Documents. THE ARCHITECT reserves the right to remove from the E-Documents all words, images, and symbols identifying THE ARCHITECT as the creator of the E-Documents, and such removal shall not affect THE ARCHITECT'S ownership interest in the E-Documents.

6. Software Compatibility and Use. THE ARCHITECT makes no representation as to long term compatibility, usability, or readability of the E-Documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by THE ARCHITECT to create the E-Documents. Transfer of the E-Documents to Recipient does not convey to Recipient a license to use the software that was used to create the E-Documents, nor does the transfer create an obligation for THE ARCHITECT to provide such software to Recipient.

7. Severability. If any provision, term, condition, or clause of this transfer agreement or the application thereof shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

ACCEPTED AND AGREED:

RECIPIENT

By: _____

Title:



OFFICE OF THE COUNTY MANAGER

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COMMISSIONER CHARLES EVANS

DATE: 11/6/2019

SUBJECT: RE-ESTABLISHING COMMUNITY OR TOWN HALL MEETINGS

Requested by: COMMISSIONER CHARLES EVANS

Presenter(s):

BACKGROUND

Some years ago, the Board of Commissioners held Community Meetings through joint meetings with the municipalities within the County. These meetings were established to provide an opportunity for the elected bodies to discuss topics of mutual interest. Also, these meetings included a public hearing to provide the citizens an opportunity to address any issues or concerns with the Board of Commissioners.

I believe we should reinstate some Community Meetings in conjunction with the municipalities to allow citizens the opportunity to engage with the Board on important issues or concerns.

RECOMMENDATION / PROPOSED ACTION

Develop Community or Town Hall meetings in conjunction with the municipalities to provide an opportunity for citizens to address the Board of Commissioners.



ASSISTANT COUNTY MANAGER - ENVIRONMENTAL/ COMMUNITY SAFETY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: TRACY JACKSON, ASSISTANT COUNTY MANAGER FOR ENVIRONMENTAL AND COMMUNITY SAFETY

DATE: 11/4/2019

SUBJECT: COMPOSITION OF FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION ADVISORY COMMISSION

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): MICHAEL GIBSON, DIRECTOR OF FAYETTEVILLE-CUMBERLAND PARKS & RECREATION

BACKGROUND

As presently structured, the Fayetteville-Cumberland Parks and Recreation Commission has 15 voting members (7 City-appointed, 7 County-appointed, and 1 School Board-appointed). The Commission routinely has difficulty achieving a quorum and is unable to perform business. A proposal to restructure the composition of the Commission will be presented.

RECOMMENDATION / PROPOSED ACTION

No action is being requested. This is for information only at this time.

ATTACHMENTS:

Description	Type
FCPR Advisory Commission By-laws	Backup Material

FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION
ADVISORY COMMISSION

BY-LAWS

Revised April, 2010

Adopted May, 2010

ARTICLE I

NAME

The name of the organization shall be the **FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION ADVISORY COMMISSION**.

ARTICLE II

MEMBERS

The membership of the Advisory Commission shall not exceed fifteen (15) persons, eighteen years of age or over, residents of Cumberland County, with seven (7) members appointed by the Fayetteville City Council; seven (7) members appointed by the Cumberland County Board of Commissioners; and one (1) member appointed by the Cumberland County Schools Superintendent.

All appointments by both the Fayetteville City Council and the Cumberland County Board of Commissioners will be for three (3) year terms, except for an appointment to fill an unexpired term, in which case the appointment will be for the unexpired portion of the term. The member appointed by the Cumberland County Schools Superintendent will serve at the pleasure of the Superintendent. Members may serve a maximum of two (2) consecutive terms, with at least one (1) year off after the completion of the two consecutive terms, before being eligible for re-appointment to the Commission. Upon the death, resignation, or disqualification of a member of the Commission, the Fayetteville City Council or the Cumberland County Board of Commissioners, as appropriate, may fill the vacancy. If an individual is filling an unexpired term, any unexpired term is not considered a term if the period served is eighteen (18) months or less. If more than eighteen (18) months is served, it will be considered a full term.

ARTICLE III

PURPOSE AND FUNCTIONS

The purpose and functions of the Parks and Recreation Advisory Commission are:

1. To advise, encourage, counsel, solicit, inform and promote the dedication and establishment of parks and recreation areas of all sizes and descriptions in all Sections of Cumberland County and, in particular, those areas where development is taking place, with the ultimate aim of making neighborhood playgrounds and parks accessible to all residents of the County through donations or dedication of property either perpetually or for a limited term.
2. To promote studies and plans of parks and recreational needs of Cumberland County, and inform and advise the Fayetteville City Council and the Cumberland County Board of Commissioners and conduct public information programs to develop public awareness of the need for such facilities.
3. To advise the Parks & Recreation Director in planning recreational programs and activities and encourage voluntary sponsorship and participation in the same clubs, societies, social and business organizations neighborhood groups and individuals.
4. To coordinate and liaise with other organizations in the full development of their programs and functions as they relate to parks, playgrounds, and recreational areas.
5. To advise the Parks & Recreation Director in acquiring land and water areas and accepting any grant, gift, bequest or donation and any personal or real properties offered or made available for recreational purposes.
6. To encourage a program for the establishment of memorial parks and playgrounds.
7. To assist and encourage the Parks & Recreation Director in the conservation and development of the natural beauty of Fayetteville and Cumberland County.

And further, to advise and comment on:

1. A Master Plan for Parks and Recreation;
2. A Capital Improvement Plan;
3. Programming to maintain and increase program participation
 - A. Establish and maintain appeals process of staff decisions on programming issues;
 - B. Establish and maintain Program Standards;
4. Standards for facility usage and charges; and
5. Preservation of historical sites and conservation of green space

ARTICLE IV

MEETINGS

Regular meetings of the Advisory Commission shall be held at such time and place as the Advisory Commission may by resolution provide. If the day fixed for the regular meeting shall fall on a legal holiday, such meeting shall be re-scheduled. The Chair or any three members may by written notice call special or emergency meetings, which notices shall state the purpose[s] for which the meeting is called and the business of such meeting shall be confined to such purpose[s]. This notice shall be provided in accordance with the North Carolina Open Meetings Law.

The Parks and Recreation Director or designee shall attend all meetings, shall act as Secretary of the Advisory Board, and shall provide staffing to record minutes and other staff support as needed.

Any member of the Advisory Commission who fails to attend three (3) consecutive meetings, or misses half of the meetings in a calendar year, may be removed from membership and, in that case, the position of such member shall be filled by appointment by the Cumberland County Board of Commissioners or the Fayetteville City Council, as hereinabove set forth.

A majority of the Advisory Board shall be necessary and sufficient at all meetings to constitute a quorum for the transaction of business, and the act of a majority present at any meeting at which there is a quorum shall be the act of the Advisory Board. A quorum once established shall not be broken by the withdrawal of any member. If a quorum shall not be present at the meeting, the members then present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present.

The Advisory Board shall conduct its business and hold its meetings generally in accordance with principles of parliamentary procedure.

ARTICLE V

OFFICERS

Officers of the Advisory Commission shall be elected annually during its November meeting, and shall consist of the following:

Chair
Vice-Chair
Member-At-Large

The Chair shall be the principal executive officer and shall preside at all meetings. He/she shall see that all orders and resolutions of the Advisory Board are carried into effect; he/she shall execute all documents on behalf of the Advisory Board; and he/she shall be the spokesperson for the Advisory Board. The Chair shall be an ex officio member of all committees. He/she shall appoint committees and perform the duties ordinarily incident to the office of Chair and such other duties as may be assigned by the Advisory Commission.

The Vice-Chair shall act in the place of the Chair in his/her absence or at any time called on to do so by the Chair. When so acting, he/she shall have the power and authority of the Chair. If the Chair refuses to act, the Advisory Commission may, by resolution, call upon the Vice-Chair to do so.

The Member-At-Large shall be a member of the Executive Committee to help effect actions necessary by the Commission when a full commission is not necessary.

The Parks & Recreation Director or his/her designee shall act as Secretary to the Advisory Board but shall not be a member thereof.

Commission members must serve 12 months before being elected as an officer.

ARTICLE VI

COMMITTEES

There shall be an Executive Committee, and the Chair of the Advisory Commission is authorized to establish and name such other committees as he/she finds and determines to be best suited to carry out the functions of the Advisory Commission. The Chair, the Vice-Chair and a designated Member at Large voted upon at regular meeting in November shall serve on the Executive Committee. The Executive Committee shall have the powers and authority of the full Advisory Commission between meetings of the Advisory Commission, except as otherwise provided by resolution of the Advisory Commission, and shall report all its actions to the Advisory Commission at the next occurring meeting of the Advisory Commission. Every committee and the membership on the same shall terminate upon change in the office of Chair.

ARTICLE VII

AMENDMENTS

The Parks and Recreation Advisory Commission may amend these By-Laws by a two-thirds vote.



BOARD OF COMMISSIONERS' OFFICE

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COMMISSIONER BOOSE AND LANCASTER

DATE: 11/14/2019

SUBJECT: COMMISSIONER-LIAISON AND COMMITTEE STRUCTURE

Requested by: COMMISSIONER BOOSE AND LANCASTER

Presenter(s): COMMISSIONER BOOSE AND LANCASTER

BACKGROUND

Practice has been that when a new Chairman is elected by the Board of Commissioners each year, the new Chairman will make commissioner-liaison appointments to the County's various boards, committees and agencies that will become effective January 1. The clerk to the board has facilitated the process each year.

RECOMMENDATION / PROPOSED ACTION

For review and discussion.

ATTACHMENTS:

Description

Blank Form for Commissioner Preferences

Type

Backup Material

2020 COMMISSIONERS' SCHEDULE FOR MEETINGS

Please write your name in the column beside your preferences for the chairman's 2020 commissioner liaison appointments.

Board of Commissioners' Meetings – 1st Monday of each month 9:00 AM; 3rd Monday of each month 6:45 PM (if meeting falls on a holiday, the meeting is normally held on the next day; no July meetings; some meetings may be cancelled due to conferences)

Agenda Sessions – 2nd Thursday of each month 1:00 PM / **Hold** - 3rd Thursday of each month 1:00 PM for carryover/capital planning

COMMISSIONER LIAISON APPOINTMENTS

(Commissioner liaison appointments are consistent with NCGS 128-1.2. and are not subject to dual office holding under NCGS 128-1.1.)

COMMITTEE	MEETING SCHEDULE	COMMISSIONER <i>Write name in this column</i>
ABC Board	2 nd Monday/Monthly/6:00 PM - 1705 Owen Drive Contact: David Horne 484-8167	
Action Pathways (formerly Cumberland Community Action Program, Inc.)	3 rd Thurs/Monthly/6:00 PM/ Cumberland Community Foundation, Community Room, 310 Green Street Contact: Nicki Maynor 485-6131 Ext. 1113	(2 Voting Members- Commissioners may designate representatives)
Agricultural Hall of Fame Nominating Committee	Applications accepted by NC Cooperative Extension March-June each year. Nominating Committee meets in July of each year. Contact: Susan Johnson 321-6405	CHAIRMAN
Arts Council	2 nd Tuesday/Monthly/12:00 PM/ Arts Council 301 Hay Street**Check calendar because meeting location can vary among agencies the Arts Council supports. Contact: Ashanti Bennett 323-1776	
Civic Center Commission	4 th Tues/Monthly/5:30 PM/Crown Center Board Room, 1960 Coliseum Drive Contact: Myra Brooks 678-7757	(non-voting)
Local Emergency Planning Committee (LEPC)	Last Thurs/Quarterly (Jan, Apr, July, Oct)/10:00 AM/ PWC Office, 955 Old Wilmington Road Contact: Gene Booth 678-7641	(ex-officio / voting member)
Fayetteville/Cumberland County Economic Development Corporation	2 nd Tuesday/Monthly/8:00 AM – R.B. Williams Building 201 Hay Street, Ste. 401A Contact: Robert Van Geons / Office: 500-6464 / Cell: 704-985-3483	CHAIRMAN (or designee)
Fire Chief's Association	4 th Mon/Monthly/7:00 PM/Locations vary Contact: Freddy Johnson 424-0694 / Cell: 910-476-1301	
Homeless Committee	Meeting dates, times and locations as noticed.	
Library Board of Trustees	3rd Thurs/ Monthly/ 9:05 AM/ Locations vary (No meetings July or Aug; Dec mtg. changed to 2 nd Thurs) Contact: Marili Melchionne 483-7727 Ext. 1304	
Mayor's Coalition (rotates Mayors for meeting info)	1st Fri/ Quarterly (Feb, May, Aug, Nov)/ 8:00 AM Locations vary Contact: Rhonda Webb 703-8900	CHAIRMAN
Mid Carolina COG (Directors)	Meets as needed Contact: Glenda Dye 323-4191 Ext. 22	(voting member)
Military Liaison	Activities as needed	
Parks and Recreation Adv. Board	Last Tues/Monthly/5:30 PM/121 Lamon Street Contact: Michael Gibson 433-1547	
Public Works Commission	2 nd & 4 th Wed/Monthly/8:30 AM/PWC Building 955 Old Wilmington Rd. Contact: Venus Durant 223-4001	
Sheriff's Office Liaison	Meets as needed Contact: Sheriff's Office 677-5410	

Transportation Policy Board (TPB) FAMPO (formerly <i>Transportation Advisory Committee</i>) (Subject to NC State Ethics Commission Requirements)	Jan 23, Mar 27, May 15, July 24, Sept 25, Nov 20/ 8:30AM/Historic Courthouse, Hearing Room #3 (Contact: Joel Strickland 678-7622)	(voting member)
Finance/Audit Committee	Meets on as-needed basis as noticed. <ul style="list-style-type: none"> NC Dept. of State Treasurer requires an Audit Committee to agree to annual audit contract Required by internal audit charter; specifically addresses role of Finance Committee in the internal audit process; lack of a committee in this capacity greatly diminishes the independence of the internal audit function for the County. 	2019 Members: FAIRCLOTH, Chairman KEEFE COUNCIL <hr/>
County 911 Committee	Meets on as-needed basis as noticed.	2019 Members: FAIRCLOTH, Chairman KEEFE ADAMS <hr/>
Fayetteville/Cumberland Liaison Committee	As called and noticed.	CHAIRMAN VICE CHAIRMAN PRIOR CHAIRMAN



BOARD OF COMMISSIONERS' OFFICE

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COMMISSIONER MICHAEL BOOSE

DATE: 11/14/2019

SUBJECT: COMMUNITY MISSION

Requested by: COMMISSIONER MICHAEL BOOSE

Presenter(s): COMMISSIONER MICHAEL BOOSE

BACKGROUND

Discuss and clarify city responsibilities, county responsibilities and mutual responsibilities.

RECOMMENDATION / PROPOSED ACTION

For discussion only.



OFFICE OF THE COUNTY MANAGER

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: DUANE HOLDER, ASSISTANT COUNTY MANAGER

DATE: 10/16/2019

SUBJECT: JUVENILE CRIME PREVENTION COUNCIL REQUEST TO REMOVE TWO AT-LARGE POSITIONS

Requested by: DUANE HOLDER, ASSISTANT COUNTY MANAGER

Presenter(s): DUANE HOLDER, ASSISTANT COUNTY MANAGER

BACKGROUND

The Juvenile Crime Prevention Council (JCPC) has had several meetings over the course of the year where a quorum could not be achieved. The JCPC membership is currently comprised of 26 members and a quorum requirement is 14 members in attendance, which has been difficult to attain. The Board of Commissioners are allowed to appoint up to seven (7) At-Large positions and has the authority to modify membership as necessary.

In order to assist the JCPC in obtaining enough members to facilitate the work of the Council, the JCPC Executive Committee met on October 15, 2019 and approved removing two (2) of the vacant At-Large positions on the Council in order to assist the JCPC in obtaining quorums for their meetings. This change would bring the At-Large Commissioner Appointments to five (5) instead of seven (7). The JCPC will remain in compliance with NCGS 143B-846 regarding membership, a copy of which is attached for your review.

RECOMMENDATION / PROPOSED ACTION

The Juvenile Crime Prevention Council respectfully requests that this item be placed on the November 18, 2019 Board of Commissioners Consent Agenda for approval to remove two vacant At-Large positions in order to assist in obtaining a quorum for the JCPC meetings.

ATTACHMENTS:

Description

NCGS 143B-846 - JCPC Creation, Method of Appointment, Membership, Chair & Vice Chair

Type

Backup Material

§ 143B-846. Creation; method of appointment; membership; chair and vice-chair.

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of commissioners of a county shall appoint a Juvenile Crime Prevention Council. Each County Council is a continuation of the corresponding Council created under G.S. 147-33.61. The County Council shall consist of not more than 26 members and should include, if possible, the following:

- (1) The local school superintendent, or that person's designee;
- (2) A chief of police in the county;
- (3) The local sheriff, or that person's designee;
- (4) The district attorney, or that person's designee;
- (5) The chief court counselor, or that person's designee;
- (6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
- (7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
- (8) The county manager, or that person's designee;
- (9) A substance abuse professional;
- (10) A member of the faith community;
- (11) A county commissioner;
- (12) Two persons under the age of 18 years, one of whom is a member of the State Youth Council;
- (13) A juvenile defense attorney;
- (14) The chief district court judge, or a judge designated by the chief district court judge;
- (15) A member of the business community;
- (16) The local health director, or that person's designee;
- (17) A representative from the United Way or other nonprofit agency;
- (18) A representative of a local parks and recreation program; and
- (19) Up to seven members of the public to be appointed by the board of commissioners of a county.

The board of commissioners of a county shall modify the County Council's membership as necessary to ensure that the members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council under subsection (a) of this section. The membership shall be representative of each participating county.

(c) The members of the County Council shall elect annually the chair and vice-chair. (1998-202, s. 1(b); 2000-137, s. 1(b); 2001-199, s. 1; 2011-145, s. 19.1(t).)



OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COUNTY ATTORNEY

DATE: 11/6/2019

**SUBJECT: DETERMINATION OF BOUNDARY WITH HARNETT COUNTY AS
RESURVEYED BY N.C. GEODETIC SURVEY**

Requested by: COUNTY MANAGER AND COUNTY ATTORNEY

Presenter(s): COUNTY ATTORNEY'S OFFICE

BACKGROUND

WHAT HAS HAPPENED TO DATE?

At the June 13 and September 12, 2019, Agenda Sessions, Tax Administrator Joseph Utley, Jr., presented background information on the resurvey of a portion of the Harnett-Cumberland County Boundary Line at the request of the boards of commissioners of both counties in 2000. Copies of Mr. Utley's memos for those presentations are attached. Additionally, at the September 12, 2019, Agenda Session, Gary Thompson, Chief of the N.C. Geodetic Survey, presented a "Report of Research Findings" about the location of this boundary line after it was surveyed. A GIS map showing the portion of the resurveyed boundary line in the Harnett Lakes Subdivision is attached as Exhibit 1. A summary of his report as to the impacts of the resurveyed line on the counties and the Harnett Lakes Subdivision is attached as Exhibit 2. Mr. Thompson reported that the plat of the resurveyed line had been completed in 2002.

HOW IS THE BOUNDARY TO BE ESTABLISHED?

N.C.G.S. § 153A-18 is the statute that governs the process for two counties to establish an uncertain boundary. Under the statute that was in effect in 2000, upon ratification of the survey by the board of commissioners in each county, a map of the survey is recorded in the Register of Deeds for each county and

in the Secretary of State's Office. Upon recording, the map is conclusive as to the location of the boundary. The Chief of the N.C. Geodetic Survey reports that the Attorney General has advised his office that the process for establishing uncertain county boundaries from surveys obtained prior to the amendment of the governing statute in 2017 shall continue under the statute in effect at the time the survey was requested by the counties' boards of commissioners. For that reason, the old statute will apply to the Harnett-Cumberland survey. The old statute does not require anything further to be done other than the recording. The amended statute does require the N.C. Geodetic Survey to notify all affected property owners if the process is done by the N.C. Geodetic Survey under the amended statute. For that reason, the County Attorney advises to include a request for N.C. Geodetic Survey to make the notifications to affected property owners.

WHY IS THIS IMPORTANT?

Although this is referenced as a "resurvey" of the county boundary, according to the Chief of the N.C. Geodetic Survey it is the only survey of that boundary in existence. That is a particularly important if a property owner contests an action by the County for which the County must establish that the affected property is within its jurisdiction. Around the State this has arisen in cases involving both the application of zoning and the levy of property taxes. The County Attorney is not aware of any litigation within the State based on the residency challenge of a voter in an election because of an uncertain county boundary; however, county residency is also a requirement for valid voter registration under both State and Federal law. Further potential legal implications may arise with respect to the jurisdiction of the Sheriff and District Attorney and the application of county ordinances.

The potential impacts on the provision of county services are just as important as the potential legal implications in an area with an uncertain boundary. These service impacts include the provision of fire and emergency medical services, building inspections and code enforcement. What is usually most important to affected residents is the statutory requirement that students residing in a school district be assigned to a public school in that district. There are a number of exceptions to that requirement and N.C.G.S. § 115C-366(d) is a catch-all that gives boards of education the right to assign and accept students between different school districts upon such terms and conditions as are agreed upon in writing by the boards.

RECOMMENDATION / PROPOSED ACTION

An appropriate form of the resolution is provided below just for information and discussion. The resolution to be adopted will be drafted in accordance with the Board's direction.

Proposed Form of Resolution of Ratification:

Whereas, on October 2, 2000, the Board of Commissioners took action requesting the N.C. Geodetic Survey to assist with obtaining a survey of the Harnett-Cumberland County Boundary Line; and

Whereas, on September 12, 2019, the Chief of the N.C. Geodetic Survey reported to the Board of Commissioners that the requested survey had been completed in 2002; and

Whereas, the Harnett County Board of Commissioners adopted a resolution ratifying this survey map on _____.

Be it therefore resolved, that the Cumberland County Board of Commissioners hereby ratifies the survey of the Harnett-Cumberland County Boundary Survey prepared by Hobbs, Upchurch & Associates,

PA, dated _____ as the portion of the boundary between Harnett and Cumberland Counties as shown therein.

Be it further resolved that:

(1) The N.C. Geodetic Survey shall place the date of this Resolution of Ratification on the face of the map of the survey and record it in compliance with N.C.G.S. § 153A-18; and

(2) The N.C. Geodetic Survey shall notify Harnett County and each property owner whose real property has been placed in whole or in part in another county of this action; and

(3) The Boards of Education of both Harnett and Cumberland County are hereby requested to grant the request of any parent with a child enrolled in a public school in either the Harnett or Cumberland District on this date, and whose county of residence is changed by this action, to allow that child to continue attendance in that school without the payment of tuition until completing the last grade offered at that school in accordance with the other provisions of N.C.G.S. § 115C-366(d).

ATTACHMENTS:

Description	Type
Utley Memo 6-13-19 Agenda Session	Backup Material
Utley Memo 9-12-19 Agenda Session	Backup Material
Exhibit 1 - GIS Map of Harnett Lakes Subdivision	Backup Material
Exhibit 2 - Impacts on Counties and Neighborhood	Backup Material

JOSEPH R. UTLEY, JR.
Tax Administrator



CUMBERLAND
COUNTY
NORTH CAROLINA

OFFICE OF THE TAX ADMINISTRATOR

MEMORANDUM FOR THE AGENDA OF THE JUNE 13, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR

DATE: JUNE 13, 2019

SUBJECT: CUMBERLAND AND HARNETT COUNTY BOUNDARY LINE SURVEY

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s): JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR

BACKGROUND

On October 2, 2000, Garrett Alexander, Cumberland County Tax Administrator appeared before the Board of Commissioners to present a request to have the Cumberland/Harnett county line resurveyed. The Harnett County Tax Administrator approached the Harnett County Board of Commissioners on the same date, with both boards approving their requests. Subsequently, the respective counties formally requested the assistance of the North Carolina Geodetic Survey, North Carolina Department of Public Safety in conducting the survey. The process of resurveying a county boundary is governed by NCGS 153A-18, which states that counties can have their border resurveyed if they are uncertain of the location.

Hobbs, Upchurch & Associates, PA, Consulting Engineers and Surveyors was hired by the North Carolina Geodetic Survey to complete the survey. They began surveying in January 2002 and concluded their work in July of the same year. Upon completion of the survey, the results were reported to the North Carolina Geodetic Survey. For reasons unknown to all parties concerned, the survey was never presented to either county Board of Commissioners for approval; therefore, it was never recorded, and no action was taken.

On December 11, 2018, the Harnett County Board of Commissioners formally requested the assistance of the Cumberland County Board of Commissioners to renew the quest to have the shared boundary resurveyed. A resurveyed boundary line will ensure accurate boundaries for the determination of

voting precincts; school assignments; emergency, fire and law enforcement responses; permitting; and assessment and taxation.

County Management, Tax Administration and Information Services recently met with representatives from the North Carolina Geodetic Survey for an update on the project. It appears the survey that concluded in July 2002 is complete and ready to be moved forward. The Geodetic Survey is preparing a report to present to the Board of Commissioners in the near future.

RECOMMENDATION/PROPOSED ACTION

This item is for information only. No action is being requested.

ATTACHMENTS:

Description

Memorandum dated: September 22, 2000

Minutes, BOC Meeting October 2, 2000

Type

Backup Material

Backup Material



CUMBERLAND
COUNTY
NORTH CAROLINA

OFFICE OF THE TAX ADMINISTRATOR

MEMORANDUM FOR THE AGENDA OF THE SEPTEMBER 12, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR

DATE: SEPTEMBER 12, 2019

SUBJECT: UPDATE ON THE CUMBERLAND AND HARNETT COUNTY
BOUNDARY LINE BY N.C. GEODETIC SURVEY

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s): JOSEPH R. UTLEY, JR., TAX ADMINISTRATOR

BACKGROUND

A presentation was given at the June 13, 2019 Agenda Session of the Board of Commissioners. At that meeting, the following information was presented:

- In 2000, both the Cumberland and Harnett County Commissioners requested a resurvey of the boundary between the two counties
- The NC Geodetic Survey hired a firm that completed the survey in July 2002
- For reasons unknown, the survey was never approved by either board leaving the survey unrecorded and no further action taken
- In December 2018, the Chairman of the Harnett County Board of Commissioners requested the assistance of the Cumberland Board of Commissioners, asking that the resurvey project be renewed and completed
- The NC Geodetic Survey updated the County Manager and leadership team in May on the status of the resurvey project and stated they would complete a report of research findings in July 2019

Mr. Gary Thompson, Chief of the NC Geodetic Survey will present a "Report of Research Findings" that provides an overview of the project from the state's perspective. Once Mr. Thompson has completed his presentation, information will be provided regarding the local impact of the survey.

RECOMMENDATION/PROPOSED ACTION

This presentation is for information only. No action is needed at this time; however, Board guidance will be sought at a future agenda session.

ATTACHMENTS:

Description

Type

None

EXHIBIT 1 - Map of Resurveyed County Boundary Line

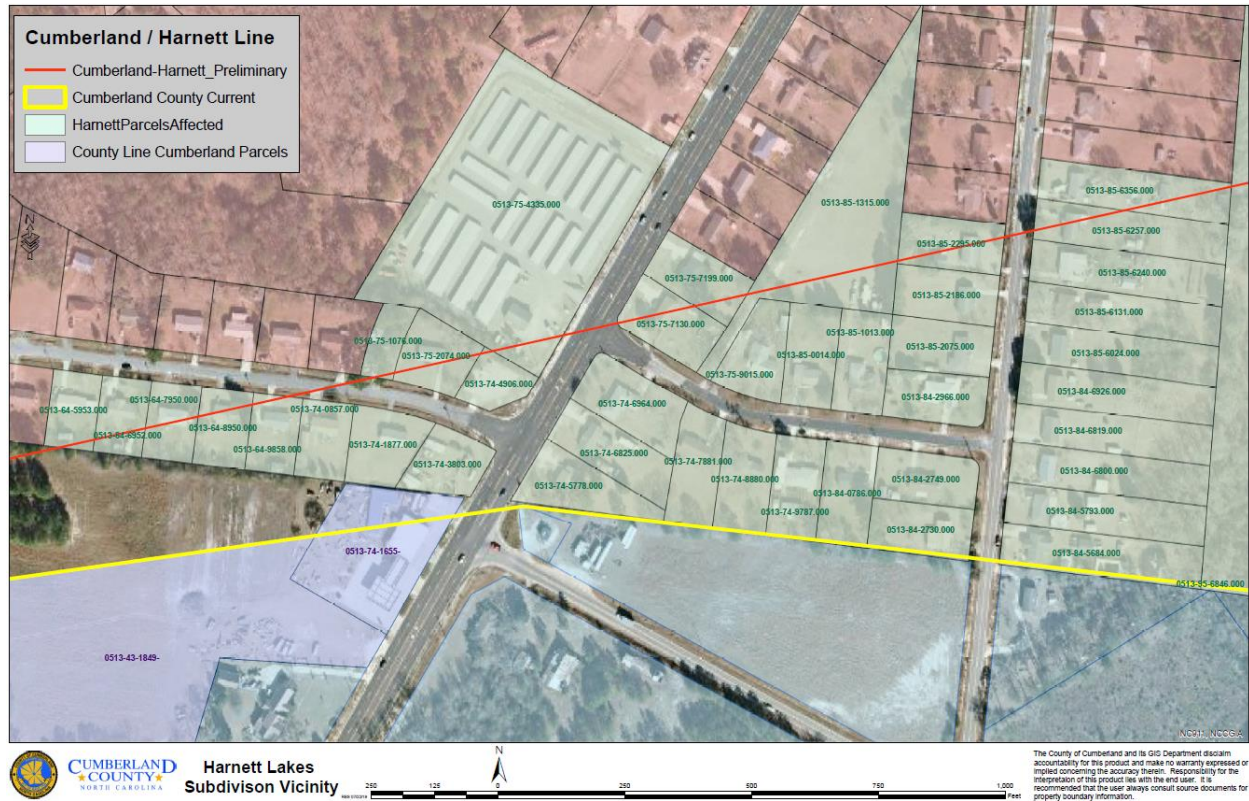


EXHIBIT 2 – Impacts on the Counties and the Neighborhood

Impacts on Cumberland County:

- Approximately 55 parcels affected
- Lose an estimated 130-140 acres
- Gain an estimated 115-125 acres

Approximately 80 Harnett County parcels affected

Impacts on Harnett Lakes Neighborhood:

- Off of NC 210, just north of Spring Lake
- 78 improved parcels
- Cumberland County would gain at least a portion of 41 of these improved parcels



OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: RICK MOOREFIELD, COUNTY ATTORNEY

DATE: 9/26/2019

SUBJECT: DECLARING FORECLOSED REAL PROPERTIES AS SURPLUS

Requested by: COUNTY ATTORNEY

Presenter(s): COUNTY ATTORNEY

BACKGROUND

Upon being the successful bidder on tax foreclosed property, the County first offers that property to the various County Departments & Agencies, as well as the City. If none of these governmental entities has a need for the property, the Commissioners are then asked to declare the property surplus, and the property is placed on the County's Surplus Property List for sale to the public.

Exhibit A is a list of properties that the County has determined should be declared surplus, along with maps setting out the location of each parcel and its associated PIN number. These properties have not yet been declared surplus by the Board of Commissioners and have not been placed on the surplus property list. This list of properties has been distributed to all County Government and City Departments to determine if there were any that could be identified for governmental use. No County or City Departments expressed interest in any of the parcels.

RECOMMENDATION / PROPOSED ACTION

County Attorney recommends that the Board find these parcels are not needed for governmental purposes and declare them surplus.

ATTACHMENTS:

Description

Type

EXHIBIT A

COUNTY OWNED PROPERTY

Item No.	PIN	Address	Description	Assessed Value	Tax Lien	Date Recorded	Deed Book/Page	Zoned
1	9493-84-1667-	Off Patterson Rd (No structure per tax records and GIS data)	0.56 Ac Jones-Ratley Ld	\$15,000.00	\$4,119.06	09/17/15	9724/44	RR
2	0501-78-6946-	823 McNeill St, Spring Lake (Tax records and GIS data show a structure on the lot)	Pt Lt 1 Angela Black Subd (0.31 Ac)	\$52,900.00	\$13,091.98	06/19/19	10524/294	R6

COUNTY AND CITY OWNED PROPERTY

Item No.	PIN	Address	Description	Assessed Value	Tax Lien	Date Recorded	Deed Book/Page	Zoned
3	0439-10-9369-	Off Rosehill Rd (No structure per tax records and GIS data)	Pt Lt 3 Rosehill Rd Fred Sawyer Est .48 Ac	\$14,063.00	\$4,063.82	04/09/19	10478/827	SF10
4a.	0446-53-5958-	1511 Rhone St (dwelling) (Tax records and GIS data show a structure on the lot)	10.06 ac	\$61,900.00	\$35,078.79	08/09/12	8966/542	SF6
4b.	0446-33-1463-	Vacant Ld (No structure per tax records and GIS data)	12.44 ac	\$62,200.00				
5.	0437-81-5216	508 Scarborough St (No structure per tax records and GIS data)	Maj Pt Lt 5 Webb Pl (0.09 AC)	\$2,500.00	\$3,792.79	08/01/19	10556/414	MR5

ITEM NO. 1

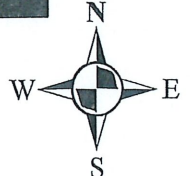


9493-84-1667-



SITE MAP
JONES-RATLEY LD (0.56 AC)

200 100 0 200 Feet



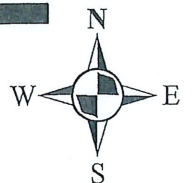
THE COUNTY OF CUMBERLAND AND ITS GIS DEPARTMENT
DISCLAIMS ACCOUNTABILITY FOR THIS PRODUCT AND MAKES
NO WARRANTY EXPRESSED OR IMPLIED CONCERNING THE
ACCURACY THEREOF. RESPONSIBILITY FOR INTERPRETATION
AND APPLICATION OF THIS PRODUCT LIES WITH THE USER.





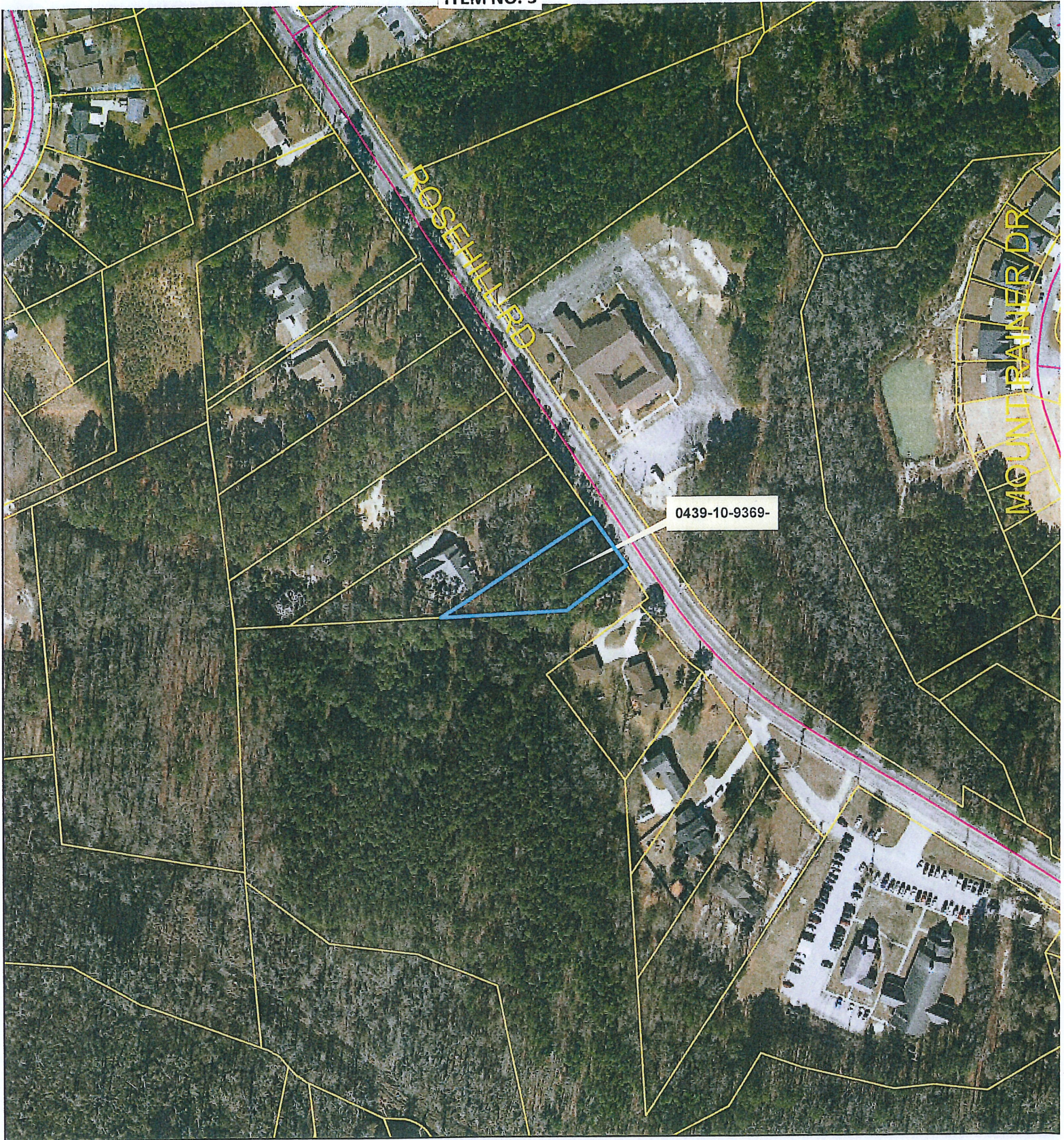
SITE MAP
PT LT 1 ANGELA BLACK SUBD (0.31 AC)

200 100 0 200 Feet



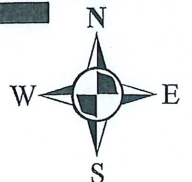
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SITE MAP
PT LT ROSEHILL RD FRED SAWYER EST (0.48 AC)

200 100 0 200 Feet



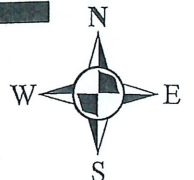
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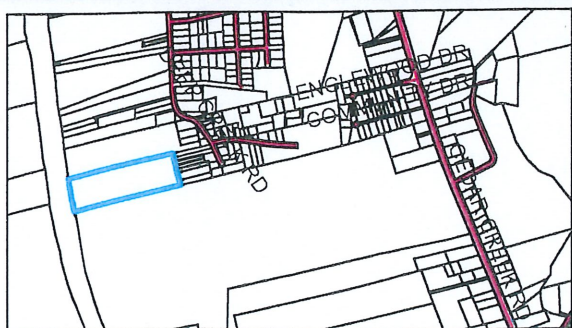
SITE MAP
10.06 ACRES

200 100 0 200 Feet

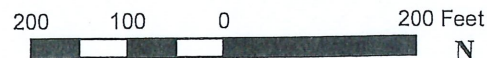


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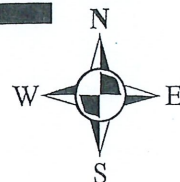




SITE MAP
12.44 ACRES



THE COUNTY OF CUMBERLAND AND ITS GIS DEPARTMENT
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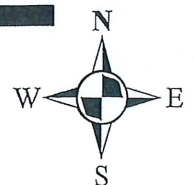


0437-81-5216-



SITE MAP
MAJ PT LT 5 WEBB PL (0.08 AC)

200 100 0 200 Feet



THE COUNTY OF CUMBERLAND AND ITS GIS DEPARTMENT
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OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COUNTY ATTORNEY

DATE: 11/6/2019

SUBJECT: AUTHORIZATION OF LITIGATION TO SET ASIDE A DEED

Requested by: COUNTY ATTORNEY

Presenter(s): COUNTY ATTORNEY'S OFFICE

BACKGROUND

Carolyn Cooper owns a one-half undivided interest in the property located at 826 Chapel Hill Road, Spring Lake. Four siblings not related to her own the other one-half interest. The owners have been cited for Minimum Housing Code violations. Ms. Cooper had her attorney contact the County Attorney about this matter and the County Attorney told Ms. Cooper's attorney what the Minimum Housing Code process was and that criminal actions had never been brought against any owners in these cases. On September 30, 2019, Ms. Cooper's attorney filed a quit-claim deed purporting to convey Ms. Cooper's interest to the County. The County cannot allow persons to convey property to it without a formal acceptance of the property by the Board of Commissioners. Acceptance of such properties may create liabilities associated with environmental hazards, contamination and nuisance issues.

RECOMMENDATION / PROPOSED ACTION

The County Attorney requests the Board to authorize the County to bring suit against Ms. Cooper and ask the court to set aside the conveyance and assess the costs of the litigation against Ms. Cooper by adopting the following resolution:

Whereas, Carolyn Cooper owns a one-half undivided interest in the property located at 826 Chapel

Hill Road, Spring Lake; and

Whereas, the owners of the property have been cited for violations of the Cumberland County Minimum Housing Code; and

Whereas, without any notice to the County, Ms. Cooper filed a quit-claim deed purporting to convey her interest in the property to the County.

Be it resolved that the County Attorney is directed to file suit against Ms. Cooper to set aside this deed, remove the County from the chain of title to this property, and seek the costs of the litigation from Ms. Cooper.



OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COUNTY MANAGER AND COUNTY ATTORNEY

DATE: 11/6/2019

SUBJECT: ACCEPTANCE OF SETTLEMENT PROPOSED BY BLUE CROSS BLUE SHIELD

Requested by: COUNTY MANAGER

Presenter(s): COUNTY ATTORNEY'S OFFICE

BACKGROUND

Retirees over the age of 65 were transitioned from BCBS to AmWINS on July 1, 2019. At that time, AmWINS discovered there were 64 deceased members who had not been terminated from the County's health insurance coverage, meaning County had been paying admin charges on those 64 deceased members. BCBS terminated the group of 64 with an effective date of June 30, 2018. BCBS has provided a credit of \$48,455.27 for that one-year timeframe. The actual years of death for those 64 retirees ranged from 2010-2019. Had those deceased members been terminated from the BCBS plan in a timely manner, the County would have saved approximately \$183,000 in admin fees over those years.

In addition to the credit for FY2019, BCBS is offering a \$75,000 credit because of the County being a long-standing BCBS client. County management and the County Attorney believe this is a reasonable offer since it is one of the County's responsibilities to terminate deceased members. Unfortunately, this is difficult because the County is not always informed of a retiree's death.

The proposed settlement is attached. Note that the settlement requires that officers and employees of the County will not discuss the settlement with third parties.

RECOMMENDATION / PROPOSED ACTION

County Manager and County Attorney recommend approval of the settlement.

ATTACHMENTS:

Description

Settlement Propose by BCBS

Type

Backup Material

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is dated as of the _____ day of October (the "Effective Date"), by and between CUMBERLAND COUNTY ("Group") and BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA ("Blue Cross NC") collectively referred to as "the Parties."

Dispute

The Parties to this Agreement entered into an Administrative Services Agreement, effective July 1, 2019 (the "ASA") where Group, as the Plan Sponsor, had established and maintains a self-funded group health plan ("the Plan") for certain employees of Group and their eligible dependents ("Members") and contracted with Blue Cross NC to perform certain services with respect to administration of the Plan. The Parties have determined that certain deceased retiree Members were not removed from the Group's employee census data sheet ("census") and terminated from the Plan upon death resulting in attributed administrative and stop loss fees. The Group did not remove and terminate deceased retiree members from 2010 to the Effective Date of this Agreement ("Deceased Members"). The Group has now removed the Deceased Members from the census and Blue Cross NC has terminated the Deceased Members back to each Deceased Member's date of death. The Group requests return of the administrative and stop loss fees associated with the the Deceased Members after their dates of death despite the Group's error and the terms of the ASA. These matters shall be referred to herein as the "Dispute." The Parties to this Agreement have engaged in discussions to settle and resolve completely the issues in the Dispute, and have reflected their agreement in the provisions set forth below. This settlement is entered into without admission of liability, and solely to avoid any costs and disruption of ongoing business relationships.

Agreement

1. **Attorneys' Fees.** Group and Blue Cross NC each agree to bear their own costs, attorneys' fees and expenses in connection with the Dispute.
2. **Settlement Details.**
 - a. **One-time Payment.** Blue Cross NC will pay Group a one time payment of Seventy Five Thousand Dollars (\$75,000.00) ("Payment") reflected as a credit on Group's Statement of Account in the month following the month in which this Agreement is executed by the Parties. This Payment constitutes repayment in-full of any fees associated with the Dispute. The Parties acknowledge and agree that the Payment was reasonably calculated and is accepted by both Parties.
3. **Taxes.** Group agrees that the responsibility of any and all tax implications of the Payment is the responsibility of the Group.
4. **Mutual Releases.**

- a. Group, for itself, and each of its agents, assigns, owners, partners, officers, directors or any person claiming through it, does hereby forever and unconditionally release Blue Cross NC and each of Blue Cross NC's past or present officers, trustees, employees, agents, attorneys ("Released Party"), from any and all loss, liability, damage, expense, settlement, cost or obligation (including reasonable attorneys' fees and expenses) resulting from the Dispute.
 - b. The Parties agree and covenant not to sue or prosecute, institute, commence or file or cooperate in the institution, commencement, filing or prosecution of any suit or proceeding in any form based upon or related to the Dispute.
 - c. It is the specific intent and purpose of this Agreement to be a full, final and complete, remise, release, discharge, compromise, settlement, accord and satisfaction of any and all claims or causes of action of every kind and character relating to the Dispute.
 - d. If Group, the Plan, or a Member asserts a claim against the Released Parties relating to the Dispute that is the subject of this Agreement, then the Released Parties shall be indemnified by Group for any liability resulting therefore, and will be entitled to reimbursement from Group in an amount up to and including \$75,000.00.
5. **Non-Admission of Liability.** Neither this Agreement nor anything contained herein shall constitute or is to be construed as an admission by the Parties as evidence of any liability, wrongdoing, or improper or unlawful conduct.
6. **Non-Disparagement.** Group shall not make any disparaging remarks of any sort or otherwise communicate any disparaging comments about Blue Cross NC at any time following execution of this Agreement.
7. **Integrated Agreement.** This document constitutes the complete and exclusive agreement of the Parties hereto with respect to the subject matter hereof, and all prior oral or written statements, promises or negotiations are merged into this Agreement. This Agreement may not be modified in any way unless done so pursuant to a written document signed by all Parties hereto.
8. **Governing Law.** This Agreement shall be governed and interpreted by the substantive laws of the State of North Carolina.
9. **Other Warranties.** Each party warrants and represents that it has not assigned or otherwise transferred any of the claims or rights being released herein to any person or entity.
10. **Counterparts.** This Agreement may be executed in counterparts. If it is so executed, the counterparts together shall constitute one and the same agreement and shall be fully enforceable as if all parties had executed a single document.

11. **Confidentiality.** Group agrees that neither it, nor any of its employees or officials, shall discuss the details or nature of the dispute or the terms of this Settlement Agreement with any third party. Blue Cross NC acknowledges that this Settlement Agreement is a public record and must be approved by the Group's governing board in a public meeting. .
12. **Severability.** If any provisions of this Agreement, **other than paragraphs 1, 2, and 4,** are held to be invalid or unenforceable, all other provisions shall nevertheless continue to be in full force and effect.

CUMBERLAND COUNTY

**BLUE CROSS AND BLUE SHIELD OF
NORTH CAROLINA**

By: _____
Name: Amy Cannon
Title: County Manager

By: _____
Name: Steve Crist
Title: Vice President Major Group
Segment



OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: COUNTY ATTORNEY

DATE: 11/6/2019

**SUBJECT: APPROVAL OF ENGAGING OUTSIDE COUNSEL TO REPRESENT
STAFF IN GUN RANGE CASES HEARD BY THE BOARD OF
ADJUSTMENT**

Requested by: COUNTY ATTORNEY

Presenter(s): COUNTY ATTORNEY'S OFFICE

BACKGROUND

The Rules of Professional Conduct prohibit the County Attorney serving as counsel to the Board of Adjustment and to the planning staff at a hearing before the Board of Adjustment. Staff presents the County's case and the Board makes determinations of fact, applies the law to the facts, and enters the order. The Board of Adjustment has heard four gun range cases and each has been appealed. These are complex cases and it is essential that both the Board of Adjustment and the planning staff be represented by counsel at these hearings. A distinct advantage of staff being represented is that the attorney representing staff can present the case and conduct cross-examination to establish a thorough record for an appeal.

The current pending gun range case is the Hampton case. It was appealed to the N. C. Supreme Court, which ruled the appeal was improvidently granted and sent it back to the Court of Appeals. That case will likely be sent back to the Board of Adjustment to make further findings of fact. Key planning staff persons that were involved with that case are no longer employed and only one of the members of the Board of Adjustment that heard the original case is still on that Board. The County Attorney advises that staff should be represented by counsel on this second hearing of this matter.

The Board of Commissioners authorized the County Attorney to engage Attorney Scott Flowers of the Hutchens Law Firm to represent staff at the second Tiger Swan case hearing. That was a very complex case

and Mr. Flowers did an excellent job in creating a good record for the appeal. The County Attorney has spoken with Mr. Flowers about this matter and Mr. Flowers is willing to serve as counsel for staff in this matter. His fee is \$250 per hour.

RECOMMENDATION / PROPOSED ACTION

The County Attorney recommends the Board approve the County Attorney's engaging Mr. Flowers to serve as counsel to staff in any further hearings before the Board of Adjustment that may be ordered in the Hampton case at the hourly rate of \$250 per hour.



INFORMATION SERVICES

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: KEITH TODD, CHIEF INFORMATION SERVICES DIRECTOR

DATE: 11/5/2019

**SUBJECT: INCREASE TO TAX SOFTWARE IMPLEMENTATION CONTRACT
WITH FARRAGUTT SYSTEMS, INC.**

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): KEITH TODD, CHIEF INFORMATION SERVICES DIRECTOR

BACKGROUND

Cumberland County Tax Administration department is in the process of implementing new tax software. The ongoing project is scheduled to be complete in December 2019. The completion of the tax software project will provide a comprehensive software package.

The Farragut Systems Inc., contract (# 2019206) for the ongoing Tax Software Project will increase by \$60,000 to reflect the purchase of additional service hours. As we near the end of the Tax Software Project, additional hours are needed for additional training, on-site support, and software modifications to meet the needs of the Tax Office. The additional cost will increase the current contract amount, however; the Tax Software budget will not increase. Contingency funds were budgeted as a part of the Tax Software Project and are sufficient to cover the additional costs.

RECOMMENDATION / PROPOSED ACTION

1. Chief Information Services Director and County Management recommend that the proposed action be

placed on the November 18, 2019 Board of Commissioners agenda as a consent item:

- Approve contract amendment for Farragut Systems Inc., (contract # 2019206). The terms of the contract will be increased by \$60,000 to reflect the purchase of 400 additional service hours for additional training, on-site support, and software modification at \$150 per hour. No additional funding is needed for this amendment.



SOLID WASTE MANAGEMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: AMANDA L. BADER, PE, SOLID WASTE DIRECTOR

DATE: 11/5/2019

SUBJECT: MCCAULEY CONVENIENCE SITE RELOCATION TO TOM STARLING ROAD/PRODUCTION DRIVE INTERSECTION

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s):

BACKGROUND

Solid Waste has leased the McCauley Convenience site for many years. Solid Waste would like to relocate to a site owned by the County. We plan to install more efficient, modern equipment to improve compaction rates to minimize hauling and save costs. The overall budget for the relocation is \$300,000, and of that amount, \$125,000 is budgeted for new equipment to replace outdated equipment.

The new site is proposed because of historical flooding at the current site. During Hurricane Matthew, boxes from the convenience site were washed across the highway. Furthermore, with the addition of new equipment, it is recommended to perform upgrades on County owned property rather than leased property.

The current lease does allow termination by agreement of the parties. The current lease burden is in-kind trash pickup for a non-profit organization.

A concept for the proposed site that faces Tom Starling Road has been developed. Solid Waste would like to reserve an alternate location facing Production Drive in the event of driveway permit challenges on Tom Starling.

RECOMMENDATION / PROPOSED ACTION

Management recommends the following actions be placed on the November 18, 2019 Board of

Commissioners meeting consent agenda:

- Approval of relocation of McCauley container site to Tom Starling Road/Production Drive
- Approval of associated budget ordinance amendment #200077

ATTACHMENTS:

Description

Concept for Relocated McCauley Site

Type

Backup Material



I:\CumberlandCounty Solid Waste\1557 Technology Dev Convenience Site\CDL & SR\1557 SR\CONCEPT.dwg - CONCEPT - 10/3/2019 2:25 PM

REVISIONS

PRELIMINARY
DO NOT USE FOR CONSTRUCTION

PROJECT NAME

**TOM
STARLING RD
CONVENIENCE
SITE**

**CONCEPTUAL
SITE PLAN**

CLIENT

**CUMBERLAND
COUNTY SOLID
WASTE**

698 Anne Street
Fayetteville, NC 28301
Phone: (910) 438-4041

PROJECT INFORMATION

DESIGNED BY:	SCOTT
DRAWN BY:	SCOTT
CHECKED BY:	CHRIS
PROJECT NUMBER:	1557

DRAWING SCALE

HORIZONTAL: 1"=30'

DATE DRAWN

OCTOBER 3, 2019

SHEET NUMBER

1

OF

1



DEPARTMENT OF SOCIAL SERVICES

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: BRENDA REID JACKSON, DIRECTOR

DATE: 11/6/2019

SUBJECT: APPROVAL FOR PROSPECTIVE LEASE PROPERTY

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): BRENDA REID JACKSON, DIRECTOR

BACKGROUND

Due to the increased number of children in foster care, we are unable to accommodate court ordered visits within our building's limited visitation space. The Cumberland County Department of Social Services received Board approval to hold a lease for a Family Visitation Center located at 727 McGilvary Street to address this need. The property was placed on the market shortly after the lease was executed in February 2019. It is not the intent of the Cumberland County Department of Social Services to attempt to renew the lease given the potential sale. An alternate location is needed; however, the terms of the agreement do not allow us to terminate the lease on this McGilvary property prior to March 7, 2020.

Efforts have been made to locate a property within the existing \$1,500 monthly rental. We have looked at county property and none are sufficient to meet a family centered environment. Search for available property has resulted in the likelihood of an increase to the current leasing budget in order to acquire a facility comparable to the McGilvary property.

RECOMMENDATION / PROPOSED ACTION

Staff recommends the following recommendation be placed on the consent agenda of the November 18, 2019 Board of Commissioner's meeting:

We respectfully request the Board to authorize the County Manager to enter into a lease agreement if and when suitable and appropriate lease space is located and identified. The conditions of the lease agreement will be a

maximum rental rate not to exceed \$2,000.00 per month. Other conditions of the lease will be vetted by County Legal to include an opt out clause and reviewed by County Finance. Such action will enable us to procure a new Family Visitation Center prior to the end of the existing lease agreement on McGilvary Street on March 7, 2020. This will allow time to transition to a new location thus making the effort as transparent as possible to the families we serve. We can absorb the additional cost for the new property in our current fiscal year budget.



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

**FROM: JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE
DIRECTOR**

DATE: 11/4/2019

**SUBJECT: CONTRACT FOR REPAIRS AT CROWN COLISEUM WEST VIP
ENTRANCE**

Requested by: AMY H. CANNON, COUNTY MANAGER

**Presenter(s): JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE
DIRECTOR**

BACKGROUND

In the aftermath of Hurricane Florence, Spectra staff notified Cumberland County Engineering and Infrastructure (E&I) staff of a leak in the Crown Coliseum below the West VIP Entrance. In order to determine the cause of the leak, an engineering study and design was necessary. E&I staff selected Fleming and Associates from the list of Qualified Architectural/Engineering Firms approved by the Board of Commissioners in 2015 to perform the study in February 2019. Through Fleming and Associates study, it was determined that the leak was occurring through the West VIP entrance due to deteriorated waterproofing and damage to the concrete from nearby trees.

The project was advertised electronically on the Cumberland County Vendor Self Service site. The project pre-bid meeting was held on October 15, 2019, in which contractors were invited to attend. The bid opening for the project was held on October 29, 2019. The certified bid tab and letter of recommendation to award a contract to the lowest, responsible and responsive bidder from Fleming and Associates are attached. The only bid received was provided by M&E Contracting, Inc. in the amount of \$160,414. An owner's allowance of \$25,000 is included within the bid amount, therefore a contingency amount is not needed for this project. In the FY 2020 budget, \$800,500 was budgeted for parking lot improvements at the Crown Complex. Since the repairs to the West VIP Entrance were not budgeted, it is my recommendation to fund these improvements

from a portion of this allocated funding. While parking lot improvements are needed, it is much more critical to prevent water from entering the Crown Coliseum to prevent structural damage to the facility.

RECOMMENDATION / PROPOSED ACTION

The Engineering and Infrastructure Director and County Management recommend that the proposed action below be placed on the November 18th Board of Commissioners agenda as a consent item:

- Accept the bid and award a contract to the lowest, responsible and responsive bidder M&E Contracting, Inc. in the amount of \$160,414.

ATTACHMENTS:

Description

Letter of Recommendation and Certified Bid Tab

Type

Backup Material



FLEMING & ASSOCIATES, PA
STRUCTURAL ENGINEERING • FORENSICS • ROOFING DESIGN

Principals: Stephen Fleming, PE, RBEC ■ J. Ben Rogers, PE ■ Sarah Duncan, PE ■ John Kells, PE, SE

October 29, 2019

Jeffery Brown, PE / Engineering & Infrastructure Director
Cumberland County
130 Gillespie St.
Fayetteville, NC 28301

Re: Waterproofing Repairs at Crown Coliseum West VIP Entrance
Our Job No.: 19-04

Dear Mr. Brown,

Enclosed you will find a Certified Bid Tabulation Form for the project entitled Waterproofing Repairs at Crown Coliseum West VIP Entrance. I recommend that Cumberland County enter into a construction contract with M&E Contracting, Inc. to include the base bid and alternate number 01 for a total contract sum of \$160,414.00.

Please call if you have questions or comments.

Sincerely,

Fleming & Associates, PA

Stephen Fleming, PE, RBEC

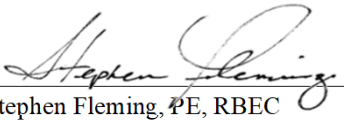


Bid Tabulation Form

Waterproofing Repairs at Crown Coliseum West VIP Entrance
Cumberland County
Bid Opening Date and Time: October 29, 2019 at 3:00pm
Engineer's Project Number: 19-04

Contractor	Base Bid	Add Alt. #1 Replace brick pavers with concrete	Base Bid plus Alternate 1	IMBP	MBE Affidavit	Bid Bond
H2 Contracting	No bid					
M&E Contracting, Inc. Lic. #32417	\$144,439.00	\$15,975.00	\$160,414.00	Included	Affidavit A	Included

I certify that the above bids were submitted properly and are accurate as received.


Stephen Fleming, PE, RBEC

10/29/19
Date

Boldface type indicates the apparent lowest responsive bidder.



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 **AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE DIRECTOR

DATE: 11/4/2019

SUBJECT: CONTRACT FOR LAW ENFORCEMENT CENTER ELEVATOR MODERNIZATION & FIRE ALARM SYSTEM UPGRADES AND BUDGET ORDINANCE AMENDMENT #200009

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s): JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE DIRECTOR

BACKGROUND

The Capital Improvement Plan (CIP) in FY 2019 identified the modernization of the Law Enforcement Center elevators. At the February 18th Board of Commissioners meeting, the professional services agreement for Progressive Design Collaborative, LTD (PDC), was approved in the amount of \$122,000. The elevator modernization project includes upgrades mechanical, electrical and car upgrades. Additionally, due to new code requirements, there are improvements necessary to the Law Enforcement Center Fire Alarm system that were not initially anticipated as part of this project nor included in the initial budget. This was part of the discussion on the professional services agreement item at the February 14th Agenda Session.

The project was advertised electronically on the Cumberland County Vendor Self Service site and the State Interactive Purchasing System. The project pre-bid meeting was held on September 19, 2019, in which contractors were invited to attend. Formal bids were received on October 8, 2019. The certified bid tab and letter of recommendation to award from PDC are attached. The lowest, responsible and responsive bidder is BAR Construction Company, Inc. in the amount of \$1,036,870. The recommendation is to only move forward with modernizing the three functioning elevators at this time. The non-functioning elevator is the old

kitchen elevator that only stops on the fourth floor. It is recommended that this elevator be addressed in the future since it only serves one floor that is unoccupied. The original budget for this project was \$720,000. There is currently \$598,000 available. In order to move forward with the project, an appropriation in the amount of \$538,870 will be needed from fund balance within the Capital Investment Fund (CIF). Please note appropriating CIF fund balance could impact the capacity and timing of future items within the CIF.

RECOMMENDATION / PROPOSED ACTION

The Engineering and Infrastructure Director and County Management recommend that the proposed actions below be placed on the November 18th Board of Commissioners agenda as a consent item:

1. Accept the bids and award a contract to the lowest, responsible and responsive bidder BAR Construction Company, Inc. in the amount of \$1,036,870.
2. Establish a contingency in the amount of \$100,000 to be used for additional work recommended by the E&I Director and approved by the County Manager.
3. Approve Budget Ordinance Amendment #200009 in which \$538,870 is being transferred from the fund balance within the Capital Investment Fund to the LEC Elevator Project.

ATTACHMENTS:

Description

Letter of Recommendation and Certified Bid Tab

Type

Backup Material



Progressive Design Collaborative, Ltd
3101 Poplarwood Court, Suite 320
Raleigh, North Carolina 27604
919-790-9989

October 31, 2019

Mr. Jeffery Brown, P.E.
Engineering & Infrastructure (E&I) Director
130 Gillespie Street, Room 214
Fayetteville, NC 28301

Re: Cumberland County
Law Enforcement Center
Elevator and Fire Alarm Modernization
PDC 19023

Mr. Brown:

Based on the attached bid tab for the referenced project, I am recommending Bar Construction Company, Inc. be awarded the project for the Base Bid, Alternates 1 and 2 for a total of \$1,036,370 to provide the Elevator and Fire Alarm modernization at the Cumberland County Law Enforcement Center Building.

Sincerely,

Scott Ennis, P.E.
PROGRESSIVE DESIGN COLLABORATIVE, LTD.

Attachments:

Certified Bid Tabulation
Bar Construction Bid Submittal



pdcengineers.com

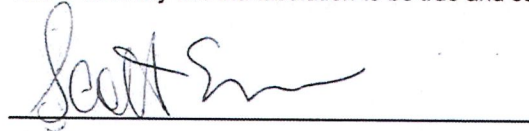


Progressive Design Collaborative, Ltd
3101 Poplarwood Court, Suite 320
Raleigh, North Carolina 27604
919-790-9989

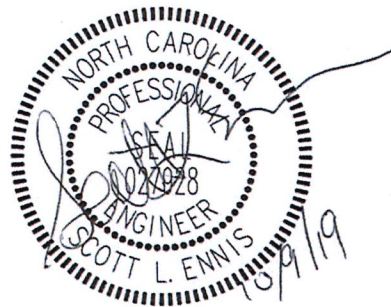
CERTIFIED BID TABULATION
Cumberland County Law Enforcement Center
Elevator & Fire Alarm Modernization
October 8, 2019 2:00pm
PDC Project 19023

CONTRACTOR	LICENSE #	M/ WBE	BID BOND	BASE BID	UNIT PRICE	ALTERNATE 01	ALTERNATE 02	ALTERNATE 03	ADD 01	ADD 02	ADD 03
MLB	56418	X	X	\$623,623	\$3,800	\$146,900	\$236,900	\$300,900	X	X	X
BAR	7973	X	X	\$564,500	\$3,900	\$185,520	\$286,850	\$241,350	X	X	X
PROGRESSIVE	36100	X	X	\$597,000	\$3,850	\$168,000	\$284,300	\$242,000	X	X	X
HM KERN	8542	X	X	\$585,000	\$5,000	\$187,000	\$282,000	\$275,000	X	X	X

This is to certify this bid tabulation to be true and correct:



Scott Ennis, P.E.
PROGRESSIVE DESIGN COLLABORATIVE, LTD.





COMMUNITY DEVELOPMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: DEE TAYLOR, COMMUNITY DEVELOPMENT DIRECTOR

DATE: 11/4/2019

**SUBJECT: COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER
RECOVERY (CDBG-DR) UPDATE**

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s): COMMUNITY DEVELOPMENT STAFF

BACKGROUND

Cumberland County, in partnership with NC Emergency Management, is implementing activities funded through the Community Development Block Grant Disaster Recovery Program. The attached report is an update on the status of all projects undertaken by Cumberland County including the Housing Recovery applications processed through the Intake Center.

RECOMMENDATION / PROPOSED ACTION

No action is needed. This item is provided for informational purposes only.

ATTACHMENTS:

Description	Type
Cumberland County CDBG-DR Program Update	Backup Material

CUMBERLAND COUNTY CDBG-DR PROGRAM UPDATE

FOR THE NOVEMBER 14, 2019

BOARD OF COMMISSIONER'S AGENDA SESSION

Status as of October 29, 2019:

Total Applications	County Application Intake (Step 1)	State Eligibility Check (Step 2)	State Duplication of Benefits Check (Step 3)	State Under Further Review
349	4 (4 county/0 city)	1 (1 county/0 city)	1 (1 city/0 county)	27 (6 county/21 city)
State Inspection & Environmental Review (Step 4)	State Grant/Award Determination (Step 5)	Contractor Selection/Bid Work (Step 6)	Construction (Step 7) Complete (Step 8)	Withdrawn/Ineligible/Inactive
23 (6 county/17 city)	106 (47 county/ 59 city)	19 (14 county/5 city)	29 (15 county/ 14city) 22 (9 county/13 city)	20 (8 county/12 city) 71 (22 county/49 city) 26 (0 county/26 city)

**Step 1 performed by County; Steps 2-8 performed by State for County; Steps 2-8 performed by Horne & State for City*

Milestones/Activities:

- NCORR preparing new SRA's for local governments for review – City SRA received for review in October;
- Ongoing– County staff finalizing processing applications, follow-up with all applicants and submitting to State for conducting Steps 2-8. Staff continue to follow-up with applicants to provide continuity and status update of applicant's file in Step 5; in addition, staff also provide consultations, closing and post-closing to applicants;
- Robins Meadow Permanent Supportive Housing Project – County received Authority to Use Grant Funds Form from NCORR on 9/24;
- Robins Meadow Permanent Supportive Housing Project A/E Services – Approved by BOCC 9/16 - Contract routing through County system;
- DRA-17 Program – County acquired 8 properties; Site Assessment Services; Demolition Activity - Invitation to Bid in process;

Current Staffing:

- State POC: John Ebbighausen – Director of Disaster Recovery Programs, NC Office of Recovery & Resiliency (NCORR)
- Cumberland County:
 - Sylvia McLean, P.T. Community Development (CD) Consultant; Chavaungh McLamb, Admin Housing Coordinator II; Tye Vaught, Admin Program Officer II

- City of Fayetteville: Cindy Blot, Eco & CD Director; Horne, LLC

Hours of Operation (Cumberland County Application Intake Center):

- Monday – Friday, 9 a.m. to 4 p.m.
- Location – Cumberland County Community Development Dept – 707 Executive Place



FINANCE OFFICE

**MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: VICKI EVANS, FINANCE DIRECTOR

DATE: 11/5/2019

SUBJECT: FINANCIAL REPORT - FISCAL YEAR 2020, SEPTEMBER YEAR-TO-DATE

Requested by: AMY CANNON, COUNTY MANAGER

Presenter(s): VICKI EVANS, FINANCE DIRECTOR

BACKGROUND

The financial report is included which shows results of the general fund for the first quarter of fiscal year 2020. Results of fiscal year 2019 will be added upon completion of the audit. Additional detail has been provided on a separate page explaining any percentages that may appear inconsistent with year-to-date budget expectations.

RECOMMENDATION / PROPOSED ACTION

For information/discussion purposes only.

ATTACHMENTS:

Description	Type
Monthly Financial Report	Backup Material

**County of Cumberland
General Fund Revenues**

REVENUES	FY19-20		YTD ACTUAL		PERCENT OF BUDGET TO DATE	*
	ADOPTED BUDGET	REVISED BUDGET	AS OF September 30, 2019			
Ad Valorem Taxes						
Current Year	\$ 165,517,000	\$ 165,517,000	\$ 25,173,568		15.2%	(1)
Prior Years	1,186,000	1,186,000	359,401		30.3%	
Motor Vehicles	19,937,832	19,937,832	3,704,725		18.6%	(2)
Penalties and Interest	742,000	742,000	121,481		16.4%	
Other	993,000	993,000	259,805		26.2%	
Total Ad Valorem Taxes	188,375,832	188,375,832	29,618,981		15.7%	
Other Taxes						
Sales	43,327,484	43,327,484	-		0.0%	(3)
Real Estate Transfer	700,000	700,000	596,693		85.2%	
Other	929,726	929,726	137,188		14.8%	
Total Other Taxes	44,957,210	44,957,210	733,881		1.6%	
Unrestricted & Restricted Intergovernmental Revenues	62,157,523	64,884,739	7,014,989		10.8%	(4)
			-			
Charges for Services	13,255,898	13,710,334	2,463,899		18.0%	(5)
Other Sources (includes Transfers In)	2,668,738	2,672,763	640,168		24.0%	
Lease Land CFVMC	3,871,986	3,871,986	3,611,275		93.3%	(6)
Total Other	6,540,724	6,544,749	4,251,444		65.0%	
Total Revenue	\$ 315,287,187	\$ 318,472,864	\$ 44,083,193		13.8%	
Fund Balance Appropriation	8,667,646	13,171,077	-		0.0%	
Total Funding Sources	\$ 323,954,833	\$ 331,643,941	\$ 44,083,193		13.3%	

County of Cumberland
General Fund Expenditures

DEPARTMENTS	YTD ACTUAL				PERCENT OF BUDGET TO DATE	**
	FY19-20 ADOPTED BUDGET	FY19-20 REVISED BUDGET	AS OF September 30, 2019			
Governing Body	\$ 662,458	\$ 662,458	\$ 242,090		36.5%	
Administration	1,837,782	1,837,782	455,390		24.8%	
Public Affairs/Education	847,376	863,546	178,693		20.7%	
Human Resources	1,169,176	1,169,176	280,152		24.0%	
Print, Mail, and Design	775,255	775,255	181,340		23.4%	
Court Facilities	203,470	211,970	23,225		11.0%	(1)
Facilities Maintenance	1,102,362	1,138,810	299,276		26.3%	
Landscaping & Grounds	724,187	724,187	173,062		23.9%	
Carpentry	230,045	230,045	55,042		23.9%	
Facilities Management	1,435,808	1,435,808	348,548		24.3%	
Public Buildings Janitorial	857,847	857,847	230,948		26.9%	
Central Maintenance	706,587	706,587	129,731		18.4%	(2)
Information Services	4,812,492	7,057,366	1,849,167		26.2%	
Board of Elections	2,022,011	2,022,011	295,068		14.6%	(3)
Finance	1,412,532	1,412,532	362,937		25.7%	
Legal	873,883	873,883	201,887		23.1%	
Register of Deeds	2,462,240	3,137,006	691,382		22.0%	
Tax	5,913,536	5,935,036	1,540,080		25.9%	
Debt Service	-	-	127,059		0.0%	(4)
General Government Other	4,126,674	4,801,396	1,011,932		21.1%	
Sheriff	54,114,179	54,972,218	13,833,170		25.2%	
Emergency Services	3,806,111	4,256,576	1,079,144		25.4%	
Criminal Justice Pretrial	587,684	587,684	136,245		23.2%	
Youth Diversion	37,027	37,027	7,366		19.9%	
Animal Control	3,462,878	3,644,378	896,047		24.6%	
Public Safety Other (Medical Examiners, NC Detention Subsidy, etc.)	1,554,236	1,554,236	197,214		12.7%	(5)
Heath	23,325,572	23,875,347	6,144,490		25.7%	
Mental Health	5,468,948	5,630,923	2,539,082		45.1%	
Social Services	62,535,270	63,326,370	15,108,061		23.9%	
Veteran Services	454,308	454,308	129,613		28.5%	

**County of Cumberland
General Fund Expenditures**

DEPARTMENTS	FY19-20	FY19-20	YTD ACTUAL	PERCENT OF	**
	ADOPTED BUDGET	REVISED BUDGET	AS OF September 30, 2019	BUDGET TO DATE	
Child Support	5,412,018	5,412,018	1,326,225	24.5%	
Spring Lake Resource Administration	34,542	34,542	7,060	20.4%	
Library	10,739,461	10,934,948	3,026,355	27.7%	
Stadium Maintenance	10,000	10,000	465	4.7% (6)	
Culture Recreation Other (Some of the Community Funding)	260,569	260,569	129,981	49.9%	
Planning	3,315,834	3,315,834	738,472	22.3%	
Engineering	699,048	1,057,971	174,065	16.5% (7)	
Cooperative Extension	773,148	773,148	125,178	16.2% (8)	
Location Services	211,911	211,911	45,057	21.3%	
Soil Conservation	145,291	598,174	43,653	7.3% (9)	
Public Utilities	88,106	88,106	26,003	29.5%	
Economic Physical Development Other	20,000	20,000	20,000	100.0%	
Industrial Park	1,427	3,415	361	10.6% (10)	
Economic Incentive	521,677	521,677	28,749	5.5% (11)	
Water and Sewer	250,000	250,000	-	0.0% (12)	
Education	94,047,126	94,047,126	30,911,375	32.9%	
Other Uses:					
Transfers Out	19,902,741	19,912,734	415,108	2.1% (13)	
TOTAL	\$ 323,954,833	\$ 331,643,941	\$ 85,765,547	25.9%	

Expenditures by Category	FY19-20	FY19-20	AS OF	PERCENT OF
	ADOPTED BUDGET	REVISED BUDGET	September 30, 2019	BUDGET TO DATE
Personnel Expenditures	\$ 145,632,904	\$ 145,975,697	\$ 36,525,230	25.0%
Operating Expenditures	156,762,673	163,158,984	48,463,344	29.7%
Capital Outlay	1,656,515	2,596,526	233,556	9.0% (14)
Debt Service	-	-	127,059	0.0% (4)
Refunding of 2009A and 2011B LOBS	-	-	1,250	0.0% (4)
Transfers To Other Funds	19,902,741	19,912,734	415,108	2.1% (13)
TOTAL	\$ 323,954,833	\$ 331,643,941	\$ 85,765,547	25.9%

COUNTY OF CUMBERLAND

Fiscal Year 2020 - September Year-to-Date Actuals (Report Run Date: October 21, 2019)

Additional Detail

General Fund Revenues

*

- (1) **Current Year Ad Valorem 15.2%** - Normal for this time of year. The bulk of revenues are typically recorded between November - January.
- (2) **Motor Vehicles 18.6%** - YTD Actual reflects 2 months of collections.
- (3) **Sales Tax 0.00%** - There is a three month lag. Collections for the fiscal year are first recorded in October.
- (4) **Unrestricted/Restricted Intergovernmental 8.2%** - There is typically a one to two month lag in receipt of this funding.
- (5) **Charges for services 18.0%** - The largest component of charges for services is revenue from the Board of Ed for security at 25% of budget. Only 3% of that revenue has been billed/collected to date.
- (6) **Lease Land CFVMC 93.3%** - This is typically paid in the beginning of the fiscal year.

General Fund Expenditures

**

- (1) **Court Facilities 11.0%** - Most of these expenditures will occur during the second and third quarter of FY20.
- (2) **Central Maintenance 18.4%** - Fleet supervisor has been vacant for the first quarter.
- (3) **Board of Elections 14.6%** - This will increase during the second quarter due to the upcoming elections.
- (4) **Debt Service / Refunding 0%** Entries to these lines were made in error. These will be corrected by journal entry in the next reporting month.
- (5) **Public Safety Other 12.7%** - Outside agency invoices are typically paid at the beginning of the second quarter.
- (6) **Stadium Maintenance 4.7%** - Only the July and August invoices for the reimbursement for telephone charges have been submitted by the Fayetteville Swampdogs.
- (7) **Engineering 16.5%** -The board revision for stream debris removal re-appropriation was taken to the BOCC on 8/1/19 in the amount of \$358,923 and there have been vacancies within this department.
- (8) **Cooperative Extension 16.2%** - Custodian, row crop agent, and program assistant position have been vacant for the first quarter.
- (9) **Soil Conservation 7.3%** - The NC Disaster Recovery Act 2018 was re-appropriated in the amount of \$452,883 at the 8/19/19 BOCC meeting.
- (10) **Industrial Park 10.6%** - The re-appropriation in the amount of \$1,988 was approved by the BOCC on 8/19/19.
- (11) **Economic Incentives 5.5%** - Economic incentives are not paid until the company complies.
- (12) **Water and Sewer 0%** - No expenditures were incurred for the first quarter.
- (13) **Transfers Out 2.1%** - The transfers are often prepared toward the end of the fiscal year.
- (14) **Capital Outlay 9.0%** - Most of these capital items are typically purchased in the second and third quarters of the fiscal year.



ENGINEERING AND INFRASTRUCTURE DEPARTMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019
AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

**FROM: JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE
DIRECTOR**

DATE: 11/4/2019

SUBJECT: PROJECT UPDATES

Requested by: AMY H. CANNON, COUNTY MANAGER

**Presenter(s): JEFFERY P. BROWN, PE, ENGINEERING & INFRASTRUCTURE
DIRECTOR**

BACKGROUND

Please find attached the monthly project update report for your review.

RECOMMENDATION / PROPOSED ACTION

This is for information purposes only as there is no action required for this item.

ATTACHMENTS:

Description	Type
Project Updates	Backup Material

MONTHLY PROGRESS REPORT				
Project Location	Contract Amount	Project Status	Contract Start Date	Contract Duration
Courthouse, Detention Center, Community Corrections, Headquarters Library Parking Lots	\$174,251.53	The HQ Library North Staff Parking Lot is completed. The only remaining parking lot in this project is the HQ Library East Public Parking Lot. This lot has been impacted by PNG, PWC and the failed stormwater pipe from Maiden Lane.	5/7/2018	90 days
Crown Coliseum Ice Plant, Chiller and Ice Floor Replacement	\$3,441,390.00	The contractor has completed the ice floor and mechanical center installation. The system is currently active. The existing dasher board system is being utilized as we wait on the new dasher boards to be delivered. Delivery and installation is scheduled for the first two weeks in January 2020.	3/22/2019	150 days
Expo Center and Crown Coliseum East Parking Lot	\$1,328,480.00	The contractor is performing punch list items on the project. All major items on this project are completed.	6/17/2019	60 days
Building Maintenance and Central Maintenance Parking Lot	\$420,422.87	The contractor has completed Phase I, II, and III paving operations. Phase IV paving operations should be concluded by November 5th and paving marking installation will follow.	4/22/2019	180 days
Detention Center Roof Replacement	\$1,238,351.00	The preconstruction meeting is scheduled for November 4th.	Not Started	120 days
Detention Center Building Exterior Improvements	\$150,359.00	The contractor is performing sealant installation around the facility.	10/24/2019	90 days
Department of Social Services Chiller Replacement Project Phase II - Engineering Services	\$11,215.00	The pre-bid meeting is scheduled for October 31st and bids are scheduled to be received on November 13th. The DSS Cooling Tower will be bid as an alternate item for replacement in this project.	Not Started	120 days
Judge E. Maurice Braswell Courthouse Generator	\$2,828,700.00	The contractor has performed silt fence installation and removed a tree in preparation of constructing the concrete slab.	10/23/2019	179 days



RISK MANAGEMENT

MEMORANDUM FOR THE AGENDA OF THE NOVEMBER 14, 2019 AGENDA SESSION

TO: BOARD OF COUNTY COMMISSIONERS

FROM: JULIE A. CRAWFORD, BENEFITS COORDINATOR

DATE: 10/31/2019

SUBJECT: HEALTH INSURANCE UPDATE

Requested by: AMY H. CANNON, COUNTY MANAGER

Presenter(s): N/A

BACKGROUND

As of July 1, 2019, retirees who are 65 and older became covered by a County funded fully insured plan through AmWINS. All other covered members remained insured by the County's self-funded plan through BCBS. The information provided below and within the graphs has been updated to include the monthly premium amount paid to fund the fully insured plan and the actual monthly claims amounts for all other covered members. Combining these amounts for FY20 and beyond is necessary to ensure a complete picture when comparing the claims results to prior years.

Total health insurance claims plus the fully insured premium amount for FY20 are up 3.64% for the month of September as compared to the same month in FY19. To provide some perspective, below is the three-month average for the past five fiscal years. This average represents the average monthly year-to-date claims for each fiscal year and includes the fully insured premium for FY20. Additionally, graphs are provided in the attachment to aid in the analysis.

Year to date claims and premium payment through September: \$4,197,044
Less year to date stop loss credits: \$0.00
Net year to date claims and premium payment through September: \$4,197,044

Average monthly claims and fully insured premium (before stop loss) per fiscal year September:

FY16 \$1,781,299
FY17 \$1,474,044
FY18 \$1,447,991
FY19 \$1,508,543
FY20 \$1,399,015

RECOMMENDATION / PROPOSED ACTION

For information only – no action needed.

ATTACHMENTS:

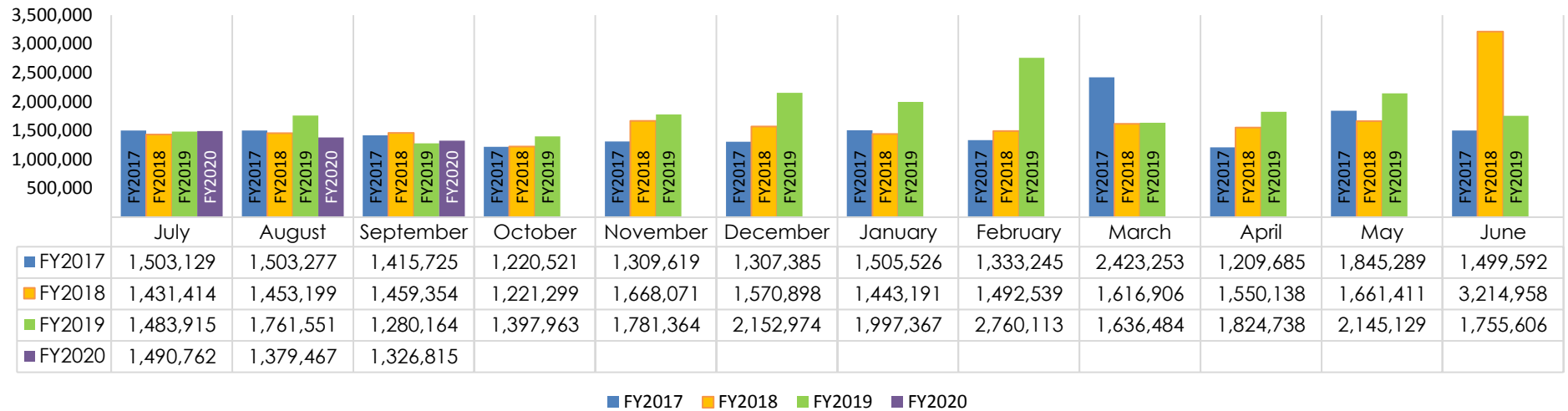
Description

Health Insurance Graphs

Type

Backup Material

Monthly Insurance Claims FY17-FY19 Claims & Fully Insured Premium FY20



Monthly Insurance Claims FY17 - FY19 Claims & Fully Insured Premium FY20

