Western Carolina University

STEM Building Project

Construction Manager at Risk – Preconstruction Services Proposal

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Request for Proposal
For Construction Manager at Risk Services for the STEM Building

1.1 SUMMARY OF REQUEST

Western Carolina University (WCU) is soliciting proposals for Construction Manager at Risk (CMR) services for pre-construction of the new Science, Technology, Engineering, and Math (STEM) Building located on the Main Campus in Cullowhee, North Carolina. The project will consist of the construction of approximately 185,000 square foot multi-storied building to replace the Natural Sciences Building (NSB). The project will be phased to allow for the existing laboratories in NSB to stay operational until they are relocated to Phase I of the new building. After existing operations are relocated to Phase I, NSB will be demolished for the construction of Phase II. It is expected that construction will be completed by January 2021.

It will be the responsibility of the successful CMR firm to deliver pre-construction services during late Programming and the Design phases, including but not limited to cost estimating; constructability review; advanced material procurement projections; site access/utilization; and construction project scheduling. The successful CMR will also provide a Guaranteed Maximum Price (GMP) based on **50%** Construction Documents prior to award of final CMR contract. The scope of work for CMR services required is described further in this document. (Refer to Section II – General Provisions for additional service requirements)

The CMR firm selected for this project will report directly to the WCU Project Manager assigned to this project, and assume full responsibility for facilitating all aspects of pre-construction management services. The CMR may be required to co-habitat the Pre-Construction staff with the Design Team to provide ongoing review and commentary. This requirement will be negotiated with the successful CMR and Design Team leadership.

The purpose of this document is to provide the detail of the CMR services required for this project and establish the basis for the contract agreement between WCU and the CMR service provider. Although unforeseen circumstances may require departures from this directive; any deviations require prior written approval or direction from WCU or the WCU Project Manager.

1.1.1 WCU Background

Western Carolina University is a coeducational public university located in Cullowhee, North Carolina, United States. The university is a constituent campus of the University of North Carolina system.

The fifth oldest institution of the sixteen four-year universities in the UNC system, WCU was founded to educate the people of the western North Carolina mountains. WCU now serves more than 10,000 full-time undergraduate and post graduate students, providing an education to students from 48 states and 35 countries. Enrollment for the Fall 2014 semester was 10,382 students.

1.2 PROJECT

1.2.1 Project Confidentiality

The CMR service provider will be required to: 1) Maintain strict confidentiality of all oral, written and otherwise documented information pertaining to this project; 2) Limit distribution of such information to only individuals necessary to prepare your proposal; 3) Return all materials provided by WCU during the Request of Proposal (RFP) process to the WCU Project Manager, within ten (10) calendar days of notification, if you are not awarded the contract; and 4) Include an acknowledgement that all copies made have been destroyed. If you are awarded the contract, do not distribute any project related information at any time, except as required to complete the project, without written permission or direction from WCU.

1.2.2 Pre-Construction Scope of Services

A. Programming

a. Participate in design meetings with Owner and their consultants near the completion of the Programming phase (2 meetings)
b. Provide review and commentary on the proposed program
c. Provide commentary for building systems appropriate for construction for the region

B. Schematic Design

a. Participate in design meetings with Owner and their consultants
b. Review Geo-technical report
c. Review existing building conditions
d. Review asbestos abatement report
e. Review constructability of building systems and site constraints
f. Prepare a project schedule to meet WCU's milestone dates.
g. Review Architectural and Engineering space/system plans
h. Prepare conceptual site access/utilization layouts.
i. Prepare conceptual cost estimate and reconciliation with Design Team's estimate
j. Present final preliminary constructability report for WCU's review.

C. Design Development Phase

a. Participate in design meetings with Owner and their consultants
b. Review constructability of building systems and site constraints
c. Revise SD project schedule to meet WCU's milestone dates.
d. Review Architectural and Engineering space/system plans
e. Prepare conceptual cost estimate and reconciliation with Design Team's estimate
f. Update final preliminary constructability report for WCU's review.

D. Construction Document Phase

a. Participate in design meetings with Owner and their consultants
b. Review constructability of building systems and site constraints
c. Revise DD project schedule to meet WCU's milestone dates.
d. Review Architectural and Engineering space/system plans
e. Present final constructability report for WCU's review.
f. Prepare GMP at 50% CD completion.

E. Guaranteed Maximum Price

a. Provide GMP to WCU for review and recommendation to SCO

1.2.3 Changes in CMR Scope or Criteria

During the design and/or construction phase, it may be necessary for WCU to make modifications or additions to the project scope or criteria. In such cases, the WCU Project Manager will request a Proposal Request (PR) from the appropriate party. In either case, do not proceed with the changes until receipt of a change order or contract alteration signed by an authorized WCU representative and SCO. If verbal instructions are received from one of the members of the WCU project team that would result in changes to the original scope or criteria and have an impact on the total costs or schedule of your contract, notify the WCU Project Manager. Unless otherwise directed by WCU, submit detailed break out quotations for Proposal Request.

Change Notice with details of CMR hour's, certified payroll rates, labor burden (not to exceed 40%), reimbursable, etc. to be provided. There may be times when the WCU Project Manager will request that you prepare one or more of the following, to be included in an ASP:

- Description of the change
- Estimated hours, by trade, to accomplish the change
- Proposed duration for the completion of design revisions and notification of whether or not the modifications will result in additional duration to the established contractual delivery dates, if applicable
- Net change in fee to complete the change, broken down by drawing and specification revisions, document distribution, construction cost estimate preparation, and additional shop drawing reviews resulting from the change

1.1.4.1 Changes Initiated by the CMR

WCU encourages you to submit recommendations for procedures or design changes that will reduce project cost, improve functionality of the completed facility, and/or shorten the project schedule. However, any such changes are subject to approval by WCU and must meet the same functional and technical requirements that are included in this RFP. Identify and submit recommended changes separately from other project correspondence and documentation. Provide all information and materials necessary to satisfy the WCU project team that recommended changes do not adversely affect cost, functionality, or schedule.

1.1.5 Kick-Off Meeting

The WCU Project Manager will schedule a kick-off meeting with the A/E and CMR. It is mandatory that your project organization chart be established by the day of this meeting and that your Project Manager and all assigned pre-planning staff be in attendance. The CMR shall require that all the people that will be attending the kick-off meeting read the entire document and formulate questions regarding the parts of it that they will be responsible for and do not fully understand.

At this kick-off meeting the following items will be completed/reviewed:

- Review of project scope.
- Review of, and the identification of, specific people from each organization for the items, services, tasks, etc. indicated including roles and responsibilities.
- A preliminary schedule, by A/E - CMR, indicating functional review meeting dates, coordination meeting dates, completion of engineering dates, issue of bid dates, award of

contract dates, and construction duration periods for each bid package.

1.2 SCHEDULE

1.2.1 Project Summary Schedule

Anticipated milestone dates that are critical to the delivery of this project are as follows:

Posting of RFP	June 28, 2016	5:00 PM
Initial Question Period	June 29 – July 11	
Site visit	July 11, 2016	1:30 PM
Final Question Period Ends	July 15, 2016	5:00 PM
Issue of Addendum	July 19, 2016	5:00 PM
Proposals due	**July 26, 2016**	**5:00 PM**
Review of Proposals by WCU – A/E	August 1- September 8	
Issue of selected firms list (Short List)	September 9, 2016	
Interview of Short List	September 22, 2016	
Recommend Selection List to SCO	September 26, 2016	
Negotiate/Award Pre-Construction Contract	**October 2016**	**30 days**
Kick-off Meeting	November 3, 2016	1:30 PM
Programming Phase	July – November 2016	Estimated
SCO Review and Comment Period	December 2016	15 days
Schematic Design Phase	January – April 2017	Estimated
SCO Review and Comment Period	April 2017	30 days
Design Development Phase	May – August 2017	Estimated
SCO Review and Comment Period	August 2017	30 days
Construction Document Phase	September – January 2018	Estimated
50% Construction Document Plot	November 2017	Estimated
GMP submitted to WCU for review	**January 2018**	**Estimated**
SCO Review and Comment Period	January 2018	60 days
Negotiate/Award CMR for Construction Contract	**February 2018**	**30 days**
SCO re-submittal	March 2018	15 days
SCO Final Approval	April 2018	15 days
Start of Construction	April 2018	Estimated
Completion of Construction	**January 2021**	

2.1 PROPOSAL REQUIREMENTS

Please address all of the items noted in this section in your proposal. Failure to do so may result in your proposal not being considered. Proposals will be evaluated based on demonstration of meeting the requirements of this RFP. Refer to Section I – Proposals, Evaluation, Selection and Award for requirements for Construction Managers submitting proposals.

2.2 QUALIFICATIONS

2.2.1 Organization

Please submit general statements about your organizations qualifications and other information deemed necessary. Include at least the following:

- Refer to SCO – Construction Manager at Risk Qualifications Questionnaire form
- Firm name, business address, telephone, email address, website address and fax numbers
- Contact person(s) with title(s)
- Professional history and affiliations
- Current staff size and professional registrations
- Range of Construction Management service capabilities
- Impact of current workload on ability to meet the requirements of this RFP
- Previous experience with WCU

2.2.2 Relevant Project Experience

Provide descriptions of at least three projects that have been executed within the past five years. The projects described shall be similar in scope and complexity to the project described within this RFP. Please include at least the following:

- Project size (square feet)
- Construction value
- Basic project program
- Project delivery approach
- Project owner with current address and telephone number
- Principal Tenant Organization contact with current address and telephone number

2.2.3 Key Personnel

Please submit resumes for key personnel proposed for the project form. State their proposed project responsibilities. Include the following:

- Project Manager
- Signatory Licensee who will be professionals of record
- Discipline leaders (site, building, plumbing, mechanical, electrical, etc.)
- Project Managers and licensed engineers of consulting firms
- Field representative(s)
- Other specialists

2.2.4 Project Planning

Please submit resumes for key personnel proposed for the project form. State their proposed project responsibilities. Include the following:

- Pre-Construction and Construction project management methods
    - Value Engineering
    - Constructability Issues
    - Cost Model/Estimates
    - Project Tracking/Reporting
    - Request for Information (RFI) and Shop Drawings
    - Quality Control
    - Schedule and Staffing Plan
- Minority Participation Program
- Describe the Discipline leaders (site, building, plumbing, mechanical, electrical, etc.)

- Project Managers and licensed engineers of consulting firms
- Field representative(s)
- Other specialists

2.2.5 Proposal Submittal Information

Please submit your proposal with all of the requirements of this RFP to the following email and/or postal address:

Matthew J. Ketchum, AIA
Director of Capital Projects
Office of Facilities Management
Western Carolina University
3476 Old Cullowhee Road
Cullowhee, NC 28723
mjketchum@email.wcu.edu

Project Advertisement

Western Carolina University is accepting proposals for Construction Manager at Risk for the Science, Technology, Engineering, and Math (STEM) Building until 5:00 PM, July 26, 2016 in the Office of Facilities Management, located at 3476 Old Cullowhee Road, Cullowhee, North Carolina 28723. The project will consist of a new 185,000 square foot science and technology building on the main campus of Western Carolina University. The estimated construction budget of the project has been set at $70,000,000.00. This cost will include the demolition of the existing Natural Sciences Building and the construction of a two phased, multi-storied, high performance building for the STEM programs. Project completion is scheduled for January 2021.

A Mandatory Pre-Proposal Conference will be held on:

Conference Date:	July 11, 2016
Conference Time:	1:30 PM
Conference Address:	Room 150 Stillwell Sciences Building Central Drive Cullowhee, NC 28723

For purposes of coordination, primary contact for project information is:

Project Information Link http://www.wcu.edu/discover/campus-services-and-operations/facilities-management/facilities-planning-design-and-construction/project-solicitations.asp

Project Manager	Matthew J. Ketchum, AIA
Title	Director of Capital Projects
Mailing Address	3476 Old Cullowhee Road Cullowhee, NC 28723
Phone Number	828.227.7441
E-Mail Address	mjketchum@wcu.edu

RFP DATA SHEET	
Item	**Datum**
Short Description of Project	Western Carolina University will be adding a new Science Technology Engineering and Math (STEM) Building to the main campus. The site which is currently occupied by the Natural Sciences Building has been identified as the future project location. The new building will be constructed in two phases which will include the demolition of the existing four story Natural Sciences Building (approximately 67,000 sf) and the construction of the new STEM Building (approximately 185,000 sf) The project consists of a multi-storied laboratory building house under graduate and graduate teaching and research spaces. The project will act as an outreach space for campus and community functions. Key program spaces will consist of student collaboration areas; classrooms; research and teaching laboratories; greenhouse; and multi-use flex spaces.
Issuing Office	Department of Administration - Office of State Construction
Department, Agency/Institution, Location where the Project will be constructed	Office of Facilities Management Western Carolina University 3476 Old Cullowhee Road Cullowhee, North Carolina 28723
Project Overview	Provide qualifications for Pre-construction services and Guaranteed Maximum Price for the scope of work described in the project requirements. Participate in design process from late Programming through completion of Construction Documents.
Website address (URL) for posting of notices regarding this project	
Expected Date of Completion of Design	The completion of the project is targeted for January 2018.
Project Designer & Consultants	TBD
Construction Manager at Risk Selection Schedule	RFP due: …….July26, 2016 Selection of short list: ……..……...September 9, 2016 CMR Interviews: ……September 22, 2016 Award CMR contract for Preconstruction Services:……October 2016
Construction Management Fee (Section II Paragraph E.2)	The Construction Management Fee will be a fixed number and will be negotiated at the end of the Pre-Construction phase.
Project Construction Cost	Total Project Budget:……..$70,000,000.00

STATE OF NORTH CAROLINA

Qualifications Questionnaire for Construction Manager at Risk

Due Date: July 26, 2016 @ 5:00PM

Submitted to: Matthew J. Ketchum, AIA
Office of Facilities Management
Western Carolina University
3476 Old Cullowhee Road
Cullowhee, North Carolina 28723
mjketchum@wcu.edu

Project Title: STEM Building
Western Carolina University, Main Campus

Proposer's Name and Principal Office serving this project:

(Include Company Name and address along with the name of the contact person with telephone number and e-mail address)

Profile of Proposer:

A. Give corporate history of the company including organizational structure, years in business and evidence of authority to do business in North Carolina.

B. Provide annual workload for each of the last five (5) years; number of projects and total dollar value.

C. List projects for which the company is currently committed including name & location of each project, time frame to complete & dollar volume of each project.

D. Financials – Attach latest balance sheet and income statement if available, based on company type. Audited statements preferred. If not available, attach a copy of the latest annual renewal submission to the relevant licensing board. Indicate Dunn & Bradstreet rating if one exists. (Firms must submit financial data and may clearly indicate a request for confidentiality to avoid this item becoming part of a public record.)

E. Attach letter from Surety Company or its agent licensed to do business in North Carolina verifying proposer's capability of providing adequate performance and payment bonds for this project.

F. List all construction projects performed by the proposer for agencies and institutions of the State of North Carolina during the past 10 years.

G. Litigation/Claims. If yes to any of the questions below, list the project(s), dollar value, contact information for owner and designer and provide a full explanation with relevant documentation.

1. Has your company ever failed to complete work awarded to it? ___Yes ___No
2. Has your company ever failed to substantially complete a project in a timely manner (i.e. more than 20% beyond the original contracted, scheduled completion date)? ___Yes ___No

3. Has your company filed any claims with the North Carolina State Construction Office within the last five years? ___Yes ___No

4. Has your company been involved in any suits or arbitration within the last five years? ___Yes ___No

5. Are there currently any judgments, claims, arbitration proceedings or suits pending or outstanding against your company, its officers, owners, or agents? ___Yes ___No

6. Has your present company, its officers, owners, or agents ever been convicted of charges relating to conflicts of interest, bribery, or bid-rigging? ___Yes ___No

7. Has your present company, its officers, owners, or agents ever been barred from bidding public work in North Carolina? ___Yes ___No

Project Experience

A. List three projects of similar size, scope and complexity performed by the proposer.

B. For each of the three projects, include specific details on the extent to which pre-construction & construction phase services were provided.

C. For the three projects listed above where CM services were provided, list the Guaranteed Maximum Price (if given), or if not given, the estimated cost provided by you, and the total cost of the project at completion.

D. For each of the three projects above where CM services were provided, compare the number of days in the original schedule with the number of days taken for actual completion.

E. For each of the three projects listed above, attach project owner references including the name, address, telephone and fax numbers, and e-mail address of the project owner representative.

Key Personnel

A. List of key personnel who will be assigned to the project. Attach sworn statement that the above persons will be exclusively assigned to this project for its duration.

B. For each person listed above, list what aspects of pre-construction or construction the person will handle. For those persons who will divide their time between pre-construction and construction phases, indicate what percentage of their time will be devoted to each phase.

C. For each person listed in response to A & B above, list his/her experience with firm, other prior and relevant experience with projects of similar size and scope in construction/design, and the person's location. Attach the resumes and references for each person listed.

D. Attach project organizational chart indicating the placement of each of the persons listed in response to A & B above.

Project Planning

A. Provide a brief, overall description of how the project will be organized and managed, and how the services will be performed in both Pre-Construction and Construction Phases. Project planning that offers the same project manager for pre-construction and construction phases shall be given preference.

   a. Value Engineering
   b. Constructability Issues
   c. Cost Model/Estimates
   d. Project Tracking/Reporting
   e. Request for Information (RFI) and Shop Drawings
   f. Quality Control
   g. Schedule and Staffing Plan

B. Minority Participation: Describe the program (plan) that your company has developed to encourage participation by Minority and other HUB firms to meet or exceed the goals set by North Carolina General Statute 143-128.2. Attach a copy of that plan to this proposal. Provide documentation of the Minority and other HUB participation that you have achieved over the past two years on both public and private construction projects. Outline specific efforts that your company takes to notify Minority and other HUB firms of opportunities for participation. Indicate the minority participation goal that you expect to achieve on this project.

This the_____ day of_____, 20_____

COMPANY NAME

By: _____

Title:_____

Attest:

_____ (Corporate Seal)

VERIFICATION

I HEREBY CERTIFY THAT THE RESPONSES OF _____ ARE CORRECT AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE AND FOR THOSE RESPONSES GIVEN WHICH ARE BASED ON INFORMATION AND BELIEF, THOSE RESPONSES ARE TRUE AND CORRECT BASED ON MY PRESENT BELIEF AND INFORMATION.

This the_____ day of_____, 20_____

COMPANY NAME

By: _____

(Corporate Seal) President

Attested: _____

Secretary

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, hereby certify that _____ personally came before me this day and acknowledged that he/she is secretary of _____ and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its president, sealed with its corporate seal, and attested by him/herself as is secretary.

Witness my hand and official seal, this the _____day of _____, 20_____.

_____

Official Signature of Notary

_____, Notary Public

Notary's Printed or Typed Name

_____

My Commission Expires:

I. SECTION I – PROPOSALS, EVALUATION, SELECTION AND AWARD

A. SUMMARY

The objective of this Request for Proposal (RFP) is for the Owner to select a Construction Management (CM) firm at risk to provide professional construction management services during the design and the construction of the Project as described in this Request for Proposal (RFP).

1. The work of the Construction Manager-at-Risk will be performed in two phases under separate contracts for each phase. Phase I will include the pre-construction phase services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the bidding, award and management of numerous principal and specialty trade contracts for others to provide the actual construction of the Project. Since the Construction Manager-at-Risk will be providing only professional services for the benefit of the Owner based on a fee for such services, this procurement will be made in accordance with provisions of North Carolina General Statute (N.C.G.S) 143-64.31 which require that firms qualified to provide such services be selected on the basis of demonstrated competence and qualification for the type of professional service required without regard to fee and thereafter negotiate a contract for those services at a fair and reasonable fee with the best qualified firm.

2. All work performed under this contract shall be in accordance with the General Conditions of the Contract hereinafter set as modified or supplemented by any Contract Amendments, Special Conditions, or other Contract Documents as listed hereinafter any addenda, and other components of the Contract.

B. PRE-PROPOSAL CONFERENCE

A Pre-proposal Conference inclusive of site tour will be held as set forth on the foregoing RFP Data Sheet.

1. Should a Proposer find discrepancies in the RFP documents, or should he be in doubt as to the meaning or intent of any part thereof, he must, not later than **ten (10) calendar days prior to the proposal due date**, request clarification in writing from the Issuing Office, which may issue a written Addendum to the RFP. Oral explanations or instructions will not be binding; only written Addenda may be relied upon. Any Addenda resulting from these requests, or from questions raised at the mandatory pre-proposal meeting, will be sent to all listed holders of the RFP's no later than **seven (7) calendar days** prior to the proposal due date.

2. Any addenda/amendments to the Request for Proposal must be acknowledged in the submitted Proposal.

C. PROPOSALS

1. All proposals shall include the information requested by the Qualifications Questionnaire. One (1) original plus two (2) copies (for a total of three (3)) of the Proposal must be received at the issuing office as set forth on the foregoing Data Sheet in order to be considered. The proposal shall be signed in accordance with the provisions of Article 2.c. of the General Conditions of the Contract (Section III of the RFP). The Owner reserves the right to reject either all proposals after the opening of the proposals but before award, or any proposal, in whole or part, when it is in the best interest of the Owner. For the same reason, the Owner reserves the right to waive any minor irregularity in a proposal.

2. Proposers must possess all licenses required by North Carolina law, including, at a minimum, an unlimited general contractor's license in the building classification under N.C.G.S. Chapter 87, and shall submit proof of current licensing with their proposal.

3. If the Proposer is a joint venture firm or partnership, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested. As part of the proposal submission under the category of Project Planning - General, the Proposer must identify the responsibilities of each joint venture or partnership party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFP document. All joint venture/partnership parties will be held responsible for the contract obligations jointly and severally.

4. Proposers should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the Owner under North Carolina public records laws. Proposals will be publicly opened. Proposers must clearly indicate each and every section that is deemed to be confidential, proprietary or a trade secret as required by statute. It is NOT sufficient to preface your entire proposal with a proprietary statement.

D. MINORITY BUSINESS ENTERPRISE

Minority business enterprises are encouraged to respond to this RFP. Construction Managers who are not minority business enterprises are encouraged to make a commitment to include a minority business enterprise as part of their management team. The verifiable goal for minority business participation pursuant to N.C.G.S. 143-128.f. is set at not less than ten percent (10%) of the total value of the work, inclusive of all fees. Written guidelines specifying the actions that the Construction Manager-at-Risk must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in

contracts awarded under this section are set forth in Appendix F and are herein incorporated by reference as if fully set forth herein.

E. PROPOSAL REQUIREMENTS

1. A Proposer, to be considered, must have a minimum of five (5) years of experience as a Construction Manager or General Contractor. Construction management experience gained by key personnel proposed for this project during previous employment in providing Pre-Construction and Construction Phase Services may be considered in meeting this minimum experience requirement.

2. Each proposer shall complete the Qualifications Questionnaire for Construction Manager-at-Risk that is part of this Request for Proposal.

3. In the interest of cost-savings, consistency of submittals and more efficient use of time by the pre-selection committee, the submitted information should not include any extra marketing materials. The format should be in 8-1/2" x11" pages. The package length should not exceed twenty (20) double-sided pages.

F. EVALUATION

1. After the closing date for receipt of Proposals, the Owner shall open the Proposals. An Owner's Pre-selection Committee will evaluate the Proposals that are timely and properly submitted.

2. The Pre-selection Committee will form a shortlist of three to six firms whose proposals, in the judgment of the committee, offer the most desirable plans for the provision of services considering, among other things, the experience, expertise, and reputation of the proposing firm, together with due consideration of proffered quality, performance and the time specified in the proposals for the performance of the contract. The Owner reserves the right to request clarifying information from any and all Proposers at any time during the evaluation process. All proposers will be notified in writing of those firms selected for the shortlist.

3. The Owner will receive an oral presentation from each firm that is short-listed by the Pre-selection Committee. The purposes of the presentation are to allow the Owner to meet the Proposer's key personnel assigned to the project and to allow the Proposer to highlight aspects of selected areas of its technical proposal.

4. The Pre-selection Committee will rank the top three firms in priority order based on the selecting criteria listed below and will recommend this slate of firms to the Board of Trustees of the campus for the University of North Carolina System and Community Colleges or to the State Building

Commission for Agencies and Departments (hereinafter: the Appropriate Authority) for their consideration and final approval.

G. SELECTING CRITERIA

In selecting the three firms to be presented to the Appropriate Authority, the Pre-selection Committee should take into consideration in the evaluation of the proposals such factors as:

1. Workload that is fully able to accommodate the addition of this project.

2. Record of successfully completed projects of similar scope without major legal or technical problems.

3. Previous experience with the Owner, a good working relationship with Owner representatives, have completed projects in a timely manner and have performed an acceptable quality of work.

4. Key personnel that have appropriate experience and qualifications.

5. Relevant and easily understood graphic or tabular presentations.

6. Completion of CM-at-Risk projects in which there was little differences between the GMP and final cost.

7. Projects that were completed on or ahead of schedule.

8. Recent experience with project costs and schedules.

9. Construction administration capabilities.

10. Proximity to and familiarity with the area where the project is located.

11. Quality of compliance plan for minority business participation as required by N.C.G.S. 143-128.2.

12. Other factors that may be appropriate for the project.

H. CONTRACT NEGOTIATION AND AWARD

1. After the three firms have been notified of the selection action by the constituent agency or institution of the Appropriate Authority, a representative from the State Construction Office, the capital projects coordinator, and a representative from the using agency will discuss with the selected Construction Manager-at-Risk appropriate services and information about the project.

2. The State Construction Office will request in writing a detailed fee proposal for Pre-construction Services from the selected Construction Manager-at-Risk. The State Construction Office in coordination with appropriate representatives from the Owner will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked Construction Manager-at-Risk, the process will be repeated with the third-ranked Construction Manager-at-Risk . If a fee still cannot be agreed upon, the Owner shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected. Such renegotiation with the firms shall be carried out in the original selection order, or a call will be made for the Pre-selection Committee to submit another list of three firms in priority order to the Appropriate Authority for consideration and final approval. The negotiation process will continue until a fee has been determined that is agreed to by the State Construction Office, the Owner and the Construction Manager-at-Risk.

3. Following successful negotiation, the Owner, by and through the State Construction Office as the final awarding authority shall award the Pre-Construction Services contract to authorize the Construction Manager-at-Risk to provide the services outlined in Section II, Paragraph G of this Request for Proposals.

At the end of the Pre-construction Phase, and in accordance with the terms and conditions of this Request for Proposal, the Construction Manager-at-Risk will ordinarily negotiate a Guaranteed Maximum Price to include Cost of the Work, Construction Manager-at-Risk Construction Management Fee, Construction Manager-at-Risk Contingency, and the cost of Bonds and Insurance. Following successful negotiation, the Owner, by and through the State Construction Office as the final awarding authority will award the Guaranteed Maximum Price contract.

II. SECTION II -- GENERAL PROVISIONS

A. PROJECT OVERVIEW - See RFP Data Sheet

B. OWNER'S ROLE

1. DESIGN SERVICES - The Owner will retain the Project Designer to be named. The Project Designer will provide all design services throughout the duration of the Project. The CM acknowledges that he will receive a copy of the Design Contract between the Owner and Project Designer.

2. DESIGNATED REPRESENTATIVE - The Owner shall designate a representative who shall be the CM's Owner contact point during both the Pre-Construction and Construction Phases. This representative shall be the primary channel of communication to the Owner and shall act as the Owner's liaison with the CM. The Owner may designate multiple representatives responsible for defined aspects of the project, and may replace or re-designate any or all representatives in the Owner's sole discretion.

3. DECISION MAKING AUTHORITY - As defined above, the Owner includes representatives from the Agency/Institution and from the State Construction Office (SCO). In conformity with State laws and rules, the Agency/Institution, the SCO, and the Project Designer have varying duties with respect to the several decisions required in this contract. Information from the CM required or requested in aid of these decisions, and to the CM with respect to the all such decisions shall be communicated either through or with the knowledge of the Owner's designated representative. In the event of any disagreement or dispute between any members of the Project Team regarding the project, the State Construction Office shall be the final decision making authority.

C. CONSTRUCTION MANAGER-AT-RISK CONTRACT OVERVIEW

1. The Owner is employing a Construction Manager-at-Risk contracting system to aid the Owner in the review and management of the design and to effect the construction of this project. In broad terms, the Construction Management firm selected will perform the following:

   1.1 Pre-Construction Services run from the beginning of the Construction Manager-at-Risk contract for such services (typically the beginning of the Design Development phase established by the contract between the Owner and the Designer unless an earlier or later time is elsewhere specified), through the approval by the Owner of the Guaranteed Maximum Price submitted by the Construction Manager-

at-Risk. Upon agreement of the Owner, Construction Manager-at-Risk and the State Construction Office, the Guaranteed Maximum Price may be submitted by the Construction Manager-at-Risk at any time after completion and approval of the Design Development Phase, but in no case later than ten (10) days after the Designer submits final review construction documents to the State Construction Office for review.

1.2. Construction Services, with the Construction Manager-at-Risk General Conditions Services and Fee being provided on a lump sum basis, and all construction being accomplished through Principal Trade and Specialty Contractors selected as provided herein. The Owner may require, based on discussions with the Construction Manager-at-Risk and Designer, the work of the project be broken into two or more phases and require a Guaranteed Maximum Price for each phase. The use of Fast Track Contracting is not authorized.

1.3 The Construction Manager-at-Risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in N.C.G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work.

1.4 The requirements for the Construction Manager-at-Risk set forth in this section supplement the requirements of the General Conditions of the Contract (OC-15CM) that are included as Section III in this RFP.

D. RELATIONSHIP OF OWNER AND CONSTRUCTION MANAGER

While the Construction Manager-at-Risk accepts financial risk in providing a Guaranteed Maximum Price for delivery of the Project, the Guaranteed Maximum Price will contain a contingency for (or in certain circumstances may be amended because of) conditions or circumstances which a prudent Construction Manager-at-Risk could not have reasonably detected at the time the Guaranteed Maximum Price was given. Accordingly, without limiting the guaranty given by the Construction Manager-at-Risk with respect to the maximum price, the primary duties of the Construction Manager-at-Risk also include the proper and timely completion of the design and construction of the Project through the employment of the best construction management practices. The Construction Manager-at-Risk project records will be an “open book”. The Owner may attend any and all meetings and the Owner or its designated auditors or accountants shall have access to any and all records maintained by the Construction Manager-at-Risk that relate to the project.

E. CONSTRUCTION MANAGER-AT-RISK GENERAL CONDITIONS ALLOWANCE AND FEESP

1. Pre-Construction Phase (Herein sometimes referred to as Design Phase) The Construction Manager-at-Risk Pre-Construction Phase Fee shall be an all inclusive lump sum fee for providing all required services as hereinafter set forth for the Design Phases, established by the contract between the Owner and the Designer.

2. The Construction Manager-at-Risk General Conditions Allowance & Construction Phase Fee shall be an all inclusive lump sum management fee which will include all Construction Manager-at-Risk home office, project site and project related costs, including all Construction Manager-at-Risk overhead costs and profit. This fee will be hereinafter referred to as the Construction Management Fee and shall be calculated as a percentage of the Cost of the Work as stated on the RFP Data Sheet. Project site costs in the Construction Management Fee should include:

   a. Project staff costs – direct salary plus customary labor burden, transportation and/or subsistence, communications, computers & travel expenses related to equipment/material survey & inspections.

   b. Mobilization – establishment of job site including office & storage trailer set-up & utility connections, site fencing and identification signage.

   c. Temporary Facilities – rental of field office trailer(s) including an independent office for the Owner's representative and Project Designer and a conference room for about twenty (20) people; utilities costs for field office trailer(s); rental (or purchase) of field office furniture & equipment; field office telephone(s) with voice mail, dedicated fax lines and high speed internet connections; field office operation cost (i.e. stationary, postage shipping, equipment maintenance, etc); temporary construction utilities (if required); small tools, storage yard rental, parking lot rental, and parking fees.

   d. Plans/Surveys/Permits – reproduction of Construction Documents during the construction phases; surveyor's services as required; all required permits, all appropriate contractor and equipment licenses.

   e. Safety/Cleanup – establishment and maintenance of an on-site safety program; installation and maintenance of temporary facilities (safety barricades, partitions, ladders, stairs, safety signage, first aid, traffic control devices, etc.); daily site clean-up, trash collection and removal; maintenance of site security; site snow removal as required; temporary weather and/or dust protection as required, vehicle wash stations as may be required; fire extinguishers and fire watch as required; safety harnesses, lanyards and fall arrest equipment as required.

f. Close-out/Demobilization – final site/facility clean-up; final release of liens for all sub-contracts; an as-built set of drawings in hard copy to the Project Designer for preparation of record as-built drawings; multiple copies (# determined by owner) of project files and records for the Owner's archives.

g. Quality Control – monthly reports, photographs, inspection reports, logs (RFIs, submittals, change orders, etc.)

h. All costs in this section shall be paid by the Construction Manager-at-Risk and shall not be passed down to the Principal Trade Contractors or any subcontractor.

3. The cost of Bonds and Insurance as required by Article 34 of The General Conditions of the Contract shall be carried in the GMP as a separate line item, not part of the Construction Management Fee.

F. PAYMENTS TO THE CONSTRUCTION MANAGER-AT-RISK

1. Payment of the Construction Manager-at-Risk Pre-Construction Fee shall be made in an agreed monthly sum upon the evaluation by the Owner, after consultation with the Project Designer of work accomplished by the Construction Manager-at-Risk, but in no event exceeding the following schedule:

   a. One-third of the Fee during the Design Development Phase of the Project;

   b. One-third of the Fee during the Construction Document Phase of the Project;

   c. One-third of the Fee within fifteen (15) days after the Construction Manager-at-Risk submits a complete Guaranteed Maximum Price package for the Project.

2. Payments of the Construction Management Fee shall be made in conformance with Article 31, Paragraph f.7 of the General Conditions to the Contract included as Section III of this Request for Proposal.

G. PRE-CONSTRUCTION SERVICES

1. The Construction Manager-at-Risk shall meet with the Owner, the State Construction Office, the Project Designer and any other design team members to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project. The

Construction Manager-at-Risk shall become an integral part of the Project Team and shall develop written project procedures in cooperation with the Owner that will be used as a guide for the management and coordination of this project throughout the life of the project.

2. Consultation During Project Development

The Construction Manager-at-Risk shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phases to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The Construction Manager-at-Risk shall provide written recommendations on construction feasibility.

3. Value Analysis

3.1 The Construction Manager-at-Risk shall provide continuous value analysis studies as the project design is developed to offer suggestions that provide the most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function. All recommendations shall be in writing and must be fully reviewed with the Project Designer and Owner, and approved by the Owner prior to implementation.

3.2 The Construction Manager-at-Risk shall conduct a major value analysis study at 100% Design Development utilizing the 100% Design Development documents.

3.3 The Construction Manager-at-Risk shall promptly notify the Owner and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

3.4 The Construction Manager-at-Risk shall conduct a major value analysis study at 100% Design Development (utilizing the 100% Design Development documents) which shall include, but not be limited to, the items noted below:

a. Develop value analysis concepts for consideration in brainstorming sessions with the Design Team.

b. Written cost studies shall be produced and submitted to the

Owner within two (2) weeks of the final brainstorming session. Written pro/con evaluation of the cost studies shall be provided to the Owner within two (2) weeks after submission of the cost studies.

c. A formal written value analysis study document including a summary of value analysis items, applicable cost savings, selected items and their corresponding cost savings shall be presented to the Owner & Project Designer.

d. The Construction Manager-at-Risk shall also conduct value analysis studies during each of the Construction Document Phases to evaluate specific items as requested by the Owner.

4. Schedule

The Construction Manager-at-Risk shall schedule Pre-Construction Services in accordance with the design schedule established in the agreement between the Owner and Project Designer. The Construction Manager-at-Risk is responsible to monitor this schedule during the pre-construction/design phase, insure that this schedule is updated, and advise the Owner of any deficiencies in adhering to this schedule by any party.

5. Constructability Review

The Construction Manager-at-Risk shall review the design continuously throughout the Pre-Construction Phase as to constructability. With respect to each such issue, the Construction Manager-at-Risk shall submit a written report to both the Owner and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the in-depth study/research conducted by the Construction Manager-at-Risk; and, (3) written recommendations for addressing the issue.

6. Construction Cost Model/Estimates

6.1 The Construction Manager-at-Risk shall develop a project budget/cost model, independent from any similar cost estimates required of the Project Designer, which shall be updated as needed but at a minimum at the end of each design phase during which the Construction Manager-at-Risk is performing Pre-Construction Services. (Hereinafter: CM Cost Model Update.) Prior to the development of the cost model, the Construction Manager-at-Risk will meet with the Project Designer and establish a common cost estimating format so that project cost estimates prepared by the Designer and Construction

Manager-at-Risk may be directly compared.

6.2 Each CM Cost Model Update must set forth the total construction costs for the facility including alternates, Construction Manager-at-Risk Construction Management Fee, Bonds, Insurance and Contingency.

6.3 In the event that the Project Designer's Statement of Probable Construction Costs exceed the Amount Available for Construction, the Owner may to direct the Construction Manager-at-Risk to (and the Construction Manager-at-Risk shall without additional compensation) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the Project Program within the Amount Available for Construction as set forth on the RFP Data Sheet.

6.4 Each CM Cost Model Update and the Designer's Probable Construction Costs will be reviewed by the Project Designer and the Owner for reasonableness and compatibility with the Amount Available for Construction. Meetings and negotiations between Owner, Project Designer and the Construction Manager-at-Risk will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM Cost Model Update. The Construction Manager-at-Risk shall work with the Owner and Project Designer to reach a mutually acceptable joint Probable Construction Cost.

7. Coordination of Contract Documents

7.1 The Construction Manager-at-Risk shall review the plans and specification for features that may be ambiguous, confusing, conflicting or erroneous and shall notify the Project Designer and Owner in writing when such features are observed.

7.2 The Construction Manager-at-Risk shall provide a thorough interdisciplinary coordination review of the Construction Drawings and Specifications submitted for review to the State Construction Office. The review shall be performed utilizing a structured and industry accepted process by a qualified firm or personnel. The Construction Manager-at-Risk shall review the final documents to see that all comments have been incorporated.

7.3 All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the Construction Manager-at-Risk during the review process shall be deemed to be corrected, and any associated costs shall be included in the Guaranteed Maximum Price (GMP) unless the Construction Manager-at-Risk notifies the Owner otherwise in writing prior to the advertisement for bids.

8. Construction Guaranteed Maximum Price (GMP)

8.1 Upon agreement of the Owner, Construction Manager-at-Risk and the State Construction Office, the GMP may be submitted at any time after completion and approval of the Design Development Phase, but in no case later than 10 days after final review submission of the construction documents to the State Construction Office. The Construction Manager-at-Risk will develop and provide to the Owner a GMP which will include all construction costs, and all other projected costs including without limitation the Construction Manager-at-Risk Construction Management Fee and Contingency but not including the Owner's Construction Contingency. The GMP shall set out each anticipated trade contract amount. The GMP must not exceed the Amount Available for Construction as set forth on the RFP Data Sheet.

8.2 In the event that the GMP exceeds the Project Construction Budget, the Owner reserves the right to direct the Construction Manager-at-Risk to (and the Construction Manager-at-Risk shall, without additional compensation) work in conjunction with the Project Designer to redesign the Project as necessary to and meet the Project Construction Budget. The Construction Manager-at-Risk shall work with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost and shall provide the Owner with a revised GMP based on the altered and redrafted documents.

8.3 Upon acceptance by the Owner of a GMP, the Owner shall prepare and the Construction Manager-at-Risk shall execute a contract to reflect the GMP. Within ten (10)days after the owner has provided a contract to the Construction Manager-at-Risk shall return to the Owner a signed contract including a Performance Bond and a Labor and Material Payment Bond in accordance with provisions of Article 35 of the General Conditions of the Contract and evidence of insurance in accordance with the provisions of Article 34.(Section III of this RFP).

9. (Not Used)

10. Non-Acceptance of the GMP

10.1 The Owner, at its sole discretion, may decline to accept the GMP submitted by the Construction Manager-at-Risk for any Construction Phase and thereupon without penalty, the Construction Manager-at-Risk work will end upon completion of the Pre-Construction Phase contract.

10.2 The Construction Manager-at-Risk shall accept the amount negotiated for Pre-Construction Services as full and complete reimbursement of all costs and services performed by the Construction Manager-at-Risk for Pre-Construction Services. Thereafter, the Owner shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the Construction Manager-at-Risk and with full ownership and use of any data and information written or electronic developed during Pre-Construction activities.

11. Contingencies

11.1 Owner/Owner's Contingency: An Owner's Construction Contingency will be established. Expenditures against this contingency will be available to cover all costs resulting from changes in scope not specifically covered in Paragraph 11.2 below and initiated by the Owner's designated representative with the Owner's written approval via a change order amendment issued by the Owner.

11.2 Construction Manager-at-Risk GMP Contingency:

a. The GMP shall include a Construction Manager-at-Risk Contingency in an amount approved by the Owner, to help reduce the risks assumed by the Construction Manager-at-Risk in providing the GMP for the Project. The Owner and the Construction Manager-at-Risk acknowledge that the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including ~~(1) scope gaps between trade contractors, (2) contract default by trade contractors,~~ (3) unforeseen field conditions and (4) design omissions which a prudent Construction Manager-at-Risk could not have reasonably detected during the discharge of his Pre-Construction Services. It is understood that the amount of the Construction Manager-at-Risk Contingency is the maximum sum available to cover costs incurred as a result of such unanticipated causes and that cost overruns in excess of the amount of this Contingency will be borne by the Construction Manager-at-Risk.

b. The Construction Manager-at-Risk Contingency may be applied to any items within the Cost of the Work without the necessity of a change order, without constituting a change in the Work, and without resulting in any change in the GMP. The Construction Manager-at-Risk will notify the Owner and Project Designer in writing of the intent to

apply any part of this contingency to any item within the Cost of the Work prior to any such application. The Construction Manager-at-Risk shall fully document the change on its copy of the construction documents.

c. The amount of the Construction Manager-at-Risk Contingency is to be reviewed by the Owner as part of the review of the GMP. The Owner retains the right to specifically request revisions to the amount of the Construction Manager-at-Risk Contingency prior to the Owner's acceptance and approval of the GMP.

12. Ownership of Documents

All data information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the Construction Manager-at-Risk or in the possession or control of the Construction Manager-at-Risk relating to the Project are the property of the Owner and shall be turned over to the Owner within ten (10) days after the Owner's request.

13. Principal Trade and Specialty Contractor Pre-Qualification

13.1 All Principal Trade and Specialty Contractors shall be pre-qualified by the Construction Manager-at-Risk in accordance with Article 16 of the General Conditions of the Contract (Section III of this RFP).

13.2 The Construction Manager-at-Risk shall identify and define contract packages (the value of which shall total to at least 10% of the GMP) that remove barriers to participation commonly experienced by Historically Underutilized Businesses and Minority Business Enterprises (as those terms are defined in N.C.G.S. 143-128.2, Hereinafter: Reduced Barrier Packages (RBP). Such contract packages will be submitted to the owner for review. As an example, RBP's may require no performance or payment bonds, or may offer the participation of the Construction Manager-at-Risk as a guarantor or surety in the financing of materials purchases by the Principal Trade and/or Specialty Contractors, provided that the Construction Manager-at-Risk may condition such financing participation upon the issuance of joint checks or other similar arrangements to allow the Construction Manager-at-Risk to verify that timely payments are made to suppliers furnishing credit. The Construction Manager-at-Risk may propose other or additional provisions for reducing barriers to participation.

H. CONSTRUCTION PHASE SERVICES

Construction Phase services provided by the Construction Manager-at-Risk shall be as required to effect the complete construction of the Project and to maintain the established GMP of the Project.

1. Consultation During Continuing Project Development:

   Upon acceptance of the GMP, the Construction Manager-at-Risk shall continue to advise and assist the Owner and Project Designer during any continuing Design Activities.

2. Project Construction Costs:

   2.1 The Construction Manager-at-Risk will publicly bid Principal Trade & Specialty Subcontracts in accordance with the established project schedule. Upon completion of the award process for subcontracts the Construction Manager-at-Risk will summarize the values of all of the subcontracts and compare this total with the budgeted amount within the GMP cost summary. Should the value of the awarded subcontracts be less than the GMP trade contract budget, a reserve fund will be established. The Construction Manager-at-Risk may utilize the Reserve Fund as follows:

      a. There are certain uses for the Construction Manager-at-Risk Contingency delineated in Paragraph F.11.2 above. The Construction Manager-at-Risk can only utilize the Reserve Fund for these uses after the Construction Manager-at-Risk Contingency has been expended and upon prior written approval of the Owner.

      b. The Construction Manager-at-Risk shall be authorized to use or allocate Reserve Funds for other purposes only upon mutual agreement that the purpose is appropriate to the project and to the contract, and only with the prior written approval of the Owner and the State Construction Office.

   2.2 Upon completion of work any and all non-expended funds remaining in the GMP will be retained by the Owner via a change order.

3. Principal Trade & Specialty Contracts

   3.1 One or more Principal Trade Contract packages shall be prepared for each of the General Construction, Electrical, Mechanical, Fire Protection, and Plumbing divisions of the work of the Project. The Construction Manager-at-Risk may at any time prior to the prequalification of bidders, identify and define other Specialty

Contract packages which the Construction Manager-at-Risk determines may be helpful in the timely, cost-effective construction of the Project, with or without barrier reduction. Each Principal Trade Contractor shall provide such bonds and insurance as the Construction Manager-at-Risk may require in the contract package.

3.2 In addition to Principal Trade and Specialty Contract packages including general, plumbing, HVAC, and electrical divisions of the work, a Construction Manager-at-Risk, in conjunction with the public agency with whom the Construction Manager-at-Risk has contracted, may advertise for one or more combinations of one or more Principal Trade and/or Specialty contract packages, and may prequalify and accept bids from first-tier subcontractors who wish to submit such combined bids which fully and completely incorporate the specifications for two or more of the bid packages advertised to bid at a single bid opening. All requirements of N.C.G.S Sections 143-128, 143-128.1, 143-128.2, and 143-129, as well as all advertised conditions for bidding, must be satisfied for such a combination bid to be considered responsive.

3.3 In conformity with the public policy set forth in N.C.G.S. 143-128, no Trade Contract Package, including RBP's, may be awarded other than to the bidder submitting the lowest verified bid.

3.4 After the Construction Manager-at-Risk has prequalified Principal Trade and Specialty Contractors, the Construction Manager-at-Risk shall advertise for receipt of bids as directed by the owner. Bids will be received from all prequalified contractors for each trade & specialty package in a public venue and publicly opened at the time specified. The Construction Manager-at-Risk shall tabulate the bids received on each package. Next, the Construction Manager-at-Risk shall determine the apparent low bidder for each package. Upon this determination, the Construction Manager-at-Risk shall have the right to review all bid documentation from the apparent low bid contractor to verify the scope of the bid. If this review shows that the low bid contractor fully accounted for all costs associated with the scope of the work on which he was bidding, then the contract shall be awarded to the low bid contractor. If, however, this review shows that the low bid contractor failed to account for all costs associated with the scope of the work on which he was bidding, then the bid may be disqualified at the discretion of the Construction Manager-at-Risk. The Construction Manager-at-Risk shall have the right as outlined above to verify the scope of each low bid in the same manner until he determines the lowest verified bid.

3.5 The Construction Manager-at-Risk may repeat the bidding for a Principal Trade or Specialty Contract only if 1) the initial bidding produces no responsible, responsive bids for that portion of the work, or 2) no responsible, responsive bidder will execute a contract for the bid portion of the work, or 3) in the judgment of the Construction Manager-at-Risk the bids represent an excessive cost based on current market value and 4) the Owner approves of such a re-bid.

3.6 The Construction Manager-at-Risk will require the Principal Trade & Specialty Contractors to provide the applicable contract documents including insurance certificates, Historically Underutilized Businesses (HUB) and Minority Business Enterprise (MBE) participation schedules, and verification of HUB and MBE participation (by submission of letters of intent, copies of purchase orders, etc).

3.7 All contract documents between the Construction Manager-at-Risk and the Principal Trade and Specialty Contractors shall be made available for review by the Owner.

4. Project Control & Management

4.1 The Construction Manager-at-Risk shall accept delivery and arrange for storage, protection and security for any Owner purchased materials, systems and equipment that are a part of the work until such items are turned over to the respective Principal Trade & Specialty Contractors.

4.2 The Construction Manager-at-Risk shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the Construction Manager-at-Risk shall conduct bi-weekly Owner's meetings and other meetings as may be directed by the Owner, at which Principal Trade and Specialty Contractors, Owner, Project Designer, and other designated representatives, and the Construction Manager-at-Risk can discuss jointly such matters as progress, scheduling, and construction-related problems. The Construction Manager-at-Risk shall prepare 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 meetings and shall in any case receive all notices and minutes of meetings.

5. Requests for Information (RFI)

The Construction Manager-at-Risk will be responsible for developing and implementing an RFI process for use on the project and shall be responsible for tracking and monitoring all RFI's throughout the Construction Phase.

6. Claims Avoidance/Resolution

See Appendix H for rules implementing mediated settlement conferences in North Carolina public construction contracts.

7. Reports

7.1 The Construction Manager-at-Risk shall keep accurate and detailed written records of project progress during all stages of construction.

7.2 The Construction Manager-at-Risk shall maintain a detailed daily diary of all events, which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall be available to the Owner at all times and shall be turned over to the Owner upon completion of the contract.

7.3 The monthly report by the Construction Manager-at-Risk shall include the following items: project status, schedule update, cost status, change order summary, shop drawing/submittal/RFI summary, quality control/inspection summary, any current construction and/or cost issues with proposed solutions for resolution, an accident report, and a 30 and 60 day look ahead report.

8. Contract Close-Out

8.1 The Construction Manager-at-Risk is responsible for compliance with all Contract Close Out items per the Contract Documents and shall obtain data from Principal Trade & Specialty Contractors and maintain a current set of record drawings, specifications and operating manuals.

8.2 With mechanical and electrical equipment, the Construction Manager-at-Risk is to obtain the Operating and Maintenance (O&M) manuals at least four (4) months prior to the demonstration for such equipment. These O&M manuals are to be sent to the Owner's Project Manager who is to forward one (1) set to the Owner's department responsible for maintaining the facility for review prior to the equipment demonstration.

8.3 At the completion of the Project and before final payment, the Construction Manager-at-Risk shall deliver all such records to the Owner along with a complete set of as-built drawings for use by the Project Designer in preparing Record Drawings.

9. Separate Contracts

Without invalidating the relationships with the Construction Manager-at-Risk, the Owner reserves the right to let other contracts in connection with the project, the work under which shall proceed simultaneously with the execution of the work of the Construction Manager-at-Risk. The Construction Manager-at-Risk shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the Construction Manager-at-Risk shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the Construction Manager-at-Risk from carrying out his work according to the plans and specifications, the Construction Manager-at-Risk shall immediately notify the Project Designer and the Owner upon discovering such conditions.

GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM FOR CONSTRUCTION MANAGER-AT-RISK PROJECTS

NORTH CAROLINA

DEPARTMENT OF ADMINISTRATION

STATE CONSTRUCTION OFFICE

SAMPLE

Form OC-15CM

This document is intended for use on State capital construction projects and shall not be used on any project that is not reviewed and approved by the State Construction Office. Extensive modification to the General Conditions by means of "Supplementary General Conditions" is strongly discouraged. State agencies and institutions may include special requirements in "Division 1 – General Requirements" of the specifications, where they do not conflict with the General Conditions.

First Edition September 2010

GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE 1 - DEFINITIONS

a. The **contract documents** consist of the Request for Proposal (RFP); Construction Manager's formal response to the RFP; General Conditions of the Contract; special conditions if applicable; Supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates; the approval of the attorney general; and the certificate of the Office of State Budget and Management. All of these items together form the contract.

b. The **Owner** is the State of North Carolina by and through the agency or institution named on the cover sheet, where the project is being built.

c. The **designer** or **project designer** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the project pursuant to a contract with the Owner, (hereinafter, the "design contract").

d. The **Construction Manager-at-Risk (CM) accepts a relationship of trust and confidence between himself and the Owner and undertakes to act as the Owner's fiduciary in the handling and opening of bids in accordance with the provisions of North Carolina General Statute (N.C.G.S.) 143-128.1.** The CM agrees to furnish his best skills and his best judgment to cooperate with the Owner and Designer for undertaking all necessary action contemplated under the contract documents to (a) establish during the design phase a Guaranteed Maximum Price (GMP) to construct the project and (b) ensure timely and quality completion of the project at a cost within the GMP. Construction Manager or CM as used in the contract documents means Construction Manager-at-Risk (CM at Risk).

e. A **subcontractor**, as the term is used herein, shall be in the case of a principal trade contractor, a general, mechanical, electrical or plumbing contractor or in the case of a specialty contractor, a trade contractor who is not a principal trade contractor, who has entered into a direct contract with a CM, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.

f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.

g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor as supervised by the CM.

h. The **project** is the total construction work to be performed under the contract documents.

i. **Construction Management Fee** shall be an all inclusive lump sum management fee which will include all Construction Manager-at-Risk home office, project site and project related costs including all Construction Manager-at-Risk overhead costs and profit.

j. **Change order**, as used herein, shall mean a written order to the CM subsequent to the signing of the contract authorizing a change in the GMP contract. The change order shall be

signed by the CM, designer and the Owner, and approved by the State Construction Office, in that order (Article 19).

k. **Field Order,** as used herein, shall mean a written approval for the CM to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the CM, designer, Owner, and State Construction Office (SCO).

l. **Field Change,** as used herein shall mean a written approval from the Owner for the CM to proceed with work requested by the Owner to be paid for from the CM Contingency or Owner's Project Reserve within the GMP.

m. **Liquidated damages,** as stated in the contract documents, is an amount reasonably estimated in advance to cover the losses incurred by the Owner by reason of failure of the CM to complete the work within the time specified.

n. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the CM, and which engages to be responsible for the CM and his acceptable performance of the work.

o. **Routine written communications between the Designer and the Construction Manager** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".

p. **Clarification or Request for information (RFI)** is a request from the CM seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the CM's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.

q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work**.**

r. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.

s. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents.

t. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order

of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.

b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

c. The CM shall execute each copy of the response to RFP, contract, performance bond and payment bond as follows:

1. If the documents are executed by a sole Owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.

2. If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.

3. If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.

4. If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole Owner, partnership or corporation, whichever form is applicable to each particular member.

5. All signatures shall be properly witnessed.

6. If the construction manager's license is held by a person other than an Owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.

7. The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.

8. Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear after the signature.

9. The seal of the bonding company shall be impressed on each signature page of the bonds.

10. The CM's signature on the performance bond and the payment bond shall correspond with that on the contract.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.

b. The CM and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or

change in accordance with progress of the work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The CM shall not proceed with the work without such detail drawings and/or written clarifications.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

The Designer shall furnish free of charge to the contractors copies of plans and specifications as follows: The CM shall receive up to thirty (30) sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the CM shall clearly and legibly record all work-in-place that is at variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the CM at the request of the CM.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

a. Within thirty (30) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the CM and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.

b. The CM will be responsible for logging all shop drawings/submittals prior to submission to the Project Designer and Owner. The CM is to insure that shop drawings/submittal packages are submitted in an appropriate manner and, if not, return them to the Principal Trade or Specialty Contractor for proper submission.

c. The CM shall develop and implement a system for the processing of all shop drawings/submittals and shall be responsible for tracking and monitoring all shop drawings/submittals until all have been approved by the Project Designer & Owner.

d. Approval of shop drawings by the designer shall not be construed as relieving the CM from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the designer in writing by the CM.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

a. The CM shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the Designer or his authorized representative.

b. The CM shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the CM and submitted to the designer upon project completion and no later than thirty (30) days after acceptance of the project.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

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

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

a. The CM shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water and shall require the Principal Trade and Specialty Contractors to, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The CM shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.

b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

c. Upon notice, the CM shall require the Principal Trade and Specialty Contractors to furnish evidence as to quality of materials.

d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CM through the Principal Trade or Specialty Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CM through the Principal Trade or Specialty Contractor has the option of using any product and manufacturer combination listed. However, the CM through the Principal Trade or Specialty Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The CM will be responsible for reviewing all substitution requests from Principal Trade or Specialty Contractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids.

e. The CM shall obtain written approval from the designer for the use of products, materials**,** equipment**,** assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.

f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.

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

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The CM shall protect and save harmless the Owner against suit on account of alleged or actual infringement. The CM shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

a. The CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the CM observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the CM performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.

b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the CM unless otherwise specified.

c. Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The CM shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.

d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The CM shall pay the cost of these permits and inspections unless otherwise specified.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

a. The CM shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or designer, and by laws or ordinances governing such conditions. The CM shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The CM shall be responsible for and pay for any damages caused to the Owner. The CM shall have access to the project at all times.

b. The CM shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.

c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.

d. The CM shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and

specifications. All walks, roads, etc., shall be barricaded as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.

e. The CM shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the 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 and similar hazards. The CM shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.

f. The CM shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.

g. The CM shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the work project. The name of the safety inspector shall be made known to the designer at the time the work is started. The CM shall conduct daily safety and health inspections of the construction site and, on a weekly basis, report to the Owner and Project Designer, in writing, the results of such inspections, all workplace hazards identified during such inspections, and corrective action taken to correct such hazards.

h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the CM is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the CM on account of such action shall be determined as provided for under Article 19(b).

i. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the CM or its Principal Trade or Specialty Contractors, the CM shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Owner and designer in writing. The Owner shall take responsibility for remediating the material or substance from the site. If the CM's progress in completing the project is delayed as a result of the Owner's having to remediate the site, the Owner shall issue a change order to the CM's contract in accordance with Article 19.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

a. Any land-disturbing activity performed by the CM or any Principal Trade or Specialty Contractor in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the CM shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.

c. The CM shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.

d. To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, the designer and the agents, consultants and employees of the Owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 - INSPECTION OF THE WORK

a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designer, designated official representatives of the Owner, State Construction Office and those persons required by state law to test special work for official approval. The CM shall therefore provide all equipment necessary and safe access to the work at all times for such inspections.

b. All instructions to the CM will be made only by or through the designer or his designated project representative. Observations made by official representatives of the Owner shall be conveyed to the designer for review and coordination prior to issuance to the CM.

c. The CM shall perform quality control inspections on the work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designer. The CM shall advise the Project Designer of any apparent variation and/or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.

d. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the CM shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the CM's responsibility to serve ample notice of such tests.

e. All laboratory tests shall be paid by the Owner unless provided otherwise in the contract documents except the CM shall pay for laboratory tests to establish design mix for concrete and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.

f. Should any work be covered up or concealed prior to inspection and approval by the Project Designer and/or (SCO) such work shall be uncovered or exposed for inspection, if so requested by the Project Designer or SCO in writing. Inspection of the work will be made promptly upon notice from the CM. All cost involved in uncovering, repairing, replacing,

recovering and restoring to design condition, the work that has been covered or concealed will be paid by the CM.

g. If any other portion of the work has been covered which the Designer has not specifically requested to observe prior to being covered, the Project Designer may request to see such work and it shall be uncovered by the CM. If such work be found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the Owner. If such work is found not in accordance with the contract documents, the CM shall pay such costs.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

a. On-site representatives of the CM shall manage the work of the Principal Trade and Specialty Contractors and coordinate the work with the activities of the Owner and Project Designer to complete the project with the Owner's objectives of cost, time and quality. Throughout the progress of the work, the CM shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the CM will remain on the job and in responsible charge as long as those persons remain employed by the CM unless otherwise requested or agreed to by the Owner. The CM shall establish an on-site organization with appropriate lines of authority to act on behalf of the CM. Instructions, directions or notices given to the designated on-site authority shall be as binding as if given to the CM. However, directions, instructions, and notices shall be confirmed in writing.

b. The CM shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.

c. {NOT USED}

d. The CM shall call and preside over monthly job site progress conferences. All Principal Trade and Specialty Contractors shall be represented at these job progress conferences by both home office and project personnel. The CM shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. The CM shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate. The CM with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman.

e. The CM shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.

f. {NOT USED}

g. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages. After contract award but prior to thirty (30) days from the date of the notice to proceed, the CM shall obtain from the Principal Trade and Specialty Contractors their respective work activities and integrate them into a project construction schedule in CPM form. The resulting CPM schedule shall show all salient features of the work required for construction of the project from start to finish within the time allotted by the contract. The time in days between the CM's early completion date and the contractual completion date is project float time and shall be used as such by the CM unless amended by change order. The CM shall submit to the Project Designer an electronic and paper copy of the final CPM schedule after contracts are executed but within fifteen (15) days prior to the written notice to proceed. The Project Designer after reviewing and commenting on the project CPM schedule shall submit it to the Owner for approval. No application for payment will be processed until the project CPM schedule is approved by the Owner. No monthly application for payment will be processed without the submission of an electronic and paper copy of the CPM schedule attached.

h. The CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.

i. The CM shall distribute to the principal trade and specialty contractors the approved project CPM schedule and shall display same at the job site.

j. The CM shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the project within the time allotted by the contract. In doing so, the CM shall keep the designer as well as all Principal Trade and Specialty Contractors fully informed as to all changes and updates to the schedule. The CM shall submit to the Project Designer a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the CM must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the CM shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the CM to abide by the directives in this paragraph will give the Owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

ARTICLE 15 – {NOT USED}

ARTICLE 16 - PRINCIPAL TRADE AND SPECIALTY CONTRACTS AND CONTRACTORS

a. Principal Trade and Specialty Contractors shall be pre-qualified by the CM. The prequalification criteria shall be determined by the Owner and CM to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and any other factors deemed appropriate by the Owner and/or CM. Basic qualification information from Principal Trade and Specialty Contractors shall be requested on the standard State of North Carolina

Prequalification Form approved by the State Building Commission. Only pre-qualified contractors are allowed to bid to and contract with the CM on a project.

b. All bids for Principal Trade and Specialty Contracts shall be publically advertised and shall be opened publically in a public venue, and once opened, shall be public records under N.C.G.S. 132. The CM shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. 143-128.2, and other factors deemed appropriate by the Owner and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. 143-128(f1). Once Principal Trade and Specialty Contractors are in place, the CM shall provide copies of the contracts to the Project Designer and also provide a list of equipment and material suppliers.

c. A CM may perform a portion of the work only if (a) bidding produces no responsible, responsive bidder for that portion of the work, or (b) the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the Principal Trade or Specialty Contractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (c) the Owner approves performance of the work by the CM.

d. The Designer will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the CM on account of the work of the Principal Trade or Specialty Contractor.

e. The CM is and remains fully responsible for his own acts or omissions as well as those of any Principal Trade or Specialty Contractor or of any employee of either. The CM agrees that no contractual relationship exists between the Principal Trade and Specialty Contractors and the Owner in regard to the contract, and that the Principal Trade and Specialty Contractors act on this work as an agent or employee of the CM.

ARTICLE 17 - CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS

The CM agrees that the terms of these contract documents shall apply equally to each Principal Trade and Specialty Contractor as to the CM, and the CM agrees to take such action as may be necessary to bind each Principal Trade and Specialty Contractor to these terms. The CM further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to CM-subcontractor relationships, and that payments to Principal Trade and Specialty Contractors shall be made in accordance with the provisions of N.C.G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to N.C. G.S. 136-28.1, the balance due the CM shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the Owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the Owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the CM, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit.

Should final payment to the CM beyond the date such contracts have been certified to be completed by the Project Designer, accepted by the Owner, or occupied by the Owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the contract documents or said CM shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

b. Within seven days of receipt by the CM of each periodic or final payment, the CM shall pay the Principal Trade and Specialty Contractors based on work completed or service provided under their contract with the CM. Should any periodic or final payment to a Principal Trade or Specialty Contractor be delayed by more than seven days after receipt of periodic or final payment by the CM, the CM shall pay the Principal Trade or Specialty Contractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

c. The percentage of retainage on payments made by the CM to the Principal Trade and Specialty Contractors shall not exceed the percentage of retainage on payments made by the Owner to the CM. Any percentage of retainage on payments made by the CM to the Principal Trade or Specialty Contractors that exceeds the percentage of retainage on payments made by the Owner to the CM shall be subject to interest to be paid by the CM to the Principal Trade or Specialty Contractor at the rate of one percent (1%) per month or fraction thereof.

d. Nothing in this section shall prevent the CM at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Principal Trade or Specialty Contractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of the Principal Trade or Specialty Contractor to make timely payments for labor, equipment and materials; damage to CM or another subcontractor; reasonable evidence that a Principal Trade or Specialty Contract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

ARTICLE 18 - DESIGNER'S STATUS

a. The Project Designer shall provide liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the Owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.

b. The Project Designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the CM, taking sides with neither.

c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.

d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.

e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the Designer may perform his functions under the contract documents.

f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the administration of the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The CM's decisions, however, relating to means and methods, and administration of the contracts the CM holds are final.

ARTICLE 19 - CHANGES IN THE WORK

a. The Owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the CM from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.

b. Except in an emergency endangering life or property, NO CHANGE IN THE GMP CONTRACT SHALL BE MADE BY THE CM EXCEPT UPON RECEIPT OF APPROVED CHANGE ORDER OR WRITTEN FIELD ORDER FROM THE DESIGNER, COUNTERSIGNED BY THE OWNER AND THE STATE CONSTRUCTION OFFICE AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE CONTRACT PRICE SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.

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

The CM may be requested to make a change to the work by the Project Designer and Owner where such work is to be funded by the CM Contingency or Project Reserve that is part of the GMP contract. Such a change must be documented in the same manner as a Change Order and must be authorized in writing by the Project Designer and Owner by a Field Change document.

In the event of emergency endangering life or property, the CM may be directed to proceed on a time and material basis whereupon the CM shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

c. In determining the values of changes, either additive or deductive, the CM and Principal Trade and Specialty Contractors are restricted to the use of the following methods:

1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except is such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.

2. Otherwise, the contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.

d. Under Paragraph “b” and Methods "c(2)" above, the allowances for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of **net cost** of the work. No allowance for overhead and profit will be allowed for the CM until the change orders aggregate to a sum in excess of five percent (5%) of the Cost of the Work portion of the GMP. Once this threshold is met the CM may add an overhead & profit allowance not to exceed four percent (4%) of the net cost of the change order. Change orders to the GMP which authorize additional phases of a project without a change in scope of the originally intended project will not be considered in establishing the threshold for additional CM overhead & profit. Under Method "c (1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%***)*** profit, but no allowances for overhead.

e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:

1. The actual costs of materials and supplies incorporated or consumed as part of the project;

2. The actual costs of labor expended on the project site;

3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker’s compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;

4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;

5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project.

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

f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty

(30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

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

g. In all change orders, the procedure will be for the Project Designer to request proposals for the change order work in writing. The CM will require the Principal Trade and Specialty Contractors to provide such proposals and supporting data in suitable format and will review and approve such change orders prior to submission to the designer. The Project Designer shall verify correctness. Within fourteen (14) days after receipt of the CM's proposal**,** the Project Designer shall prepare the change order and forward to the CM for his signature or otherwise respond, in writing, to the CM's proposal. Within seven (7) days after receipt of the change order executed by the CM, the Project Designer shall, certify the change order by his signature, and forward the change order and all supporting data to the Owner for the Owner's signature. The Owner shall execute the change order and forward to the State Construction Office for final approval**,** within seven (7) days of receipt. The State Construction Office shall act on the change order within seven (7) days. Upon approval by the State Construction Office, one copy remains with the State Construction Office, and the remaining copies are sent to the Project Designer for distribution to the Owner(s)**,** CM and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

h. At the time of signing a change order, the CM shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."

i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

j. If, during the progress of the work, the Owner requests a change order and the CM's terms are unacceptable, the Owner**,** with the approval of the State Construction Office, may require the CM to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

ARTICLE 20 - CLAIMS FOR EXTRA COST

a. Should the CM consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay, and shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.

b. The CM shall not act on instructions received by him from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer will not be responsible for

misunderstandings claimed by the CM of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.

c. Should a claim for extra compensation by the CM be denied by the Project Designer or Owner, and cannot be resolved by a representative of the State Construction Office, the CM may request a mediation in connection with N.C.G.S. 143-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, then the CM may pursue his claim in accordance with the provisions of N.C.G.S. 143-135.3 and the following:

1. A CM who has not completed a contract with a state agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the CM claims is due. The Director may deny, allow or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under N.C.G.S. Chapter 150B.

2. (a) A CM who has completed a contract with a State agency or institution for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the State Construction Office of the Department of Administration for the amount the CM claims is due. The claim shall be submitted within sixty (60) days after the CM receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

(b) The Director shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the Director and the CM agree. The CM may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny or compromise the claim, in whole or in part. The Director shall give the CM a written statement of the Director's decision on the CM’s claim.

(c) A CM who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within sixty (60) days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the CM may, in lieu of the procedures set forth in the preceding subsection of this section, within six (6) months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

ARTICLE 21 - MINOR CHANGES IN THE WORK

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

ARTICLE 22 - UNCORRECTED FAULTY WORK

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

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

a. The final completion date will be as determined by the Owner, Designer and CM during the pre-construction phase of the project and will be incorporated into the contract for construction services between the Owner and the CM.

b. The CM shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall fully complete all work hereunder within the time of completion specified. For each day in excess of the above number of days, the CM shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the loses to be incurred by the Owner by reason of failure of the CM to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.

c. {NOT USED}

d. If the CM is delayed at any time in the progress of his work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and Owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and Owner may determine is reasonable.

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

e. Request for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the CM shall notify the Project Designer of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.

f. The CM shall notify his surety in writing of extension of time granted.

g. No claim shall be allowed on account of failure of the Project Designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

a. The Owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.

b. Prior to the final payment, the Owner, with the approval of the State Construction Office, may request the CM in writing, through the Project Designer if applicable, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the CM agrees, the Project Designer will schedule a beneficial occupancy inspection, with the approval of the State Construction Office, after which the Project Designer may issue a certificate of substantial completion. The certificate shall include the following documentation:

1. Date of substantial completion.

2. A tentative list of items to be completed or corrected before final payment.

3. Establishing responsibility between the CM and Owner for maintenance, heat, utilities and insurance.

4. Establishing the date for guarantees and warranties under terms of the contract.

5. Consent of surety.

6. Endorsement from insurance company permitting occupancy.

c. The Owner shall have the right to exclude the CM from any part of the project which the Project Designer has so certified to be substantially complete, but the Owner will allow the CM reasonable access to complete or correct work to bring it into compliance with the contract.

d. Occupancy by the Owner under this article will in no way relieve the CM from his contractual requirement to complete the project within the specified time.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

a. Upon notification from the CM that the project is complete and ready for inspection, the Project Designer shall make a preliminary final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the CM shall ensure that all items requiring corrective measures noted at the preliminary inspection are complete**.** The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner, the CM and the State Construction Office.

b. {NOT USED}

c. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the Project Designer and State Construction Office representative shall make the following determinations:

1. That the project is completed and accepted.

2. That the project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the Owner may invoke Article 28, Owner's Right to Do Work.

3. That the project is not complete and another date for a final inspection will be established.

d. Within fourteen (14) days of acceptance per Paragraph c1 or within fourteen (14) days after completion of punch list per Paragraph c2 above, the Project Designer shall certify the work and issue applicable certificate(s) of compliance.

e. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs c1 or c2 above shall be handled in accordance with Article 42.

f. The date of acceptance will establish the following:

1. The beginning of guarantees and warranties period.

2. The date on which the CM's insurance coverage for public liability, property damage and builder's risk may be terminated.

3. That no liquidated damages (if applicable) shall be assessed after this date.

4. The termination date of utility cost to the CM (if applicable).

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the Project Designer shall be promptly removed from the work site by the CM, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the CM.

b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and shall make satisfactory progress until completed.

c. Should the CM fail to proceed with the required corrections, then the Owner may complete the work in accordance with the provisions of Article 28.

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee**.** Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, nor the Project Designer, shall relieve the CM from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The CM shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the CM and establish a

time limit for completion of corrections by the CM. The Owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

If, during the progress of the work or during the period of guarantee, the CM fails to prosecute the work properly or to perform any provision of the contract, the Owner, after fifteen (15) days written notice sent by certified mail, return receipt requested, to the CM from the Project Designer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the CM, such action and cost of same having been first approved by the Project Designer. Should the cost of such action of the Owner exceed the amount due or to become due the CM, then the CM or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 29 - ANNULMENT OF CONTRACT

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

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

a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the CM, or if the Owner should fail or refuse to make payment on account of a certificate issued by the Project Designer within thirty (30) days after receipt of same, then the CM, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner and the Project Designer, may suspend operations on the work or terminate the contract.

b. The Owner shall be liable to the CM for the cost of all materials delivered and work performed on this contract plus 20 percent overhead and profit and shall make such payment. The Project Designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT

a. Based on applications for payment submitted to the Project Designer by the CM and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the contract documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.

b. Provided an application for payment is received by the Project Designer not later than the 5th day of the month, the Owner shall make payment to the CM not later than the 20th day of the following month. If an application for payment is received by the Project Designer after the application date fixed above, payment shall be made by the Owner not later than forty-five days after the Project Designer receives the application for payment.

c. Prior to submitting the first payment request, the CM shall prepare a schedule showing a breakdown of the contract price into values of the various parts of the GMP contract. The Cost of the Work breakdown will be arranged so as to facilitate payments to the Principal Trade and Specialty Contractors in accordance with Article 17. The combined CM Construction Management Fee, Bonds & Insurance, CM Contingency, and Project Reserve (if any) will be shown on the Schedule of values as separate lines. The values for the CM Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Designer and Owner may require.
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d. Applications for payment shall be in a form agreed upon by the CM, Project Designer and Owner and shall prepared and supported by such data to substantiate the accuracy of the request as the Project Designer may require.

e. Subject to other provisions of the contract documents, the amount of each progress payment shall be computed as follows:

    1. Take that portion of the GMP properly allocable to completed work as determined by multiplying the percentage completion of each portion Cost of the Work by the share of the GMP allocated to that portion of the work in the schedule of values.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.

3. Subtract the aggregate of previous payments made by the Owner.

4. Subtract the amount, in any, by which the CM has been previously overpaid, as evidenced by the Owner's review of the CM's documentation.

5. Subtract amounts, if any, for which the Project Designer has withheld or nullified a certificate of payment.

6. Subtract retainage as per paragraph (h) below.

7. Add the amount due for the CM Construction Management Fee calculated on the basis the percentage completion of the project or on a schedule of payment negotiated with the Owner less fifteen percent (15%) and less previous payments for CM Construction Management Fee.

f. Payment allocated to Principal Trade and Specialty Contractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and the State Construction Office and with written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule. The balance of the CM Construction Management Fee shall be held by the Owner until satisfactory completion and close out of the project. Satisfactory completion and close out of the project means that the Owner and Project Designer are satisfied that the project has been completed in accordance with the plans and specifications and within the GMP, all general conditions of the contract pertaining to close out have been satisfied, and all Principal Trade and Specialty Contractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance

g. Except with the Owner's prior approval, the CM shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the site.

h. The Project Designer shall take action on the CM's application for payment in accordance with the Agreement between the Owner and Designer. The Project Designer's certification for payment shall be based upon the Project Designer's on-site observation and the documentation submitted by the CM with the application for payment.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

a. Within five (5) days from receipt of request for payment from the CM, the Project Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the Project Designer. If the certificate is not approved by the Project Designer, he shall state in writing to the CM and the Owner his reasons for withholding payment.

b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:

1. Claims arising from unsettled liens or claims against the CM.

2. Faulty work or materials appearing after final payment.

3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.

4. As conditioned in the performance bond and payment bond.

c. The making and acceptance of final payment shall constitute a waiver of all claims by the CM except those claims previously made and remaining unsettled (Article 20(c)).

d. 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:

1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The Project Designer must approve the Manuals prior to delivery to the Owner).

2. Transfer of required attic stock material and all keys in an organized manner.

3. Record of Owner's training.

4. Resolution of any final inspection discrepancies.

e. The CM shall forward to the Project Designer, the final application for payment along with the following documents:

1. List of minority business subcontractors and material suppliers showing breakdown of contracts amount.

2. Affidavit of Release of Liens.

3. Affidavit from CM of payment to material suppliers and subcontractors. (See Article 36).

4. Consent of Surety to Final Payment**.**

5. Certificates of state agencies required by state law.

f. The Project Designer will not authorize final payment until the work under contract has been certified by Project Designer, certificates of compliance issued, and the CM has complied with the closeout requirements. The Project Designer shall forward the CM's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD

a. The Project Designer with the approval of the State Construction Office may withhold payment for the following reasons:

1. Faulty work not corrected.

2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.

3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the CM.

b. The Secretary of the Department of Administration may authorize the withholding of payment for the following reasons:

1. Claims filed against the CM or evidence that a claim will be filed.

2. Evidence that Principal Trade or Specialty Contractors have not been paid.

c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the CM without cause will make Owner liable for payment of interest to the contractor as provided in N.C.G.S. 143-134.1.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until the CM has verified to the Owner that all required insurance and verifying certificates of insurance have been obtained and approved in writing by the Owner. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled, reduced in amount or coverage's eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Owner of such alteration or cancellation.

a. **Worker's Compensation and Employer's Liability**

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

b. **Public Liability and Property Damage**

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

Bodily Injury:	$500,000 per occurrence
Property Damage:	$100,000 per occurrence / $300,000 aggregate

In lieu of limits listed above, a $500,000 combined single limit shall satisfy both conditions.

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

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

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

d. **Deductible**

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

e. **Other Insurance**

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

f. **Proof of Carriage**

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

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ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

a. The CM shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount, which shall be in the amount of the GMP for the entire project. Bonds shall be executed in the form bound with the specifications

b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the CM on account of the contract shall not become due until the CM has furnished to the Owner through the Project Designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work to Principal Trade and Specialty Contractors in connection with his contract have been satisfied, and that no claims or liens exist against the CM in connection with this contract. In the event that the CM cannot obtain similar affidavits from the Principal Trade and Specialty Contractors to protect the CM and the Owner from possible liens or claims against the subcontractor, the CM shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the CM's) knowledge, and if any appear afterward, the CM shall save the Owner harmless.

ARTICLE 37 - ASSIGNMENTS

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

ARTICLE 38 - USE OF PREMISES

a. The CM shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Project Designer and shall not exceed those established limits in his operations.

b. The CM shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

c. The CM shall enforce the Project Designer's instructions regarding signs, advertisements, fires and smoking.

d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

a. The CM shall ensure that all cutting, fitting or patching that may be required to make the work come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the Project Designer may direct.

b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.

c. No Principal Trade or Specialty Contractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the Project Designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

a. The CM shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the CM is to pay all utilities, any permanent meters installed shall be listed in the CM's name until his work is fully accepted by the Owner. As stipulated in the Supplementary General Conditions, the Owner may: (1) pay utilities cost directly, (2) require the CM to pay all utilities cost, (3) or reimburse the CM for the actual cost of utilities. The Owner or CM, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in project completion.

b. If applicable Meters shall be relisted in the Owner's name on the day following completion and acceptance of the CM's work, and the Owner shall pay for services used after that date.

c. {NOT USED}

d. Prior to the operation of permanent systems, the CM will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.

e. The CM shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows**,** doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed***;*** and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the CM and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CM.

f. The CM shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.

g. The CM shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.

h. The CM shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:

    1. Prior to acceptance of work by the Owner, the CM shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.

    2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.

    3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.

    4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.

    5. The CM shall ensure that all lamps are in proper working condition at the time of final project acceptance.

i. The CM shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.

j. The CM shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.

k. On multi-story construction projects, the CM shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall either be included in the CM Construction Management Fee or specified as part of the work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.

l. The CM will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the CM's name, and the name of the Project Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

a. The CM shall ensure that the building and surrounding area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the Project Designer. The CM shall provide an on-site refuse container(s) for the use of all Principal Trade and Specialty Contractors. The CM shall ensure that each Principal Trade and Specialty Contractor removes their rubbish and debris from the building on a daily basis. The CM shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.

b. The CM shall provide and maintain suitable all-weather access to the building**.**

c. Before final inspection and acceptance of the building, the CM shall ensure that all portions of the work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

a. The CM shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.

b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The CM shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.

c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the CM, which is hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS

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

ARTICLE 44 - INDEMNIFICATION

To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, the Project Designer and the agents, consultants and employees of the Owner and Project Designer, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the CM, the CM's subcontractor, or the agents of either the CM or the CM's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

ARTICLE 45 - TAXES

a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).

b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).

c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the bid proposal and contract sum.

d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the bid proposal and contract sum.

e. Accounting Procedures for Refund of County Sales & Use Tax

   Amount of county sales and use tax paid per CM's statements:

   CM's performing contracts for state agencies shall ensure that the Principal Trade and Specialty Contractors provide information to allow the CM to give the state agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C.G.S. 105-164.14(e).

   The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

   In the event the contractors make several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

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

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

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

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

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

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

ARTICLE 47 - EMPLOYMENT OF THE HANDICAPPED

The CM agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The CM agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. Construction Managers are reminded of the requirements of instructions under General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* from the State Construction Office is to be incorporated in all asbestos abatement projects for the Capital Improvement Program.

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

N.C.G.S. 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project and requires documentation of good faith efforts for meeting that goal. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix F are hereby incorporated into and made a part of this contract.

The CM shall identify and define contract packages (the value of which shall total to at least ten percent (10%) of the GMP) that remove barriers to participation commonly experienced by Historically Underutilized Businesses and Minority Business Enterprises as those terms are

defined in North Carolina General Statute 143-128.2, hereinafter referred to as Reduced Barrier Packages (RBP). Such contract packages will be submitted to the Owner for review. As an example, RBP's may require no performance or payment bond, or may offer the participation of the CM as a guarantor or surety in the financing of material purchases by the Principal Trade and/or Specialty Contractors, provided that the CM may condition such financing participation upon the issuance of joint checks or other similar arrangements to allow the CM to verify that timely payments are made to suppliers furnishing credit. The CM may propose other and/or additional provisions for reducing barriers to participation.

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

ARTICLE 50 – CONTRACTOR EVALUATION

The CM's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to compete for future capital improvement projects for institutions and agencies of the State of North Carolina. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, Construction Manager Evaluation Procedures, is hereby incorporated and made a part of this contract. The Owner may request the CM's comments to evaluate the Project Designer.

ARTICLE 51 – GIFTS

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any state employee of any gift from anyone with a contract with the state, or from any person seeking to do business with the State. By execution of any response in this contract, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

APPENDIX A

FORM OF CONTRACT – PRE-CONSTRUCTION SERVICES

SAMPLE

CONSTRUCTION MANAGER AT RISK
PRE-CONSTRUCTION SERVICES AGREEMENT

State Construction File Number:

THIS AGREEMENT, made this _____ day of _____ in the year of _____

for the Science Technology, Engineering, and Math (STEM) Building by and between *TBD* hereinafter called the Construction Manager at Risk, and the State of North Carolina, through Western Carolina University hereinafter called the Owner.

WITNESSETH:

Whereas the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

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

Whereas, the Owner, through its awarding authority, has made an award for the Pre-Construction Services related to the Project work to the undersigned Construction Manager at Risk, and pursuant to the terms of the Request for Proposals this form is to be executed to form and memorialize the contractual relationship between the parties;

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

1. This form of pre-construction services contract hereby shall be incorporated and accompanied by; Owner's letter for recommendation of award dated _____, Owner's request for proposal dated _____, and the Construction Manager at Risk's response to the proposal dated _____.

2. The Pre-Construction Services provided by the Construction Manager at Risk shall be in accordance with Section II, Paragraph G of the incorporated Owner's request for proposal.

3. The Owner will compensate the Construction Manager at Risk for pre-construction services in the amount of _____ payable in accordance with Section II, Paragraph F of the incorporated Owner's request for proposal.

SAMPLE

4. The Owner may terminate this agreement for any reason upon ten (10) calendar days written notice (delivered by certified mail, return receipt requested). This agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by certified mail, return receipt requested) should one party fail to perform in accordance with its terms through no fault of the other. In the event of termination, the Construction Manager at Risk shall receive payment for services rendered prior to receipt of the written termination notice. Any work done by the Construction Manager at Risk prior to termination shall become the property of the Owner. Termination for non-acceptance of the Construction Manager at Risk's proposed Guaranteed Maximum Price shall be stipulated in Section II, Paragraph G.10 of the incorporated Owner's request for proposal.

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

Witness: (Proprietorship or Partnership)

_____

Attest: (Corporation)

By: _____

Title: _____
(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

Construction Manager at Risk:

_____
(Trade or Corporate Name)

By: _____

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

The State of North Carolina through

Witness:

_____

_____
(Agency, Department or Institution)

By: _____

Title: _____

SAMPLE

APPENDIX C

FORM OF CONTRACT – FIXED GUARANTEED MAXIMUM PRICE

SAMPLE

FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT
FIXED GUARANTEED MAXIMUM PRICE

State Construction File Number:

THIS AGREEMENT, made this _____ day of _____ in the year of _____

for Science Technology Engineering Math (STEM) Building by and between *To Be Determined,* hereinafter called the Construction Manager at Risk, and the State of North Carolina, through Western Carolina University, hereinafter called the Owner.

WITNESSETH:

Whereas the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

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

Whereas, the Owner, through its awarding authority, has made an award of the work to the undersigned Construction Manager at Risk, and pursuant to the terms of the Request for Proposals this form is to be executed to form and memorialize the contractual relationship between the parties;

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

1. This form of contract hereby shall be incorporated and accompanied by; Owner's letter for recommendation of award dated _____, Owner's Request for Proposal dated _____, Construction Manager at Risk's response to proposal dated _____, Construction Manager at Risk's HUB plan approved by Owner dated _____, Designer's drawing and specification lists dated _____, Construction Manager at Risk's payment and performance bonds dated _____, Power of Attorney, Construction Manager at Risk's Insurance Certificate dated _____, Statement of GMP including schedule of values for cost of the work and General Conditions dated _____, and incorporated herein by reference the contract for Pre-Construction Services dated _____.

2. For the sums set forth in the Construction Manager at Risk's fee proposal (or any subsequently amended fee agreement), the Construction Manager at Risk undertakes to act as the Owner's fiduciary (N.C.G.S.143-128.1) and to furnish professional construction management services during the construction of the Project.

SAMPLE

3. The providing of the Construction Manager at Risk services shall be in compliance with the requirements of the Request for Proposal (including all its appendices and attachments) and the Construction Manager at Risk's proposal (Hereinafter, together: the Contract Documents). To the extent that any term, requirement, or specification in the Construction Manager at Risk's proposal shall be in conflict with the Request for Proposal, the terms, requirements, and specifications of the Request for Proposal shall control and the conflicting contents of the Construction Manager at Risk's proposal shall be deemed surplussage except where provided otherwise.

4. That the Construction Manager at Risk shall commence provision of construction phase services under this agreement on a date to be specified in a written order of the Owner and shall fully complete all services hereunder and accomplish the final completion of the project within _____consecutive calendar days from the date of Notice to Proceed. The Construction Manager at Risk shall furnish to the Owner various schedules as provided in the Contract Documents setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days. If the Construction Manager at Risk fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or shall allow the work to be performed unsuitably or shall discontinue the prosecution of the work, or if the Construction Manager at Risk shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the Construction Manager at Risk and his surety of such delay, neglect or default, specifying the same, and if the Construction Manager at Risk within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Construction Manager at Risk, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Construction Manager at Risk and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said Construction Manager at Risk, then the said Construction Manager at Risk and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Construction Manager at Risk and the surety shall be liable and shall pay to the Owner the amount of said excess.

SAMPLE

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

6. Fixed Guaranteed Maximum Price

Cost of the Work	$
Construction Management Fee	$
Construction Manager's Bonds and Insurance	$
Construction Manager's Construction Contingency	$ _____
Total Fixed Guaranteed Maximum Price	**$**

SAMPLE

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

Witness: (Proprietorship or Partnership)

_____

Construction Manager at Risk:

_____
(Trade or Corporate Name)

By: _____

Attest: (Corporation)

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: _____

Title: _____
(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

Witness:

_____

The State of North Carolina through

_____
(Agency, Department or Institution)

By: _____

Title: _____

SAMPLE

APPENDIX D

PERFORMANCE AND PAYMENT BOND FORMS

SAMPLE

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal (Contractor) _____

Name of Surety: _____

Name of Contracting Body: _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

SAMPLE

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Witness:

_____
Contractor: (Trade or Corporate Name)

_____
(Proprietorship or Partnership)

By: _____

Attest: (Corporation)

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: _____

Title: _____
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

_____
(Surety Company)

Witness:

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

_____
(N.C. Licensed Resident Agent)

_____
Name and Address-Surety Agency

_____
Surety Company Name and N.C. Regional or Branch Office Address

SAMPLE

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal (Contractor) _____

Name of Surety: _____

Name of Contracting Body: _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

SAMPLE

Witness:

Contractor: (Trade or Corporate Name)

(Proprietorship or Partnership)

By:

Attest: (Corporation)

Title:

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By:

Title:

(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

(Surety Company)

Witness:

By:

Title:

(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C. Regional or Branch Office Address

SAMPLE

APPENDIX F

HUB PLAN

APPENDIX G

Non-Collusion and Non-Suspension Statement

The undersigned certifies that (name and business address of CM candidate), North Carolina General Contractor License Number _____, has not in connection with this proposal or in any instance engaged in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of N.C.G.S. 75-1 and 75-2 where the combination, conspiracy or other unlawful act in restraint of trade involves a contract for construction, renovation or repair, let or to be let by a governmental agency or a subcontract for construction renovation or repair with a prime contractor or proposed prime contractor for a governmental agency. N.C.G.S. 133-24.

Furthermore, the undersigned certifies that it is familiar with the response to the RFP for (Project Name) and that said response, is fair and proper and is not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the undersigned or any of its agents, representatives, owners, employees or parties in interest. N.C.G.S. 133-30.

Finally, the undersigned certifies that it has not been suspended from bidding by the North Carolina State Building Commission or any other State building authority and that it is not an affiliate or subsidiary of any company suspended by the North Carolina State Building Commission or any other State building authority.

By_____
Title_____
Date_____

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the _____day of _____, 20_____.

_____
Official Signature of Notary

_____, Notary Public
Notary's Printed or Typed Name

_____
My Commission Expires:

Appendix H

RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN NORTH CAROLINA PUBLIC CONSTRUCTION PROJECTS

Adopted
February 26, 2002

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RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

A. **Purpose of Mandatory Settlement Conferences**.

Pursuant to N.C.G.S. 143-128(g) 143-135.26(11), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for 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 public construction contract governed by Article 8. Ch. 143 of the North Carolina General Statutes and identified in N.C.G.S. 143-128(g) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least $15,000 may submit a written request to the public owner for mediation of the dispute.

2) Prior to submission of a written request for mediation to the public owner, the parties requesting mediation,

a) If a prime contractor, must have first submitted its claim to the Project Designer for review as set forth in Exhibit A. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit his written request for mediation to the public owner.

b) If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the public owner.

c) If the party requesting mediation is the Project Designer, then it must first submit its claim to the public owner to resolve. If the dispute is not resolved with the public owner's involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the public owner for mediation.

RULE 2. SELECTION OF MEDIATOR

A. **Selection of Certified Mediator by Agreement of the Parties**. The parties may select a mediator certified pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the State Construction

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Office (hereinafter collectively referred to as the "SCO") or public owner if a non-State project a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

B. **Nomination and Public Owner Approval of a Non-Certified Mediator.** The parties may select a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and the SCO or public owner, is otherwise qualified by training or experience to mediate the action.

   If the parties select a non-certified mediator, the requesting party shall file with the SCO a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

   The SCO or public owner shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

C. **Appointment of Mediator by the SCO**. If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the SCO or public owner and request, on behalf of the parties, that the SCO or public owner appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the SCO or public owner shall appoint a certified attorney mediator. If no preference is expressed, the SCO or public owner may appoint a certified attorney mediator or a certified non-attorney mediator.

D. **Mediator Information Directory**. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.

E. **Disqualification of Mediator**. Any party may request replacement of the mediator by the SCO or public owner 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 the county where the project is located. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

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B. **When Conference is to be Held**. The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.

C. **Request to Extend Deadline for Completion**. A party, or the mediator, may request the SCO or public owner to 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. If any party does not consent to the request, said party shall promptly communicate its objection to the SCO or public owner.

The SCO or public owner may grant the request by setting a new deadline for completion of the conference.

D. **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

E. **The mediated settlement conference shall not be cause for the delay of the construction project which is the focus of the dispute.**

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

A. **Attendance.**

1) All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in the public owner's withholding of monthly payment to that party until such party attends the mediation.

2) Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.

3) Attorneys on behalf of parties may attend the mediation but are not required to do so.

4) Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

B. **Finalizing Agreement.** If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel.

C. **The mediation fee shall be paid in accordance with N.C.G.S. 143-128(g).**

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D. **Failure to compensate mediator.** Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by the public owner.

Should the public owner fail to compensate the mediator, it shall hereby be subject to a civil cause of action from the mediator for the 1/3 portion of the mediator's total fee as required by N.C.G.S. 143-128(g).

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.

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;
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 N.C.G.S 7A-38.1(1);
h) The duties and responsibilities of the mediator and the participants; and
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 circumstance bearing on possible bias, prejudice or

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partiality.

3) *Declaring Impasse.* It is the duty of the mediator timely to determine that an impasse exists and that the conference should end.

4) *Reporting Results of Conference.* The mediator shall report to the SCO or public owner within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the SCO or public owner of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The SCO or public owner may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.

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. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the SCO or public owner.

RULE 6. COMPENSATION OF THE MEDIATOR

A. **By Agreement.** When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provisions of N.C.G.S 143-128(g) are observed.

B. **By Appointment.** When the mediator is appointed by the SCO or public owner, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. * When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these rules.

All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the SCO or public owner to mediate any dispute in accordance with these rules.

* Except when otherwise allowed by the SCO or public owner upon the request of the parties to the mediation.

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RULE 8. RULE MAKING

These Rules are subject to amendment by rule making by the State Building Commission.

These Rules are mandated for State projects when the contracting state entity has not otherwise adopted its own dispute resolution provision. These rules are optional for all other projects subject to Article 8, Ch. 143 of the General Statutes.

RULE 9. DEFINITIONS

When the phrase “SCO or public owner” is used in these rules, “SCO” shall apply to state projects, “public owner” shall apply to non-state public projects.

RULE 10. TIME LIMITS

On state contracts, any time limit provided for by these Rules may be waived or extended by the SCO for good cause shown.

On non-state contracts, any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the designer of record shall decide all waivers or extensions of time for good cause shown.

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