NEW HANOVER COUNTY
REQUEST FOR QUALIFICATIONS
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE NHC DIVISION OF JUVENILE JUSTICE FACILITY
RFQ # 19-0116

COUNTY COMMISSIONERS
WOODY WHITE, CHAIR
SKIP WATKINS, VICE-CHAIR
JONATHAN BARFIELD, JR.
PATRICIA KUSEK
ROB ZAPPLE
CHRIS COUDRIET, COUNTY MANAGER
NEW HANOVER COUNTY
REQUEST FOR QUALIFICATIONS
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR THE NHC DIVISION OF JUVENILE JUSTICE FACILITY

RFQ # 19-0116

New Hanover County is soliciting qualifications from interested firms to provide construction management at risk services for a new Division of Juvenile Justice Facility that will house juvenile court rooms and related functions to serve New Hanover County. The new facility will replace the existing facility located at 138 North 4th Street, Wilmington, NC.

Submit Statements of Qualifications by mail to:
New Hanover County
Attn: Kevin Caison, Facilities Project Manager
200 Division Drive, Wilmington, North Carolina 28401

The deadline for receipt of Statements of Qualifications is 5:00 P.M. EST, Wednesday, August 15, 2018.

Submitted Statements of Qualifications are not subject to public inspection until a contract is awarded and executed. Statements of Qualifications will be evaluated and firms may be contacted for interviews to be conducted by phone or in person.

Instructions for submitting Statements of Qualifications and complete requirements and information may be obtained by visiting the County’s website at http://www.nhcgov.com/business-nhc/bids.

New Hanover County reserves the right to accept or reject any or all Statements of Qualifications and to make the award which will be most advantageous to the County.

Lena L. Butler, Purchasing Supervisor
New Hanover County
(910) 798-7190

Published: August 1, 2018
Section 2 Instructions

2.1 Schedule

<table>
<thead>
<tr>
<th>Advertisement</th>
<th>Wednesday August 1, 2018</th>
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<tbody>
<tr>
<td>Deadline for Questions (Questions may be submitted from the release date until the deadline for questions)</td>
<td>Wednesday August 8, 2018 by 5:00 PM, EST</td>
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<tr>
<td>Deadline for Receipt of Statements of Qualifications</td>
<td>Wednesday August 15, 2018 by 5:00 PM, EST</td>
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<td>New Hanover County</td>
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<td>Attn: Kevin Caison, Facilities Project Manager</td>
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<td>200 Division Drive,</td>
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<td>Wilmington, North Carolina 28401</td>
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2.2 Statement of Qualifications Instructions

2.2.1 Submit your Statement of Qualifications in a sealed envelope properly marked “RFQ # 19-0116 CM@R for NHC DIVISION OF JUVENILE JUSTICE FACILITY” and addressed to the County at the following address: New Hanover County

Attn: Kevin Caison, Facilities Project Manager
200 Division Drive,
Wilmington, North Carolina 28401

Firms submitting their qualifications statements are asked to submit ten (8) copies of the complete statement of qualifications along with one (1) electronic copy on CD/DVD/USB.

Clearly show the office location where work will be done and the experience of those that will do the work and their locations.

The successful firm must have the capability of receiving and submitting all documents in an electronic format. Also, successful firm must have Internet access for browsing and receipt of electronic documents via email.

2.2.2 Qualification Statements received after the time and date for closing will not be considered.
2.2.3 Submitted Statements of Qualifications are not subject to public inspection until a contract is awarded and executed.

2.2.4 After the issue date, all communications between the County and prospective Respondents regarding this RFQ shall be in writing. Any inquiries, requests for interpretation, technical questions, clarification, or additional information shall be directed to Kevin Caison, Facilities Project Manager by emailing kcaison@nhcgov.com. All questions concerning this RFQ shall reference the section number and page. Questions and responses will be compiled and shared with all interested Respondents known to the County. All questions shall be received no later than August 8, 2018 at 5:00 PM, EST.

Respondents may not have communications, verbal or otherwise, concerning this RFQ with any personnel or boards from New Hanover County, other than the person listed in this section. If any vendor attempts any unauthorized communication, the proposal will be rejected.

All Respondents who intend to submit a Statement of Qualification on this project should send an email to kcaison@nhcgov.com including pertinent contact information. This will ensure that you receive all addenda issued for this RFQ; if applicable.

Any changes in the qualification’s request will be issued by addenda and sent by email to all proposers that have notified the County of their intent to submit a Qualification Package. The addenda will also be posted on the County’s website at http://www.nhcgov.com/business-nhc/bids/. Verbal information obtained otherwise will not be considered in the awarding of the proposal.

2.2.5 The deadline for receipt of all Qualification Statements is August 15, 2018 by 5:00 PM EST. Any Statements received after the scheduled closing time will not be accepted.

2.2.6 New Hanover County reserves the right to allow or disallow minor deviations or technicalities should the County deem it to be to the best interest of the County. New Hanover County shall be the sole judge of what is to be considered a minor deviation or technicality.

2.2.7 Qualification Statements will be evaluated and oral interviews may be requested as part of the evaluation process. If interviews will be conducted, the County will contact Respondents by email to make arrangements.

2.2.8 CM shall maintain Commercial General Liability (CGL) with a total limit of not less than 10,000,000 each occurrence for bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Project or the general aggregate shall be twice the required limit. CGL insurance shall be written on Insurance Services Office (ISO) “occurrence” form CG 00 01.
covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

New Hanover County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 and CG 20 37 or an endorsement providing equivalent coverage with respect to liability arising out of activities performed by or on behalf of CM; products and completed operations of CM; premises owned, leased or used by CM; and under the commercial umbrella, if required by County. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees. The status of County as an additional insured under a CGL obtained in compliance with this Contract shall not restrict coverage under such CGL with respect to the escape or release of pollutants at or from the Project site. There shall be no endorsement or modification of the CGL or Umbrella Liability limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, employment-related practices, or damage to the named insured’s work. CM shall maintain CGL and, if necessary Commercial Umbrella Liability (CUL) insurance, both applicable to liability arising out of CM’s completed operations, with a limit of not less than $10,000,000 each occurrence for at least three (3) years following substantial completion of the Work. CM’s CGL insurance shall be primary as to County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be excess of and not contribute toward CM’s insurance.

The Workers’ Compensation and Employer’s Liability.
CM shall maintain Workers’ Compensation as required by the State of North Carolina and Employer’s Liability Insurance. The Employer’s Liability, and if necessary, CUL insurance shall not be less than $10,000,000 each accident for bodily injury by accident, $10,000,000 each employee for bodily injury by disease, and $10,000,000 policy limit. The Insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from the Work performed by CM for County.

Business Auto Liability.
CM shall maintain Business Auto Liability and, if necessary, CUL insurance with a limit of not less than $10,000,000 combined single limit. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01. CM’s Business Auto Liability insurance shall be primary as to County, its officers, officials, agents, and employees. Any other insurance or self-insurance
maintained by County, its officers, officials, agents, and employees shall be excess of and not contribute with CM’s insurance.

**Builders Risk Insurance.**
CM shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum subject to subsequent modifications of the contract sum. The insurance shall apply on a replacement cost basis. Builders Risk insurance shall name as insureds County, CM, and all subcontractors and sub contractors. Builders Risk insurance shall cover the entire work at the site identified in this Contract including reasonable compensation for architects’ services and expenses made necessary by an insured loss. Insured property shall include portions of work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. Builders Risk Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse including collapse resulting from design error.

Builders Risk Insurance shall include coverage for flood. If property is damaged by the failure of CM to maintain Builders Risk or Equipment Breakdown, then CM shall bear all reasonable costs properly attributable to that failure.

Partial occupancy or use of the Work upon substantial completion shall not commence until the insurance company or companies providing Builders Risk insurance have consented to such partial occupancy or use. County and CM shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the Work that could lead to cancellation, lapse, or reduction of insurance.

**Surety Bond - Performance & Payment Bonds.**
CM shall furnish and deliver to County a Payment Bond and a Performance Bond covering the faithful performance and completion of work included in this Contract and payment for all materials and labor furnished or supplied in connection with work included in this Contract. All bonds shall be issued and furnished to County prior to, and as a condition precedent to, commencement of the Work of this Contract. The Payment Bond and Performance Bond shall be furnished on behalf of CM, shall name County obligee, and shall be one hundred percent (100%) of the amount of the guaranteed repair and maintenance costs. Such bond(s) shall be solely for the protection of County. The Payment Bond and the Performance Bond shall be issued by a surety of financial standing having a rating from A.M. Best Company equal to or better than A and must be included on the approved list of sureties issued by the United States Department of Treasury. The bond shall remain in effect at least one (1) year after the date when final payment is made. The surety bond must be in
the form set forth in N.C.G.S. 44A-33, without any variations therefrom. CM shall provide surety bond wherein Surety waives notice of all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by the Bond shall not be impaired in any manner due to any modifications, omissions, additions, changes, and advance payments or deferred payments. The surety bond must set forth no requirement that suit be initiated prior to the time stipulated in applicable North Carolina Statutes of Limitation.

**Deductibles and Self-Insured Retentions.**
CM shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not County is an insured under the policy.

**Miscellaneous Insurance Provisions**
Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County, its officers, officials, agents, and employees. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to New Hanover Risk Management, 230 Government Center Drive, Ste. 125, Wilmington, North Carolina, 28403.

If CM’s liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross liability coverage.

**Acceptability of Insurers.**
Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best’s rating of no less than A VII unless specific approval has been granted by County.

**Evidence of Insurance.**
CM shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the Work, and thereafter upon renewal or replacement of each certified coverage until all the Work under this contract are deemed complete. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract. Insurance maintained after final payment evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the two-year period for which such insurance must be maintained.

2.2.9 All costs, including travel and expenses, incurred in the preparation of this Qualification Statement will be borne solely by the proposing Respondent.
2.2.10 No agreements with any selected Respondent shall be binding until a contract is signed and executed by the authorized County official and authorized representatives of the vendor.

2.2.11 It is the policy of New Hanover County that minority businesses, as defined by NCGS 143-128 have maximum opportunity to participate in the performance of contracts and subcontracts funded in whole or in part with public funds. The County has established a verifiable goal of ten percent (10%) participation in the total value of the work.

2.2.12 Pursuant to S.L. 2015-294, Respondents shall fully comply with the U. S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors.

2.2.13 Iran Divestment Act requires that the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any contractor or subcontractor found on the State Treasurer’s Final Divestment List. Architect certifies that it or its subcontractors are not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. The State Treasurer’s Final Divestment List can be found on the State Treasurer’s website at the address www.nctreasurer.com/Iran and will be updated every 180 days.
Section 3: Project Description

This Request for Qualifications (RFQ) is to solicit qualifications from qualified applicants to provide Construction Management at Risk Services for the New Hanover County Division of Juvenile Justice Facility.

Project Information:

This request is for the construction of a Division of Juvenile Justice Facility that will house court rooms and related functions for New Hanover County.

The design team is Moseley Architecture. They have completed the space needs analysis and programming and have started schematic design.

Anticipated Construction Cost: $11,000,000 to $12,000,000

PROPOSED SCHEDULE
• Schematic design completion – September 25, 2018
• Design development completion – December 20, 2018
• Construction documents completion – April 24, 2019
• Out to bid: May 1, 2019
• Bid opening: June 20, 2019
• Substantial completion: November 2020
• Final completion: December 2020

Estimated facility size: 35,350 sf and 3 stories.

The existing facility will be torn down and replaced in the same location.

For more detailed information, please see the attached preliminary concept plans and space needs summary.
Section 4: Selection Criteria

Selection Criteria & Format of Proposal

The following criteria will be used for (1) determining the short-listed candidates and (2) the selection of the firm after the interviews. If you are submitting as a joint venture, both partners are required to respond completely.

1 Past experience in CM at Risk work (30%)
   a) List all public and private North Carolina CM at Risk projects completed or begun (indicate dates) within the last 7 years with construction budgets in excess of $10,000,000. Also indicate on a separate list the projects that were not in North Carolina and whether they were public or private.
   b) Provide a description and owner and architect contact information for each project.
   c) Provide a description of any claims that were not resolved within 180 days of substantial completion of the project and/or any litigation for any project (CM at Risk or otherwise) completed in the past 5 years.
   d) Provide actual copies of the post-construction evaluations from the firms three most recent CMR projects
   e) Show your record of developing and following construction schedules for CM at Risk projects.
   f) Has an owner assessed or threatened to assess liquidated damages against you in the past 5 years on any project, CM at Risk or otherwise? If so, please explain.
   g) Define the firm’s approach to managing risk through bonding of construction contracts.

2 Preconstruction Services expertise (30%)
   a) Provide project information defining your construction cost estimated experience in the Southeastern, N.C. market.
   b) Provide a description of how you will collaborate with the design team.
   c) Provide a comparison of final estimated cost for the GMP immediately before the bids were opened and the actual cost of the work immediately after the bids were opened and before any value engineering or scope changes occurred for the 5 most recent CM at Risk projects with bids greater than $10,000,000. Please include the date each project was bid.
   d) Describe your experience and ability to provide value engineering and constructability review and analysis for all portions of the work, including PM&E.
   e) Describe your program to manage contractor and subcontractor participation in the preconstruction services and in bidding the completed design
3 Adequate staff / team and location of office / familiarity with the area (30%)
   a) Provide the length of time your firm has performed Construction Management at Risk services in North Carolina.
   b) Provide resumes of all key team members proposed to be assigned. Please note that substitutions must be approved by the Owner. You should also provide a narrative description on how you would efficiently staff and manage the project.
   c) Provide information showing your proximity to New Hanover County, including both your local office and upper management personnel. Include the number and description of staff providing these services in the office proposed to handle this project.
   d) Provide a description of your safety program and historical safety record for past 3 years.
   e) Provide a list of your current CM at Risk project commitments.

4 HUB Program (10%)
   a) Describe your past experience and proposed method to include minority participation in the management side of this project. It is not acceptable to indicate that this will be provided later.
   b) Describe your outreach program to increase project HUB contractors and subcontractors
   c) Provide documentation of your actual final MBE participation as a percentage of the final GMP on each of your 5 most recent CM at Risk projects completed that are greater than $10,000,000.
   At the end of your submission, include the following statement: “I certify that the preceding and referenced information is accurate to the best of my knowledge and belief” and have it signed and dated by the Principal responsible for the submission.
Section 5: Selection Process

Phase 1: Each firm initially will be evaluated based upon information provided in the Selection Criteria listed above. From such review, firms receiving the highest ranking will be the firms chosen to participate in Phase 2, the second phase of the selection process. The County reserves the right to reject any and all statements of qualifications as well as reserve the right to waive any irregularities in the statements of qualifications.

Phase 2: The firms who are chosen for Phase 2 of the selection process may be required to make a presentation. Firms will be notified if presentations will be required and given the dates and times reserved for the presentations. The County reserves the right to establish additional rules and procedures for the presentations and for the interview process.

Final Selection: The County will negotiate a contract with the top rated firm as selected by the County. If a contract cannot be successfully negotiated with the top rated firm, the County will proceed to the second rated firm. The County reserves the right to reject any and all statements of qualifications.
STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

AGREEMENT

THIS CONTRACT made and entered into this _____ day of _______ 2017 by and between NEW HANOVER COUNTY, a political subdivision of the State of North Carolina, hereinafter referred to as “County”; and ______________________, as Contract Manager at Risk, hereinafter referred to as “CM,” for services in connection with the Project known as: New Hanover County Division of Juvenile Justice Facility Project, as further described in Article 2:

Project Architect (“Designer”):

Moseley Architects
11430 N. Community House Road
Suite 225
Charlotte, NC 28277

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

ARTICLE 1
RELATIONSHIP OF THE PARTIES

1.1 County and Construction Manager
The CM and the County shall perform as stated in this Agreement and each accepts the relationship between them that is established by this Agreement.

1.1.1 Standard of Care
The CM covenants with the County to furnish its skill and judgment with due care in accordance with applicable federal, state, and local laws and regulations that are in effect on the date of this Agreement first written above.

1.2 County and Designer
The County shall contract separately with one or more Designers to provide architectural and engineering design for the Project. The Project is defined in Article 2 of this Agreement.

1.3 County and Contractors
The County will require the CM to contract directly with such Contractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement and N.C. Gen. Stat. § 143-128 to 132.

1.4 Relationship of the CM to the Designer and Other Project Participants
In providing construction management services described in this Agreement, the CM shall maintain a working relationship with the Designer. The Designer is solely responsible for the Project design and shall perform in accordance with the Designer Agreement with the County and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Designer or any other persons or parties not specified by this Agreement.

ARTICLE 2
PROJECT DEFINITION

The term “Project” when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project. The term “Work” required for the “Project” used in this Agreement shall mean the various parts of total construction to be performed under this Agreement.

The Project name and locations are as follows:
NHC Division of Juvenile Justice Facility Project
138 N. 4th Street
Wilmington, NC 28401

The Project is defined as:

Construction management at risk services for the construction of a new Division of Juvenile Justice Facility that will house juvenile courtrooms and related functions. The new facility will be located at 138 North 4th Street. The anticipated facility size is 35,350 sq. ft. and 3 stories. The new facility will be constructed on the same parcel as the existing DJJ building.

ARTICLE 3
CONSTRUCTION MANAGER’S BASIC SERVICES

3.1 CM Basic Services
The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Design Phase – Project Management

3.2.1 Project Management

3.2.1.1 Construction Management Plan
The CM shall prepare a Construction Management Plan for the Project within the time mutually established by the County and CM and shall make recommendations for revisions to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the CM shall consider the County's schedule, budget, and design requirements for the Project. The CM shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the County. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the County for acceptance. The CM shall develop a master schedule for the project. The CM shall determine the appropriate bid packages based on
the available resources. The CM shall familiarize itself with all available project funding and work with the County and Designer to maximize the scope and quality of the project based upon the available funds. The CM shall make recommendations regarding communication among the parties in an effort to ensure the prompt and proper flow of project information. The CM shall outline its plan for minority business enterprise participation goals required by state law and the County, including reporting all information required by state law on behalf of the County to the North Carolina Department of Administration, Office of Historically Underutilized Businesses. The CM shall include a project safety plan covering all critical areas of the project.

3.2.2 Time Management

3.2.2.1 Master Schedule
In accordance with the Construction Management Plan, the CM shall prepare a Master Schedule for the Project in accordance with the deadlines established by the County. The Master Schedule shall specify the proposed start and finish dates for each major project activity. The CM shall submit the Master Schedule to the County for acceptance.

3.2.2.2 Design Phase Milestone Schedule
After the County accepts the Master Schedule the CM shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for proposals and contract for the Designer and shall be a method for judging progress during the Design Phase. The CM shall track the Designer’s progress during the design phase and alert the County of any delays in the Designer’s timely completion of its services.

3.2.3 Cost Management

3.2.3.1 Construction Market Survey
The CM shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project.

3.2.3.2 Project and Construction Budget
Based on the Construction Management Plan and the Construction Market Survey, the CM shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The CM shall submit the Project and Construction Budget to the County for acceptance. The CM shall make recommendations to the County and Designer regarding whether the County should conduct any additional geotechnical, environmental or other inspections of the project site reasonably necessary for the CM to estimate the cost of the work and minimize change orders due to unforeseen conditions. If the project involves renovation work, the CM shall perform inspections of the existing building and project conditions and perform any destructive testing reasonably necessary for the

New Hanover County Contract #19-0116 draft

Designer to prepare a complete and accurate set of construction documents and allowing the CM to estimate the cost of the work in order to minimize change orders due to unforeseen conditions. The cost of any destructive testing shall be billed as a reimbursable and shall not be included in the CM’s fee for basic services. The Project and Construction Budget shall be revised as directed by the County.

3.2.3.3 Preliminary Estimate and Budget Analysis
The CM shall analyze and report to the County the cost of various design and construction alternatives, including CM’s assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the CM shall consider costs relating to efficiency, usable life, maintenance, energy, and operation.

3.3 Design Phase – Design Support

3.3.1 Project Management

3.3.1.1 Revisions to the Construction Management Plan
During the Design Phase, the CM shall make the recommendations to the County regarding revisions to the Construction Management Plan. Revisions approved by the County shall be incorporated into the Construction Management Plan.

3.3.1.2 Project Conference
At the start of the Design Phase, the CM shall conduct a project conference attended by the Designer, the County and others as necessary. During the Project Conference, the CM shall review the Construction Management Plan, the Master Schedule, the Design Phase Milestone Schedule, the Project and Construction Budget, and the MIS. The CM shall be responsible for tracking the progress of the design in relation to the design phase milestone schedule and shall promptly notify county of any delay. The CM shall make recommendations to the county, with a copy to the designer, regarding strategies for overcoming any delay in the design of the project.

3.3.1.3 Design Phase Information
The CM shall monitor the Designer’s compliance with the Construction Management Plan and the MIS and the CM shall coordinate and expedite the flow of information between the County, Designer, and others as necessary.

3.3.1.4 Progress Meetings
The CM shall conduct periodic progress meetings attended by the County, Designer and others as necessary. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The CM shall prepare and distribute minutes of these meetings to the County, Designer and others. During the periodic progress meetings, the CM shall update the County and Designer regarding the estimated cost of the design and make recommendations to the County and Designer regarding constructability, construction cost, sequence of construction, construction duration, possible means and
methods of construction, time for construction, and any other information reasonably necessary to assist the Designer with cost, budget and schedule requirements.

3.3.1.5 Review of Design Documents
The CM shall review the design documents and any addenda or other information from the Designer for clarity, consistency, constructability and coordination among the Contractors. If the project is a prototype that has been previously constructed, the CM shall verify that all applicable change orders from previous projects have been incorporated into the bidding documents. The results of the review shall be provided in writing as notations on the documents. The CM is not responsible for providing, nor does the CM control, the Project design and contents of the design documents. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The CM’s actions in reviewing the Project design and design documents and in making recommendations as provided herein are for the use of the County and Designer.

3.3.1.6 Design Recommendations
The CM shall make recommendations to the County and Designer with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project contracts for various categories of Work. In addition, the CM shall give to the Designer all data of which it or the County is aware concerning patents or copyrights for inclusion in Contract Documents.

3.3.1.6.1 On renovation projects, the CM shall:
A. Conduct thorough evaluation of existing conditions of building(s), all building systems, site, and site infrastructure;
B. Conduct destructive and nondestructive testing as necessary to thoroughly evaluate existing conditions of the building(s), building systems, site, and site infrastructure (all testing, whether destructive or non-destructive, is to be approved in advance by the County and shall be coordinated to occur at a time that will reasonably allow the information to be used by the Designer in the in the preparation of the contract documents);
C. Report to County and Designer during design phase regarding findings of evaluation of existing building(s), building systems, site, and site infrastructure and make recommendations to the County and Designer that will assist with establishing cost, budget, and schedule requirements;
D. Work with County and Designer during design phase to create phasing plans that allow the work to be conducted in the most expedient manner while taking into account both cost and time;
E. Develop a plan to address the safety and security of all students, staff, visitors that will be on a site that is being used as a school during construction, including a plan that minimizes noise levels that would be disruptive to the educational environment without the prior approval of the County.

3.3.1.7 County Design Reviews
The CM may expedite the County’s design reviews by compiling and conveying the County’s comments to the Designer.

3.3.1.8 Approvals by Regulatory Agencies
The CM shall monitor transmittal of documents to regulatory agencies for review and shall advise of potential problems in completing such reviews of which the CM is aware.

3.3.1.9 General Conditions
The General Conditions for use in the contracts between the CM and the Contractors for construction of the Project shall be prepared by the CM to meet the specific requirements of the Project and all of the requirements of this Agreement.

In interpreting the requirements of this Agreement, anything shown on the Designer’s drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. The Designer’s technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all relevant drawings, and the CM will coordinate the work and the drawings. If any portion of the Designer’s plans and specifications shall be in conflict with any other portion, the various documents comprising the contract documents shall govern in the following order of precedence: this Agreement; any addendum issued by the Designer; the specifications; the drawings; as between schedules and information given on drawings, the schedules shall govern; as between figures given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small scale drawings, the larger scale drawings shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted to the Designer whose decision thereon shall be final and conclusive.

3.3.1.10 Public Relations
The CM shall assist the County in public relations activities and shall prepare information for and attend public meetings regarding the Project.

3.3.1.11 Project Funding
The CM shall assist the County in preparing documents concerning the Project and Construction Budget and for use in obtaining or reporting on project funding. The documents shall be prepared in a form approved by the County.
3.3.2 Time Management

3.3.2.1 Revisions to Master Schedule
While performing the services provided in Paragraphs 3.3.1.1, 3.3.1.2 and as necessary throughout the Design Phase, the CM shall recommend revisions to the Master Schedule. The County shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

3.3.2.2 Monitoring The Design Phase Milestone Schedule
While performing the services provided in Paragraphs 3.3.1.3, and 3.3.1.4, the CM shall monitor compliance with the Design Phase Milestone Schedule.

3.3.2.3 Pre-Bid Construction Schedules
Prior to transmitting Contract Documents to bidders, the CM shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Procurement Phase.

3.3.3 Cost Management

3.3.3.1 Cost Control
Following the completion of each design phase milestone, the CM shall prepare an estimate of the construction cost for the Design Drawings and Specifications furnished by the Designer. Each estimate shall be accompanied by a report to the County and Designer identifying variances from the Project and Construction Budget as well as CM’s assumptions in preparing the estimate. The CM shall coordinate the activities of the County and Designer when changes to the design are required to remain within the Project and Construction Budget.

3.3.3.2 Project and Construction Budget Revision
The CM shall make recommendations to the County concerning the design changes that may result in revisions to the Project and Construction Budget and divisions of the Work required for the Project.

3.3.3.3 Value Engineering Studies
The CM shall provide value engineering recommendations to the County and Designer for major construction components, including cost evaluations of alternative materials and systems.

3.3.4 Management Information System (MIS)

3.3.4.1 Schedule Reports
In conjunction with the services provided by Paragraph 3.3.2.1, the CM shall prepare and distribute schedule maintenance reports that shall contrast actual progress against scheduled progress for the Design Phase and the overall Project and shall make recommendations to the County for corrective action.

3.3.4.2 Project Cost Reports
The CM shall prepare and distribute project cost reports that shall indicate estimated costs compared to the

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Project and Construction Budget and shall make recommendations to the County for corrective action.

3.3.4.3 Cash Flow Report
The CM shall periodically prepare and distribute a cash flow report.

3.3.4.4 Design Phase Change Order Report
The CM shall prepare and distribute Design Phase change order reports that shall list all County-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

3.4 Procurement Phase

3.4.1 Project Management
The CM shall procure bids in accordance with N.C. Gen. Stat. § 143-128 to-132. The CM shall ensure that all minority business participation goal requirements are followed in the solicitation and award of contracts. The CM shall report its efforts to solicit minority business participation to the County in writing. Unless approved otherwise by the County, a minimum of three (3) bids shall be required for opening if bids are received in advance of the GMP having been established.

3.4.1.1 Prequalifying Bidders
The CM shall work with County to develop lists of possible prequalified bidders. This service shall be performed in accordance with County’s prequalification of bidders for construction projects. The County shall notify the CM of any reasonable objections to a proposed bidder, and the CM shall remove that bidder from the bidders list.

The CM shall provide the County with a list of all businesses in which the CM’s have any ownership interest if the business is engaged in the construction industry, including demolition and the supply of materials for construction, and the CM intends to solicit bids for any work on the project from the business. The CM shall provide said list to the County prior to prequalifying bidders for the work. The County shall determine whether any business listed may submit a bid or perform any work on the project.

3.4.1.2 Bidder’s Interest Campaign
The CM shall conduct a telephonic and correspondence campaign to attempt to create interest among qualified bidders.

3.4.1.3 Notices and Advertisements
The CM shall prepare and place notices and advertisements to solicit bids for the Project as prescribed by N.C. Gen. Stat. § 143-128 TO-132.

3.4.1.4 Delivery of Bid Documents
The CM shall expedite the delivery of bid documents to the bidders. The CM shall obtain documents from the Designer and arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a record of bidders receiving documents. The CM shall notify the
County in advance, in writing, of the anticipated number of bid documents to be produced. The County shall reimburse the CM for the actual cost of bid documents.

3.4.1.5 Pre-Bid Conference
In conjunction with the Designer, the CM shall conduct a Pre-Bid Conference. These conferences shall be forums for the CM and Designer to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the project administrative requirements and technical information.

3.4.1.6 Information to Bidders
The CM shall develop and coordinate procedures to provide answers to bidders’ questions.

3.4.1.6.1 Site Access for Bidders
In the event bidders require access to the site to gain information necessary to prepare their bids, the CM shall be responsible for coordinating access with the County. Any access shall be during regular business hours or otherwise at a time that would not unreasonably disturb the adjacent property owners. If the information sought by the bidders requires any alteration to the existing building or site or destructive testing, the CM shall notify the County in advance and coordinate said work so that it does not cause any disruption to the current use of the site or building. The CM shall ensure that any disturbed areas are repaired if the building is currently being used by the County. In all situations, the CM shall ensure that the site or building is left in a safe and secure condition and that the disturbed area is cleaned of any debris resulting from the access. In the event that the bidders’ access disturbs any adjacent property, including depositing dirt, soil or debris on the roads adjacent to the site, the CM shall promptly clean any and all areas and be responsible for any claims, fines or penalties resulting from said access.

3.4.1.7 Addenda
The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design. The CM shall also distribute a copy of all addenda to each bidder receiving documents.

3.4.1.8 Bid Opening
The CM shall act as the fiduciary of the public entity in handling and opening bids. All bids shall be received and opened in a matter agreed upon by the County. The CM shall conduct bid openings and shall evaluate the bids to determine the lowest responsive and responsible bidder taking into consideration quality, performance, and time specified to perform. The contracts shall be awarded in accordance with N.C. Gen. Stat. § 143-128.1.

3.4.1.9 Construction Contracts
At the direction of the County, the CM shall prepare, execute, and deliver the Contract Documents between the CM and the Contractors. The contract documents shall consist of the plans and specifications, any addendum, the general conditions, the form of Agreement between the CM and the contractor, and any other documents incorporated by the CM. The CM shall also issue the notices to proceed. The CM shall not issue contract documents or notices to proceed with the work to the contractors until the County and CM have agreed upon the amount of reduction, if any, of the GMP as a result of the receipt of bids that are lower than the estimated amount and the County has notified the CM that it can proceed with the work.

3.4.1.10 Permits, Insurance and Labor Affidavits
The CM shall verify that the Contractor has secured the required building permits, bonds, insurance, labor affidavits, and waivers.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule
The CM shall inform the bidders of their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or Contract Documents. The CM shall inform the bidders of the County’s requirements for scheduling and communication between the parties.

3.4.2.2 Construction Schedule
The CM shall provide a copy of the Master Schedule to the bidders. The CM shall prepare a construction schedule and all updates in accordance with the County’s scheduling requirements. The County shall provide the CM with its scheduling requirements prior to receipt of bids for the project.

3.4.3 Cost Management

3.4.3.1 Estimates for Addenda
Unless the County has elected to establish the GMP after bids have been received, the CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the County for approval. After approval by the County, the addenda shall be transmitted to bidders and the Guaranteed Maximum Price and the CM’s compensation shall be adjusted as provided in this Agreement.

3.4.3.2 Analyzing Bids:
Upon receipt of bids, the CM shall evaluate the bids, including alternate prices and unit prices.

3.4.4 Management Information System (MIS)

3.4.4.1 Schedule Maintenance Reports
The CM shall prepare and distribute schedule maintenance reports during the Procurement Phase. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

3.4.4.2 Project Cost Reports
The CM shall prepare and distribute the project cost reports during the Procurement Phase. The reports shall
specify the actual award prices and construction costs for the Project, compared to the Project and Construction Budget. The CM shall provide updated project cost reports to the County, with a copy to the Designer, on at least a monthly basis.

3.4.4.3 Cash Flow Reports
The CM shall prepare and distribute cash flow reports during the Procurement Phase. The reports shall be based on actual award prices and construction costs for the Project and the reports shall specify the actual cash flow compared to the projected cash flow.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference
In connection with the Designer, the CM shall conduct a Pre-Construction Conference during which the CM shall review the reporting procedures, site operations and other contractual requirements.

3.5.1.2 Onsite Management and Construction Phase Communication Procedures
The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, County, Designer, and Contractors. The CM’s project manager and superintendent shall be approved by the County. The County reserves the right to require the removal of a particular PM or superintendent at any time the County reasonably believes the PM or superintendent is adversely impacting the project. A PM or superintendent approved by the County shall not be reassigned by the CM unless they cease to be on the CM’s payroll or the County otherwise agrees. The CM shall observe the work as required for general conformance with the contract documents. The CM shall be responsible for project site safety and the means and methods for the construction of the project.

3.5.1.3 Contract Administration Procedures
The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted. The CM shall provide periodic reports to the County, with a copy to the Designer, updating the status of the project. The reports shall be provided not less than bi-weekly. The County shall have no duty to respond to any information in the periodic reports, unless the CM specifically requests a response or action by the County in writing in a separate document.

3.5.1.4 Project Site Meetings

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Periodically the CM shall conduct meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the County and Designer. The CM shall conduct weekly progress meetings with the County and Designer. The CM shall record, transcribe and distribute minutes to all attendees, the County and Designer.

3.5.1.5 Coordination of Other Independent Consultants
Technical inspection and testing provided by the Designer or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

3.5.1.6 Review of Requests for Changes to the Contract Time and Price
The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the County and Designer for review. If the County approves the change, the Designer shall prepare the necessary change order documents for signing by the CM and County. The CM shall prepare the necessary change order documents for execution by the CM and contractors.

3.5.1.7 Quality Review
The CM shall establish and implement a program to monitor the quality of construction. The CM shall observe the work as required for general conformance with the contract documents. The purpose of the program shall be to guard the County against defects and deficiency in the work of the Contractor. The CM shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. The Designer shall have the final authority to decide the acceptability of the work.

3.5.1.8 Operation and Maintenance Materials
The CM shall receive from the Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents.

3.5.1.9 Substantial Completion
The date of substantial completion of the work or designated portion thereof is the date certified by the Designer when the work or a designated portion thereof...
is sufficiently complete, in accordance with the contract documents, so the County can fully occupy and utilize the work or designated portion thereof for the use for which it is intended, with all of the project's parts and systems operable as required by the contract documents, including a preliminary test and balance report for the mechanical system. The CM acknowledges and agrees that the intercom, telephone, data, security, building automation system (including functional graphics at the site), or other operational systems are required for the County's use of the building for its intended purpose. The CM shall provide operation & maintenance manuals to the County as required by the contract documents prior to substantial completion and shall provide the required training on the operation of the equipment and systems within two weeks of substantial completion of the project. The County's occupancy of incomplete work shall not alter the CM's responsibilities pursuant to this Paragraph. Only incidental corrective work and any final cleaning beyond that needed for the County's full use may remain for final completion. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute substantial completion.

When the CM considers that the work, or a designated portion thereof which is acceptable to the County, is substantially complete as defined above, the CM shall prepare for and submit to the Designer and County a list of all items which in the CM's opinion are to be completed or corrected and shall attach it to a request in writing that the Designer perform a substantial completion inspection. The County's occupancy of incomplete work shall not alter the contractor's responsibilities. The Designer shall review the CM's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the CM to complete all work in accordance with the contract documents. When the Designer and CM on the basis of an inspection jointly determine that the work or designated portion thereof is substantially complete, the Designer will then prepare a certificate of substantial completion which shall establish the date of substantial completion, shall state the responsibilities of the County and the CM for security, maintenance, heat, utilities, damage to the work, and insurance, and shall signify the beginning of the time within which the CM shall complete the items listed therein. Warrants required by the contract documents shall commence on the date of substantial completion of the work or designated portion thereof, unless otherwise provided in the certificate of substantial completion. The certificate of substantial completion shall be submitted to the County and the CM for their written acceptance of the responsibilities assigned to them in such certificate.

Upon substantial completion of the work or designated portion thereof and upon application by the CM and certification by the Designer, the County shall make payment, except retainage held pursuant to the contract documents and state law, for such work or portion thereof as provided in the contract documents.

The acceptance of final payment shall constitute a waiver of all claims by the CM and its contractors, except those previously made in writing and identified by the CM as unsettled at the time the CM submits the application for payment for substantial completion, and except for the retainage sums due at final acceptance. The CM shall indemnify and hold the County harmless against any claims by the contractors that are waived because they were not made in writing and identified by the CM as unsettled when the CM submitted the application for payment for substantial completion.

The County shall have the option to correct or complete any and all punch list items not completed by the CM to the satisfaction of the Designer and the County within the time specified for final completion by utilizing its own forces or by hiring others. The cost of such correction of remaining punch list items by the County or others shall be deducted from the final payment to the CM. If CM does not complete certain punch list items within the required time period, all warranties and guarantees for such incomplete punch list items shall become effective upon issuance of final payment for the project.

The issuance of the certificate of substantial completion does not indicate final acceptance of the project by the County, and the CM is not relieved of any responsibility for the project except as specifically stated in the certificate of substantial completion.

Should the Designer and the County determine that the work or a designated portion thereof is not substantially complete, they shall provide the CM with written notice stating why the project or designated portion is not substantially complete. The CM shall expeditiously complete the work and shall re-request in writing that the Designer perform another substantial completion inspection. Costs, if any, associated with such reinspection shall be assessed to the CM at the rate specified in the Designer's contract.

3.5.1.10 Final Completion

In consultation with the CM, the Designer shall determine when the Project and the Contractors’ Work is finally completed and, following completion of corrections, the Designer shall issue a Certificate of Final Completion to the County. The date of final completion of the work is the date certified by the Designer and the County when the work is totally complete, to include punchlist work, in accordance with the contract documents and the County may fully occupy and utilize the project for the use for which it is intended. The issuance of a temporary or final certificate of occupancy shall not, in itself, constitute final completion. If more than two (2) final completion inspections are required by the Designer due to the CM’s failure to complete the work, the additional inspections shall be charged to the CM at the rate specified in the Designer’s contract all punch list work shall be complete. If any change order is issued for work to be performed after the substantial completion certificate is issued, the completion date for that work shall be established separately and shall not prevent the project from achieving final completion for purposes of this Agreement. Following the receipt of payment from the County for substantial completion, the CM shall deem the project to be substantially complete as defined above, the CM shall issue a Certificate of Final Completion to the County which in the County’s opinion are to be completed and the Designer’s list and shall compile a punch list of items to be corrected and shall attach it to a request in writing that the Designer perform another substantial completion inspection. Costs, if any, associated with such reinspection shall be assessed to the CM at the rate specified in the Designer’s contract.
County, the CM shall make all payments due to contractors within ten (10) days.

For multi-phased projects, final completion of each phase shall include the completion of all work for the phase with the exception of any system that is required to be integrated into a phase that has a later contract date for final completion. This exception might apply to the hvac, data, intercom, or similar systems. Notwithstanding the above, complete and proper operation of all systems shall be required for the project to achieve final completion.

### 3.5.2 Time Management

#### 3.5.2.1 Master Schedule

The CM shall adjust and update the Master Schedule and distribute copies to the County and Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project.

#### 3.5.2.2 Construction Schedule

The CM shall adjust and update the construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the County and that it establishes completion dates that comply with the requirements of the master schedule. The CM agrees that the construction schedule is for the benefit of the entire project team and by execution of this Agreement gives permission and direction to its scheduler to provide copies of the schedule in a format as required by the County.

#### 3.5.2.3 Construction Schedule Report

The CM shall review the progress of construction of each Contractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, the County and Designer. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The CM shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Contractor.

#### 3.5.2.4 CM Review of Time Extension Requests

The CM shall, prior to the issuance of a change order, determine the effect on the Construction and Master Schedules of time extensions requested by the Contractor.

#### 3.5.2.5 Recovery Schedules

The CM shall prepare and submit a recovery schedule in accordance with the County’s scheduling requirements specified in Appendix I.

### 3.5.3 Cost Management

#### 3.5.3.1 Schedule of Values (Each Contract)

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The CM shall, in participation with the Contractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for payment to the contractors.

#### 3.5.3.2 Change Order Control

The CM shall establish and implement a change order control system that is approved by the County.

1. **3.5.3.2.1** All proposed County-initiated change orders shall first be described in detail in writing. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The CM shall review the Contractor’s proposal, shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor’s basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall present its findings to the County and, following County acceptance, the Designer shall prepare the change order documents for signature by the CM and County. Upon execution of the change order documents between the CM and County, the CM shall prepare change order documents for signature by the affected Contractor. The CM shall verify that the Work, and any adjustment of time required by approved change orders has been incorporated into the Contractor’s Construction Schedule.

2. **3.5.3.2.2** The CM shall review the contents of all Contractor-requested changes to the contract time or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price. The CM shall provide the Designer a copy of each change request, and the CM shall, in its evaluations of the Contractor’s request, consider the Designer’s comments regarding the proposed changes. The CM shall present its findings to the County regarding the proposed changes and at the County’s direction, shall prepare the change order documents for signature by the CM and County. Upon execution of the change order documents between the CM and County, the CM shall prepare change order documents for signature by the affected Contractor.

#### 3.5.3.3 Cost Records

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.5.3.2, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Contractor in performing the Work.

#### 3.5.3.4 Trade-Off Studies

The CM shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the County and Designer.

#### 3.5.3.5 Progress Payments

In consultation with the Designer, the CM shall inspect the work in order to ensure compliance with the contract.
documents, review the payment applications submitted by each Contractor and determine whether the amounts requested reflects the progress of the Contractor’s Work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the County a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and delivered to the County. The CM shall make payments that are due to all contractors, suppliers, and material men within ten (10) days following the receipt of payment for the work from the County. In addition, the CM shall keep the Project and the site on which Work is performed free and clear of all liens from Contractors, subcontractors, or suppliers. The CM shall provide sales tax information using the form attached as appendix a with each payment application.

Payments may be made by the County, at its sole discretion, on account of materials or equipment not incorporated in the work but delivered and suitably stored at the site or in a bonded warehouse by the CM or contractor. Payments for materials or equipment stored shall only be considered upon submission by the CM of satisfactory evidence (for example, releases or paid invoices from the seller) that the CM or the contractor has acquired title to such material, that it will be utilized on the work under this contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the County that will protect the County’s interests have been taken. In the event the materials are stored in a bonded warehouse that is not located in the County of the project, the CM shall reimburse the travel cost and hourly billing expenses incurred by the Designer for travel to view and assess whether the materials meet the requirements of the contract documents. Materials once paid for by the County become the property of the County and may not be removed from the work site or bonded warehouse, other than to be delivered from the warehouse to the site, without the County’s written permission. Responsibility for such stored materials and equipment shall remain with the CM and the contractor regardless of ownership.

The County will retain five percent of the amount for each progress payment on the project, excluding the amount billed for general conditions, for as long as is authorized by G.S. 143-134.1. At all times during the project, the County shall retain the maximum funds allowed by G.S. 143-134.1. The County specifically reserves the right to withhold additional funds as authorized by this Agreement or G.S. 143-134.1.

3.5.3.6 Decisions To Withhold Payment
The Designer may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the County. If the Designer is unable to certify payment in the amount of the application, the Designer will notify the CM and the County in writing. If the CM and Designer cannot agree on a revised amount, the Designer will promptly issue a certificate for payment for the amount for which the Designer is able to make such representations to the County. The Designer may also withhold a certificate for payment, in whole or in part, to such extent as may be necessary in the Designer’s opinion to protect the County from loss for which the CM or the contractor(s) is responsible, including loss resulting from acts and omissions, because of:

A. defective work not remedied;
B. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the County is provided by the CM;
C. failure of the CM or contractor(s) to make payments properly to sub-contractors or for labor, materials or equipment;
D. reasonable evidence that the work cannot be completed for the unpaid balance of the contract sum;
E. damage to the County or another contractor;
F. reasonable evidence that the work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
G. failure to carry out the work in accordance with the contract documents;
H. failure to provide sales tax documentation as required by the County;
I. failure or refusal of the contractor to submit the required information on minority business enterprises;
J. any other reason deemed necessary by the Designer to protect the County; or
K. subsequently discovered evidence that work previously approved was not performed in accordance with the contract documents.

3.5.3.7 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

3.5.3.8 No interest shall be added to any amounts withheld pursuant to Paragraph 3.5.3.7.

3.5.4 Management Information System (MIS)

3.5.4.1 Schedule Maintenance Reports
The CM shall prepare and distribute monthly schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

3.5.4.2 Project Cost Reports
The CM shall prepare and distribute monthly Project cost reports during the Construction Phase. The reports shall specify actual Project and construction costs compared to the Project and Construction Budget.
3.5.4.3 Project and Construction Budget Revisions
The CM shall make recommendations to the County concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.4 Cash Flow Reports
The CM shall prepare and distribute cash flow reports during the Construction Phase. The reports shall specify actual cash flow as compared to projected cash flow.

3.5.4.5 Progress Payment Reports (Each Contract)
The CM shall prepare and distribute the progress payment reports. The reports shall state the total construction contract price, payment to date, current payment requested, retainage, sales tax paid, and actual amounts owed this period. A portion of this report shall be a certificate of payment that shall be signed by the CM certifying that the work complies with the contract documents and delivered to the County for use by the County in making payments to the CM.

3.5.4.6 Change Order Reports
The CM shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all County-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware. The report shall also include a summary of the impact of the change orders on the project schedule and completion dates.

3.5.4.7 Contractor’s Safety Program
The CM shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents.

3.6 Post Construction Phase

3.6.1 Project Management

3.6.1.1 Record Documents
The CM project superintendent shall maintain a field set of drawings for the duration of the construction period. The CM project manager shall review the superintendent’s field set to confirm that all addenda and bulletin drawings have been accurately incorporated. During construction the field set shall be updated to include all RFI responses, approved change orders and any minor plan clarifications made by the Designer during site visits. The CM shall provide evidence to the Designer on a monthly basis that it is maintaining an accurate and complete copy of all changes in the work in a form that will facilitate the prompt and accurate creation of record drawings. Within thirty (30) days of substantial completion, the field set (including general, plumbing, mechanical and electrical as-built drawings) shall be delivered to the architect for preparation of record drawings. Prior to delivery, the CM project manager shall thoroughly review the as-built field set for completeness and transmit said drawings to the Designer with a letter stating that the drawings are complete and accurately reflect the construction.

3.6.1.2 Organize and Index Operations and Maintenance Materials
Prior to substantial completion of the Project the CM shall compile manufacturers’ operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner. A minimum of three (3) copies of this information shall then be provided to the County.

3.6.1.3 Occupancy Permit
The CM shall be responsible for obtaining the final occupancy permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

3.6.1.4 Closeout Documents and Test Reports
The CM shall organize and provide the County all closeout documents and test reports that the contractors are required to provide for the project.

3.6.1.5 County Training
The CM shall coordinate or provide all training of the County’s personnel required by the contract documents.

3.6.2 Time Management

3.6.2.1 Occupancy Plan
The CM shall prepare an Occupancy Plan for the Project. This plan shall be provided to the County. The plan shall include early access, training on the use of equipment and systems, delivery of furniture and any other activities requested by the County. The plan shall comply with all deadlines provided by the County.

3.6.3 Cost Management

3.6.3.1 Change Orders
The CM shall continue to provide services related to change orders as specified in Paragraph 3.5.3.2.

3.6.4 Management Information System (MIS)

3.6.4.1 Closeout Reports
At the conclusion of the Project, the CM shall prepare final project accounting and closeout reports.

3.6.4.2 MIS Reports for Move-in and Occupancy
The CM shall prepare and distribute reports associated with the Occupancy Plan.

3.7 Additional Services

3.7.1 At the request of the County, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 7 of this Agreement. The CM shall perform Additional Services only after the County and CM have executed a written Change Order to this Agreement providing for such services. Additional Services may include:
3.8 Warranty

3.8.1 The CM warrants to the County and the Designer that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all workmanship will be in accordance with generally accepted industry standards, free from faults and defects and in conformance with the contract documents and all other warranties and guaranties specified therein. Where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the County or the Designer, the CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.8.2 The CM will be required to complete the work specified and to provide all items needed for construction of the project, complete and in good order.

3.8.3 The warranties set forth in this section and elsewhere in the contract documents shall survive final completion of the work.

3.8.4 The CM guarantees and warrants to the County all work as follows:

A. that all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified;
B. that all work will be in accordance with generally accepted industry standards and free of omissions and faulty, poor quality, imperfect and defective material or workmanship;
C. that the work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;
D. that the work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
E. that consistent with requirements of the contract documents, the work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment;
F. that the work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage; and
G. that the products or materials incorporated in the work will not contain asbestos.

3.8.5 All work not conforming to guarantees and warranties specified in the contract documents, including substitutions not properly approved and authorized, may
be considered defective. If required by the Designer or County, the CM shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The CM will submit a written affidavit certifying that none of the materials incorporated in the project contain asbestos.

3.8.6 If, within one (1) year after the date of substantial completion of the work or designated portion thereof or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the contract documents, any of the work is found to be defective, not in accordance with the contract documents, or not in accordance with the guarantees and warranties specified in the contract documents, the CM shall correct it within five (5) working days or such other period as mutually agreed, after receipt of notice from the County to do so. The County shall give such notice with reasonable promptness after discovery of the condition. For items that remain incomplete or uncorrected on the date of substantial completion, the one (1) year warranty shall begin on the date of final completion of the work or upon correction of the defective work.

3.8.7 If at any time deficiencies in the work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to or conspiracy to defraud the County by the CM, any contractor or supplier, the CM will be liable for replacement or correction of such work and any damages which the County has incurred related thereto, regardless of the time limit of any guarantee or warranty.

3.8.8 Any materials or other portions of the work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Designer or the County, shall be immediately removed and replaced by the CM to the satisfaction of the Designer and County, when notified to do so by the Designer or County.

3.8.9 If the CM fails to correct defective or non-conforming work as required, or if the CM fails to remove defective or non-conforming work from the site, the County may elect to either correct such work or remove and store materials and equipment at the expense of the CM. If the CM does not pay the cost of such removal and storage within ten (10) days thereafter, the County may upon ten (10) additional days written notice, sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the CM, including compensation for the Designer's additional services and County's reasonable attorney's fees made necessary thereby. If such proceeds of sale do not cover all costs, which the CM should have borne, the difference shall be charged to the CM and an appropriate change order shall be issued. If the payments then or thereafter due the CM are not sufficient to cover such amount, the CM shall pay the difference to the County.

3.8.10 The CM shall bear the cost of making good all of the work of the County, separate contractors or others, destroyed or damaged by such correction or removal required under this section or elsewhere in the contract documents.

**ARTICLE 4**

**DURATION OF THE CONSTRUCTION MANAGER'S SERVICES**

4.1 The duration of the CM's Basic services under this Agreement shall be from the date of this Agreement through the issuance of final payment. The CM shall provide any warranty phase services at no additional cost to the County.

4.1.1 The commencement date for the CM's Basic Services shall be the date of execution of this Agreement by the County as stated herein or the date on which the County issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1 The CM's Basic Services during the Pre-Design Phase shall be performed as required during the pre-design phase.

4.1.2.2 The CM's Basic Services during the Design Phase shall be performed as required during the design phase.

4.1.2.3 The CM's Basic Services during the Procurement Phase shall be performed as required during the procurement phase.

4.1.2.4 The CM's Basic Services during the Construction Phase shall be performed as required during the construction phase.

4.1.3 The CM's Basic Services during the Post-Construction Phase shall be performed as required during the post-construction phase.

4.1.4. The CM shall achieve substantial completion of the project on or before , unless the County and CM agree to a different date in writing. The date for final completion shall be thirty (30) days after substantial completion.

4.2 Delays and Extensions of Time

4.2.1 The time during which the CM or any of the contractors is delayed in the performance of the work by the issuance of any required permits, acts of god, excessive inclement weather, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the CM's or the contractors' control and which the CM or the contractors could not reasonably have foreseen and
provided against, except for delays caused solely by the County, Designer or their consultants, shall be added to the time for completion of the work stated in the Agreement. Neither the County nor the Designer shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, or changes in sequence in the work included in this Section against the County and the Designer on account of any indirect or direct damages, lost profits, costs or expenses of any nature which the CM, the contractors or any other person may incur as a result of any delays, interferences, changes in sequence or the like, and it is understood and agreed that the CM’s sole and exclusive remedy in any such events shall be an extension of the contract time in accordance with the contract documents.

4.2.2 In the event project delays arise from or out of any act or omission of the County, Designer or their consultants, the time during which the project is delayed shall be added to the Agreement and the CM may be reimbursed for its direct project damages, excluding general overhead expenses and indirect costs, if the CM strictly complies with this Section. Notwithstanding the previous sentence, if the CM, a contractor and/or subcontractor in any way shares in responsibility for the delay, neither the County nor the Designer shall be obligated or liable to the CM or the contractors for indirect or direct damages, costs or expenses of any nature which the CM, the contractors, or any other person may incur as a result of any of the delays, interferences, changes in sequence of the work, and the CM’s sole remedy, if any, shall be an extension of the contract time.

4.2.3 In the event project delays arise solely from or out of any act or omission of the CM, contractors, subcontractors or their agents, the CM shall not be entitled to extension of the contract time and shall be subject to the payment of liquidated damages as provided in this Agreement.

4.2.4 The contract time shall be adjusted only for changes authorized pursuant to this Agreement, suspension or the work by the County, and excusable delays pursuant to this Section. In the event the CM requests an extension of the contract time or files a claim related to any form of delay, it shall furnish such justification and supporting evidence as the County may deem necessary for a determination of whether or not the CM is entitled to an extension of time under the provisions of the contract, and shall further outline the alleged impact on the schedule’s critical path. The burden of proof to substantiate a claim shall rest with the CM, including evidence that the cause was beyond its control. The County shall base its findings of fact and decision on such justification and supporting evidence, including a finding that the alleged delay impacted the project’s critical path, and shall advise the CM in writing thereof. If the County finds that the CM is entitled to any extension of the contract time, the County’s determination of the total number of days extension shall be based upon the currently approved progress schedule and on all data relevant to the extension. Such data will be incorporated into the schedule in the form of a revision thereto, accomplished in a timely manner. The CM acknowledges and agrees that actual delays (due to said changes, suspension of work or excusable delays) in activities which, according to the schedule, do not affect the contract time, do not have any effect upon the contract time and therefore will not be the basis for a change therein. The CM acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the critical path activities in the currently approved schedule.

4.2.4.1 Extensions in the contract time by change orders are subject to extension-in-time audit by the County as follows:

4.2.4.1.1 The CM agrees that, even though the County, CM and Designer have previously signed a change order containing an extension-in-time resulting from a change in or addition to the work that said extension in the contract time may be adjusted by an audit after the fact by the County. If such an audit is to be made, the County must undertake the audit and make a ruling within thirty (30) days after the completion of the work under the change order.

4.2.4.1.2 The CM agrees that any extension of the contract time to which it is entitled arising out of a change order undertaken on a force accounting (labor and materials) basis, shall be determined by an extension-in-time audit by the County after the work of the change order is completed. Such rulings shall be made by the County within thirty (30) days after a request for same is made by the CM or Designer, except said thirty (30) days will not start until the work under the change order is completed.

4.2.4.1.3 Should a time extension be granted for substantial completion the date for final completion shall be appropriately adjusted unless specifically stated otherwise.

4.2.4.2 Subject to other provisions of the contract, the CM may be entitled to an extension of the contract time (but no increase in the GMP) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the CM, the contractors or suppliers as follows:

A. Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly delay the progress of the work on the critical path; however, an extension of contract time on account of an individual labor strike shall not exceed the number of days of said strike;

B. Acts of god: tornado, fire, hurricane, blizzard, earthquake, or flood that damage completed work or stored materials and affecting the critical path; or

C. Excessive inclement weather; however, the contract time will not be extended due to
reasonably anticipated inclement weather or for delays in the aftermath of inclement weather, reasonably anticipated or excessive. The time for performance of this contract, as stated in this Agreement, includes an allowance for calendar days which may not be available for construction out-of-doors; for the purposes of this contract, the CM agrees that the number of calendar days per month stated below are to be considered reasonably anticipated inclement weather and planned for in the construction schedule. Unless the CM can substantiate to the satisfaction of the County that there was greater than the reasonably anticipated inclement weather actually delayed the work or portions thereof which had an effect upon the contract time, the CM shall not be entitled to an extension of time.

For the purpose of this contract, the CM agrees to anticipate and plan for inclement weather for the number of calendar days in accordance with the following table:

<table>
<thead>
<tr>
<th>Planned days/month</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
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<td>10</td>
<td>9</td>
<td>8</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
</tbody>
</table>

Also the CM agrees that the calculation of the number of excessive inclement weather days shall be the number of days in excess of those shown for each month in the table above, in which precipitation exceeded 0.10 inch, or in which the highest temperature was 32 degrees f. Or less as recorded at the approved weather station. Rain days from hurricanes not causing damage in New Hanover County shall be deemed inclement weather days.

If the total accumulated number of calendar days lost to excessive inclement weather, from the notice-to-proceed until the building is enclosed, exceeds the total accumulated number to be reasonably anticipated for the same period from the table above, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost. No extension of time will be made for days due to excessive inclement weather occurring after the building is enclosed. For the purpose of this contract, the term “enclosed” is defined to mean when the building is sufficiently roofed and sealed, either temporarily or permanently, to permit the structure to be heated and the plastering and dry-wall trades to work. The Designer shall determine when the structure is “enclosed”. Upon the request of either party, the Designer shall issue a letter certifying to the County, with a copy to the CM, stating the date the building became enclosed. No change in GMP will be authorized because of adjustment of contract time due to excessive inclement weather; and

4.2.4.3 Delays in the issuance of a required permit, acts of the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor in the performance of a contract with the County relating to the project.

4.2.5 If the CM shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the County, then the CM agrees, as a part consideration for the awarding of this contract, to pay the County the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the CM shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the CM and the County because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the County would in such event sustain, and said amount is agreed to be the amount of damages which the County would sustain and said amount shall be retained from time to time by the County from current periodical estimates.

4.2.6 The CM and the contractors shall not be entitled to and hereby expressly waive any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the County within ten (10) days of the first instance of delay for all delays, except excessive inclement weather which shall be made in writing to the County within forty-five (45) days after the date the structure is enclosed. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected. In every such written claim, the CM shall provide the following information:

- A. nature of the delay;
- B. date (or anticipated date) of commencement of delay;
- C. activities on the progress schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;
- D. identification of person(s) or organization(s) or event(s) responsible for the delay;
E. anticipated extent of the delay; and
F. recommended action to avoid or minimize the delay.

4.2.7 If no schedule or Agreement is made stating the dates upon which written interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until twenty (20) days after request is made for them, and not then unless such claim is reasonable.

4.2.8 No claim by the CM for an extension of time for delays will be considered unless made in strict compliance with the requirements of this article. All claims not filed in accordance with this Paragraph shall be waived by the CM.

ARTICLE 5
CHANGES IN THE CONSTRUCTION MANAGER’S BASIC SERVICES AND ADDITIONAL COMPENSATION

5.1 Changes - Preconstruction Basic Services

5.1.1 The County, without invalidating this Agreement, may make changes in the CM’s Basic Services specified in this Agreement. The CM shall promptly notify the County of changes which increase or decrease the CM’s compensation, the duration of the CM’s Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

The CM shall be entitled to receive additional compensation and additional time when the scope of this Agreement is increased or extended through no fault of the CM. If the scope of these Basic Services is increased or the duration of these Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the County within ten (10) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM’s cost, a customary and reasonable adjustment in the CM’s fixed or lump sum fee consistent with the provisions of this Agreement, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CM’s Basic Services

Changes in the CM’s Basic Services and entitlement to additional compensation shall be made by a written Change Order to this Agreement executed by the County and the CM. A Change Order shall be executed by the County and CM prior to the CM performing the services required by the Change Order. The CM shall proceed to perform the services required by the Change Order only after receiving notice directing the CM to proceed. The CM shall not be entitled to compensation for work performed without a written change order.

5.1.4 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

5.2 Changes to The Work or Construction Phase Basic Services

The County may, at any time, by written order designated or indicated to be a change order, make any change or modification in the work or add to the work within the general scope of the contract, including, but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the work; (3) in the County-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the work.

The CM’s fee on any additional work and the fee reduction for any work or allowances removed from the scope of work shall be based on the same percentage fee specified in Paragraph 7.4.1, unless the CM performs the work with its own forces as allowed in this Agreement. The parties agree that Paragraphs 5.2.1.1 through 5.2.1.3 are intended to govern payment to the contractors and their subcontractors for performing work associated with a change, unless the CM performs the work with its own forces as allowed in this Agreement. If the CM performs the work with its own forces, the CM shall also be referred to by the term “contractor” in Paragraphs 5.2.1.1 through 5.2.1.3. The parties specifically agree that any adjustment to the amount that could be reimbursed for general conditions, if any, shall be negotiated in good faith between the parties based upon the additional work actually required to be performed by the CM as a result of the change.

5.2.1 County directed changes to the work requiring an increase in GMP

If the change in or addition to the work will result in an increase in the guaranteed maximum price, the County shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the County as aforesaid shall apply with respect to each such change in the work).

5.2.1.1 If the County elects to have the change in the work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the CM to the County within ten (10) days of the CM's receipt of a request therefor (but the County's request for a lump sum proposal shall not be deemed an election by the County to have the change in the work performed on a lump sum basis). The CM's proposal shall be itemized and segregated by labor and materials for the various components of the change in or addition to the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any contractors who will perform any portion of the change.
in, or addition to, the work and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the CM’s estimate of the time required to perform said changes or additional work.

5.2.1.1 The portion of the proposal relating to labor, by the forces of any of the contractors, may include: reasonably anticipated gross wages of job site labor, including foremen, who will be directly involved in the change in the work (for such time as they will be so involved), plus premium costs of overtime time, if overtime is anticipated; a maximum labor burden of thirty nine percent (39%) of the actual cost of labor by any such contractor in connection with such labor; and up to fifteen percent (15%) of such anticipated gross wages, as overhead and profit for any such contractor, as applicable (said overhead and profit to include all extended general conditions and supervision, but it shall not include the labor burden).

5.2.1.2 The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the contractor or to any of its subcontractors of materials to be purchased for incorporation in the change in the work, plus transportation and applicable sales and use taxes and up to fifteen percent (15%) of said direct material costs as overhead and profit for the contractor or any of its subcontractors (said overhead and profit to include all small tools), and may further include the contractor’s and any of its subcontractor’s reasonably anticipated rental costs in connection with the change in the work (either actual or discounted local published rates), plus up to eight percent (8%) thereof as overhead and profit for any of the contractors, as applicable (said overhead and profit to include all extended general conditions and supervision, except it shall not be applied to any sales tax paid for any purpose or shipping costs incurred by the contractor or any subcontractor). If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the County may, if it requires the change in the work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

5.2.1.3 The CM shall provide any documentation that may be requested by the County to support the change proposal including payroll records, insurance rates, material quotes or rental quotes. The CM shall also provide an itemized breakdown of all transportation and shipping costs, including receipts documenting the expenses.

5.2.1.4 The lump sum proposal may include up to eight percent (8%) of the amount which the contractor will pay to any of its subcontractors for the change in the work as a commission to the contractor. The change proposal form attached to this Agreement as appendix b-2 shall be used to submit the change proposal to the County.

5.2.1.5 In the event that the CM fails to submit his proposal within the designated period, the County may order the CM to proceed with the change or addition to the work and the CM shall so proceed. The County shall unilaterally determine the reasonable cost and time to perform the work in question, which determination shall be final and binding upon the CM.

5.2.1.6 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the work based upon the CM’s proposal and the County does not elect to have the change in the work performed on a time and material basis, the County may choose to make a determination of the reasonable cost and time to perform the change in the work, based upon their own estimates, the CM’s submission or a combination thereof, except for a change order initially establishing the GMP for the project or initially establishing a partial GMP for a portion of the work included in the original project scope. A change order shall be issued in this case for the amounts of cost and time determined by the County and shall become binding upon the CM unless the CM submits its protest in writing to the County within thirty (30) days of the issuance of the change order. County has the right to direct in writing the CM to perform the change in the work, which is the subject of such change order. Failure of the parties to reach Agreement regarding the cost and time of the performing the change in the work and/or any pending protest, shall not relieve the CM from performing the change in the work promptly and expeditiously.

5.2.1.7 The County reserves the right to reject the CM’s proposal for a change in the work and to elect to perform said work using a separate contractor. Under such circumstances, the CM shall coordinate the performance of the work.

5.2.1.8 if the County elects to have the change in the work performed on a time and material basis, the same shall be performed, by the forces of any of the contractors, at actual cost to the entity performing the change in the work. The CM shall maintain records to submit to the County such as daily time and material tickets, to include the identification number assigned to the change in the work, the location and description of the change in the work, the classification of labor employed (and names and employee numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the County may require. The County may require authentication of all time and material tickets and invoices by persons designated by the County for such purpose. The failure of the CM to secure any required authentication shall, if the County elects to treat it as such, constitute a waiver by the CM of any claim for the cost of that portion of the change in the work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the County shall not constitute an acknowledgment by the County that the items thereon were reasonably required for the change in the work.
5.2.1.3 Changes in the work to be completed on a unit price basis shall be quantified by the Designer or an independent third party and shall be completed at an all-inclusive rate established in the bid proposal, unless a mutually agreed upon price is established by the County and CM. The unit prices include the cost of all materials, taxes, shipping and delivery charges, labor and labor burden, insurance, supervision, overhead and profit. Time to complete any work done on a unit price basis for quantities within the base bid allowance amount is included in the base bid. The unit price does not include bonds. Procedures for quantifying units of measure shall be proposed by the Designer and agreed to by the CM and County prior to the commencement of the work to be completed on a unit base price. Work performed without such Agreement in place shall be deemed to have been done at the sole risk and expense of the CM. Time for quantities exceeding the base bid allowance will be evaluated based on the effect of the change in the work on the critical path of the project.

5.2.1.3.1 No overhead and profit will be paid by the County on account of a change in the work except as specifically provided in this section. Overhead and profit, as allowed in this section, shall be deemed to include all costs and expenses which the CM or any of the contractors may incur in the performance of a change in the work and which are not otherwise specifically recoverable by them pursuant to this section.

5.2.1.4 The County may direct in writing the CM to begin changes in the work prior to the issuance of a formal change order. The CM shall promptly perform the changes in the work directed by the County in a manner that shall result in minimum impact on the critical path.

5.2.2 CM Notice of Change

If the CM or any of the contractors asserts that any event or occurrence has caused a change in or addition to the work which change causes an increase or decrease in the GMP or the time required for the performance of any part of the work under the contract, including work not affected directly by the change, the CM shall, within ten (10) days of such event unless such event was not discovered in the exercise of reasonable diligence, in which event the ten (10) day notice period shall commence upon discovery or when the CM should have discovered such event, give the County written notice as herein required. Said notice shall include the instructions or circumstances that are the basis of the claim and the CM's best estimate of the cost and time involved.

If the CM intends to assert a claim under this Section, he must, within ten (10) days after the furnishing of a written notice as outlined above, submit to the County a written statement setting forth the specific nature and anticipated cost of such claim, unless this period is extended by the County. The statement of claim hereunder may be included in the notice required above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the CM's estimate of the schedule impact of the change, if any. The CM and the contractors shall not be entitled to reimbursement or an increase in the GMP for any claims that are not filed in strict conformance with this section. The CM shall indemnify and hold the County harmless against any claims by the contractors that are waived because they are not filed in strict conformance with this section.

If the parties are unable to agree to the reasonable cost and time to perform the change, or are unable to agree as to whether a change occurred, the County shall make a unilateral determination as described in this section. The CM shall proceed with the work pursuant to the provisions of this section.

5.2.3 General Provisions Related to Changes

The CM shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called “impact” costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the CM, the contractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this section, unless the delay is caused solely by the County or Designer. It is understood and agreed that the CM's and the contractors’ sole and exclusive remedy in such event shall be recovery of direct costs as compensable hereunder and an extension of the contract time, but only in accordance with the provisions of the contract documents. No claim by the CM hereunder shall be allowed if asserted after final payment for the construction or the project under this Agreement. No claim relating to or flowing from a particular change shall be allowed after execution of the change order relating to that change or commencement of the change by the CM, except as specifically provided in this section.

If any dispute should arise between the parties with respect to an increase or decrease in the GMP or an expansion or contraction in the contract time as a result of a change in the work, the CM shall not suspend performance of a change in the work or the work itself unless otherwise so ordered by the County in writing. The County shall, however, pay to the CM up to the County’s reasonable estimated value of the change in the work, regardless of the dispute, if said change in the work results in an increase in the contract sum; and the County shall have the right to decrease the contract sum up to the County's reasonable estimated value of the change in the work, regardless of the dispute, if said change in the work results in a decrease in the contract sum. The CM’s acceptance of payment following a unilateral decision by the County shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.
5.2.4.1 If the change in the work will result in a decrease in the contract sum, the CM shall provide a quotation detailing the proposed amount of such decrease. The portion of the proposal relating to labor, whether by the CM's forces or the forces of any of the contractors, shall include reasonably anticipated gross wages of job site labor, including foremen, who would have been directly involved in the work that has been deleted from the contract (for such time as they would have been so involved), plus payroll costs (including premium costs of overtime time, if overtime was anticipated), social security, federal or state unemployment insurance taxes and fringe benefits required by collective bargaining Agreements entered into by the contractor or any subcontractor in connection with such labor and seven percent (7%) of such anticipated gross wages, but not payroll costs, as overhead and profit not incurred or earned by the contractor or any subcontractor, as applicable (said overhead and profit to include all supervision except foremen). If applicable, the fee percentage to be applied to the CM’s forces shall be the percentage stated in Paragraph 7.4.1.

5.2.4.2 The portion of the proposal relating to materials shall include the reasonably anticipated direct costs which would have been incurred by the contractor or to any subcontractors for materials which would have been purchased or incorporation in the work but which has been deleted from the contract, plus transportation and applicable sales and use taxes which will be avoided, and seven percent (7%) of said direct material costs incurred by the contractor or subcontractor (excluding transportation and sales and use taxes) as overhead and profit not incurred or earned by the contractor or any subcontractor (said overhead and profit to include all small tools), and shall further include the contractor's and subcontractor's reasonably anticipated rental costs which will be avoided (either actual or discounted local published rates), plus five percent (5%) thereof as overhead and profit not incurred or earned by the contractor or subcontractor, as applicable. If any of the items included in the lump sum proposal are covered by unit prices contained in the contract documents, the County may elect to use these unit prices in determining the amount of reduction to the GMP as a result of a deletion of work from the contract. No overhead and profit shall be applied to any unit prices for purposes of calculation such reduction in the contract sum. The lump sum proposal for work which would have been performed by any subcontractors shall include four percent (4%) of that amount as an estimate of the contractor's overhead and profit that will not be earned by contractor due to the decrease in the contract sum. In the event the construction work would have been performed by the CM in the limited circumstances allowed in this contract, the fee percentages stated in this section shall apply to the work that would have been performed by the CM as the contractor and its subcontractors.

5.2.4.3 The CM's quotation shall be forwarded to the County within ten (10) days of the County's request and, if acceptable to the County, shall be incorporated in a change order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the contract documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the work, as determined by the County in its reasonable judgment, plus overhead and profit as stated above. The CM’s acceptance of payment following a unilateral decision by the County shall not constitute a waiver of any claim the CM may have for additional compensation. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.5. Minor Changes in The Work
The County shall have authority to order minor changes in the work not involving an adjustment in the contract sum or an extension of the contract time and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order, and shall be binding on the County and the CM. The CM shall carry out such written orders promptly.

The CM shall not perform any changes in the work unless authorized in writing by the Designer or County. The CM's performance of minor changes pursuant to this section shall not constitute a waiver of any claim the CM may have for additional compensation or time. However, any claim the CM may have shall be filed in strict conformance with the contract documents.

5.2.6 Differing Site Conditions
Should the CM encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, he shall immediately give notice to the County of such conditions before they are disturbed. The County and the Designer shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the drawings or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional work and changes. However, neither the County nor the Designer shall be liable or responsible for additional work, costs or changes to the work that could have been reasonably determined from any geotechnical, soils and other reports, surveys and analyses made available for the CM's review or that could of been discovered by the CM through the performance of its obligations pursuant to this Agreement.

5.3 General Provisions Regarding Changes in Contractor Work.
In the event the work included in the original contract issued to a contractor is changed, or new contracts are issued, the CM shall notify the County of the change or
the new contract, including the nature and reason for the change or new contract and the associated cost. Regardless of whether the change or new contract is believed to result in an increase or decrease in the GMP. The County and CM shall review all changes or new contracts that were not incorporated into a change order between the County and CM or resulted in the use of either of the CM’s contingencies at the conclusion of the project in order to determine whether the County is entitled to a reduction in the cost of work portion of the GMP as it is defined in Paragraph 7.4.1.

ARTICLE 6
COUNTY’S RESPONSIBILITIES

6.1 The County shall provide to the CM complete information regarding the County’s requirements for the Project.

6.2 The County shall examine information submitted by the CM and shall render decisions thereto.

6.3 The County shall contract with a Designer to furnish design counseling services as may be necessary for the Project.

6.4 The County shall furnish insurance for the Project only as specified in Article 8.

6.5 If the County observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the County shall give written notice thereof to the CM.

6.6 The County shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.

6.7 The County shall retain a Designer whose services, duties and responsibilities shall be described in a written Agreement between the County and Designer. The County shall require that the Designer perform its services in cooperation with the CM, consistent with this Agreement and in accordance with the planning, scheduling and budgetary requirements of the Project as determined by the County and documented by the CM.

6.8 The County shall approve the Project and Construction Budget and any subsequent revisions as provided in this Agreement.

6.9 If the County contracts separately with any other parties, the County shall cause all such Agreements to be compatible and consistent with this Agreement.

6.10 At the request of the CM, sufficient copies of interim and bidding drawings, specifications and Contract Documents shall be furnished to or printed by the CM at the County’s expense. The CM shall be solely responsible for the cost of any drawings, specifications and contract documents required after bidding the project.

6.11 The County or Designer shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.

6.12 The County may authorize the CM to proceed with the work on the project in discreet phases if all of the funds required for the entire project are not identified at the time this Agreement is executed by the parties.

6.13 The County, its representatives and consultants, including Designers, shall endeavor to communicate with the Contractors through the CM.

6.14 The County shall require the Designer to send the CM copies of all notices and communications sent to or received by the County or Designer relating to the Project.

6.15 The County shall designate, in writing, an officer, employee or other authorized representatives to act in the County’s behalf with respect to the Project. This representative shall be available during working hours and may be required to render decisions and furnish information so as not to delay the project. The CM acknowledges that some changes in the scope of the project may require approval by the Board of County Commissioners. The CM shall notify the County in writing of any deadlines for responses and how the County’s failure to respond by the stated deadline will impact the project schedule.

6.16 The County shall make approved payments to the CM on the basis of the Contractors’ payment applications that are certified by the CM and on the basis of the CM’s invoices for its services performed. Prior to payment by the County, the Designer shall review and approve the contractors’ payment applications in accordance with this Agreement.

ARTICLE 7
COMPENSATION FOR CM SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

7.1.1 The County and CM agree that the guaranteed maximum price shall be ______ dollars ($______) for this project. The parties further agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the County, pursuant to this Agreement exceed the line item in the GMP for the cost of the work, the CM shall be solely responsible for the additional cost of the work, unless this Agreement is terminated by the CM pursuant to Paragraph 7.1.1.1. In the event that the bids received
by the CM for the work, including all alternatives accepted by the County, are less than the line item in the GMP for the cost of the work, the remaining funds shall be added to the County’s allowance. The scope of work included in the bid documents, including any alternates accepted by the County, shall form the basis of the work to be performed by the CM. The CM and County agree that the line items in the GMP shall consist of the cost of the work, CM’s contingency, and general conditions, CM’s fee. The CM and County further agree that the dollar values for the line items in the GMP stated above consist of the cost of the work ($ ), CM construction contingency ($ ), general conditions ($ ), and CM’s fee ($ for preconstruction services and $ for construction and post-construction services).

7.1.1.1 The parties agree that in the event the bids received by the CM for the work, including all of the alternates accepted by the County, pursuant to article 3.4 of this Agreement exceed the line item in the GMP for the cost of the work, then the CM shall have the right to terminate this Agreement. The CM shall provide the County with notice of intent to terminate pursuant to this provision within fifteen (15) days of the CM’s receipt of bids for the project. Prior to a termination pursuant to this provision becoming effective, the County and CM will review the list of alternates, other modifications or value engineering requests in order to determine whether an Agreement can be reached between the County and CM regarding a modified scope of work or an adjustment to the GMP. In the event an Agreement regarding the modified scope of the work and/or a revision to the GMP cannot be reached within fifteen (15) days of the County’s receipt of notice of intent to terminate pursuant to this section, then the termination shall become immediately effective.

7.1.1.2 The parties specifically agree that none of the provisions in Article 10 shall apply to any termination of this Agreement pursuant to section 7.1.1.1, but the CM shall be entitled to payment for work actually performed through the procurement phase (section 3.4) pursuant to the compensation set forth in Paragraph 7.4.1; however, CM shall not be compensated for any services provided after the date of termination. In the event a modified scope of work and/or a revision to the GMP is agreed upon by the parties, the modified scope shall form the basis of the work to be performed by the CM for the established GMP. The CM construction contingency, general conditions, and/or CM’s fee for construction may be reduced by mutual consent of both parties in order to provide funding for the project. The CM and County shall document any changes to the GMP, scope of work, cost of the work, general conditions, CM fee, or CM contingency prior to the County issuing notice to proceed with the work. Any reduction in the cost of the work as a result of a modification of the project scope shall be added to the County’s allowance.

7.1.1.3 In the event the County does not request the CM to establish a Guaranteed Maximum Price or does not accept the CM’s Guaranteed Maximum Price, but chooses to proceed with the Project, then all provisions of this Agreement regarding the Guaranteed Maximum Price and adjustments thereto shall become null and void. In the event this Agreement is terminated pursuant to this provision, the CM shall only be entitled to receive compensation for services as outlined in Article 10. All other provisions of this Agreement shall remain in full force and effect, with all Project costs being reimbursed to the CM by the County in accordance with this Agreement without the limitations imposed by Paragraph 12.1.5 thereof.

7.1.1.4 In the event that the guaranteed maximum price is accepted by the County, a change order shall be completed and executed by both parties to this Agreement and the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the project and shall proceed with the CM’s basic services.

7.1.1.5 Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM shall request and receive bids for each contract and shall solicit and award the contracts in accordance with N. C. Gen. Stat. § 143-128 to-132. The contractor and CM shall comply in all respects with the County’s MBE policies, rules and regulations. The CM shall enter into contracts with the lowest responsible and responsive bidders within sixty (60) days after notice of approval of the GMP by the County; however, the CM shall not be entitled to additional time to complete the project due to any delay in entering into contracts with a bidder unless the delay is due solely to the actions or inactions of the County.

7.1.1.6 The CM may perform a portion of the work only if (1) bidding produces no responsible, responsive bidder for that portion of the work, the lowest, responsive, responsible bidder will not execute a contract for the bid portion of the work, or a contractor defaults and a pre-qualified replacement cannot be obtained in a timely manner, and (2) the County approves of the CM’s self-performing of the work. In the event the CM self-performs a portion of the work pursuant to either method noted above, it shall be paid for the direct cost of the work with no reimbursement for office overhead or for any other work otherwise included in the general conditions. The fee for the work will be at the same CM fee percentage stated in 7.4.1. This Paragraph shall not govern compensation for work self-performed by the CM.

7.1.1.7 The Guaranteed Maximum Price is the total cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation and incorporated into the change order establishing the GMP.

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The GMP shall include the cost of the work, CM's general conditions, bonds/insurance, the CM's fee for construction and post-construction phase basic services, and the County's allowance. The GMP shall also include a CM construction contingency fund. The CM's construction contingency fund and the County's allowance shall only be utilized as outlined in Paragraphs 7.1.1.7.1, and 7.1.1.7.2. The CM's fee shall be paid pursuant to section 7.4. The general conditions shall be reimbursed as described in 7.1.1.7.3.

7.1.1.7.1 Unless otherwise agreed in writing, the CM's construction contingency may be used by the CM to expedite the work, address scheduling and coordination problems, respond to a default by a non-bonded contractor, and repair damaged work in place where the responsible contractor cannot be identified by the CM after reasonable efforts to identify the responsible party. The CM's construction contingency may also be used by the CM to correct design issues that reasonably should have been discovered by the CM during the performance of its obligations pursuant to Paragraphs 3.3.1.5 and 3.3.1.6. Correct scope gaps in the bidding of the project, correct code, regulatory and other issues identified by the County in writing prior to bidding the project, correct items identified in change orders or request for information arising on previous uses of the same prototype design, and any issues that are the fault of the CM. The CM's use of the CM's construction contingency fund shall be documented in writing by the CM and approved by the County in writing prior to the CM billing for the work. The CM shall not be entitled to receive any fee for the use of the CM's contingency. In the event of a default by a contractor, the CM shall not use the CM's contingency to cover any costs covered by a performance or payment bond provided by the contractor or covered by a program paid for by the CM to insure the performance of the contractors. The CM shall vigorously pursue reimbursement of all expenses from the contractor's surety or through the program provided by the CM.

7.1.1.7.2 Unless otherwise agreed in writing, the County's allowance shall be used to correct any design issues that could not reasonably have been discovered by the CM during the performance of its obligations during the design and bidding phases, and any changes requested by the County. The use of the County's allowance shall be documented in writing by the CM and approved by the County in writing prior to the CM billing for the work.

7.1.1.7.3 The general conditions shall be paid as a reimbursable expense in an amount that shall not exceed the amount included in the GMP. The County and CM agree that the items to be reimbursed as general conditions are indicated in appendix c. The County reserves the right to take ownership and possession of any equipment or other item purchased by the CM as part of general conditions at the conclusion of the project. The CM shall be notified of the County's intent to take possession of any such items prior to final payment.

7.1.1.8 The Guaranteed Maximum Price shall include those taxes applicable to the Project. Any sales tax refunds paid to the County shall be exclusively for the County's use and shall not in any way reduce the cost of the project or impact the guaranteed maximum price.

7.1.1.9 The County may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.1.10 In the event that the cost of the project exceeds the guaranteed maximum price and any adjustments therein (such as allowances, architectural errors, or County requested changes) as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the County until the project, defined by this Agreement and attachments hereto, is complete and achieves final completion. The CM shall be responsible for paying all costs and expenses, in accordance with the terms of this Agreement, that may be necessary to complete the project, even if such amounts are in excess of the guaranteed maximum price.

7.1.2 Cost of the Project

The term "cost of the Project" shall include all amounts paid by the County to the CM for construction and post-construction phase basic services provided by the CM in Paragraphs 3.5 and 3.6 and payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items.

7.1.2.1 The cost of the Project shall not include the following:

A. The CM's fee for Basic Services;
B. All professional fees paid by the County to the Designer or other consultants retained directly by the County;
C. All costs paid directly by the County to contractors or suppliers retained directly by the County and outside the scope of the Guaranteed Maximum Price;
D. All Additional Services costs as defined herein;
E. All other costs identified as being not within the Guaranteed Maximum Price.

7.1.2.2 The cost of the Project may be further defined in the order identifying the scope of the work and the final guaranteed maximum price. If the requirements of this Agreement and the documentation required by the change order establishing the guaranteed maximum price differ, then the CM shall identify and explain the difference, but the documentation provided in accordance with change order establishing the final guaranteed maximum price shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.1.3 Adjustments to the Guaranteed Maximum Price
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7.1.3.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications, the Guaranteed Maximum Price may be adjusted by change order in accordance with Paragraph 5.2.2.

7.1.3.4 The Designer shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the County and the CM prior to the work being performed.

7.1.3.5 In the event that the bids for the construction of the project are less than the line item(s) in the GMP for the construction of the project, the GMP shall be reduced dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the County.

7.1.4 Unused Funds

7.1.4.1 In the event that there are any funds remaining in the CM’s contingency or the County’s allowance, those funds shall be retained solely by the County.

7.1.4.2 In the event that all of the funds allocated for the CM’s general conditions are not used, the County shall retain all of those funds.

7.1.4.3 In the event that there are unused allowances or other cost of work funds, all of those funds, plus the associated CM fee, shall be retained by the County.

7.1.4.4 In the event that the bids for the construction of the project are less than the line item(s) in the GMP for the construction of the project, the County’s allowance shall be increased dollar for dollar to reflect the savings. The parties agree that any savings based upon the receipt of bids shall be retained solely by the County.

7.4 Lump Sum

The County shall compensate the CM for Basic Services on the basis of a Lump Sum in accordance with the terms and conditions of this Agreement as follows:

7.4.1 Compensation for Basic Services

The CM shall be compensated for performing Basic Services described in the pre-design phase (Paragraph 3.2), design phase (Paragraph 3.3) and the procurement phase (Paragraph 3.4) for a total lump sum in the amount of Dollars ($______), that shall be divided by the number of months scheduled for the basic services in and paid in equal monthly installments as the services are performed. The CM shall be compensated for performing basic services described in the construction phase (Paragraph 3.5) and post-construction phase (Paragraph 3.6) for a total lump sum in the amount of Dollars ($______). In the event there are changes in the work that require an adjustment in the CM’s construction/post-construction fee, the fee adjustment shall be based upon % of the cost of the work added or deleted from the project. The fee for these phases shall be paid in proportion to the...
7.4.2 Payments
Payments to the CM shall be made monthly, not later than forty-five (45) days after receipt of the CM’s Invoice by the County.

7.4.2.2 Payments due to the CM that are unpaid for more than forty-five (45) days from the due date of the CM’s invoice shall not bear interest from the due date.

7.4.3 Compensation for Additional Services
The CM shall be compensated and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the County and CM.

7.4.4 Auditing Rights
The CM shall keep all records and supporting documentation which concern or relate to the work, general conditions, or other monies paid hereunder for a minimum of three (3) years from the date of termination of this Agreement or the date the project achieves final completion. The CM shall require all of its subcontractors to likewise retain all of their project records and supporting documentation. The County, and any duly authorized agents or representatives of the County, shall be provided access to all such records and supporting documentation during normal business hours upon reasonable request by the County. Further, the County, and any duly authorized agents or representatives of the County, shall have the right to audit, inspect and copy all of the CM’s and any contractor’s project records and documentation. These access, inspection, copying and auditing rights shall survive the termination of this Agreement.

7.5 Adjustments to the CM’s Compensation
The CM shall notify the County as specified in this Agreement when material changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the County or Designer are expected to increase or extend the project’s critical path or the scope or duration of the CM’s Services. If the change results in a delay to the project’s critical path or a material increase in the project’s scope, the CM shall be entitled to receive an increase in the duration of this Agreement and/or additional compensation for the change in accordance with this Agreement.

7.6 Liquidated Damages
7.6.1 Should the CM fail to substantially complete the project or phase on or before the date stipulated for substantial completion of the project (or such later date as may result from extension of time granted by County), the CM shall pay or the County may retain from the funds otherwise to be paid to the CM the sum of $ as substantial completion liquidated damages for each consecutive calendar day beyond the date established in this Agreement that project fails to achieve substantial completion as defined in this Agreement, which sum is agreed upon as a reasonable and proper measure of damages which the County will sustain per day by failure of the CM to complete work within time as stipulated; it being recognized by the County and the CM that the injury to the County which could result from a failure of the CM to complete on schedule is uncertain and cannot be computed exactly. This amount is the minimum measure of damages the County will sustain due to delay in the completion of the work, which shall include but not be limited to the loss of use of the facilities, the relocation of students and services, the cost of County’s time and resources, damage to County’s reputation, and storage of furniture and other materials. The inability of the County to quantify actual damages shall not prevent the recovery of liquidated damages.

7.6.2 For each consecutive calendar day that the work remains incomplete after the date established for final completion of the project, the CM shall pay or County will retain from the compensation otherwise to be paid to the CM the sum of $ as final completion liquidated damages. This amount is agreed upon as a reasonable and proper measure of damages the County will sustain due to the delay in the completion of all remedial work, the delay in the correction of the deficient work, the disruption to the school and the learning environment, the cost of County’s time and resources, damage to County’s reputation, and the inability to use the facilities fully. This amount is in addition to the liquidated damages prescribed above for substantial completion.

7.6.3 The amount of liquidated damages set forth in Paragraphs 7.6.1 and 7.6.2 hereinafore shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are defined above. This provision of liquidated damages does not bar County’s right to enforce other rights and remedies against CM, including but not limited to, specific performance or injunctive relief. In no way shall costs for liquidated damages be construed as a penalty to the CM.

7.6.4 Notwithstanding any other provisions of the Agreement, if there is concurrent delay in the completion of the work, the CM shall be liable for liquidated damages as specified in this Agreement during such period of concurrent delay. For the purpose of this section 7.6, concurrent delay means (a) a delay event caused in part
by the County or its agent and in part by the CM or its contractors, subcontractors, sub-subcontractors, or (b) one or more delay event caused solely by the County, its agents, or the Designer, and one or more delay event caused in part by the CM, subcontractors, subsubcontractors or agents, each of which would have resulted in a delay without the other and which delays run concurrently, or at the same time. In the event that the foregoing provision making the CM liable for liquidated damages during a period of concurrent delay is found to be unenforceable, then the parties agree that in the event of a concurrent delay, the extent of the delay will be apportioned between the County and the CM, and the CM will be responsible for liquidated damages as set forth in the section 7.6 for those portions of the delay which are apportioned to the CM, its subcontractors, sub-subcontractors, agents or material suppliers.

7.6.5 The amount of liquidated damages set forth in this Section shall not include additional legal or design professional costs that may result from the CM’s default. If such legal or design professional costs are incurred by the County, the CM shall be liable to the County for those costs in addition to the liquidated damages amount set forth.

7.7 The following summary is intended to provide a single location for all relevant monetary amounts included in this Agreement as of the date of execution of the Agreement. The following list shall take precedence over any inconsistencies in the amounts otherwise incorporated into this Agreement. The amounts in this Agreement shall only be revised by written Agreement between the parties. The monetary amounts follow:

- **GMP** $________
- **COST OF WORK** $________
- **CM PRECONSTRUCTION FEE** $________
- **CM CONSTRUCTION FEE** $________
- **CM CONSTRUCTION CONTINGENCY** $________
- **COUNTY ALLOWANCE** $________
- **GENERAL CONDITIONS** $________
- **LIQUIDATED DAMAGES-SUBSTANTIAL** $________/day
- **LIQUIDATED DAMAGES – FINAL** $________/day

**ARTICLE 8 INSURANCE AND MUTUAL INDEMNITY**

**8.1 CM’s Liability Insurance**

8.1.1 **Commercial General Liability.**
CM shall maintain Commercial General Liability (CGL) with a total limit of not less than $10,000,000 of bodily injury and property damage. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Project. CGL insurance shall be written on Insurance Services Office (ISO) “occurrence” form CG 00 01 covering CGL or its equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract.

County, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 10 and CG 20 37 or an endorsement providing equivalent coverage with respect to liability arising out of activities performed by or on behalf of CM; products and completed operations of CM; premises owned, leased or used by CM; and under the commercial umbrella, if required by County. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, officials, agents, and employees. The status of County as an additional insured under a CGL obtained in compliance with this Contract shall not restrict coverage under such CGL with respect to the escape or release of pollutants at or from the Project site. There shall be no endorsement or modification of the CGL Umbrella Liability limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, employment-related practices, or damage to the named insured’s work. CM shall maintain CGL and, if necessary Commercial Umbrella Liability (CUL) insurance, both applicable to liability arising out of CM's completed operations, with a limit of not less than $10,000,000 each occurrence for at least three (3) years following substantial completion of the Work. CM’s CGL insurance shall be primary as to County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be excess of and not contribute toward CM’s insurance.

8.1.2 **The Workers’ Compensation and Employer’s Liability:**
CM shall maintain Workers’ Compensation as required by the State of North Carolina and Employer’s Liability Insurance. The Employer's Liability, and if necessary, CUL insurance shall not be less than $5,000,000 each accident for bodily injury by accident; $5,000,000 each employee for bodily injury by disease, and $5,000,000 policy limit. The Insurer shall agree to waive all rights of subrogation against County, its officers, officials, agents, and employees for losses arising from the Work performed by CM for County.

8.1.3 **Business Auto Liability.**
CM shall maintain Business Auto Liability and, if necessary, CUL insurance with a limit of not less than $5,000,000 combined single limit. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos. Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01. CM’s Business Auto Liability insurance shall...
be primary as to County, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by County, its officers, officials, agents, and employees shall be excess of and not contribute with CM’s insurance.

8.1.4 Builders Risk Insurance.
CM shall purchase and maintain in force builders risk insurance on the entire work. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum subject to subsequent modifications of the contract sum. The insurance shall apply on a replacement cost basis. Builders Risk insurance shall name as insureds County, CM, and all subcontractors and sub-subcontractors. Builders Risk insurance shall cover the entire work at the site identified in this Contract including reasonable compensation for architects’ services and expenses made necessary by an insured loss. Insured property shall include portions of work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. Builders Risk Insurance shall, at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for loss or damage from collapse including collapse resulting from design error. Builders Risk Insurance shall include coverage for flood. If property is damaged by the failure of CM to maintain Builders Risk or Equipment Breakdown, then CM shall bear all reasonable costs properly attributable to that failure.

Partial occupancy or use of the Work upon substantial completion shall not commence until the insurance company or companies providing Builders Risk insurance have consented to such partial occupancy or use. County and CM shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the Work that could lead to cancellation, lapse, or reduction of insurance.

8.1.5 Professional Liability Insurance.
CM shall maintain in force for the duration of this Contract professional liability or errors and omissions liability insurance appropriate to CM’s profession. Coverage as required in this paragraph shall apply to liability for a professional error, act, negligence, or omission arising out of the scope of CM’s services as defined in this Contract. Coverage shall be written subject to limits of not less than $5,000,000 per loss. If coverage in this Contract is on a claims-made basis, CM warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that services under the Contract are complete.

8.1.6 Surety Bond - Performance & Payment Bonds.
CM shall furnish and deliver to County a Payment Bond and a Performance Bond covering the faithful performance and completion of work included in this Contract and payment for all materials and labor furnished or supplied in connection with work included in this Contract. All bonds shall be issued and furnished to County prior to, and as a condition precedent to, commencement of the Work of this Contract. The Payment Bond and Performance Bond shall be furnished on behalf of CM, shall name County obligee, and shall be one hundred percent (100%) of the amount of the guaranteed repair and maintenance costs. Such bond(s) shall be solely for the protection of County. The Payment Bond and the Performance Bond shall be issued by a surety of financial standing having a rating from A.M. Best Company equal to or better than A and must be included on the approved list of sureties issued by the United States Department of Treasury. The bond shall remain in effect at least one (1) year after the date when final payment is made. The surety bond must be in the form set forth in N.C.G.S. 44A-33, without any variations therefrom. CM shall provide surety bond wherein Surety waives notice of all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by the Bond shall not be impaired in any manner due to any modifications, omissions, additions, changes, and advance payments or deferred payments. The surety bond must set forth no requirement that suit be initiated prior to the time stipulated in applicable North Carolina Statutes of Limitation.

8.1.7 Deductibles and Self-Insured Retentions.
CM shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not County is an insured under the policy.

8.2 Miscellaneous Insurance Provisions
Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to County, its officers, officials, agents, and employees. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be canceled or rescinded by either party except after thirty (30) days prior written notice has been given to New Hanover Risk Management, 230 Government Center Drive, Ste. 125, Wilmington, North Carolina, 28403. If CM's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

8.3 Acceptability of Insurers.
Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best’s rating of no less than A VII unless specific approval has been granted by County.

8.4 Evidence of Insurance.
CM shall furnish County with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance
requirements prior to commencing the Work, and thereafter upon renewal or replacement of each certified coverage until all the Work under this contract are deemed complete. Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract. Insurance maintained after final payment evidencing such coverage shall be provided to County with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the two-year period for which such insurance must be maintained.

8.5 Subcontractors.
CM shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. GCL coverage shall include Independent CM’s coverage, and CM shall be responsible for assuring that all subcontractors are properly insured.

8.6 Conditions.
County may, at its discretion and with the approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements. CM shall warrant that the insurance contributing to the satisfaction of insurance requirements in this Contract and shall not be canceled, terminated, or modified by CM without prior written approval of County. CM shall promptly notify the New Hanover County Property Management and New Hanover County Risk Management at (910) 798-7497 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage. County reserves the right to obtain complete, certified copies of all required insurance policies. Failure of County to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of County to identify a deficiency from evidence that is provided shall not be construed as a waiver of CM’s obligation to maintain such insurance. County does not represent that coverage and limits will be adequate to protect CM and such coverage and limits shall not be deemed as a limitation of CM’s liability under the indemnities granted to County in this Contract. If CM fails to maintain the insurance as set forth herein, County shall have the right to purchase said insurance at CM’s expense. CM agrees to reimburse County for all expenses incurred for such purchase. CM or its agent may apply to County for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage. County shall have the right to prohibit CM or any subcontractor from performing work or services and may withhold payment until required certificates has been received and approved by County.

8.7 Indemnity.
To the fullest extent permitted by law, CM shall indemnify and hold harmless County, its officers, officials, agents and employees from and against liability, claims, damages, losses and expenses, including attorneys’ fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of CM, anyone directly or indirectly employed by it or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by County, its officers, officials, agents and employees.

ARTICLE 9
SUSPENSION

9.1 Suspension
9.1.1 The County may order, in writing, the CM to suspend all or any part of the CM’s services for the Project for the convenience of the County or for work stoppage beyond the control of the County or the CM. If the performance of all or any part of the services for the Project is suspended, the County and CM may negotiate an adjustment in the CM’s compensation for the increase, if any, in the cost of the CM’s performance of this Agreement caused by such suspension and this Agreement may be modified in writing accordingly.

9.1.2 in the event the CM’s services on the project are suspended, the County shall reimburse the CM for all of the costs of its construction site staff, assigned project home office staff and other costs provided for by this Agreement for the first seven (7) days of such suspension. the CM shall reassign the staff for the remainder of the suspension period unless directed otherwise by the County in writing and, if the County directs the CM to maintain all or part of its staff, the County shall reimburse the CM for all costs of staff remaining dedicated to the project. upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.

9.1.3 Persons assigned to another project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The County shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.

9.1.4 If the Project is suspended by the County for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the County of such suspension, together with direct expenses then due. If the Project is resumed after being suspended for more than six (6) months, the CM shall have the right to request that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10
TERMINATION
10.1 Termination by the CM

10.1.1 If the work is stopped for a period of one hundred eighty (180) days by the County or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, and through no act or fault of the CM or a contractor or their agents or employees or any other persons performing any of the work under a contract with the CM, then the CM may, upon seven (7) additional days' written notice to the County and the design consultant, terminate the contract and recover from the County payment for all work executed. The CM shall not be entitled to collect and hereby expressly waives any profit on work not performed and any damages related to that portion of the contract which has been terminated.

10.2 Termination for convenience of the County

10.2.1 The County may, at any time upon ten (10) days' written notice to the CM and to the CM's surety, which notice shall specify that portion of the work to be terminated and the date said termination is to take effect, terminate (without prejudice to any right or remedy of the County) the whole or any portion of the work for the convenience of the County. The CM's sole remedy, in the event of such termination, will be the allowable termination costs. CM shall include termination clauses identical to Article 10 in each of its subcontracts.

10.3 Default termination

10.3.1 Ten (10) days' after written notice is mailed to the CM and to the CM's surety, the County may terminate (without prejudice to any right or remedy of the County or any subsequent buyer of any portion of the work) the employment of the CM and its right to proceed either as to the whole or any portion of the work required by the contract documents and may take possession of the work and complete the work by contract or otherwise in any one of the following circumstances:

A. If the CM or its surety refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure the substantial or final completion of the work within the contract time or fails to complete the work or remedy a default within said period;

B. If the CM is in material default in carrying out any provisions of the contract for a cause within his control;

C. If the CM fails to supply a sufficient number of properly skilled workmen or proper equipment or materials;

D. If the CM fails to make payment to the contractors or for materials or labor when due, unless he otherwise provides the County reasonable evidence that payment is not legally or contractually due;

E. If the CM disregards laws, permits, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to follow the reasonable instructions of the County;

F. If the CM substantially violates any provisions of the contract documents; or

G. If the CM refuses or fails to properly schedule, plan, coordinate and execute the work, as specified herein, so as to perform the work within the specified milestone and completion dates, or to provide scheduling or related information, revisions and updates as required by the contract documents.

10.3.2 The right of the CM to proceed shall not be so terminated under this Section if the delays in the completion of the work are due to causes beyond the control and without the fault or negligence of the CM or the contractors.

10.3.3 If, after the CM has been terminated for default pursuant to this Section, it is determined that none of the circumstances set forth herein exist, then such termination shall be considered a termination for convenience. In such case, the CM's sole remedy will be the costs permitted.

10.3.4 If the County so terminates the employment of the CM, the CM shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation that would have been paid to the CM for the actual work completed, excluding the CM's unused contingency, shall exceed the expense of so completing the work (including compensation for additional construction management, managerial, administrative, consultant, legal, design and inspection services and any damages for delay) such excess shall be paid to the CM.

10.3.5 If such expenses shall exceed the unpaid balance, the CM and his sureties shall be liable to the County for such excess. If the right of the CM to proceed with the work is partially or fully terminated, the County may take possession of and utilize in completing the work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the work and necessary for the completion of the work. If the County does not fully terminate the right of the CM to proceed, the CM shall continue to perform the part of the work that is not terminated.

10.3.6 If the County terminates the whole or any part of the work, the County may procure, upon such terms and in such manner as the County may deem appropriate, supplies or services similar to those so terminated, and the CM shall be liable to the County for any excess costs for such similar supplies or services. The CM shall continue the performance of the contract to the extent not terminated hereunder.

10.4 Allowable Termination Costs
10.4.1 If the County terminates the whole or any portion of the work, then the County shall only be liable to the CM for those costs reimbursable to the CM in accordance with this Section, plus a markup of ten (10%) percent for profit and overhead on the actual fully accounted costs paid by the County; provided however, that if there is evidence that the CM would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder for the work performed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss. Under no circumstances shall the CM be entitled to any loss profit or fee on the work terminated.

10.4.1.1 After receipt of a notice of termination, the CM shall submit to the County his termination claim, in the form and with certification prescribed by the County. Such claim shall be submitted promptly, but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the County upon request of the CM made in writing within such thirty (30) day period or authorized extension thereof. However, if the County determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such thirty (30) day period or any extension thereof. Upon failure of the CM to submit his termination claim within the time allowed, the County may determine, on the basis of information available to him, the amount, if any, due to the CM by reason of the termination.

10.4.2 If the County terminates the whole or any portion of the work pursuant to Article 10, the County shall pay the CM an amount for supplies, services, or property accepted by the County, and which is in accordance with the contract documents, in an amount as if the Agreement had not been terminated. In addition, in such event, the County shall pay to CM an amount representing CM’s actual cost, excluding any overhead and profit for the items and things specified in this Section and heretofore paid for, appropriately adjusted for any saving of freight or other charges. Under no circumstances, shall the CM be entitled to any loss profit or fee on the work terminated pursuant to this Section.

10.4.2.1 The CM agrees that neither the County nor the Designer will be liable for payments to contractors or subcontractors pursuant this Section unless each contract or subcontract contains termination provisions identical to those set forth in this Article 10. The County and the design consultant will not be liable to the CM or any of the contractors or subcontractors for any costs associated with termination if the contract or subcontract of the party involved does not include the required termination language.

10.4.3 In arriving at any amount due the CM pursuant to this Section, there shall be deducted the following:

A. All unliquidated advance or other payments on account theretofore made to the CM applicable to the terminated portion of the contract;
B. Any amount which the County reasonably believes the CM or any of the contractors owes to the County;
C. Such amount as the County determines to be necessary to protect the County against loss because of outstanding or potential liens or claims; and
D. Agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the CM or sold, pursuant to the provisions of this Agreement, and not otherwise recovered by or credited to the County.

10.4.4 The total sum to be paid to the CM under Article 10 shall not exceed the contract sum as reduced by the amount of payments otherwise made or to be made for work not terminated and as otherwise permitted by the contract. Except for normal spoilage, and except to the extent that the County shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the CM. The replacement cost of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the County, or to a buyer.

10.5 General Termination Provisions

10.5.1 After receipt of a notice of termination from the County, and except as otherwise directed by the County, the CM shall:

A. Stop work under the contract on the date and to the extent specified in the notice of termination;
B. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
C. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
D. At the option of the County, assign to the County in the manner, at the times and to the extent directed by the County, all of the rights in the contracts so terminated, in which case the County shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
E. Settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, with the approval or ratification of the County, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
F. Transfer title and deliver to the entity or entities designated by the County, in the manner, at the times and to the extent directed by the County to the extent specifically produced or specifically acquired by the CM for the performance of such portion of the work as had been terminated, the following:

(1) the fabricated or unfabricated parts, work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed work, supplies and other material produced as part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and

(2) the completed or partially completed plans, drawings, information, releases, manuals and other property related to the work and which, if the contract had been completed, would have been required to be furnished to the County;

G. Use commercially reasonable efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the County, any property of the types; provided, however, that the CM:

(1) shall not be required to extend credit to any buyer, and

(2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the County; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the County to the CM under the contract or shall otherwise be credited to the contract sum covered by the contract or paid in such other manner as the County may direct;

H. Complete performance of such part of the work as shall not have been terminated by the notice of termination; and

I. Take such action as may be necessary, or as the County may direct, for the protection and preservation of the property related to the contract which is in the possession of the CM and in which the County has or may acquire an interest.

10.5.2 The CM shall, from the effective date of termination until the expiration of three (3) years after final settlement under the contract, preserve and make available to the County, at all reasonable times at the office of the CM, but without direct charge to the County, all his books, records, documents and other evidence bearing on the costs and expenses of the CM under the contract and relating to the work terminated hereunder, or, to the extent approved by the County, photographs, micro-photographs or other authentic reproductions thereof.

10.5.3 If the termination be partial, the CM may file with the County a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the CM for an equitable adjustment must be asserted within six (6) months from the effective date of the notice of termination.

10.5.4 The CM shall refund to the County any amounts paid by the County to the CM in excess of costs reimbursable.

10.5.5 The CM shall be entitled to only those damages and that relief from termination by the County as specifically provided in article 10.

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Confidentiality

11.1 Consistent with North Carolina’s public records law, the CM will keep information specifically designated and marked by the County as “Confidential” and concerning the Project confidential.

11.2 Limitation and Assignment

11.2.1 The County and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

11.2.2 The CM shall not assign or transfer its rights or interest in this Agreement without the written consent of the County, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the County. However, nothing contained in this Paragraph can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder.

11.3 Governing Law

11.3.1 This Agreement shall be governed by the laws of the State of North Carolina.

11.3.2 CM shall comply with all applicable laws and regulations in providing services under this Agreement. CM shall not employ any individuals to provide services to the County who are not authorized by federal law to work in the United States. CM represents that it is aware of and in compliance with the immigration reform and control act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system. CM further warrants that it will use the E-Verify system to verify employment eligibility of all its employees throughout the
term of this Agreement, and that it will remain in compliance with all I-9 requirements throughout the term of this Agreement. CM shall also ensure that any subcontractors use the e-verify system at all times while providing subcontracted services in connection with this Agreement.

11.3.3 Compliance with Federal Law.
If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable federal laws, policies, and standards, including those under the uniform guidance (2 C.F.R. part 200).

11.3.4 The CM shall comply with the above listed and all applicable laws and regulations in providing services under this Agreement.

11.4 Extent of Agreement

11.4.1 This Agreement represents the entire and integrated Agreement between the County and the CM and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the County and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Designers are not intended third party beneficiaries of this Agreement. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared initially by the County, it being recognized that both parties and their respective counsel have had a full and fair opportunity to negotiate and review the terms and provisions of this Agreement and to contribute to its substance and form.

11.5 Severability

11.5.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.6 Meaning of Terms

11.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.7 Notices

11.7.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail, postage prepaid, or by facsimile, addressed as follows:

To the County:
New Hanover County Property Management
Attn: Kevin Caison
200 Division Drive

New Hanover County Contract #19-0116 draft

Wilmington, NC 28401

To the CM:

11.8 Compliance with County policies and procedures

11.8.1 The CM agrees to comply with these and all other County policies. In addition, the CM agrees to comply with the following:

A. the CM, the contractors and their employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the County. property owned by the County.

B. the CM, the contractors and their employees, are prohibited from profane, lewd, obscene or offensive conduct or language, including engaging in sexual harassment.

C. the CM and the contractors shall not manufacture, transmit, conspire to transmit, possess, use or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana or anabolic steroids, or possess, use, transmit or conspire to transmit drug paraphernalia on any property owned by the County.

D. the CM and the contractors may not at any time use or display tobacco or nicotine-containing products, including but not limited to electronic cigarettes (e-cigarettes), on County premises, both indoor and outdoor.

11.8.9 The CM shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to it. The County may require the CM to remove any employee, contractor or subcontractor the County deems incompetent, careless or otherwise objectionable.

11.8.10 All agents and workers of the CM and the contractors shall possess identification badges provided by the CM at all times they are on the County’s property. The identification badges shall at a minimum display the company name, telephone number, employee name and a picture of the employee. The CM and the contractors shall comply with the County’s site or school building access procedures when working on any existing school campus.

11.9 Construction Project Policies
The CM acknowledges receipt of the County’s dispute resolution policy, minority business participation policy, and prequalification of bidders for construction projects, including their regulations and procedures. The CM and
County agree that these policies shall be incorporated into this Agreement by reference.

[PAGE INTENTIONALLY LEFT BLANK]
This Agreement is executed the day and year first written above.

NEW HANOVER COUNTY:

________________________
________________________
________________________
Chairman

Attest:

________________________
________________________
Secretary
[Corporate Seal]

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

________________________
County Finance Officer

CONSTRUCTION MANAGER:

________________________

________________________
________________________
Attest:

________________________
Corporate Secretary
[Corporate Seal]

Approved as to form:

________________________
County Attorney
**Item No.** | **Description** | **Unit Cost** | **Total Cost**  
--- | --- | --- | ---  
1 | New Construction (anticipates specialized foundations) | 35,350 SF | $310.00 | $10,958,500.00  
2 | 320 Chestnut Upfit (not required with this Option) | 0 SF | $125.00 | $0.00  
3 | Replacement Facility Site Development | N/A N/A lump sum | $250,000.00  
4 | Existing Facility and Site Demolition | N/A N/A lump sum | $250,000.00  
5 | Construction / Design Contingency | N/A % | 10.00% | $1,145,850.00  
6 | Cost Escalation Contingency | N/A % | 10.00% | $1,260,435.00  
Subtotal | | | $13,864,785.00  

**Estimated Construction Cost** | 35,350 SF | $392.21 | $13,864,785.00  

**Project Costs** |  
1 | Fixtures. Furnishings & Equipment (FF&E of finished space) | N/A % | 10.00% | $1,386,478.50  
2 | Site and Construction Testing | N/A % | 1.00% | $138,647.85  
3 | A/E Fee - Lump Sum | N/A N/A lump sum | $1,325,000.00  
4 | Document Printing | N/A N/A lump sum | $10,000.00  
5 | Property Acquisition (assume County-owned land) | N/A N/A lump sum | $0.00  
6 | Relocation Expenses (assume a 24-36 month term) | N/A N/A lump sum | $70,000.00  
7 | CMAR Fee | N/A N/A lump sum | $100,000.00  
Subtotal | | | $3,030,126.35  

**TOTAL ESTIMATED PROJECT BUDGET** | | | $16,894,911.35  

**Notes:**  
This Option requires a temporary relocation of juvenile court functions while the existing facility is demolished and a new three story facility is constructed on the existing site.