

MAYOR
Michael L. Alvarez

MAYOR PRO TEM
David Cohn



TOWN COUNCIL
Gordon B. Daniels
David W. Drehs
Christopher M. King
Gary M. Savoie

Indian Trail Town Council Meeting
February 10, 2015
Civic Building
6:30 p.m.

- 1. CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**
- 2. ADDITIONS AND DELETIONS** **action**
- 3. MOTION TO APPROVE AGENDA**
- 4. PRESENTATIONS**
 - a. Town Services Update
- 5. PUBLIC COMMENTS**
- 6. LAW ENFORCEMENT UPDATE**
- 7. PARC COMMITTEE APPLICATION**
 - a. Approval of application of Gabriel Ortiz for the PARC Committee
- 8. CONSENT AGENDA** **action**
 - a. [Approval of January 27, 2015 draft minutes](#)
 - b. [Approval of advertisement of delinquent taxes](#)
 - c. [Approval of January 2015 month end tax report](#)
 - d. [Approval of concession agreement](#)
 - e. [Approval of proposed 2015-2016 Budget Schedule](#)
 - f. [Approval of Multi-Jurisdictional Hazard Mitigation Plan Resolution](#)
 - g. [Approval of LGC 203](#)
- 9. PUBLIC HEARINGS** **action**

NONE

10. BUSINESS ITEMS

- a. Council consideration and approval of 2015 Stormwater Maintenance Contract
- b. Council consideration of approval of Construction Manager @ Risk Agreements and discussion of initial cost estimates.

11. DISCUSSION ITEMS

- a. Discussion on list of accounts with Town assets that are interest bearing. What are balances, interest rate and terms – long term plan for accounts, interest paid per FY 2013-2014 – list of any interest used – *this matter was requested by Mayor Alvarez*
- b. Discussion on NCDOT US-74 intersection improvements

12. MANAGERS REPORT

13. COUNCIL COMMENTS

14. CLOSED SESSION

action

15. ADJOURN

action

To speak concerning an item on the Agenda, please print your name and address on the sign up sheet on the table prior to the meeting. Each speaker will be limited to 3 minutes.

AS A COURTESY, PLEASE TURN CELL PHONES OFF WHILE MEETING IS IN PROGRESS

The Town of Indian Trail is committed to providing all citizens with the opportunity to participate fully in the public meeting process. Any person with a disability who needs an auxiliary aid or service in order to participate in this meeting may contact the Town Clerk at least 48 hours prior to the meeting. The e-mail address is townclerk@admin.indiantrail.org; the phone number is 704-821-5401



Town of Indian Trail
Minutes of Town Council
January 27, 2015
Civic Building
06:30 P.M.

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: David Cohn, Gordon B. Daniels, David W. Drehs and Gary M. Savoie.

Absent Members: Christopher King

Staff Members: Town Manager Joe Fivas, Town Clerk Peggy Piontek, Town Attorney Keith Merritt, Director of Community & Economic Development Kelly Barnhardt, Director of Engineering and Public Works Scott Kaufhold , Interim Planning Director Rox Burhans, Planner Lindzey Small, Assistant Director of Parks & Recreation Jason Tryon, and Communications Coordinator Lindsey Edmonds.

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Alvarez called the meeting to order and asked Councilman Daniels to lead in the Pledge of Allegiance.

ADDITIONS AND DELETIONS

Gordon B. Daniels made a motion to approve moving item 7a draft minutes for January 10, 2015 to item 10a for further discussion.
Council voted unanimously in favor of the motion.

David W. Drehs made a motion to approve deleting item 9c Construction Manager @ Risk Agreement.
Council voted unanimously in favor of the motion.

David W. Drehs made a motion to approve moving item 7g Budget Amendments to 10b for further discussion.
Council voted unanimously in favor of the motion.

Mr. Savoie entered the meeting

MOTION TO APPROVE AGENDA

David W. Drehs made a motion to approve the Agenda as amended.
Council voted unanimously in favor of the motion.

PRESENTATIONS

- a. Christmas Parade winners presentation * Best Youth- Sun Valley Marching Band and Sun Valley NJROTC * Best Decorated- Indian Trail United Methodist Church * Most Festive- Belk Auction Stage Coach

Mr. Donald Moore, President of the Indian Trail Arts & Historical Society stated it was the best parade we have had to date, congratulating Ms. Didier for such a fine job. He presented the awards to the organizations listed above.

- b. Economic Development Advisory Committee Update

Maureen Mulhall, Chairperson for EDAC, Trip Melton Vice Chair, read to Council their mission statement and explained the projects they are working on. They invited the Council to attend a meeting and provided the meeting day and time information, stating they are excited to be a part of this committee.

- c. Don Moye, County Emergency Management Update

Mr. Moyer presented an overview of the updated Union County Emergency Management Program, advising that it was created for clarification of resources and responses during a disaster. Council asked several questions at the conclusion of Mr. Moyer's presentation.

Mr. Merritt entered the meeting.

d. Gary Sides Union County Board of Education Introduction

Mayor Alvarez introduced Mr. Sides. Mr. Sides explained the areas his district consists of, he provided some background on him and his family. Mr. Sides touched on top issues for the school board. Council had a brief discussion with Mr. Sides on several issues.

e. Town Services Update

Mr. Fivas asked to defer to next meeting due to technological issues.

Mr. Daniels requested that the Town provide name tags for the Boards and Committees, Mr. Fivas stated staff would take care of it.

PUBLIC COMMENTS

Dr. Shamir Ally, 1008 Nut Grove Lane, Indian Trail, NC stated that he has completed one year in the town and provided a SWOT analysis (Strength, Weakness, Opportunities and Threats) for the Town. He stated that the New Town Hall reeks of success, acknowledging that everyone is not in favor of spending the money; he commended the Mayor, Council and staff for their hard work under the current conditions. He publicly thanked Joe and his team for doing such a great job with limited resources. Dr. Ally stated he has spoken to residents throughout the community who like the low taxes "best" traffic "worst". He commented on the wonderful website and newsletter. A copy of Dr. Ally's suggestions can be found in the official packet.

Shirley Howe, 6205 Clearwater Drive, Indian Trail, NC stated the length of time passed since last Public Comments due to the manipulation of the Council majority, referring to an occurrence last year when meetings were boycotted by certain Council Members because they didn't get their way. She stated they took an oath to faithfully discharge their duties which include attending Council meetings. Ms. Howe referred to the two hour Closed Session in the middle of the meeting on December 9th, stating Council was abandoning the very people they were elected to represent and Council should be apologizing to them, not the Town Manager or Finance Director. She stated the Closed Session provided the Town Manager time to insult the current and past employees; and

asked how they believe there is no morale problem. The Manager successfully exonerated himself to the Council majority who expressed confidence in him. He made sure there was a trial with bias evidence, violating HIPPA Laws by exposing private information of employees. Ms. Howe stated that the Finance Director threatened to quit because she was exposed as a bully by several staff members and Council confirmed that is acceptable behavior by comments in the newspaper. She concluded by suggesting that Council ask themselves if they would be upset if one of their children worked under those conditions.

Samantha Townes, 104 Pine Lake Drive, Indian Trail, NC addressed the article in the newspaper on the treatment of employees, stating that bullying should not be done or tolerated. The article referred to comments that the staff did nothing but barbeque and play hockey inquiring how did all of the houses get built before all of you arrived. She stated that all of the staff works hard, not just one person making the rest of the staff feel like they were nothing. She feels the staff deserves an apology.

Curtis Nolan, 1416 Hartis Lane, Matthews, NC stated he is representing three other individuals who are opening a new business in Indian Trail of a Craft Beer establishment while offering performing arts presentations as well . He described it as a coffee shop that serves beer. They have identified Indian Trail as an ideal regional location to offer a wide variety of locally crafted beer, as none currently exist. Mr. Nolan provided some statistics on breweries in the state and region, also touching on the local retail availability of crafted beers and performing arts. He stated they are looking at real estate in Indian Trail and are hoping to get local support, since they are not serving food on site.

Michael Faulkenberry, 519 Picketts Circle, Indian Trail, NC registered a formal complaint that he has been interrupted by the Town Manager at committee meetings, as he does not attend them to be disrespected or interrupted. It's not about someone being a Yankee but about his being a professional. He stated he is saddened to state that two ethics code violations have taken place according to the Indian Trail Ethics Policy, Cannon 6 line item b (which he read) indicating that Mr. Drehs voting on the Miracle Field land exchange was one of the violations because it benefits his pending 501C3 organization; Mr. Drehs is also the Chairman of the organization which Mr. Faulkenberry feels makes it a business dealing. He referred to the same policy, line item c (which he read) stating Mr. Drehs should have abstained from voting on the Resolution because he paid the \$500 fee to the Miracle League Organization to establish the Miracle Field League of Indian Trail which shows it is a personal financial interest; also Mr. Drehs was advised that he would have a conflict of interest if he continued to go on that path and he choose to ignore those warnings. Mr. Faulkenberry stated that he supported Mr. Drehs getting his seat and is now holding him accountable to do the job properly and correctly. He referred to NCGS 14-234 Public Officers or

employees benefiting from public contracts. Mr. Faulkenberry stated he is a friend of Mr. Drehs and asked him to please not jeopardize this project due to bad advice or emotions, suggesting he either resign as Council or Chairman of the Miracle Field.

William Hardman, Mineral Spring, NC advised the Council if Mr. Sides is going to act as a liaison, they inquire exactly how he's going to bridge the gap between the Board of County Commissioners and Union County Public Schools. It's his feeling that the settlement won't take place in February or March but if it does great. However he's not getting the answer that he is looking for to that question.

LAW ENFORCEMENT UPDATE

Lieutenant Coble advised that car break-ins are happening all over town suggesting locking the doors. He advised they have been working on the Governor's Highway Safety Grant. Law Enforcement study has been given the most current statistics. They are working on a parking campaign; they have decals that will be placed on cars at the beginning. A parking ticket is \$213. He summarized the yearly report he handed out to the Council. A Copy can be found in the Official Packet in the Clerk's Office.

CONSENT AGENDA

- a. Approval of January 10, 2015 draft minutes - *this matter was moved to Discussion pursuant to a motion made by Councilman Daniels under Additions and Deletions*
- b. Approval of December 9, 2014 draft minutes
- c. Approval of revised October 14, 2014 minutes
- d. Approval of MSLO for Cranston Crossing Place and Rhode Island Court **(COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES)**
- e. Approval of December 2014 Tax Report **(COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES)**
- f. Approval of returned check fee
- g. Approval of Budget Amendments - *this matter was moved to Discussion pursuant to a request made by Mayor Alvarez and a motion made by Councilman Drehs under Additions and Deletions*
- h. Approval of tax refunds over \$500.00
- i. Approval of A-C4957B Supplemental Agreement **(COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES)**
- j. Approval of modifications to Wayfinding Program
- k. Approval of Union County Emergency Operations Plan Update **(A COPY CAN**

BE FOUND IN THE TOWN MANAGERS OFFICE)

I. Approval of Cash Management Policy (COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES)

David W. Drehs made a motion to approve the Consent Agenda.
Council voted unanimously in favor of the motion

PUBLIC HEARINGS

- a. ZT2014-004 Chapter 1710 of the Unified Development Ordinance A request to amend Chapter 1710 of the UDO to reflect improvements made to the Town's street tree list as well as other minor changes. Applicant: Town of Indian Trail

Planner Lindzey Small advised the impetus for this request is to establish a standard for planting bed sizes of street trees, respective to their mature height and canopy spread. The proposed modifications also incorporated additional native tree species within the approved tree list and removed inappropriate street trees. The amendment is proposed to Chapter 1710 of the UDO: Trees and Shrubs. The proposed amendment includes: 1) An update of the existing street tree list 2) A series of proposed planting bed standards to encourage mature tree growth and 3) General housekeeping changes.

The Planning Board heard this item at its November 18, 2014 public meeting. Questions were asked of the document, including information about specific trees, as well as the presence of native plant species. The Planning Board voted unanimously to transmit a recommendation to approve to the Town Council. The following consistency statements were found:

1) The proposed UDO amendment is consistent with the following goals of the Comprehensive Plan: **Natural Environment Goal 4:** This Amendment provides for more variety in the tree selection process and encourages trees to grow to mature height and spread. **Infrastructure Goal 2:** This Amendment helps minimize infrastructure damage to town roads through the use of planting bed spaces to support mature growth.

2) This UDO amendment is in the best interest of the public because it allows more variety of trees and shrub species and ensures an appropriately sized planting bed space is provided based on the anticipated mature growth of the planted street tree.

Mayor Alvarez opened and closed the Public Comments portion of the hearing as no one had signed up to speak.

David Cohn made a motion to accept the findings as read into the record.

Council voted unanimously in favor of the motion

David Cohn made a motion to approve ZT2014-004 Chapter 1710 of the Unified Development Ordinance as presented.

Council voted unanimously in favor of the motion.

BUSINESS ITEMS

a. Council consideration of RFP for Concessions at Crooked Creek Park

Jason Tryon explained the process that staff conducted for the RFP, stating that staff recommends Homerun Concession as they will give us a higher percentage of the sales.

Gary M. Savoie made a motion to approve Homerun Concessions to execute the concession agreement with the town at Crooked Creek Park.

Council voted unanimously in favor of the motion

b. Council consideration of approval of PARTF Grant Application

Jason Tryon explained that this application was explained during the January 10th meeting, requesting that we move forward with adopting the Crooked Creek Park Capital Improvement Plan and the PARTF Grant application.

David W. Drehs made a motion to approve the Capital Improvement Plan for Crooked Creek Park. Council voted unanimously in favor of the motion.

David Cohn made a motion to approve PARTF Grant Application
Council voted unanimously in favor of the motion.

c. Council consideration of Construction Manager @ Risk Agreements ***this item was removed from the agenda as a result of a motion made by Councilman Drehs under Additions and Deletions.***

DISCUSSION ITEMS

Approval of January 10, 2015 draft minutes - *this matter was moved to Discussion pursuant to a motion made by Councilman Daniels under Additions and Deletions*

Mr. Daniels requested the January 10th meeting minutes be done verbatim, as the presentation included extensive information that would be helpful to have in writing. Council had a brief discussion on this matter.

Gordon B. Daniels made a motion to approve making the January 10, 2015 minutes verbatim. Motion Failed 3 - 1 with David Cohn, David W. Drehs, and Gary M. Savoie opposing.

David Cohn made a motion to approve the January 10, 2015 minutes as presented with the power points attached.

Motion passed 3-1 with Gordon Daniels opposing.

b. Approval of Budget Amendments - *this matter was moved to Discussion pursuant to a request made by Mayor Alvarez and a motion made by Councilman Drehs under Additions and Deletions*

Mayor Alvarez stated that he has received inquiries from residents on this topic and wanted to provide them with the answers.

- He inquired where the Town Hall \$125,000 architecture project money is coming from and going to. Mr. Fivas replied the Council approved the Creech & Associates agreement and what is being shown here is coming out of the Town Hall Fund and being transferred to the Debt Service and Capital Reserve Fund because you can't spend money from the Town Hall Fund it has to be transferred.
- What is being resurfaced with the \$200,000 from the Powell bill Fund and why not the Road Bond Maintenance Fund or Park Bond depending on what's being resurfaced? Mr. Kaufhold replied the \$200,000 was used for a patching contract. It was advertised, we took the low bid but they were unable to come up with the bond requirements, so staff went to the next lowest bidder. There were a couple of locations planned but due to the unit costs being higher we were only able to do the primary location of Brandon Oaks Parkway at the roundabout.
- Why doesn't the 5 year PARTF Grant budget include operating and maintenance cost and what are the operating and maintenance cost estimates? Mr. Fivas replied what you are approving tonight is the Capital Improvement budget and obviously we don't have the operating and maintenance costs. Should we receive the Grant, we will have some time for this discussion from Council to officially recognize and receive the grant the question can be answered.

Gary M. Savoie made a motion to approve the budget amendments.

Council voted unanimously in favor of the motion. **(COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES)**

MANAGERS REPORT

Mr. Fivas stated there were several members of the 2015 Citizen Academy present and asked them to introduce themselves. He invited the Council to join them for the classes.

COUNCIL COMMENTS

Mr. Cohn had no comments.

M. Drehs thanked all the committee members who attended the appreciation reception. Mr. Drehs stated he feels a slight obligation to address a couple of issues from Public Comments: the Miracle League of Indian Trail is a nonprofit; the \$500 came out of his own checking account. He wrote it to the organization; he does not believe there is a conflict to serve on a town board and serving on the committee. Before voting on the land he checked with the School Of Government and Town Attorney if he should vote and was told to vote. Nobody is making any money from it and we're putting every penny in for those kids.

Mayor Alvarez thanked staff for answering the questions. Just to clarify he is not against any project and is all for moving forward but if the citizens have questions he will get the answer to them to the best of his ability. It is his obligation for the oath he took. He commented on Bob Sapen passing, stating that this County has lost an unconditional person who gave everywhere he went. Please keep his family in your prayers.

Mr. Daniels stated the Chairman of EDAC said their mission statement is not only to retain but attract new business. He commented on an article in the Observer reminding everyone that we live in Indian Trail and love Indian Trail, but as Public Officials who have concerns or don't think we will be attracting businesses it offends him. He commented on Frayda Bluestein of School Of Government and he would like to see 2015 be the town we can be and stop sniping at each other. If a citizen asked a question they are due an answer. He made a promise in 2015 that he will calm down and reach out more, he extended phone calls to discuss our concerns and he's still waiting for a call back. He was touched by the Mayor of Weddington who called each and every council member about the Providence Fire Department. He has done that and is waiting for his phone to ring.

Mr. Fivas stated he was remiss in not mentioning the other Citizens Academy Member Mr. Fish.

Mr. Savoie thanked everyone for coming out; thanked Mr. Fivas and staff for the hard work they do for this town. He would like to hear positive public comments.

Mr. Cohn stated that not necessarily every comment up here may be negative to you or someone else; it depends on their point of view. If they want to come up here and speak their mind he doesn't look at it as a negative comment. One of the things that strikes me, I know we're talking about a Town Hall I'm all for it, I don't think it's negative unless the people vote on it and he feels they should be able to vote on it. What's more disturbing is that when running they didn't support a Town Hall but once elected they are for it, it tells him that they said what they needed to say to get elected.

CLOSED SESSION

None

ADJOURN

Gary M. Savoie made a motion to adjourn
Council voted unanimously in favor of the motion.

APPROVED:

Michael L. Alvarez, Mayor

Attest:

Peggy Piontek, Town Clerk

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Joe Fivas
CC: Marsha Sutton, Alicia Massey
DATE: February 10, 2015
SUBJECT: Advertisement of Delinquent 2014 Taxes



According to GS 105-369(a) it is the duty of the tax collector in February of each year to report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens.

2014-2015 Delinquent Real Property Tax: \$284,461.24

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Joe Fivas
CC: Marsha Sutton, Alicia Massey
DATE: February 10, 2015
SUBJECT: Month End January 2015



According to GS 105-350(7) it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount he/she has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he/she is taking to encourage or enforce payment of uncollected taxes.

Attached is the month end report for January 2015 collections. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes including but not limited to garnishments, attachments and NC Debt Setoff. Second notices were mailed the first week of February.

Description	Count	Principal			Future	Penalty	Total
		Arrears/Other	Fiscal 2014	Fiscal 2015			
Billing	31404	0.00	7,291,022.01	0.00	0.00		7,291,022.01
Payments	27716	18,556.03-	0.00	6,973,302.53-	0.00	2,337.98-	6,994,196.54-
Reversals	8	0.00	1,686.92	0.00	0.00	5.49	1,692.41
Adjustments	1813	0.00	2,086.27-	0.00	0.00	812.48-	2,898.75-
Apply Over	0	0.00	0.00	0.00	0.00	0.00	0.00
Rev Appl Ovr	0	0.00	0.00	0.00	0.00	0.00	0.00
Penalty	3040					10,154.71	10,154.71
Totals	63981	18,556.03-	7,290,622.66	6,973,302.53-	0.00	7,009.74	305,773.84



TO: Mayor and Town Council

FROM: Jason Tryon, Assistant Parks & Recreation Director

DATE: February 10th, 2015

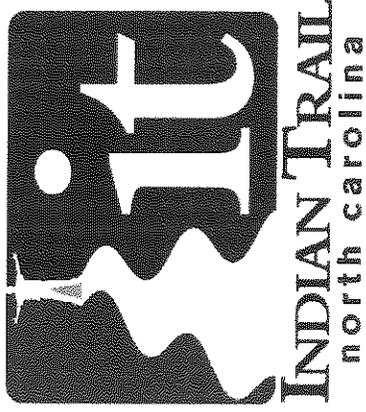
SUBJECT: Concession Vendor Modification

During the last Town Council meeting Town staff presented the concession process and recommendation that has taken place for Crooked Creek Park. Since the last meeting, and Town Council approval, the approved concessions company has become unavailable to fulfill the requirements.

Staff has spoken with the next concession vendor that turned in the RFP and would like to move forward and recommend 'Creative Food Concepts' for Crooked Creek Park concessions. Currently, 'Creative Food Concepts' operates concessions for two other park and recreation departments as well as a local athletic association.

Staff Recommendation:

Staff recommends that Town Council approve and select 'Creative Food Concepts' as the vendor for Crooked Creek Park.



**PROPOSED
FISCAL YEAR 2015-2016
BUDGET SCHEDULE**

February TBD Meetings with Council members as they request of Town Manager.

April 2, 2015 Information from Dept. Managers to Town Manager.

March 2, 2015 Staff will receive information as to estimating budget.

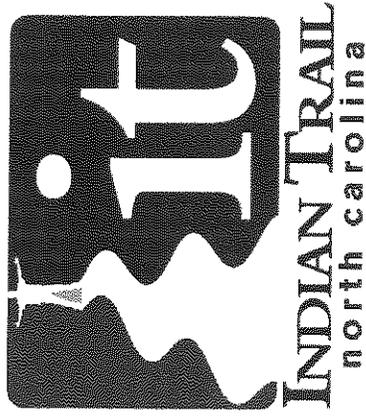
April 6 – 17, 2015 Review of budget information with Town Manager and Dept. Managers.

March 10, 2015 Regular Meeting - 30 minute Public Comment section regarding budget related topics.

April 14, 2015 Regular Meeting - 30 minute Public Comment section regarding budget related topics.

March 24, 2015 Regular Meeting - 30 minute Public Comment section regarding budget related topics.

April 28 2015 Regular Meeting - 30 minute Public Comment section regarding budget related topics.



**PROPOSED
FISCAL YEAR 2015-2016
BUDGET SCHEDULE CONTINUED**

May 4, 2015 Send proposed budget to Mayor and Council (draft).

May 6, 2015 Proposed budget ready for public review on website, at Library, and at Town Hall by appt with the Town Clerk, 704-821-5401 (draft).

May 12, 2015 Regular Meeting – Budget Workshop with Mayor and Council. **Public Hearing #1 – Time 6:30pm – Location: Civic Building, 100 Navajo Trail, Indian Trail, NC**

May 25, 2015 Regular Meeting – **Public Hearing #2 - Time: 6:30pm – Location: Civic Building, 100 Navajo Trail, Indian Trail, NC**

June 9, 2015 Regular Meeting – Budget Adopted **6:30pm**



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: February 6, 2015

SUBJECT: CSU Regional Hazard Mitigation Plan

This is the final phase of the CSU Regional Hazard Mitigation Plan, referenced by Mr. Moyer at our last meeting. We have attached a copy of the Resolution for your approval and the link to the final plan for your review is:

<https://atkins.box.com/s/c0iai5rq0e16d2oda40koecqzcrq7e7j>



UNION COUNTY EMERGENCY MANAGEMENT

500 North Main Street • Monroe, NC 28112 • Phone (704) 283-3575 • Fax (704) 283-3716

Feb. 5, 2015

Good afternoon Union County Jurisdictions,

On January 6, 2015, the Federal Emergency Management Agency (FEMA) issued the attached letter stating that the Cabarrus Stanly Union Regional Hazard Mitigation Plan is approvable pending receipt of adoption documentation (Resolution) from participating jurisdictions and also documentation that a final public meeting took place. At that time, FEMA will issue a Final Approval letter once both requirements have been met.

Each Union County jurisdiction that participated in the development of the plan will need to adopt the plan by Resolution. A sample adoption Resolution has been provided for your convenience. I would like a copy of the adopted Resolution for your jurisdiction forwarded to me no later than **April 30, 2015**. Please let me know if you have any further questions about the adoption process.

Your jurisdiction will be notified about the final public meeting at a later date.

Per both Federal and State legislation, a FEMA-approved hazard mitigation plan is required for communities to remain eligible for Hazard Mitigation Grant Program (HMGP) funds following a Presidentially-declared disaster and for State Public Assistance (PA) funds following a State-declared disaster. A hazard mitigation plan is also required for communities to remain eligible for future grant funds available through FEMA's Pre-Disaster Mitigation (PDM), and Flood Mitigation Assistance (FMA) programs.

Thank you for your participation in this important planning effort and please let me know if you have any questions.

Sincerely,

Don Moye
Union County
Emergency Management Coordinator
500 N. Main St. Suite 809
Monroe, NC 28112
Donald.moye@co.union.nc.us
704-283-3575

2. Agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan.

Adopted on February 10, 2015.

Michael L. Alvarez, Mayor

ATTEST:

Peggy Piontek, Town Clerk

U.S. Department of Homeland Security
FEMA Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341



FEMA

January 6, 2015

Mr. Chris Crew
State Hazard Mitigation Officer
North Carolina Emergency Management Agency
4238 Mail Service Center
Raleigh, North Carolina 27699

Reference: Cabarrus Stanly Union Regional Hazard Mitigation Plan

Dear Mr. Crew:

This is to confirm that we have completed a Federal review of the draft Cabarrus Stanly Union Regional Hazard Mitigation Plan for compliance with the Federal Hazard Mitigation Planning requirements contained in 44 CFR 201.6(b)-(d). We have determined that the Cabarrus-Stanly Union Regional Hazard Mitigation Plan is compliant with Federal requirements, subject to formal community adoption.

In order for our office to issue formal approval of the plan, Cabarrus Stanly Union Regional Hazard Mitigation Plan must submit adoption documentation and document that the final public meeting occurred. Upon submittal of these items to our office, we will issue formal approval of the Cabarrus Stanly Union Regional Hazard Mitigation Plan.

Please have Cabarrus Stanly Union Regional submit a final copy of their Plan, without draft notations and track changes.

For further information, please do not hesitate to contact Victor Geer, of the Hazard Mitigation Assistance Branch, at (770) 220-5659 or Linda L. Byers of my staff, at (770) 220-5498.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Lowe".

Robert E. Lowe, Chief
Risk Analysis Branch
Mitigation Division



TO: Mayor and Town Council

FROM: Joe Fivas

CC: Marsha Sutton

DATE: February 10, 2015

SUBJECT: LGC-203EZ Report of Deposits and Investments

As required by the Town's Cash Management Policy, attached is a copy of the LGC-203 report submitted to the LGC (Local Government Commission) during the month of January for the period ending December 31, 2014.

This report is a semi-annual report of all cash and investments held by the Town. The LGC reviews these reports to determine:

- All funds are in authorized depositories and properly collateralized/secured
- All investments are permitted by General Statute
- The average maturity of investments are appropriate for the Town

This report is submitted to you for informational purposes and no action is required.

State of North Carolina
 LOCAL GOVERNMENT COMMISSION
 325 North Salisbury Street, Raleigh, North Carolina 27603-1385
 REPORT OF DEPOSITS AND INVESTMENTS

Report Period

As of: **DECEMBER 31** 2014
 (June 30 or December 31, and Year)

(As required by G.S. 159-33 and G.S. 115C-446)

Name of Unit ** **Indian Trail**
 ** Note - Discretely Presented Component Units must submit separate LGC-203 reports
 Legal Name of Unit: **Town of Indian Trail**

LGC Use Only		
Unit Code	Unit Type	Rec'd Date
191	A	

CERTIFICATION

This is to certify that the data contained in this report is accurate to the best of my knowledge and belief.

Name of Official (Type or print your name)	Unit Mailing Address - Street	Telephone Number, including area code
Tracee Karlsson	PO Box 2430	704-821-5401
Title (i.e. Finance Officer, Treasurer, etc)	Unit - City, State & Zip Code	Email Address
Asst. Director of Finance	Indian Trail, NC 28079	tkarlsson@admin.indiantrail.org
		Signature of Official (only if mailing or faxing)

I. Cash on hand

	Amount	
Petty cash funds and change funds	\$ 850	
Undeposited receipts		
		Total Cash on Hand
		\$ 850

II. Dedicated Method Financial Institutions ** If you have additional deposits in Dedicated Banks (non-pooling), you must use the LGC-203 Standard Form

	C.D.s	Interest Bearing Checking Accounts	
FINISTAR (total dedicated amount from statement) attach statement or leave blank if NA			Dedicated Amounts only
CDARS - attach statement or leave blank if NA			
ICS - attach statement or leave blank if NA			
Totals for Finistar, CDARS and ICS	\$ -	\$ -	Total Dedicated Deposits
			\$

III. Pooling Method Financial Institutions ** LIST ONLY BANKS INCLUDED ON POOLING BANK MEMO

Select Bank Name from Drop Down Menu Do not select the same bank name more than once Enter total amount for each Account type going across	Demand Deposits	Time Deposits	Interest Bearing Checking Accounts	Total Pooling Deposits
	Regular Savings	C.D.s		
(1) Branch Banking & Trust	\$ 31,147		\$ 7,057,264	
(2) First Citizens Bank & Trust	\$ 600,982		\$ 132,849	
(3) Park Sterling Bank		\$ 1,393,310		
(4) Yadkin Bank		\$ 213,628		
(5)				
FINISTAR (total pooling amount from statement) attach statement or leave blank if NA		Pooling amounts only-----		
Totals for All Pooling Banks	\$ 632,129	\$ 1,739,787	\$ 7,057,264	\$ 9,429,180

IV. Investments NCCMT

	Amount
North Carolina Capital Management Trust Cash Portfolio	\$ 9,804,846
North Carolina Capital Management Trust Term Portfolio	\$ 8,743,344

V. Summary: Please recheck totals.

(1) Total Cash on hand (TOTAL FROM SECTION I)	\$ 850
(2) Total Dedicated Method (TOTAL FROM SECTION II)	\$
(3) Total Pooling Method (TOTAL FROM SECTION III)	\$ 9,429,180
(4) Total cash (lines 1, 2 & 3 combined)	\$ 9,430,030
(5) NCCMT (TOTAL FROM SECTION IV)	\$ 18,548,190
(6) Total cash and investments (lines 4 plus 5)	\$ 27,978,220
(7) Please enter (subtract) Unexpended bond and/or note proceeds	\$ 3,644,963
(8) Net cash and investments (line 6 minus 7)	\$ 24,333,257



Town of Indian Trail

Memo

TO: Mayor and Town Council

FROM: Scott J. Kaufhold, P.E., Director of Engineering and Public Works

COUNCIL DATE: February 10, 2014

SUBJECT: 2014 Stormwater Maintenance Contract Renewal

General Information:

The Stormwater Maintenance Contract is a source of funds for continuous work to improve and maintain the existing stormwater system. The 2014 contract was awarded to Bullseye Construction on July 22, 2014 in the amount of \$261,951.50. Renewals are subject to the terms and conditions of the original contract including but not limited to work availability, termination and unit price. Renewal amendments will be executed by the Town Council.

Staff recommends renewal extension of the 2014 Stormwater Maintenance Contract.

Required Action:

Approval

Attachment:

2014 Stormwater Maintenance Contract Extension Agreement

CONTRACT EXTENSION

**STORM WATER MAINTENANCE CONTRACT FY 2014
PROJECT NUMBER:
750-2014-006**

The Town of Indian Trail (“Town”) and the contractor identified below by its signature (“Contractor”) hereby mutually agree to extend the contract between them, which is identified above and was executed by them on or about August 6, 2014 (hereafter, the “Contract”).

The Contract shall be extended through and including 11:59 p.m. on _____, 20__ . All other terms and conditions within the Contract, specifically including those for payment, remain in full force and effect.

Contractor shall provide the required performance and payment bonds and insurance certificates, as specified in the Contract, at execution of this contract extension (“Extension”).

AGREED TO:

**OWNER:
TOWN OF INDIAN TRAIL
INDIAN TRAIL, NORTH CAROLINA**

ATTEST:

By: _____ **By:** _____
Town Manager Town Clerk

Date: _____ **Date:** _____

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

By: _____
Finance Officer

Date: _____

CONTRACTOR:

Printed legal name of entity: Bullseye Construction, Inc.
581 North Polk Street
Pineville, NC 28134

By: _____

Printed name of person signing: _____

Title of person signing: _____

Date: _____



TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: February 6, 2015

SUBJECT: Edifice, Inc Agreements

The Town's legal counsel has reviewed the Construction Manager at Risk (CM@Risk) agreements between the Town and Edifice, Inc.

Edifice, Inc has just started their review process of these documents. We hope to have these ready for Council consideration on Tuesday, February 10th.

kdb

CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES AGREEMENT

THIS PRE-CONSTRUCTION SERVICES AGREEMENT (the "Agreement"), made this ___ day of _____ in the year of 2015 for Town of Indian Trail New Town Hall Project (the "Project") by and between Edifice, Inc. (the "Construction Manager at Risk" or "CM"), a North Carolina corporation with its principal office and place of business in Charlotte, North Carolina, and the Town of Indian Trail, North Carolina ("the Owner"), a North Carolina municipality.

WITNESSETH:

Whereas the Owner has published a Request for Qualifications dated November 4, 2014 seeking the submission of qualifications and competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the New Town Hall Project (the "Project") identified and described in that Request for Qualifications; and,

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

Whereas, the Owner, through its awarding authority, has made an award for the pre-construction services related to the Project work to the undersigned Construction Manager at Risk, and the parties desire to memorialize their contractual relationship with respect to such pre-construction services;

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

1. The Construction Manager at Risk shall provide pre-construction services in accordance with Exhibit A attached hereto and incorporated herein by reference (the "Pre-Construction Services").
2. The Owner will compensate the Construction Manager at Risk for Pre-Construction Services in the amount of _____ ("Lump Sum") plus Reimbursable Costs (as defined in Exhibit B). On or before the 30th day of each month, the CM shall submit an application for payment to the Owner, complete with substantiating data, for the amount of that portion of the Lump Sum due, plus the Reimbursable Costs incurred during the prior month ("Application for Payment"). The amount of the Lump Sum due shall be determined by taking the CM's good faith estimate of the percentage of the Pre-Construction Services performed to date, multiplied by the Lump Sum, minus the previous progress payments of the Lump Sum. Payment will be made within thirty (30) days of the Owner's receipt of a properly submitted and correct application for payment.
3. The Owner may terminate this Agreement for any reason upon ten (10) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested). This Agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested) should

the other party fail to perform in accordance with its terms through no fault of the party terminating this Agreement. In the event of termination, the Construction Manager at Risk shall receive payment for services rendered prior to receipt of the written termination notice. Any work done by the Construction Manager at Risk prior to termination shall become the property of the Owner.

4. The CM shall provide the insurance set forth in Exhibit C. To the fullest extent permitted by law, CM agrees to defend, indemnify and hold harmless the Owner, its public officials, officers, employees and agents, from and against any and all claims, damages, loss or expense, including reasonable attorney's fees and litigation expenses, arising out of, or resulting from: (a) injury to or sickness, disease or death of any person or injury to property, but only in the event caused in whole or in part by the negligence or intentional misconduct of the CM or anyone working under the CM; and (b) claims against Owner by the CM's consultants, subcontractors or suppliers (of any tier) arising out of or related to non-payment by CM. This indemnity shall survive termination of the Agreement. In any case in which CM provides a defense to the Owner, its public officials, officers, employees and agents, CM shall do so using attorneys reasonably acceptable to Owner.

5. **E-verify requirements.** CM certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The CM agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the CM agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first above written in two (2) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager at

Risk: EDIFICE, INC

By: _____

Printed Name: _____

Title: _____

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

Date:

Attest: (Corporation)

By: _____

Title: _____

(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

TOWN OF INDIAN TRAIL

By:

Title:

Date:

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

Finance Officer

Date: _____

|

EXHIBIT A
SCOPE OF PRE-CONSTRUCTION SERVICES

1. The CM shall meet with the Owner, the Project Designer and any other design team members (the “Project Team”) as needed to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project. The CM shall become an integral part of the Project Team and shall develop written project procedures in cooperation with the Owner that will be used as a guide for the management and coordination of this project throughout the design and construction of the project.

2. Consultation During Project Development
 - a. The CM shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phase to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM shall provide written recommendations on construction feasibility.

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

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

 - c. The CM shall conduct a major value analysis study at 100% Design Development (utilizing the 100% Design Development documents) which shall include, but not be limited to, the items noted below:
 1. Develop value analysis concepts for consideration in brainstorming sessions with the Design Team.

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

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

Owner & Project Designer.

4. The CM shall also conduct value analysis studies during the Construction Document Phase of design to evaluate specific items as requested by the Owner.

4. Schedule

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

5. Constructability Review

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

6. Construction Cost Model/Estimates

- a. The CM shall develop a project budget/cost model (the "CM Cost Model"), independent from any similar cost estimates required of the Project Designer, which shall be updated as needed but at a minimum at the end of each design phase during which the CM is performing Pre-Construction Services. (the "CM Cost Model Update"). Prior to the development of the CM Cost Model, the CM will meet with the Project Designer and Owner to ascertain the Owner's project construction budget and to establish a common cost estimating format so that project cost estimates prepared by the Designer and CM may be directly compared.
- b. Each CM Cost Model Update must set forth the total construction costs for the project including alternates, the Construction Management Fee, General Conditions, Bonds, Insurance and CM Contingency.
- c. In the event that the Project Designer's Statement of Probable Construction Costs exceeds the project construction budget, the Owner may direct the CM to (and the CM shall without additional compensation) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the project program within the project construction budget.
- d. Each CM Cost Model Update and the Designer's Statement of Probable Construction Costs will be reviewed by the Project Designer and the

Owner for reasonableness and compatibility with the Owner's Project Construction Budget. Meetings and negotiations between Owner, Project Designer and the CM will be held to resolve questions and differences that may occur between the Designer's Statement of Probable Construction Costs and the CM Cost Model Update. The CM shall work with the Owner and Project Designer to reach a mutually acceptable joint Statement of Probable Construction Cost.

7. Coordination of Contract Documents

- a. The CM shall review the project plans and specifications for features that may be ambiguous, confusing, conflicting or erroneous and shall notify the Project Designer and Owner in writing when such features are observed.
- b. The CM shall provide a thorough interdisciplinary coordination review of the project plans and specifications submitted for review. The coordination review shall be performed by a qualified firm or personnel utilizing a structured and industry accepted process. The CM shall review the final documents to see that all comments have been incorporated.
- c. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM during the review process shall be deemed to be corrected, and any associated costs shall be included in the GMP unless the CM notifies the Owner otherwise in writing prior to the advertisement for bids from Principal Trade and Specialty Contractors or subcontractors.

8. Construction Guaranteed Maximum Price (GMP) and Final Schedule

- a. The CM shall prequalify Principal Trade and Specialty Subcontractors in compliance with Article 16 of the General Conditions.
- b. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages.
- c. The CM shall create a Bid Package Manual outlining the various subcontractor Bid Packages with the associated scopes for bidding purposes along with any milestone and logistical requirements,
- d. The CM shall solicit prequalified subcontractor bids as outlined within the Bid Package Manual and hold Bid Openings in compliance with the requirements of Articles 16 and 49 of the General Conditions.
- e. The CM may submit to Owner the -GMP and Final Schedule for the Project at any time after completion and approval of the Design

Development Phase of design, likely after receipt of bids from Principal Trade and Specialty Contractors. However, in any event, the CM shall submit to the Owner the GMP and the Final Schedule within ___ calendar days from the date that the Construction Documents are issued. The CM will develop and provide to the Owner in writing a GMP, which is more particularly described in the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price, but which shall include all construction costs, including amounts to be paid to principal trade and specialty contractors (the “Principal Trade and Specialty Contractors”) and others for construction of the project (the “Cost of the Work”), and all other projected costs including without limitation the Construction Management Fee, General Conditions and CM Contingency but not including the Owner's Construction Contingency. The GMP shall set out as the Cost of the Work each anticipated trade contract and subcontract amount. The GMP must not exceed the project construction budget.

- f. In the event that the GMP exceeds the project construction budget, the Owner reserves the right to direct the CM to (and the CM shall, without additional compensation) work in conjunction with the Project Designer to redesign the Project as necessary to meet the project construction budget. The CM shall work with the Project Team to identify alterations and revisions of the project plans and specifications as necessary to accomplish the required reduction in cost and shall provide the Owner

with a revised GMP based on the altered and revised documents.

Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM shall execute the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price to reflect their agreement as to the GMP and the CM's Construction Management Services, such agreement to be in form and substance reasonably satisfactory to both parties.

9. Non-Acceptance of the GMP

- a. The Owner, at its sole discretion, may decline to accept the GMP submitted by the CM and thereupon without penalty, the CM's work will end upon completion of the Pre-Construction Phase contract.
- b. The CM shall accept the amount negotiated for Pre-Construction Services as full and complete reimbursement of all costs and services performed by the CM for Pre-Construction Services. Thereafter, the Owner shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the CM and with full ownership and use of any data and information written or electronic developed during Pre-Construction activities.

10. Ownership of Documents

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

EXHIBIT B
LIST OF APPROVED REIMBURSABLE COSTS

The term "Reimbursable Costs", as used in this Agreement, shall mean the reasonable costs necessarily, and actually, incurred in connection with CM's Services, and which shall include *only* the following items:

- (a) Mailing costs and overnight or special delivery services (but no additional charge shall be made for facsimile transmissions);
- (b) Statutory fees paid to governmental agencies for securing approvals of authorities having jurisdiction over the Project;
- (c) Fees of subcontractors (other than those included in the Pre-Construction Services for this Agreement as part of the scheduled fee for the CM's Services) if their employment is authorized in advance by the Owner in writing; provided, however, that such subcontractors' fees shall be payable at cost, without markup to the Owner;
- (d) Costs of reproduction and printing of drawings, specifications and other documents in excess of that amount included in the Pre-Construction Services covered by the scheduled fee for the CM's services under this Agreement. Under no circumstances will the cost of reproductions for the office use of the CM or the CM's subconsultants be included as a Reimbursable Cost;
- (e) Costs of photographic production techniques when used at the written request of the Owner;
- (f) Any other necessary, incurred costs approved in advance by the Owner.

No data processing, word processing or other secretarial or clerical charges shall be allowed as Reimbursable Costs.

Receipts are required for all Reimbursable Costs. The Owner reserves the right to require additional documentation of Reimbursable Costs, and the right to audit all such Costs at a reasonable time and place.

**EXHIBIT C
INSURANCE
REQUIREMENTS**

The CM shall furnish the following insurance with respect to the Project or the services required under the Agreement:

1.1 Commercial Liability and Other Insurance. At all times while this Agreement is in effect, CM will take out and keep in force at its expense:

1.1.1. Commercial General Liability insurance, including insurance against assumed or contractual liability of the CM, with a combined single limit for each occurrence of not less than \$1,000,000 per occurrence and aggregate (including primary and excess coverage) with respect to claims and damages arising out of personal injury, sickness, disease, death or property damage.

1.1.2 If and to the extent required by law, worker's compensation or similar insurance in amounts, and in a form, as required by the law of the state where CM's employees are employed, or by the state where the services are performed, as may be applicable or required.

1.1.3 Automobile liability insurance to insure CM for operations of all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limit with respect to Bodily Injury, Death and Property Damage.

1.1.4 All insurance required under this Section 1.1, with the exception of Section 1.1.2, shall be occurrence-based and name the Owner and/or, at the option of the Owner, any interested designees of the Owner as additional insureds.

1.2 Certificates of Insurance. At the time of commencement of services under the Agreement, certificates of insurance reflecting the actual retention of the insurance policies required by this Article shall be filed with the Owner. Such certificates shall bear the endorsement "not to be canceled, allowed to lapse or substantially modified without thirty (30) days' prior written notice by certified mail, return receipt requested, to the Owner, c/o Owner, Attn: _____"

**EXHIBIT 1 TO FIXED GUARANTEED MAXIMUM PRICE AGREEMENT BETWEEN
EDIFICE, INC. AND TOWN OF INDIAN TRAIL**

TOWN OF INDIAN TRAIL

NEW TOWN HALL PROJECT

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

GENERAL CONDITIONS OF THE CONTRACT *[check references when finish]*

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ARTICLE 1 – DEFINITIONS

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

- a. The **Contract Documents** consist of the Owner’s Request for Qualifications dated _____, Construction Manager at Risk’s response to Request for Qualifications dated _____, Construction Manager at Risk’s project proposal presentation dated _____, Pre-Construction Services Agreement dated _____, Construction Manager at Risk’s HUB plan approved by Owner dated _____, Designer’s drawing and specification lists dated _____ (including the drawings and specifications listed therein), Form of Construction Manager at Risk Contract dated _____ (and exhibits thereto), Construction Manager at Risk’s payment and performance bonds dated _____ with Power of Attorney, Construction Manager at Risk’s Insurance Certificate dated _____, Detailed Budget and Statement of GMP including schedule of values for cost of the work, As used herein the term “**Agreement**” means the Contract Documents.
- b. The **Owner** is the Town of Indian Trail, North Carolina.
- c. The **Designer** or **Project Designer** means David A. Creech and the firm of Creech & Associates which have undertaken to design the Project pursuant to a contract with the Owner, (hereinafter, the “design contract”).
- d. The **Construction Manager-at-Risk** or **CM** means Edifice Inc.
- e. A **subcontractor**, shall mean an entity or individual who has entered into a direct contract with the CM to construct a portion of the Work, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the Contract Documents, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to an officer, partner, or managing member of a contracting organization or sent to to such officer, partner, or managing member at the last known business address of the contracting organization by certified mail.
- g. **Work**, as used herein as a noun, is intended to include services, materials, equipment, labor, and workmanship of the appropriate contractor to construct the Project in accordance with the plans and specifications prepared by the Designer and as supervised by the CM or as provided by the CM.
- h. The “**Cost of the Work**” means the cost of the Work inclusive of costs of tap and impact fees and site security and the CM’s Project Cost, but exclusive of the CM Management Fee.
- i. The **Project** is the Indian Trail New Town Hall project and is the total construction work and services to be performed under the Contract Documents.
- j. **Change Order** shall mean a written amendment subsequent to the signing of the Agreement authorizing (i) a change in scope of the Work and (ii) either a change in the GMP or use of the CM Contingency. The Change Order shall be signed by the CM, Designer, and the Owner.

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

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

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

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

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

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

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

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

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

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

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

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

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

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

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

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

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the Contract Documents that the Work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The CM shall defend, indemnify and hold harmless the Owner against suit on account of alleged or actual infringement. The CM shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter, which royalties and fees may be included in the Cost of Work.-

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

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

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

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

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

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

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

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

ARTICLE 13 - INSPECTION OF THE WORK

- a. It is a condition of this Agreement that the Work shall be subject to inspection during normal working hours by the Designer, designated official representatives of the Owner, and those persons required by state law to test special work for official approval. The CM shall therefore provide all equipment necessary and safe access to the Work at all times for such inspections.
- b. The CM shall perform quality control inspections of the Work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the Work and shall coordinate this activity with the on-site duties of the Project Designer. The CM shall advise the Project Designer of any apparent variation and/or deviation in the Work from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. Where special inspection or testing is required by virtue of any state laws, instructions of the Designer, specifications or codes, the CM shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the CM's responsibility to serve ample notice of such tests.
- e. All testing required by the Contract Documents shall be paid by the CM and shall be included in the GMP, except **[insert carve outs]**. If additional testing is ordered by the Owner or Project Designer and such additional testing is not due to the negligence of the CM or its subcontractors, Owner shall reimburse CM for the cost of such additional testing.
- f. Should any Work be covered up or concealed prior to inspection and approval by the Project Designer such Work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the Work will be made promptly upon notice from the CM. All cost involved in uncovering, repairing, correcting, replacing, recovering and restoring to design condition the Work that has been covered or concealed will be paid by the CM.

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

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

- a. On-site representatives of the CM shall manage the Work of the Principal Trade and Specialty Contractors and coordinate the Work with the activities of the Owner and Project Designer to complete the Project with the Owner's objectives of cost, time and quality. Throughout the progress of the Work, the CM shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the CM will remain on the job and in responsible charge as long as those persons remain employed by the CM unless otherwise requested or agreed to by the Owner. The CM shall establish an on-site organization with appropriate lines of authority to act on behalf of the CM. Instructions, directions or notices given to the designated on-site authority shall be as binding as if given to the CM. However, directions, instructions, and notices shall be confirmed in writing.
- b. The CM shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision of the Work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the Designer without delay. The CM will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. {NOT USED}
- d. The CM shall call and preside over monthly job site progress conferences. All Principal Trade and Specialty Contractors shall be represented at these job progress conferences by both home office and Project personnel. The CM shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified contract time. The CM shall be prepared to assess progress of the Work and to recommend remedial measures for correction of progress as may be appropriate. The CM with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman.
- e. The CM shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the Work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. {NOT USED}
- g. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages.

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

- h. The Project CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the Work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- i. The CM shall distribute to the Principal Trade and Specialty Contractors the approved baseline Project CPM schedule and shall display same at the Project site.
- j. The CM shall maintain and regularly update the baseline Project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the Project within the time allotted by the contract. In doing so, the CM shall keep the Designer as well as all Principal Trade and Specialty Contractors fully informed as to all changes and updates to the Project CPM schedule. The CM shall submit to the Project Designer a monthly report of the status of all Work activities. The monthly status report shall show the actual Work completed to date in comparison with the original amount of Work scheduled. If the Work is behind schedule, the CM must indicate in writing what measures are being taken to bring the Work back on schedule and ensure that the contract completion date is not exceeded, and the CM shall provide written weekly schedule updates so long as the Work remains behind schedule. If the Work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the CM shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the CM to abide by the directives in this paragraph will give the Owner cause to exercise the remedies set forth herein and pursue any other legal remedies allowed it by law.

ARTICLE 15 – EVERIFY

CM certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The CM agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the CM agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

ARTICLE 16 - PRINCIPAL TRADE AND SPECIALTY CONTRACTS AND CONTRACTORS

- a. Principal Trade and Specialty Contractors shall be pre-qualified by the CM in accordance with N.C.G.S. § 143-128.1. The prequalification criteria shall be determined by the CM and approved by the Owner to address quality, performance, the time specified in the bids for performance of the Work, the cost of construction oversight, time for completion, capacity to perform, and any other factors deemed appropriate by the Owner and/or CM. Only pre-qualified contractors are allowed to bid to and contract with the CM on the Project.
- b. All bids for Principal Trade and Specialty Contracts shall be publicly advertised and shall be opened publicly in a public venue, and otherwise handled in accordance with N.C.G.S. § 143-128.1. Once opened, the bids shall be public records under N.C.G.S. §132-1. The CM shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. §143-128.2, and other factors deemed appropriate by the Owner and/or CM and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. §143-128(f1). Once Principal Trade and Specialty Contractors are in place, upon request the CM shall provide copies of the contracts to the Project Designer and also provide a list of equipment and material suppliers.
- c. The CM may perform a portion of the Work only if (a) bidding produces no responsible, responsive bidder for that portion of the Work, or (b) the lowest responsible, responsive bidder will not execute a contract for the bid portion of the Work, or the Principal Trade or Specialty Contractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (c) the Owner approves performance of the Work by the CM.
- d. The Designer will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the CM on account of the Work of the Principal Trade or Specialty Contractor.
- e. The CM is and remains fully responsible for his own acts or omissions as well as those of any Principal Trade or Specialty Contractor or of any employee of either. The CM agrees that no contractual relationship exists between the Principal Trade and Specialty Contractors and the Owner, and that the Principal Trade and Specialty Contractors act as agents, subcontractors, or employees of the CM with respect to the Work. The Principal Trade and Specialty Contractors are not intended third-party beneficiaries of this Agreement.

ARTICLE 17 - CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS

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

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

first. Provided, however, that whenever the Designer determines that delay in completion of the Project in accordance with the Contract Documents is the fault of the CM, the Project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. Should final payment to the CM beyond the date the Project been certified to be completed by the Project Designer, accepted by the Owner, or occupied by the Owner and used for the purposes for which the Project was constructed, be delayed by more than 45 days, CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the Contract Documents or CM shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. In the event of a conditional acceptance of the Project, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. [When the Designer certifies that the Project is substantially complete, a reasonable sum for the Owner to retain for the correction of punch list items (the "conditions") should be established and the acceptance of the Project should be conditioned on the correction of such conditions. Otherwise, the CM will be entitled to receive full payment of the contract sum within 45 days after occupancy even if the Project is not fully complete.]

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

ARTICLE 18 - DESIGNER'S STATUS

- a. The Project Designer shall provide liaison and necessary inspection of the Work to ensure compliance with the Project plans and specifications. He is the agent of the Owner only for the purposes and to the extent stipulated in the Contract Documents. He has authority to stop work or to order Work removed, or to order corrections of faulty Work where such action may be necessary to assure successful completion of the Work.
- b. The Project Designer is the impartial interpreter of the Contract Documents, and, as such, he shall exercise his powers under the Contract Documents to enforce faithful performance by both the Owner and the CM, taking sides with neither.
- c. Should the Project Designer cease to be employed on the Work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic site visits and observations of the Project at intervals appropriate to the stage of construction. He will review the progress, the quality and the quantity of the Work.
- e. The Project Designer and the Owner shall have access to the Work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the Designer may perform his functions under the Contract Documents.
- f. Based on the Project Designer's inspections and evaluations of the Project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the administration of the Project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the Contract Documents. The CM's decisions, however, relating to means and methods, and administration of the contracts the CM holds are final.

ARTICLE 19 - CHANGES IN THE WORK

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

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

- c. A "Change Order" refers to changes in the Work that (i) result in a change to the GMP and/or, if additive, will be funded by the Owner's Contingency or (ii) involve the use of the CM Contingency.

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

4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the Project.

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

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

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

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

ARTICLE 20 - CLAIMS FOR EXTRA COST

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

- b. The CM shall not act on instructions received by him from persons other than the Project Designer or Owner, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer and Owner will not be responsible for misunderstandings claimed by the CM of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a properly authorized Change Order.
- c. Should a claim for extra compensation in excess of \$5,000 by the CM be denied by the Project Designer or Owner, and cannot be resolved by negotiation, the CM may request a mediation in connection with N.C.G.S. §143-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, or if the claim was not subject to mediation on the ground it was not in excess of \$5,000, then the CM may pursue his claim as follows:
 1. If the CM has not completed this Agreement with the Owner and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the Town Manager for the amount the CM claims is due. The Town Manager may elect to hold an informal hearing at which the CM will be allowed an opportunity to explain its position. The Town Manager may deny, allow or compromise the claim, in whole or in part. For claims not in excess of \$5,000, the Town Manager shall act as the final arbitrator of the claim and the decision of the Town Manager shall be final and binding on the parties.
 2. (a) If the CM has completed this Agreement and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the Town Manager for the amount the CM claims is due. The claim shall be submitted within sixty (60) days after the CM receives a final statement of the Project Designer's disposition of his claim and shall state the factual and legal basis for the claim.
 - (b) The Town Manager shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the Town Manager and the CM agree. The CM may appear before the Town Manager, either in person or through counsel, to present facts and arguments in support of his claim. The Town Manager may allow, deny or compromise the claim, in whole or in part. The Town Manager shall give the CM a written statement of the Director's decision on the CM's claim. For claims not in excess of \$5,000, the Town Manager shall act as the final arbitrator of the claim and the decision of the Town Manager shall be final and binding on the parties.
 - (c) If the CM is dissatisfied with the Town Manager's decision on a claim in excess of \$5,000 submitted under this subsection, the CM may institute a civil action for the sum he claims to be entitled to hereunder by filing a verified complaint for a non-jury trial and the issuance of a summons in the Superior Court of Mecklenburg County. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

ARTICLE 21 - NOT USED

ARTICLE 22 - UNCORRECTED FAULTY WORK

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

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

a. Substantial Completion.

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

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

When the Work is substantially complete, the Designer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, responsibilities of Owner and Construction Manager at Risk for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which Construction Manager at Risk shall finish all items on the list accompanying the Certificate of Substantial as well as a reasonable sum to be retained by the Owner pending the completion or correction of such items. Warranties and guarantees required by the Contract Documents shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

The Certificate of Substantial Completion shall be submitted to Owner and CM for their written acceptance of responsibilities assigned to them. Upon such acceptance, receipt of

CM's application for payment, and consent of surety, if any, Owner shall make payment of retainage applying to such Work. Such payment shall be adjusted by a reasonable sum to be retained by the Owner for completing or correcting Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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

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

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

b. FINAL COMPLETION AND FINAL PAYMENT

- i. Upon receipt of the CM's written notice that the Work is ready for final inspection and acceptance and upon receipt of the CM's final Application for Payment, the Designer will promptly make the inspection described in Articles 25 and 32 and, when the Designer finds the Work complete and acceptable under the Contract Documents and the Contract Documents fully performed, the Designer will promptly issue a final Certificate for Payment stating that to the best of Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and observations, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CM and noted in the final Certificate for Payment is due and payable. Designer's final Certificate for Payment will constitute a further representation

that conditions listed in Article 32 as precedent to CM's being entitled to final payment have been fulfilled.

- ii. Neither final payment nor any remaining retained percentage shall become due until CM submits to Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid up to those amounts that Owner has paid to the CM, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that the CM knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by Owner, other data establishing payment or satisfaction of obligations, such as releases and waivers of liens, claims, security interests or encumbrances arising out of the Work, to the extent and in such form as may be designated by Owner.
- iii. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CM or by issuance of Owner requested Change Orders affecting final completion, and Designer so confirms, Owner shall, upon application by the CM and certification by Designer, and without terminating this Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM to Designer prior to certification of such payment. Such payment shall be made under terms and conditions governing applications for payment, except that it shall not constitute a waiver of claims.
- iv. Acceptance of final payment by the CM shall constitute a waiver of claims by the CM except those claims previously made as provided in the Agreement and remaining unsettled.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the Project when the Work is substantially complete.
- b. Prior to the final payment, the Owner may request the CM in writing, through the Project Designer if applicable, to permit the Owner to use a specified part of the Project which the Owner believes may be used without significant interference with construction of the other parts of the Project. If the CM agrees, the Project Designer will schedule a beneficial occupancy inspection after which the Project Designer may issue a certificate of substantial completion for the part of the Project to be used by the Owner. The certificate shall include the following documentation:
 1. Date of substantial completion.

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

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. Upon notification from the CM that the Project is complete and ready for inspection, the Project Designer shall make a preliminary final inspection to verify that the Project is complete and ready for final inspection. Prior to final inspection, the CM shall ensure that all items requiring corrective measures are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner and the CM.
- b. {NOT USED}
- c. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Contract Documents. At the conclusion of the final inspection, the Project Designer shall make one of the following determinations:
 1. That the Project is completed and accepted.
 2. That the Project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the Owner may invoke Article 28, Owner's Right to Do Work.
 3. That the Project is not complete and another date for a final inspection will be established.
- d. Within fourteen (14) days of acceptance of the Project or within fourteen (14) days after completion of punch list items as described in c(2) above, the CM may request the Project Designer to certify the final completion of the Work.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance of the Project shall be handled in accordance with Article 42.

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

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

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

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

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

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

ARTICLE 29 - DEFAULT

If the CM fails to begin the Work within the time specified, or the progress of the Work is not maintained on schedule, or the Work is not completed within the time above specified, or fails to perform the Work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of the Work, or performs the Work unsuitably or discontinues the prosecution of the Work, or if the CM becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency, or allows any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or makes an assignment for the benefit of creditors, or for any other cause whatsoever fails to carry on the Work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this Agreement in default, and, thereupon, the surety shall promptly take over the Work and complete the performance of this Agreement in the manner and within the time specified. In the event the surety shall fail to take over the Work to be done under this Agreement within fifteen (15) days after being so notified and diligently pursue and complete the same, the Owner shall have full power and authority, without violating the Agreement, to take the prosecution of the

Work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the Work, shall be deducted from any monies due or which may become due the CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by the CM, then the CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of such excess.

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

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

ARTICLE 31 - REQUEST FOR PAYMENT

- a. Based on applications for payment submitted to the Project Designer by the CM and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the Contract Documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Provided an application for payment is received by the Project Designer not later than the 25th day of the month, the Owner shall make payment to the CM not later than the 15th day of the following month. If an application for payment is received by the Project Designer after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Project Designer receives the application for payment.
- c. Prior to submitting the first payment request, the CM shall prepare a schedule of values showing a breakdown of the contract price into values of the various parts of the GMP. The Cost of the Work breakdown will be arranged so as to facilitate payments by the CM to the Principal Trade and Specialty Contractors. The CM Management Fee, CM's Project Costs, Bonds & Insurance, CM Contingency, and **Project Reserve** (if any) will be shown on the schedule of values as separate lines. The values for the CM Contingency and **Project Reserve** (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Designer and Owner may require.

- d. Applications for payment shall be in a form agreed upon by the CM, Project Designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the Project Designer may require.
- e. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - 1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion Cost of the Work and CM's Project Costs by the share of the GMP allocated to that portion of the Work in the schedule of values.
 - 2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
 - 3. Add that portion of the GMP properly allocable to CM's obtaining Bonds and Insurance.
 - 4. Subtract the aggregate of previous payments made by the Owner.
 - 5. Subtract the amount, in any, by which the CM has been previously overpaid, as evidenced by the Owner's review of the CM's documentation.
 - 6. Subtract amounts, if any, for which the Project Designer has withheld or nullified a certificate of payment.
 - 7. Subtract retainage as per paragraph (f) below.
 - 8. Add the amount due for the CM Management Fee based on the percentage completion of the Project or on a schedule of payment negotiated with the Owner less five percent (5%) retainage and less previous payments for CM Management Fee.
- f. Payment allocated to Principal Trade and Specialty Contractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and with written consent of the surety, further requirements for retainage will be waived only so long as the Work continues to be completed satisfactorily and on schedule. Satisfactory completion and close out of the Project means that the Owner and Project Designer are satisfied that the Project has been fully and finally completed in accordance with the plans and specifications and within the GMP, all requirements of the Contract Documents pertaining to close out have been satisfied, and all Principal Trade and Specialty Contractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance.
- g. Except with the Owner's prior approval, the CM shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the Project site.
- h. The Project Designer shall take action on the CM's application for payment in accordance with this Agreement. The Project Designer's certification for payment shall be based upon the Project Designer's on-site observation and the documentation submitted by the CM with the application for payment.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within **five (5)** business days from receipt of request for payment from the CM, the Project Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the Project Designer. If the certificate is not approved by the Project Designer, he shall state in writing to the CM and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the Work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
 1. Claims arising from unsettled liens or claims against the CM.
 2. Faulty Work or materials appearing after final payment.
 3. Failure of the CM to perform the Work in accordance with the Contract Documents, such failure appearing after payment.
 4. As conditioned in the performance bond and payment bond.
- c. Prior to submitting a request for final payment to the Project Designer for approval, the CM shall fully comply with all requirements specified in the “project closeout” section of the specifications. These requirements include but are not limited to the following:
 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The Project Designer must approve the Manuals prior to delivery to the Owner).
 2. Transfer of required attic stock material and all keys in an organized manner.
 3. Record of Owner’s training.
 4. Resolution of any final inspection discrepancies.
- e. The CM shall forward to the Project Designer, the final application for payment along with the following documents:
 1. List of minority business subcontractors and material suppliers showing breakdown of the contract amounts.
 2. Affidavit of Release of Liens.
 3. Affidavit from CM of payment to material suppliers and subcontractors.
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.

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

ARTICLE 33 - PAYMENTS WITHHELD

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

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The Work shall not commence until the CM has verified to the Owner that all required insurance and verifying certificates of insurance have been obtained and approved in writing by the Owner. These certificates shall contain a provision that coverage²s afforded under the policies will not be cancelled, reduced in amount or eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the Owner, Attn: _____.

a. Worker's Compensation and Employer's Liability

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

b. Public Liability and Property Damage

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

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

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

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

Owner shall be named as an additional insured.

c. Automobile Liability Insurance.

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, automobile liability insurance for all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limits with respect to Bodily Injury, Death and Property Damage.

Owner shall be named as an additional insured.

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

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

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. The CM shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina with an A.M. Best Company financial strength rating of "A" or better. The bonds shall be in the full contract amount, which shall be in the amount of the GMP for the entire project. Bonds shall be executed in the forms attached as Exhibit 8 to the Construction Manager at Risk Contract – Fixed Guaranteed Maximum Price between Owner and CM.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONSTRUCTION MANAGER'S AFFIDAVIT

The final payment of retained amount due the CM on account of this Agreement shall not become due until the CM has furnished to the Owner through the Project Designer an affidavit signed, sworn and notarized to the effect that (i) all payments then due to all Subcontractors for materials, services or subcontracted Work have been satisfied; (ii) all final payments due to all

Subcontractors for materials, services or subcontracted Work will be paid and satisfied by CM promptly upon CM's receipt of final payment., (iii) no claims or liens exist against the CM in connection with this Agreement, and (iv) that the CM shall defend, indemnify, and save the Owner harmless from any and all claims of Subcontractors

ARTICLE 37 - ASSIGNMENTS

The CM shall not assign any portion of this Agreement or any subcontract. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the CM under this Agreement may be assigned.

ARTICLE 38 - USE OF PREMISES

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

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

- a. The CM shall ensure that all cutting, fitting or patching that may be required to make the Work come together properly and fit it to receive or be received by Work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the Project Designer may direct.
- b. Any cost brought about by defective or ill-timed Work shall be borne by the party responsible therefor.
- c. No Principal Trade or Specialty Contractor shall endanger any Work of another such contractor by cutting, digging or other means, nor shall he cut or alter the Work of any other such contractor without the consent of the Project Designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

- a. The CM shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the Project. If the Owner specifies that the CM is to pay all utilities, any permanent meters installed shall be listed in the CM's name until the Work is fully accepted by the Owner. The Owner will reimburse the CM for the actual cost of temporary utilities as part of CM's Project Costs. The Owner or CM, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in Project completion.
- b. If applicable meters shall be relisted in the Owner's name on the day following Substantial Completion of the Work, the Owner shall pay for utilities services used after that date.

- c. {NOT USED}
- d. Prior to the operation of permanent systems, the CM will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. The CM shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the CM and the Designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CM.
- f. The CM shall coordinate the Work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- g. The CM shall coordinate the Work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. The CM shall be responsible for his permanently fixed service facilities and systems in use during progress of the Work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of Work by the Owner, the CM shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
 - 2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the Work.
 - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site Work operations are creating dust in excess of what would be considered normal if the building were occupied.
 - 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 - 5. The CM shall ensure that all lamps are in proper working condition at the time of final acceptance of the Project.
- i. The CM shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets, chemical toilets, and facilities required for a complete and adequate sanitary arrangement. These sanitary facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times.

- j. The CM shall provide or erect a temporary field office, complete with lights, telephone, heat and air conditioning and shall be reimbursed for the costs thereof as part of CM's Project Costs.
- j. On multi-story construction projects, the CM shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall either be included in the CM Project Costs or specified as part of the Work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
- k. The CM will erect one sign on the Project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the Project, and the CM's name, and the name of the Project Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the CM and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

- a. The CM shall ensure that the building and surrounding Project area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the Project Designer. The CM shall provide an on-site refuse container(s) for the use of all Principal Trade and Specialty Contractors. The CM shall ensure that each Principal Trade and Specialty Contractor removes their rubbish and debris from the building on a daily basis. The CM shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The CM shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the CM shall ensure that all portions of the Work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

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

ARTICLE 43 - CODES AND STANDARDS

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

ARTICLE 44 - INDEMNIFICATION

To the fullest extent permitted by law, the CM shall indemnify, defend and hold harmless the Owner, its public officials, officers, employees and agents, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the Work, provided that any such claim, damage, loss or expense arises out of or results from (1) bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only in the event caused in whole or in part by the negligence or intentional misconduct of the CM or anyone working under the CM; or (2) claims against Owner by the CM's consultants, subcontractors or suppliers (of any tier) arising out of or related to non-payment by CM. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article. Nothing herein shall be interpreted as requiring the CM to indemnify any party for that party's own negligence. This indemnity shall survive termination of the Agreement. In any case in which CM provides a defense to the Owner, its public officials, officers, employees and agents, CM shall do so using attorneys reasonably acceptable to Owner.

ARTICLE 45 - TAXES

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

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

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

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

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

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

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

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

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

ARTICLE 47 - EMPLOYMENT OF THE HANDICAPPED

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

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

{NOT USED}

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION; LOCAL BUSINESS PARTICIPATION

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

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

It is the Owner's desire to include as much local business participation with the Project as can be obtained. Local shall mean a business which business premises physically located within the borders of the Town of Indian Trail. The CM shall prepare a listing of local Subcontractors and suppliers and shall publicly advertise the Project to them and provide the details of their potential

participation. Publicly shall mean individual letters sent to such local subcontractors and suppliers and an advertisement in the local newspaper(s) to announce a public meeting for their potential participation. All Subcontractors and suppliers shall be evaluated to confirm each can meet the CM's pre-qualification requirements of the bid packages.

ARTICLE 50 – CONTRACTOR EVALUATION

{NOT USED}

ARTICLE 51 – GIFTS

N.C.G.S. §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any municipal corporation employee of any gift from anyone with a contract with the municipal corporation, or from any person seeking to do business with the municipal. By execution of any response in this Agreement, the CM attests that the CM is not aware that any such gift has been offered, accepted, or promised by any of its employees.

CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES AGREEMENT

THIS PRE-CONSTRUCTION SERVICES AGREEMENT (the "Agreement"), made this ___ day of _____ in the year of 2015 for Town of Indian Trail New Town Hall Project (the "Project") by and between Edifice, Inc. (the "Construction Manager at Risk" or "CM"), a North Carolina corporation with its principal office and place of business in Charlotte, North Carolina, and the Town of Indian Trail, North Carolina ("the Owner"), a North Carolina municipality.

WITNESSETH:

Whereas the Owner has published a Request for Qualifications dated November 4, 2014 seeking the submission of qualifications and competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the New Town Hall Project (the "Project") identified and described in that Request for Qualifications; and,

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

Whereas, the Owner, through its awarding authority, has made an award for the pre-construction services related to the Project work to the undersigned Construction Manager at Risk, and the parties desire to memorialize their contractual relationship with respect to such pre-construction services;

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

1. The Construction Manager at Risk shall provide pre-construction services in accordance with Exhibit A attached hereto and incorporated herein by reference (the "Pre-Construction Services").
2. The Owner will compensate the Construction Manager at Risk for Pre-Construction Services in the amount of _____ ("Lump Sum") plus Reimbursable Costs (as defined in Exhibit B). On or before the 30th day of each month, the CM shall submit an application for payment to the Owner, complete with substantiating data, for the amount of that portion of the Lump Sum due, plus the Reimbursable Costs incurred during the prior month ("Application for Payment"). The amount of the Lump Sum due shall be determined by taking the CM's good faith estimate of the percentage of the Pre-Construction Services performed to date, multiplied by the Lump Sum, minus the previous progress payments of the Lump Sum. Payment will be made within thirty (30) days of the Owner's receipt of a properly submitted and correct application for payment.
3. The Owner may terminate this Agreement for any reason upon ten (10) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested). This Agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested) should

the other party fail to perform in accordance with its terms through no fault of the party terminating this Agreement. In the event of termination, the Construction Manager at Risk shall receive payment for services rendered prior to receipt of the written termination notice. Any work done by the Construction Manager at Risk prior to termination shall become the property of the Owner.

4. The CM shall provide the insurance set forth in Exhibit C. To the fullest extent permitted by law, CM agrees to defend, indemnify and hold harmless the Owner, its public officials, officers, employees and agents, from and against any and all claims, damages, loss or expense, including reasonable attorney's fees and litigation expenses, arising out of, or resulting from: (a) injury to or sickness, disease or death of any person or injury to property, but only in the event caused in whole or in part by the negligence or intentional misconduct of the CM or anyone working under the CM; and (b) claims against Owner by the CM's consultants, subcontractors or suppliers (of any tier) arising out of or related to non-payment by CM. This indemnity shall survive termination of the Agreement. In any case in which CM provides a defense to the Owner, its public officials, officers, employees and agents, CM shall do so using attorneys reasonably acceptable to Owner.

5. **E-verify requirements.** CM certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The CM agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the CM agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first above written in two (2) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager at

Risk: EDIFICE, INC

By: _____

Printed Name: _____

Title: _____

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

Date:

Attest: (Corporation)

By: _____

Title: _____

(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

TOWN OF INDIAN TRAIL

By:

Title:

Date:

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

Finance Officer

Date: _____

|

EXHIBIT A
SCOPE OF PRE-CONSTRUCTION SERVICES

1. The CM shall meet with the Owner, the Project Designer and any other design team members (the “Project Team”) as needed to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project. The CM shall become an integral part of the Project Team and shall develop written project procedures in cooperation with the Owner that will be used as a guide for the management and coordination of this project throughout the design and construction of the project.

2. Consultation During Project Development
 - a. The CM shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phase to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM shall provide written recommendations on construction feasibility.

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

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

 - c. The CM shall conduct a major value analysis study at 100% Design Development (utilizing the 100% Design Development documents) which shall include, but not be limited to, the items noted below:
 1. Develop value analysis concepts for consideration in brainstorming sessions with the Design Team.

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

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

Owner & Project Designer.

4. The CM shall also conduct value analysis studies during the Construction Document Phase of design to evaluate specific items as requested by the Owner.

4. Schedule

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

5. Constructability Review

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

6. Construction Cost Model/Estimates

- a. The CM shall develop a project budget/cost model (the "CM Cost Model"), independent from any similar cost estimates required of the Project Designer, which shall be updated as needed but at a minimum at the end of each design phase during which the CM is performing Pre-Construction Services. (the "CM Cost Model Update"). Prior to the development of the CM Cost Model, the CM will meet with the Project Designer and Owner to ascertain the Owner's project construction budget and to establish a common cost estimating format so that project cost estimates prepared by the Designer and CM may be directly compared.
- b. Each CM Cost Model Update must set forth the total construction costs for the project including alternates, the Construction Management Fee, General Conditions, Bonds, Insurance and CM Contingency.
- c. In the event that the Project Designer's Statement of Probable Construction Costs exceeds the project construction budget, the Owner may direct the CM to (and the CM shall without additional compensation) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the project program within the project construction budget.
- d. Each CM Cost Model Update and the Designer's Statement of Probable Construction Costs will be reviewed by the Project Designer and the

Owner for reasonableness and compatibility with the Owner's Project Construction Budget. Meetings and negotiations between Owner, Project Designer and the CM will be held to resolve questions and differences that may occur between the Designer's Statement of Probable Construction Costs and the CM Cost Model Update. The CM shall work with the Owner and Project Designer to reach a mutually acceptable joint Statement of Probable Construction Cost.

7. Coordination of Contract Documents

- a. The CM shall review the project plans and specifications for features that may be ambiguous, confusing, conflicting or erroneous and shall notify the Project Designer and Owner in writing when such features are observed.
- b. The CM shall provide a thorough interdisciplinary coordination review of the project plans and specifications submitted for review. The coordination review shall be performed by a qualified firm or personnel utilizing a structured and industry accepted process. The CM shall review the final documents to see that all comments have been incorporated.
- c. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM during the review process shall be deemed to be corrected, and any associated costs shall be included in the GMP unless the CM notifies the Owner otherwise in writing prior to the advertisement for bids from Principal Trade and Specialty Contractors or subcontractors.

8. Construction Guaranteed Maximum Price (GMP) and Final Schedule

- a. The CM shall prequalify Principal Trade and Specialty Subcontractors in compliance with Article 16 of the General Conditions.
- b. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages.
- c. The CM shall create a Bid Package Manual outlining the various subcontractor Bid Packages with the associated scopes for bidding purposes along with any milestone and logistical requirements,
- d. The CM shall solicit prequalified subcontractor bids as outlined within the Bid Package Manual and hold Bid Openings in compliance with the requirements of Articles 16 and 49 of the General Conditions.
- e. The CM may submit to Owner the -GMP and Final Schedule for the Project at any time after completion and approval of the Design

Development Phase of design, likely after receipt of bids from Principal Trade and Specialty Contractors. However, in any event, the CM shall submit to the Owner the GMP and the Final Schedule within ___ calendar days from the date that the Construction Documents are issued. The CM will develop and provide to the Owner in writing a GMP, which is more particularly described in the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price, but which shall include all construction costs, including amounts to be paid to principal trade and specialty contractors (the “Principal Trade and Specialty Contractors”) and others for construction of the project (the “Cost of the Work”), and all other projected costs including without limitation the Construction Management Fee, General Conditions and CM Contingency but not including the Owner's Construction Contingency. The GMP shall set out as the Cost of the Work each anticipated trade contract and subcontract amount. The GMP must not exceed the project construction budget.

- f. In the event that the GMP exceeds the project construction budget, the Owner reserves the right to direct the CM to (and the CM shall, without additional compensation) work in conjunction with the Project Designer to redesign the Project as necessary to meet the project construction budget. The CM shall work with the Project Team to identify alterations and revisions of the project plans and specifications as necessary to accomplish the required reduction in cost and shall provide the Owner

with a revised GMP based on the altered and revised documents.

Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM shall execute the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price to reflect their agreement as to the GMP and the CM's Construction Management Services, such agreement to be in form and substance reasonably satisfactory to both parties.

9. Non-Acceptance of the GMP

- a. The Owner, at its sole discretion, may decline to accept the GMP submitted by the CM and thereupon without penalty, the CM's work will end upon completion of the Pre-Construction Phase contract.
- b. The CM shall accept the amount negotiated for Pre-Construction Services as full and complete reimbursement of all costs and services performed by the CM for Pre-Construction Services. Thereafter, the Owner shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the CM and with full ownership and use of any data and information written or electronic developed during Pre-Construction activities.

10. Ownership of Documents

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

EXHIBIT B
LIST OF APPROVED REIMBURSABLE COSTS

The term "Reimbursable Costs", as used in this Agreement, shall mean the reasonable costs necessarily, and actually, incurred in connection with CM's Services, and which shall include *only* the following items:

- (a) Mailing costs and overnight or special delivery services (but no additional charge shall be made for facsimile transmissions);
- (b) Statutory fees paid to governmental agencies for securing approvals of authorities having jurisdiction over the Project;
- (c) Fees of subcontractors (other than those included in the Pre-Construction Services for this Agreement as part of the scheduled fee for the CM's Services) if their employment is authorized in advance by the Owner in writing; provided, however, that such subcontractors' fees shall be payable at cost, without markup to the Owner;
- (d) Costs of reproduction and printing of drawings, specifications and other documents in excess of that amount included in the Pre-Construction Services covered by the scheduled fee for the CM's services under this Agreement. Under no circumstances will the cost of reproductions for the office use of the CM or the CM's subconsultants be included as a Reimbursable Cost;
- (e) Costs of photographic production techniques when used at the written request of the Owner;
- (f) Any other necessary, incurred costs approved in advance by the Owner.

No data processing, word processing or other secretarial or clerical charges shall be allowed as Reimbursable Costs.

Receipts are required for all Reimbursable Costs. The Owner reserves the right to require additional documentation of Reimbursable Costs, and the right to audit all such Costs at a reasonable time and place.

**EXHIBIT C
INSURANCE
REQUIREMENTS**

The CM shall furnish the following insurance with respect to the Project or the services required under the Agreement:

1.1 Commercial Liability and Other Insurance. At all times while this Agreement is in effect, CM will take out and keep in force at its expense:

1.1.1. Commercial General Liability insurance, including insurance against assumed or contractual liability of the CM, with a combined single limit for each occurrence of not less than \$1,000,000 per occurrence and aggregate (including primary and excess coverage) with respect to claims and damages arising out of personal injury, sickness, disease, death or property damage.

1.1.2 If and to the extent required by law, worker's compensation or similar insurance in amounts, and in a form, as required by the law of the state where CM's employees are employed, or by the state where the services are performed, as may be applicable or required.

1.1.3 Automobile liability insurance to insure CM for operations of all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limit with respect to Bodily Injury, Death and Property Damage.

1.1.4 All insurance required under this Section 1.1, with the exception of Section 1.1.2, shall be occurrence-based and name the Owner and/or, at the option of the Owner, any interested designees of the Owner as additional insureds.

1.2 Certificates of Insurance. At the time of commencement of services under the Agreement, certificates of insurance reflecting the actual retention of the insurance policies required by this Article shall be filed with the Owner. Such certificates shall bear the endorsement "not to be canceled, allowed to lapse or substantially modified without thirty (30) days' prior written notice by certified mail, return receipt requested, to the Owner, c/o Owner, Attn: _____"



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: February 6, 2015

SUBJECT: US-74 Intersection Construction

NCDOT will be beginning construction work on US-74 intersections this summer. NCDOT has requested feedback from the Town Council on whether the Town would like to include any aesthetic improvements to this project.