



TOWN OF CORNELIUS

Cornelius Town Hall

BOARD OF COMMISSIONERS

March 4, 2019

Agenda

PRE-MEETING - 5:45 PM

- **Legislative Priorities**
- **Closed Session - Contractual Matter**

TOWN BOARD - 7:00 PM

1. **CALL TO ORDER**
2. **DETERMINATION OF QUORUM**
3. **APPROVAL OF AGENDA**
4. **MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**
5. **MAYOR/COMMISSIONERS/MANAGER REPORTS**
6. **CITIZEN CONCERNS/COMMENTS**
7. **PRESENTATIONS**
 - A. **Mecklenburg County Sheriff Department**
8. **PUBLIC HEARING**
 - A. **REZ 10-18 Retreat @ West Catawba**
9. **CONSIDERATION OF APPROVAL**
 - A. **Management Services Agreement Amendment**
 - B. **Capital Project Ordinance**
 - C. **Cain Center for the Arts-Architectural Services Contract**
 - D. **Cain Center for the Arts-Construction Manager at Risk Contract**
 - E. **Resolution in Support of Legislation Authorizing the Town of Cornelius to Levy 1/2 Cent Municipal Sales Tax to Support Road Construction and Maintenance**
 - F. **2019 Legislation Priorities**
10. **CONSENT AGENDA**
 - A. **Approve Minutes - Regular Meeting**
11. **OLD BUSINESS**
 - A. **Salary and Benefits Study Follow-Up**
12. **COMMISSIONER CONCERNS**
13. **ADJOURNMENT**

Please note that to speak during **CITIZENS CONCERNS/COMMENTS** or **PUBLIC COMMENT**, please use the signup sheet

provided before the Board meeting and list your name, address and topic. Each speaker will be allowed 3 minutes to speak. A "hard stop" will occur after 3 minutes for each speaker. Any information displayed must be submitted to the Town Clerk within 48 hours prior meeting.

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

Town Manager and Town Board to hold a discussion regarding 2019 Legislative priorities, adopting those priorities by resolution.

Manager's Recommendation:

Town Manager recommends holding the discussion and adopting 2019 Legislative priorities by resolution.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

Hold a Closed Session to discuss a contractual matter under attorney-client privilege.

Manager's Recommendation:

Hold a Closed Session.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

Chief Collins and Major Magwood will address questions regarding their Lidar speed enforcement along Jetton Road on February 17th.

Manager's Recommendation:

Hear from Chief Collins and Major Magwood.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Aaron Tucker, Assistant Planning Director

Action Requested:

Demeter Properties in association with Landworks Design Group are requesting a conditional rezoning for the combined 9.52 acre property located at 17201 West Catawba Avenue in order to develop 60 townhomes.

The applicant hosted their required community meeting at Town Hall on Tuesday, January 8th.

In accordance with the Town's conditional zoning procedure, this is public hearing #1. This public hearing is to hear initial public feedback and for the Town Board to hear and provide any initial thoughts on the initial proposal.

The plan being provided for public hearing #1 is a 100% residential proposal with 60 total units. This plan is different from what was shown at the community meeting in that it contains no commercial or mixed use. The plan change was precipitated due to the NCDOT showing a bulb U-turn on the southern end of the property. NCDOT has expressed concerns regarding any driveways for commercial use due to the super street left overs and the limited site distance on the northern end of the property. The trip generation for the residential proposal is significantly lower and is deemed to be more acceptable by NCDOT for this location. Staff is currently evaluating the 100% residential proposal and will utilize any public comments as well Commissioner comments as we evaluate the proposal moving forward.








Following public hearing #1, Town Staff will work with the applicant to refine the plan for potential presentation at a second public hearing for final consideration.

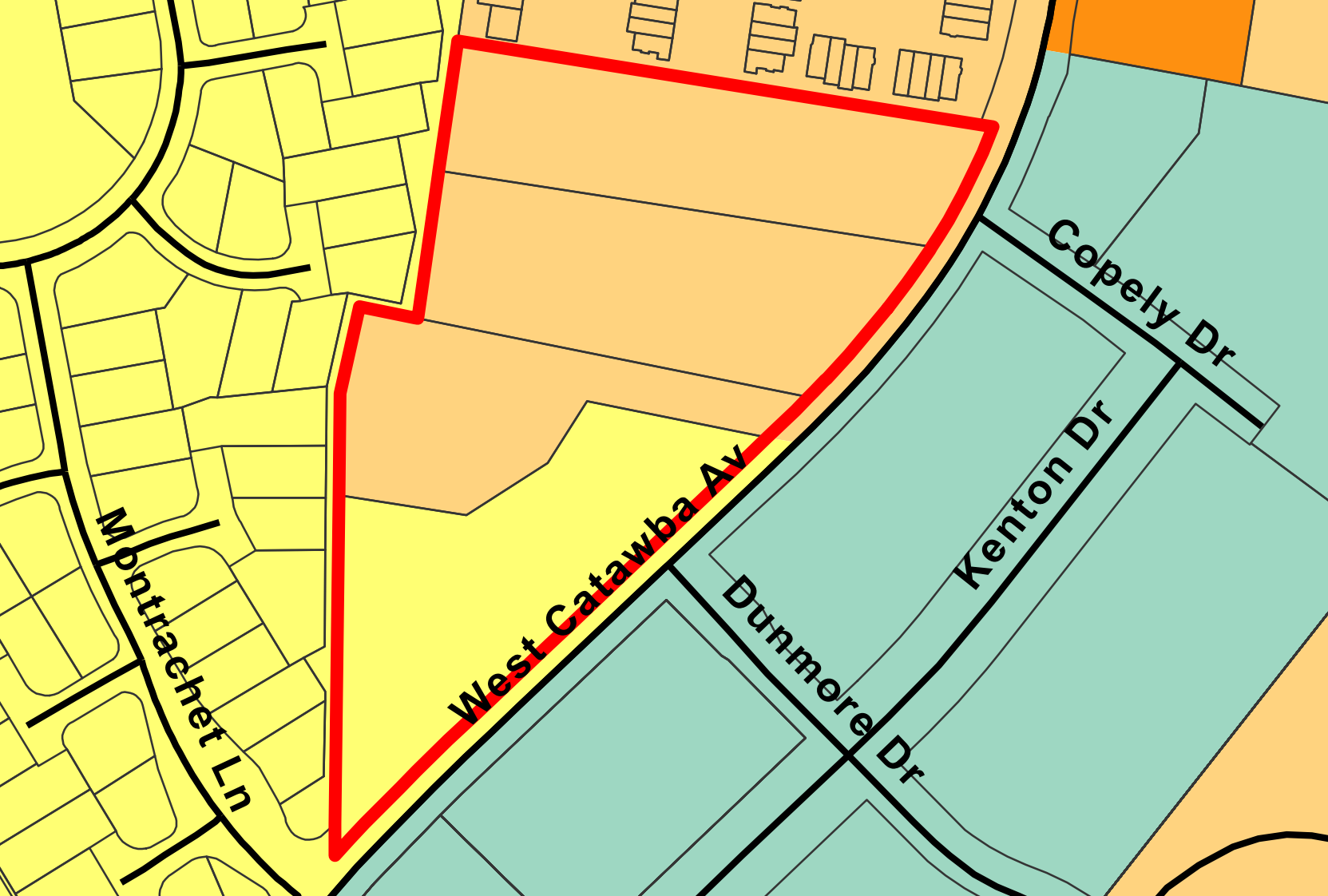
The Town Board began public hearing #1 on January 22nd and continued the hearing to February 18th and once again to tonight, in order to provide as much opportunity, as possible, for the public to comment on the amended plans before moving to Staff review and Planning Board.

Manager's Recommendation:

Reconvene Public Hearing #1 for the Retreat at West Catawba.

ATTACHMENTS:

Name:	Description:	Type:
 The_Retreat_Zoning.pdf	Zoning	Cover Memo
 The_Retreat_LU.pdf	Land Use	Cover Memo
 The_Retreat_Vicinity.pdf	Vicinity Map	Cover Memo
 The_Retreat_Property.pdf	Property Map	Cover Memo
 Site Plan The Retreat 3rdsubmittal.pdf	Site Plan	Cover Memo
 Retreat_Density_Memo_2-20-19.pdf	Density Memo	Cover Memo
 TB_3-4-19.pptx	Staff Presentation	Presentation



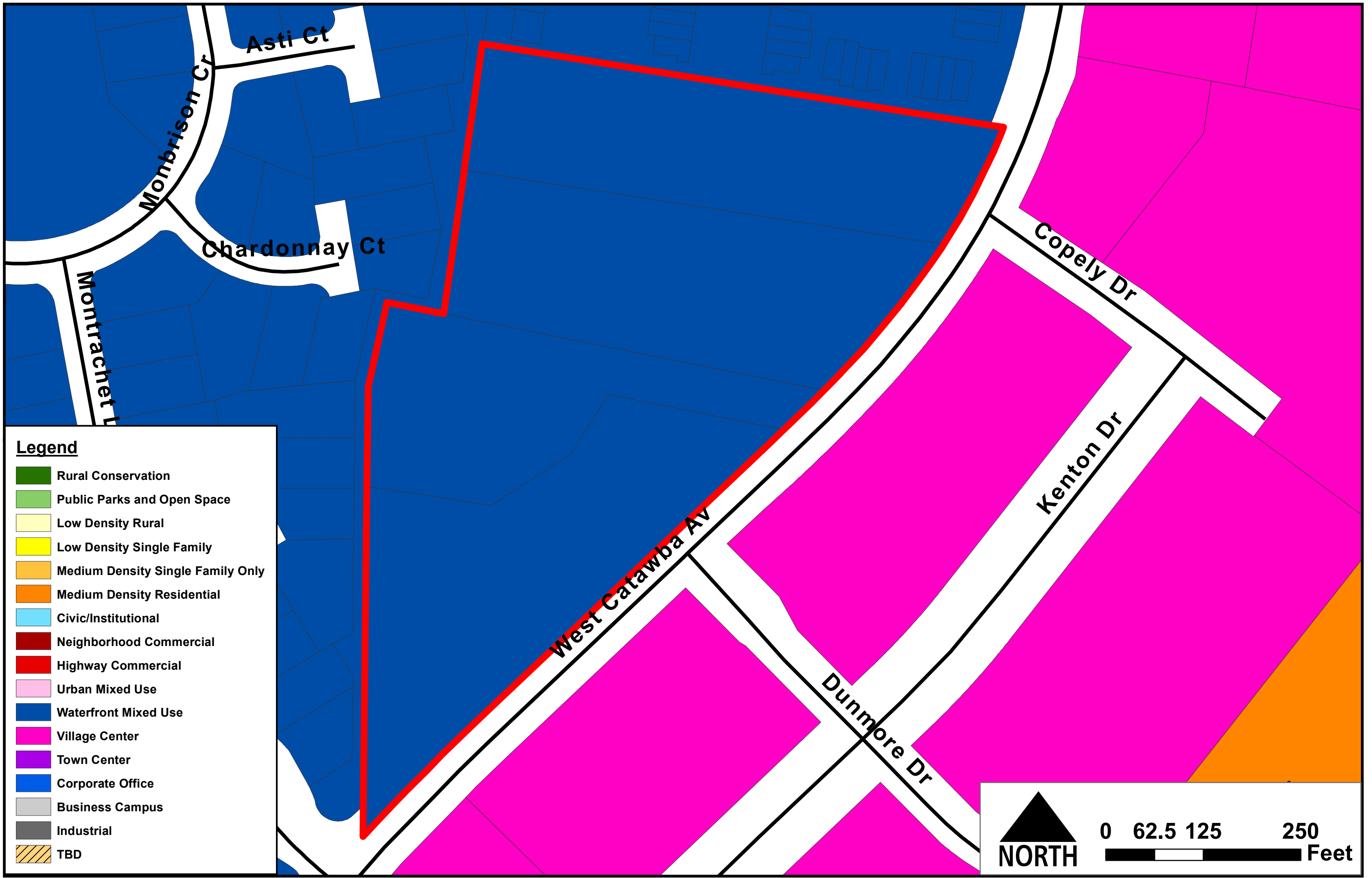
Montrechet Ln

West Catawba Av

Dunmore Dr

Kenton Dr

Copely Dr







Monratchet Ln

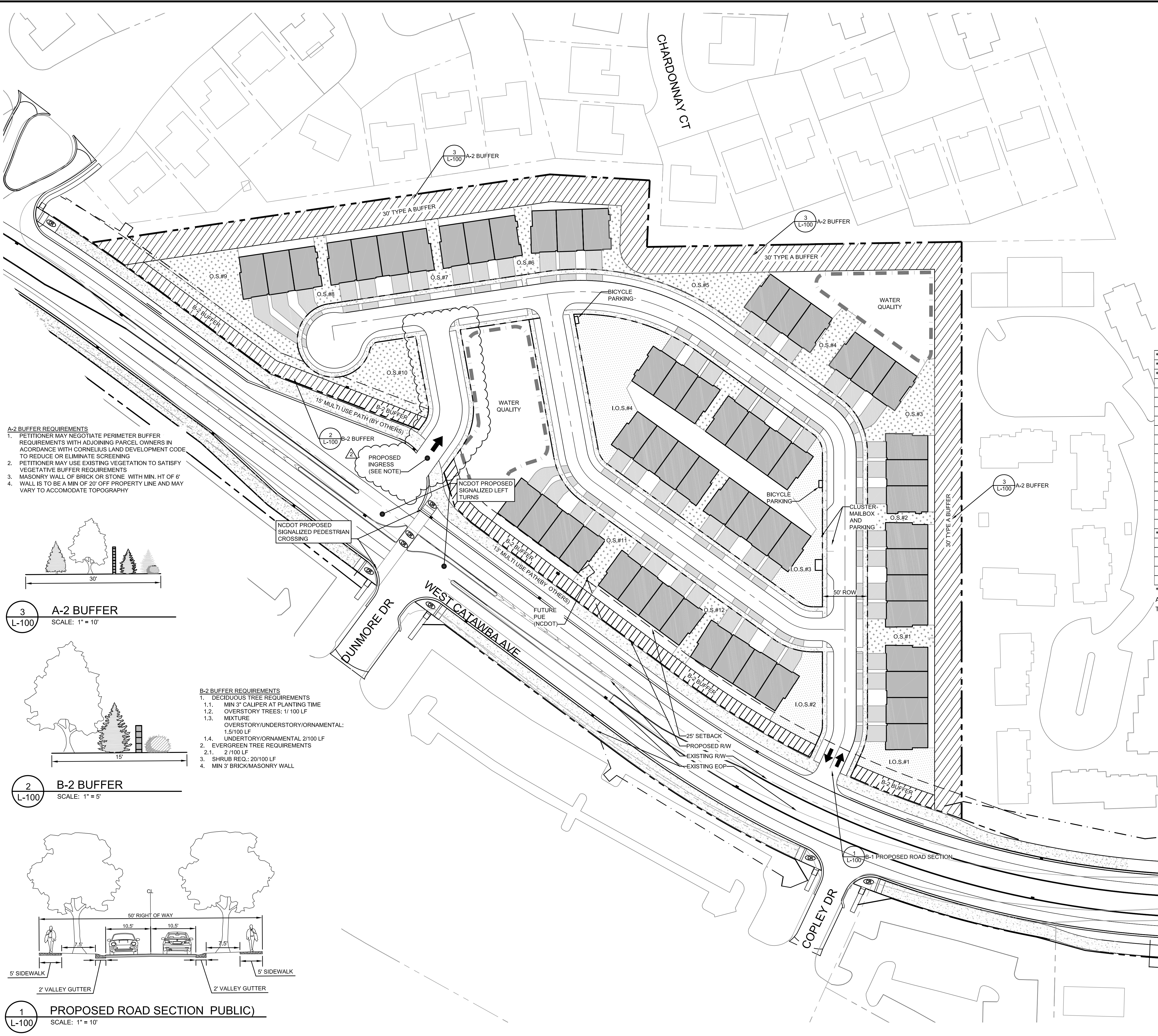
West Catawba Av

Dunmore Dr

Kenton Dr

Copely Dr

P:\2019 Jobs\18004 - West Catawba Retreat - Demeter\CAD\Sketch Planning\18004 RZ BASE CURRENT.dwg
P:\2019 Jobs\18004 - West Catawba Retreat - Demeter\CAD\Sketch Planning\18004 RZ BASE CURRENT.dwg



SITE DATA:
SITE AREA: ±9.52 Acres
EXIST. PID #: 00146704, 00146703, 00146702, 00146701
EXIST. ZONING: NR, GR, Cornelius
PROPOSED ZONING: C7
UNITS PROPOSED: 57 ATTACHED TOWNHOMES
UNITS/AC: 5.9 UNITS/ACRE
PARKING PROVIDED: 20 UNIT MIN (GARAGE) + DRIVEWAY ROLLOUT SERVICES
WASTE: ROLLOUT SERVICES

SETBACKS	
25' THOROUGHFARE SETBACK (W CATAWBA AVE)	
20' FRONT SET BACK (BACK OF SIDEWALK TO GARAGE FACE)	
0' MIN SIDE YARD	
10' MIN REAR YARD	

*REQUIRED OPEN SPACE: 82,938 SF OR 1.9 AC (20% OF 9.52 AC)	
*REQUIRED IMPROVED OPEN SPACE: 20,734 SF OR .475 AC (25% OF 1.9 AC)	
*OPEN SPACE PROVIDED: 97,569 SF OR 2.24 AC (23.5% OF 9.52 AC)	
O.S. #1	1,216 SF
O.S. #2	1,274 SF
O.S. #3	3,431 SF
O.S. #4	2,597 SF
O.S. #5	5,088 SF
O.S. #6	1,464 SF
O.S. #7	1,237 SF
O.S. #8	1,277 SF
O.S. #9	5,315 SF
O.S. #10	7,477 SF
O.S. #11	2,137 SF
O.S. #12	1,408 SF
A-2 BUFFER	48,544 SF
B-2 BUFFER	15,104 SF
TOTAL	97,569 SF

*IMPROVED OPEN SPACE PROVIDED: 20,948 SF OR .48 AC (25.3% OF 1.9 AC)	
I.O.S. #1	3,952 SF
I.O.S. #2	3,662 SF
I.O.S. #3	4,724 SF
I.O.S. #4	8,610 SF
TOTAL	20,948 SF

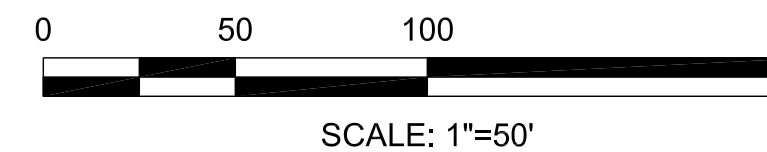
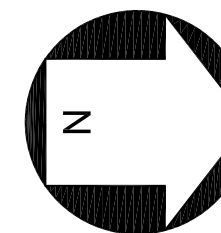
*OPEN SPACE AREA REQUIREMENTS CALCULATED BASED ON GIS INFORMATION AND ARE SUBJECT TO CHANGE BASED UPON SURVEY INFORMATION AS IT BECOMES AVAILABLE; TO BE FINALIZED DURING CONSTRUCTION DOCUMENTS

LEGEND

---	LOT LINE
---	BOUNDARY
---	PROP SIDEWALK
---	IMPROVED OPEN SPACE AREA
---	COMMON OPEN SPACE
---	DRIVEWAY
---	BLOG SETBACK
---	PROP ROW
---	ROAD CENTERLINE

- NOTE:
- PETITIONER RESERVES THE RIGHT TO NEGOTIATE WITH ADJOINING HOMEOWNERS' ASSOCIATIONS, A REDUCTION IN SCREENING REQUIREMENTS WITHIN TYPE 'A' PERIMETER BUFFER (E.G., WOODEN FENCE IN LIEU OF MASONRY WALL, PRESERVATION OF EXISTING TREES IN LIEU OF REPLANTING, ETC.) AND WILL PROVIDE WRITTEN DOCUMENTATION OF AGREEMENT IN WRITING PRIOR TO CONSTRUCTION PLAN PERMIT APPROVAL.
 - SITE ACCESS POINTS TO WEST CATAWBA HAVE NOT YET BEEN APPROVED BY NCDOT AND FINAL LOCATION(S) MAY BE ALTERED DURING DRIVEWAY PERMITTING DUE TO TOWN AND/OR NCDOT REQUIREMENTS.

This Plan Is A
Preliminary Design.
NOT Released For
Construction.



REVISIONS:

No.	Date	By	Description
1	2.7.19	MDH	STAFF COMMENTS AND REVISED NCDOT ROAD IMPROVEMENTS TO WEST CATAWBA AVENUE
2	2.20.19	MDL	REVISION TO PROPOSE INGRESS INTO SITE FROM U-TURN BULB, ADDED NOTES

THE RETREAT AT WEST CATAWBA DEMETER PROPERTIES, LLC CORNELIUS, NC

SCHEMATIC SITE PLAN

CORPORATE CERTIFICATIONS
NC PE: C-2930 NC LA: C-253
SC ENG: NO. 3599 SC LA: NO. 211

Project Manager: MDL

Drawn By: MDH

Checked By: MDL

Date: 11/19/18

Project Number: 18004

Sheet Number:

RZ-1

SHEET # 01 OF 01



February 20, 2019

Mayor Washam and Cornelius Board of Commissioners
Town of Cornelius
21445 Catawba Avenue,
Cornelius, NC 28031

Re: REZ 10-18 – The Retreat at West Catawba

Dear Mayor Washam and Commissioners:

Thank you for taking time to discuss our project on Monday night. As I mentioned in our presentation, I am providing you with some information about density of the various developments immediately surrounding our site.

If you look at the attachment to this memo, I have evaluated the developments that surround The Retreat, including the attached townhome/condo developments off Vineyard Point Lane, and the single-family developments off Waterview Drive and Montrachet Lane.

Those development total nearly 60 acres and have a density of 6.87 units per acre.

As proposed on the plan we showed Monday night (with the second entrance off the U-turn bulb), our proposed density falls just under 6 units per acre, which is less than the average surrounding us.

We hope that you will take this into consideration and agree that our project has a proposed density that is compatible with the adjacent land uses.

If you have any questions, please don't hesitate to reach out to me. My email address is mlangston@landworkspa.com, and my office number is 704-841-1604 x 701.

Thank you very much.

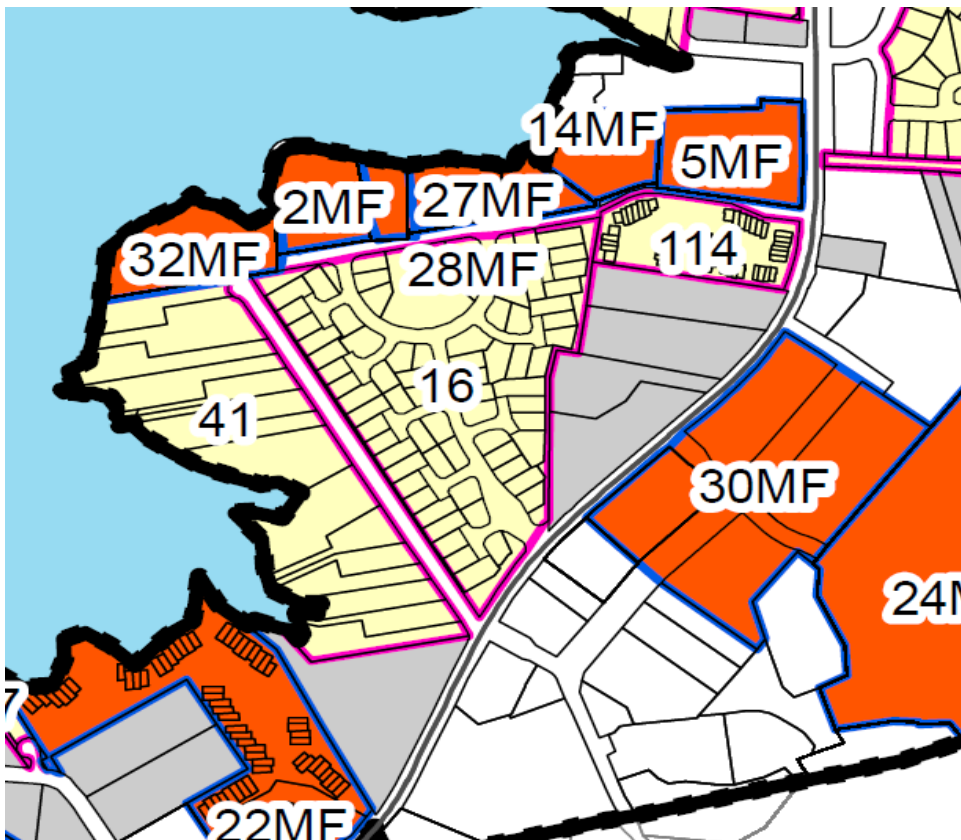
Sincerely,

Landworks Design Group, P.A.

A handwritten signature in black ink that reads "Matthew D. Langston".

Matthew D. Langston, PLA, ASLA
President

Key	Name	# Units	Acreage	Density
2MF	Arbors	45	2.6	17.31
5MF	Bayview	45	3.86	11.66
14MF	Dockside	42	2.53	16.60
27MF	Shelter Cove	54	2.84	19.01
28MF	The Moorings	15	0.97	15.46
32MF	Vineyard Point	23	3.67	6.27
16	Bordeaux	74	21.44	3.45
41	Fidler Estates	16	17.22	0.93
114	Tuscany Townhomes	94	4.27	22.01
Average Density of Existing adjacent developments		408	59.4	6.87
Retreat at West Catawba Project Density		57	9.52	5.99
Area density after Retreat Development		465	68.92	6.75



Town Board

March 4, 2019

The Retreat

REZ 10-18 Public Hearing #1 (Continued)

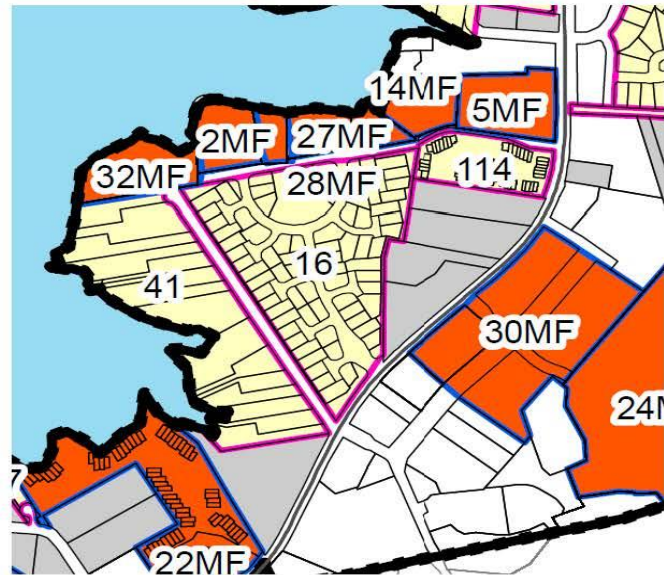
REZ 10-18 The Retreat

- Location: 17201 West Catawba Avenue (PID: 001-46-701, 001-45-702, 001-46-703 & 001-46-704)
- Property size: 9.52 acres
- Existing Zoning: General Residential (GR) and Neighborhood Residential (NR)
- Proposed Use: 57 townhomes (5.98/acre)
- Land Use Plan: 6 unit per acre maximum (57 units)

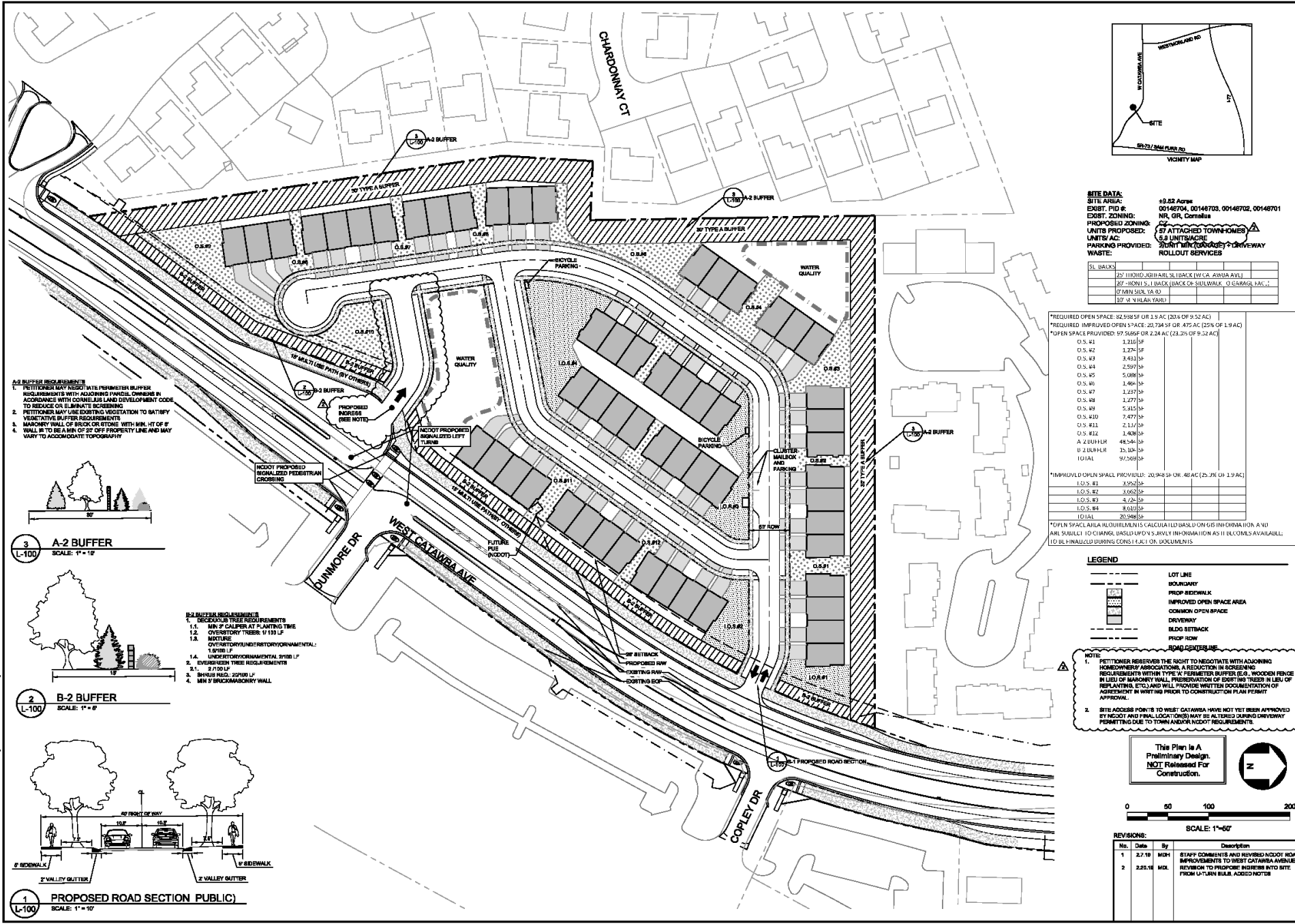
REZ 10-18 The Retreat

- Community Meeting held on January 8, 2019. Community comment again revolved around a desire for no commercial/office and having West Catawba widened.
- Transportation Advisory Board – January 8, 2019. West Catawba Avenue will have enough capacity when construction is complete.
- Town Board Public Hearing #1 – January 22nd, continued until February 18, continued again until March 4th to allow more time for public consideration of amended plan.
- Planning Board – March 11th
- Town Board public hearing #2 and potential final decision – April 1st(tentative)

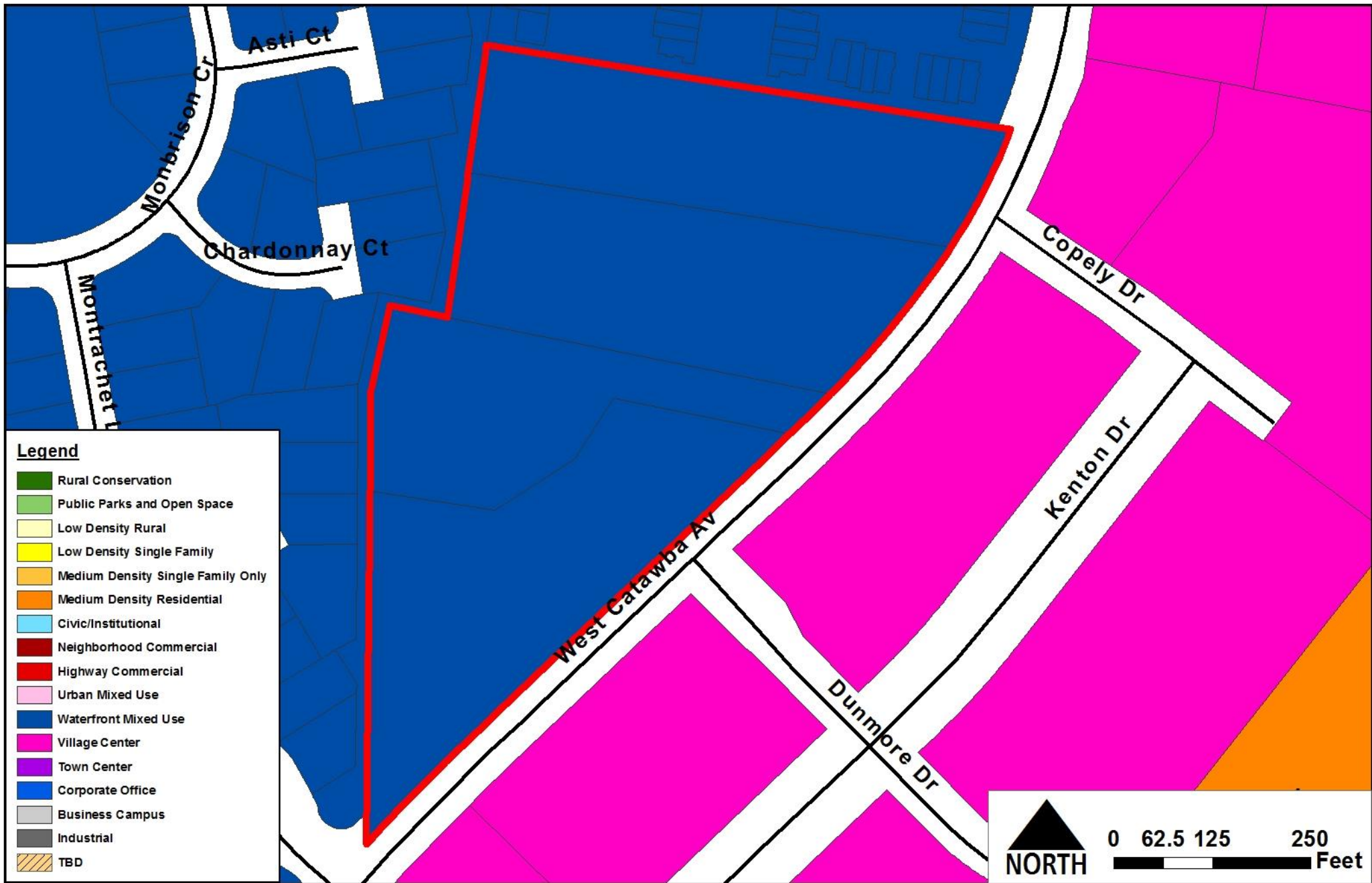
Key	Name	# Units	Acreage	Density
2MF	Arbors	45	2.6	17.31
5MF	Bayview	45	3.86	11.66
14MF	Dockside	42	2.53	16.60
27MF	Shelter Cove	54	2.84	19.01
28MF	The Moorings	15	0.97	15.46
32MF	Vineyard Point	23	3.67	6.27
16	Bordeaux	74	21.44	3.45
41	Fidler Estates	16	17.22	0.93
114	Tuscany Townhomes	94	4.27	22.01
Average Density of Existing adjacent developments		408	59.4	6.87
Retreat at West Catawba Project Density		57	9.52	5.99
Area density after Retreat Development		465	68.92	6.75



P:\2014\14011004 - West Catawba Retreat - 2014\04\20\14011004.dwg 12:56 PM 04/20/14







REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

In 2017, the Town and CACC (Cornelius Arts and Community Center) entered into a Management Services Agreement. With the commencement of design imminent and construction on the horizon, an amendment further defining the partnership relationship is necessary.

Manager's Recommendation:

Approve the amendment to the Management Services Agreement and authorize the Town Manager and Town Attorney to finalize the terms and conditions and execute it.

ATTACHMENTS:

Name:	Description:	Type:
MANAGEMENT_SERVICES_AGREEMENT_Amend_1--Revised_Budget_and_CACC_approval.pdf	Amendment 1 - Management Services Agreement	Backup Material
Executed_Management_Services_Agreement.pdf	Exhibit A; Original Management Services Agreement	Cover Memo
AIA_Architect_Contract.pdf	Exhibit B-1 Architect AIA Contract	Backup Material
CMAR_Pre-Construction_Agreement_Rodgers_FINAL.pdf	Exhibit B-2 CM@Risk Pre-Construction Contract	Cover Memo
Planning_Project_Schedule_-_Cain_Center_for_the_Arts.pdf	Exhibit C-Planning Project Schedule	Cover Memo
Exhibit_D.pdf	Exhibit D- Planned Payment Schedule (CCAC to Town)	Cover Memo

AMENDMENT #1 to Management Services Agreement

This Amendment (this “Amendment”) is dated _____, 2019 [after CACC Board and Town Board approval] and is by and between the **Town of Cornelius** (“Town”) and **Cornelius Arts & Community Center, Inc.** (“CACC”) This Amendment amends the Management Services Contract dated **April 3, 2017**, a copy of which is attached hereto as Exhibit A (the “Original Agreement”), by and between Town and CACC (as amended from time to time, the “Agreement”).

Background.

Town and CACC entered into the Original Agreement for the purpose of engaging CACC to provide management and other services to the future Cornelius Arts and Community Center (hereinafter, the “Center”). Specifically, CACC shall provide marketing and fundraising services and work together with Town staff and elected officials to formalize the design and construction plans for the Center. As contemplated by the Original Agreement, fundraising has commenced and Capital Campaign Contributions, as pledged and collected are retained in a CACC escrow account. In addition, an architect and a construction manager at risk (“CM@R”) have been selected. In connection with finalizing the contract with the architect firm the Town and CACC desire to confirm and clarify additional details regarding implementation of the design process with the architect.

Agreement.

In consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, Town and CACC hereby agree as follows:

1. **Architect Contract and Pre-Construction Services Contract; Other Contracts.** A copy of the contract between the Town and the architect is attached hereto as Exhibit B-1 (“Architect Contract”). A copy of the pre-construction services contract between the Town and the CM@R is attached hereto as Exhibit B-2 (“CM@R Pre-Construction Contract”). There will be a subsequent contract with the CM@R for the construction of the Center. There will be also other contracts for the purchase of services and goods that the Town will need to enter into to develop the Center (“Other Contracts”), such as those listed on Exhibit B-3.

Both Town and CACC have reviewed and participated in developing the Architect Contract and the CM@R Pre-Construction Contract, specifically including the milestones and phases of the design work, a reconciled proposed building program, size and budget prior to commencement of the Schematic Design phase.

2. **Cooperation to Design Center.** Exhibit A to the Original Agreement provides that CACC’s Scope of Services includes the following:

Work with Town to design the Center so that it can be constructed within the budget of available Town Bond funding [\$4,000,000] and the reasonably achievable fundraising goals determined after the fundraising study [currently \$16,600,000 , for a total budget of \$20,600,000]

Section 1.e of the Original Agreement provides:

The parties agree that Construction Expenses will be deposited into a CACC escrow account and thereafter be paid to the Town of Cornelius....

To implement this Scope of Services in a manner consistent with the schedule set forth on the Architect Contract, Town and CACC agree as follows:

- The planned project schedule, including fundraising milestones is attached as Exhibit C.
- The Construction Committee will be comprised of members representing the Town and CACC, and meet on a regular (at least monthly) basis to review progress of the design and generally advise the Town Manager regarding decisions related to the design and budget of the Center. The Construction Committee will have access to all design and budget documentation.
- The Town will create and maintain a separate project specific budget (“Capital Project Ordinance”) for the Center project.
- The Town will use best efforts to ensure that funds deposited for the Center Project will earn interest through available programs with the Town’s Bank or State of NC programs. Such interest earned will be to the benefit of the Center Project.
- CACC’s Treasurer, Finance Committee or Board President or appointed representative, will have access to review all accounting and other relevant documents related to the Center Project.
- A representative of the Construction Committee from CACC will be appointed to work with Town Manager regarding review and approval of any amendments to the Architect Contract, change orders to the CM@R contract(s), with the intent of efficiently reviewing and approving any changes without delay to the project; but providing Town and CACC are mutually in agreement via written approval of the Town Manager and CACC Construction Committee Representative regarding any material changes to contract scopes and budgets.

CACC will pay the Town in advance of and for each phase of the architect work in accordance with the payment schedule attached as Exhibit D (the “Payment Schedule”) Note: Estimated amounts listed on Exhibit D are subject to change based on mutual agreement. For reference, see Exhibit A to the Architect Contract that outlines the phases of the architect’s work. For clarity, the intent of the Parties is that architect’s fees are paid for with Capital Campaign Contributions currently in escrow with CACC.

CACC will pay the Town in advance of each phase of the CM@R work, in accordance with the Payment Schedule, including contingency funds. The parties acknowledge and understand that upon bidding, the CM@R and Town may enter into subsequent contracts with a guaranteed maximum price (“GMP”), expected to be in two phases (i) an initial construction contract for demolition, grading and other “horizontal” work (“Construction Phase I”) and then (ii) construction of the building (“Construction Phase II”). It is expected that the Town will need to encumber fund balance in the amount of 20% of construction amount of the Construction Phase II in addition to the \$4,000,000 Town contribution, pending receipt of remaining pledged (but not collected) fundraising dollars.

CACC will pay Town the needed funds in advance of Town approval of the Other Contracts. CACC will pay the Town needed funds in advance of any amendments to the Architect Contract or changes orders to the CM contracts.

If there are any donated funds remaining at the end of the Project (e.g. unused contingency funding), such donated funds shall be returned from the Town to CACC.

3. Miscellaneous. This Amendment is limited as specified and does not constitute a modification, acceptance or waiver of any other provision of the Agreement. As expressly amended by this Amendment, the Agreement will continue in full force and effect in accordance with its provisions. This Amendment may be executed in counterparts, each of which is an original and all of which together are deemed one and the same instrument. All capitalized terms not otherwise defined in this Amendment have the meanings assigned to them in the Agreement.

**CORNELIUS ARTS & COMMUNITY
CENTER, INC.**

TOWN OF CORNELIUS

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: Town Manager

Date: _____

Date: _____

For reference:

Approved by CACC Board: _____, 2019

Approved by Town of Cornelius Board of Commissioners: _____, 2019

EXHIBIT LIST

- Exhibit A: Copy of Original Agreement (between Town and CACC)
- Exhibit B-1: Copy of Architect Contract (between Town and Architect)
- Exhibit B-2: Copy of CM@R Pre-Construction Contract between Town and CM@R)
- Exhibit B-3: List of Other Contracts
- Exhibit C: Planning Project Schedule
- Exhibit D: Planned Payment Schedule – CACC to Town

MANAGEMENT SERVICES AGREEMENT

This MANAGEMENT SERVICE AGREEMENT ("**Agreement**") is dated April 3, 2017 "**Effective Date**", and is between The Town of Cornelius, a North Carolina Municipal Corporation ("**Town**"), and Cornelius Arts & Community Center, Inc. a North Carolina not for profit corporation ("**CACC**") (Town and CACC each a "**Party**" and together the "**Parties**").

STATEMENT OF PURPOSE

Town and CACC wish to enter into this Agreement for the purpose of engaging CACC to provide management and other services to the future Cornelius Arts and Community Center (hereinafter, the "**Center**"). It is the intent of the Parties that CACC, during this Initial Term, shall provide marketing and fundraising services and work together with Town staff and elected officials to formalize the design and construction plans for the Center. Subsequent to this Initial Term, and after the Center is constructed, the Parties intend to enter into a new agreement in which CACC will be responsible for and provide full and complete management of the Center (except as may be limited by the Town or as may be agreed by the Parties) including programming, staffing, marketing, scheduling, accounting and financial services, maintenance, long---range planning and any other services necessary for the management and operation of the Center.

AGREEMENT

For the consideration set forth in this Agreement, the Parties hereto agree as follows:

1. Controlling Principles:

- a. CACC recognizes that the Scope of Services that are the subject of this Agreement are and shall always be conducted for the public good and in a manner that complies with any and all laws, rules and regulations that may apply to the Scope of Services.
- b. CACC will, at all times, conduct its activities in a non---discriminatory manner and pursuant to policies established by the Town and as required by statute.
- c. CACC will, at all times, conduct itself in a manner that complies with the terms and conditions of any Installment Financing Agreements; Municipal Bond requirements or any other financing arrangement of the Town.
- d. CACC understands that Town, at all times, retains the right of final decision on design, cost, marketing and use of the Center and that CACC DOES NOT have the right nor the authority to make a binding obligation on behalf of the Town except as may be specifically delegated in this Agreement or in subsequent action of the Town.
- e. CACC and the TOWN recognize and agree that funds/donations/pledges are to be solicited in the name of the Cornelius Arts and Community Center (CACC) and those funds/donations/pledges are to be earmarked either as Capital Campaign Contributions or Operating Expenses. Furthermore it is agreed and understood that those earmarked as

Capital Campaign Contributions are to be used solely for the purposes of 1) payment of expenses incurred to develop, launch and implement a capital fundraising campaign ("Campaign Expenses"); or 2) the costs of the design and construction of the Center and ancillaries activities related thereto ("Construction Expenses"). The parties agree that Construction Expenses will be deposited into a CACC escrow account and thereafter be paid to the Town of Cornelius or its proper designee. Operating and Campaign Expenses may be utilized by CACC as necessary to perform its obligations under this Agreement.

2. **Term.** The term of this Agreement begins on the Effective Date and terminates on June 30, 2018 (the "Initial Term"). This Agreement will automatically renew for subsequent one year terms unless terminated in the manner described in Paragraph 9 below. (The Initial Term and any subsequent one year terms will together be referred to as the "Initial Term").
3. **Scope of Services.** During the Initial Term, CACC shall be primarily responsible for instituting and managing those activities necessary to raise the funds required to design, plan, and complete construction of the Center as more specifically set forth on Exhibit A attached hereto and which may be amended from time to time upon agreement of the Parties. (The "Scope of Services"). The Parties acknowledge that the funds raised by CACC will be in addition to the four million dollars to be contributed by the Town.
4. **Staffing.** After consultation and in cooperation with the Town, CACC shall hire an Executive Director who will be an employee of CACC and be responsible for managing the Scope of Services during the Initial Term. The Town may provide operational assistance to CACC including but not limited to payroll and other accounting services and legal services.
5. **Budget, Management Fees and Finances.**
 - a. **Budget and Management Fees.**
 - i. **Initial Budget.** Upon execution of the Agreement, CACC will prepare and submit to the Town Manager a proposed operating budget for the Scope of Services described herein for the time period beginning on the Effective date and ending on June 30, 2017 (the "Initial Budget"). The Town will review the Initial Budget and, at its sole and absolute discretion and in accordance with all local and State law requirements, determine and pay to CACC an Initial Management Fee to be agreed to by the Parties.
 - ii. **Subsequent Budget.** In addition to the Initial Budget, CACC will prepare and submit to the Town Manager a proposed operating budget for the Scope of Services for each subsequent fiscal year of the Initial Term on or before the Town's regular budget cycle but in no case later January 15, of each year. Town will review the proposed operating budget and, at its sole and absolute discretion and in accordance with all local and State law requirements, determine and pay to CACC an Annual Management Fee in an amount to be agreed to by the Parties.

b. Finances.

- i. CACC shall review, approve and prepare cash disbursement documents for payment of expenses incurred by CACC in performing its Scope of Services in accordance with Town's financial procedures.
- ii. CACC shall collect and maintain all financial and other records, whether hard copies or electronic, that relate to the Scope of Services and those records shall be available for the Town's inspection and review upon request.
- iii. CACC shall invoice the Town monthly for Management Fees and pre--- approved, reimbursable expenses.

6. Marketing and Use of Town Logos.

- a. The Town may permit CACC to use Town logos and other marketing materials ("Town Logos") during the Initial Term. CACC agrees that it will only use Town Logos in the form and manner approved by the Town from time to time, and will not use any other trademark or service mark in combination with Town Logos without the Town's prior written approval.
- b. CACC represents, warrants, and agrees that any use of the Town's Logos shall not be derogatory to, critical of, or otherwise reflect unfavorably on the Town or any of its officers, members, agents, employees, affiliates, or elected officials.
- c. Any logos, marketing materials, donor lists, surveys or research results, data bases, membership lists, strategic planning documents, fund raising plans and strategy documents, and/or any other documentation, in whatever form, developed by CACC while performing its obligations hereunder shall be and remain the property of the Town and not be used by CACC for any other purpose, either during the Initial Term or following the termination of this Agreement.

7. Insurance. CACC shall maintain workers compensation insurance on all of its employees according to North Carolina law, and will provide the Town with a valid Certificate of Insurance showing proof of said insurance. In addition, CACC will maintain a general liability policy with a minimum liability limit of \$1,000,000. The general liability policy shall include coverage for employee dishonesty, theft or embezzlement, and include director and officers' liability coverage. The Town shall be named as an additional insured on the policy and CACC will provide the Town with a Certificate of Insurance demonstrating the same.

8. Indemnification.

- a. CACC will indemnify and save harmless the Town, officers, employees and agents from and against all liabilities, claims, costs, damages, expenses, losses and attorney's fees arising from or alleged to have arisen from any act or omission of CACC, or any of its officers, directors, employees, volunteers, agents or assigns arising out of or in connection with the performance of this Agreement.

- b. To the extent permitted by law, Town will indemnify and hold harmless CACC, its officers, directors and employees from and against any and all liabilities, claims, costs, damages, expenses, losses and attorney's fees arising from or alleged to have arisen from any act or omission of Town or any of its officers, directors or employees arising out of or in connection with the performance of their duties under the Agreement.

9. **Termination.**

- a. Notwithstanding any provision herein, the Town and CACC reserve the right to terminate this Agreement with or without cause at any time. In the event the Town exercises its right to terminate this Agreement without cause it will pay any accrued Management Fee up to the date of Termination and:
 - i. If the Town terminates without cause during the first year of CACC's Executive Director's contract, the Town will pay an amount equal to the greater of A) the salary and benefits of the Executive Director for the remaining months of the Executive Director's initial year or B) an amount equal to six month's salary and benefits, whichever is greater.
 - ii. If the Town terminates without cause at any time after the first year of CACC's Executive Director's contract, the Town will pay an amount equal to 6 month's salary and benefits of the Executive Director.
 - b. This Agreement may be terminated immediately by the Town for "Cause." Cause shall include: (i) CACC's material breach of this Agreement after written notice from the Town is given and such breach is not cured to the satisfaction of the Town within a reasonable period of time (not greater than 30 days under the circumstances); (ii) CACC's negligence in the performance of services or nonperformance or mis--performance of such services; (iii) dishonesty, fraud, or misconduct by CACC with respect to its business affairs or the business or affairs of the Town and that in the reasonable judgment of the Town materially and adversely affects the operations or reputation of the Town; (iv) the failure of CACC to operate within applicable rules, regulations, statutes, or guidelines promulgated by local, state or federal governments and/or applicable professional bodies; (vi) CACC's violation of any federal, state or local law, rule and/or regulation pertaining to the management, and/or operation of the Center. In the event the Town terminates this Agreement for Cause, it shall pay to CACC management fees accrued up to the date of termination.
10. **Books and Records.** CACC shall maintain accurate books and records in connection with the performance of its obligations under this Agreement and shall retain such records for a period of at least six (6) years following the conclusion of each year of the Term. The Town shall have the right, upon reasonable prior written notice, to review and audit CACC's records as pertaining directly to its obligations under this Agreement.

11. **Cumulative Remedies; Waiver.** Except as otherwise and specifically contemplated by this Agreement, all rights and remedies of the Parties shall be cumulative and none shall exclude any other right or remedy at law and/or equity and said rights or remedies may be exercised and enforced concurrently. No waiver by the Parties of any covenant or condition of this Agreement shall constitute a waiver by the waiving Party of any subsequent breach of such covenant or condition or authorize the breach or non---observance on any other occasion of the same or any other covenant or condition of this Agreement.
12. **Effect of Agreement; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and to their respective permitted successors and assigns. Neither Party may assign its rights or delegate any of its duties under this Agreement to any other person or entity without the prior written consent of the other Party. All assignments of rights and delegation of duties are prohibited, whether voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. Any purported assignment or delegation in violation of this Section is null and void.
13. **Independent Contractor.** The relationship of the Town and CACC under this Agreement is that of independent contractors and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, joint venture, agency, partnership, or any other relationship other than that of independent contractors. The Parties acknowledge and agree that each is engaged in a separate and independent business and neither shall state, represent or imply any interest in or control over the business of the other.
14. **Partial Invalidity.** If any provision of this Agreement is deemed invalid or unenforceable pursuant to any statute, regulation or rule of law, the remaining provisions of this Agreement will remain valid and enforceable.
15. **Representations and Warranties of CACC.** CACC represents and warrants that (i) it is a corporation duly formed and existing under the laws of the State of North Carolina and has applied for its non---profit status; (ii) it has the full power and authority to enter into and perform this Agreement, (iii) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of CACC, (iv) this Agreement has been duly executed and delivered on behalf of CACC and is the valid and binding obligation of CACC enforceable against CACC in accordance with its terms, and (v) entering into and performance by CACC of this Agreement will not breach or violate the organizational documents of CACC or any provision of any indenture, mortgage, lien, lease, material agreement, order, judgment, or decree to which CACC is a party or by which its assets or properties are bound.
16. **E---Verify.** CACC shall comply with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes. Further, CACC shall require any subcontractor it utilizes to comply with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes.
17. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with

written confirmation of receipt), or (b) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate address set forth below (or to such other address as a Party may designate by notice to the other Party):

To Town:

Town of Cornelius
21455 Catawba Avenue
Cornelius, NC 28031

Attention: Town Manager

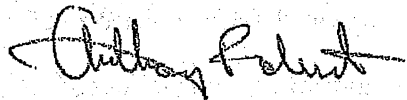
To CACC:

The Cornelius Arts and Community Center, Inc.
PO Box 1443
Cornelius, NC 28031

Attn: Board President

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or PDF shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Town of Cornelius



By: Anthony Roberts

Title: Town Manager

Cornelius Arts and Community Center, Inc.



By:

Title: *President - CACC*

Exhibit A

- Engage in cooperative budgeting with Town following the Town's schedule and process for approval.
- With Town's approval, hire, employ and manage an Executive Director who will be the primary contact between Town and CACC;
- Working with Town staff, create a business plan for the operation of the Center.
- Working with Town staff, create a plan for the implementation of arts/community programming which takes into account Town requirements.
- Conduct a fundraising study for purposes of determining the parameters of a successful fundraising campaign.
- Create an achievable fundraising campaign strategy.
- Implement fundraising campaign strategy.
- Work with Town to design the Center so that it can be constructed within the budget of available Town Bond funding and the reasonably achievable fundraising goal determined after the fundraising study.

AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 4th day of March in the year Two-Thousand Nineteen
(*In words, indicate day, month and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address and other information*)

Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

and the Architect:
(*Name, legal status, address and other information*)

C Design Inc.
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

for the following Project:
(*Name, location and detailed description*)

Cain Center for the Arts
Cornelius, North Carolina

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

See Exhibit B [Exhibit B will be the new, reconciled line item breakdown of building components/program]

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

See Exhibit A

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Construction Manager at Risk (CM@R)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None
(Paragraph Deleted)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Andrew Grant, ICMA-CM
Town Manager
Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD
[Town CACC construction committee; appoint Town Manager and one CACC designee to approve "minor" amendments]

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

(Paragraph Deleted)

<i>type</i>	<i>firm</i>	<i>contracted by:</i>
-------------	-------------	-----------------------

Site Surveying	RB Phar & Associates PA	Town of Cornelius
Geotechnical-Soils	APEX	Town of Cornelius
Phase I & II Environmental or Environmental Assessments	APEX	Town of Cornelius
Special Inspections and Material Testing	TBD	Town of Cornelius
Furniture Consultation and Specification	TBD	Town of Cornelius
Signage & Graphics Consultation and Specification	TBD	Town of Cornelius
Move Coordination & Management	TBD	Town of Cornelius
Telecommunications Consultation and Specification for Basic Building Systems	TBD	Town of Cornelius
Artwork Consultation and Specification	TBD	Town of Cornelius
Security/Access Control Consultation and Specification	TBD	Town of Cornelius
Building Systems Commissioning Services (Now be Required by Code)	TBD	Town of Cornelius

(Paragraph Deleted)

(Paragraph Deleted)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

Robert C. Crane, Jr., AIA
Managing Principal
C Design Inc
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

(Paragraph Deleted)

Init.

Design Architect	Holzman Moss Battino Architects	C Design
Landscape Architecture	Stewart	C Design
Civil	Stanley D Lindsey & Associates	C Design
Structural	Stanley D Lindsey & Associates	C Design
Plumbing	McCracken & Lopez, P.A.	C Design
Fire Protection	McCracken & Lopez, P.A.	C Design
HVAC	McCracken & Lopez, P.A.	C Design
Electrical	McCracken & Lopez, P.A.	C Design

(Paragraph Deleted)

(Paragraph Deleted)

§ 1.1.11.2 Consultants retained under Supplemental Services:

Consultants listed below in addition to the Consultants in Section 1.1.11.1

Theater Design (includes fixed seating)	Theater Consultants Collaborative	C Design
Acoustical/Audio Visual Design	Jaffee Holden	C Design
Cost Estimating	RM Rutherford & Associates	C Design

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Exhibit A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00) for each occurrence and four million dollars (\$ 4,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

Init.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and one million dollars (\$1,000,00.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 The initial schedule for the performance of the Architect's services is set forth within Exhibit A. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in

terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to CM @ Risk;
- .2 attend pre-bid conference organized by CM@Risk;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda

(Paragraph Deleted)

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs Deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

(Table Deleted)

See Exhibit A

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Exhibit A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

See Exhibit A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner after completion of schematic design;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; except as set forth on Exhibit A
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 thirty-five (35) visits to the site during the scheduled construction phase

- .3 one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 one (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. For additional clarity, the Cost of the Work is intended to be the amount of the GMP in CM@ Risk contract, as may be modified by the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 [intentionally deleted]

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 [intentionally omitted; See Exhibit C]

§ 7.3 [intentionally omitted; See Exhibit C]

§ 7.3.1 [intentionally omitted; See Exhibit C]

§ 7.4 [intentionally omitted; See Exhibit C]

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

Init.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred.. See Exhibit A for additional specificity and clarity.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: none

(Paragraphs Deleted)

Init.

| (Paragraph Deleted)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of

compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

See Exhibit A

.2 Percentage Basis

(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other

(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

See Exhibit A

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0%), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

See Exhibit A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

(Table Deleted)

See Exhibit A

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit A

(Table Deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: See Exhibit A
(Paragraph Deleted)

(Paragraphs Deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants at direct cost of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

See Exhibit A

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

See Exhibit A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

N/A

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

[X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Basic Architectural & Supplemental Services proposal dated March 4, 2019

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Andrew Grant, Cornelius Town Manager
(Printed name and title)

ARCHITECT (Signature)

Robert C. Crane, Jr, AIA, Managing Principal
(Printed name, title, and license number, if required)

Init.

Init.

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING:** This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:42:31 ET on 02/22/2019 under Order No. 9139692897 which expires on 04/09/2019, and is not for resale.
User Notes: (3B9ADA56)

Additions and Deletions Report for **AIA® Document B101™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:42:31 ET on 02/22/2019.

PAGE 1

AGREEMENT made as of the 4th day of March in the year Two-Thousand Nineteen

...

Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

...

C Design Inc.
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

...

Cain Center for the Arts
Cornelius, North Carolina

PAGE 2

TABLE OF ARTICLES

...

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

...

See Exhibit A

...

See Exhibit A

...

(Provide total and, if known, a line item ~~breakdown~~ breakdown.)

...

See Exhibit B [Exhibit B will be the new, reconciled line item breakdown of building components/program]

PAGE 3

See Exhibit A

...

TBD

...

TBD

...

TBD

...

Construction Manager at Risk (CM@R)

...

None

...

Andrew Grant, ICMA-CM
Town Manager
Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

...

TBD

...

[Town CACC construction committee; appoint Town Manager and one CACC designee to approve "minor" amendments]

...

.4—Geotechnical Engineer:

<u>type</u>	<u>firm</u>	<u>contracted by:</u>
<u>Site Surveying</u>	<u>RB Phar & Associates PA</u>	<u>Town of Cornelius</u>
<u>Geotechnical-Soils</u>	<u>APEX</u>	<u>Town of Cornelius</u>
<u>Phase I & II Environmental or Environmental Assessments</u>	<u>APEX</u>	<u>Town of Cornelius</u>
<u>Special Inspections and Material Testing</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Furniture Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Signage & Graphics Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Move Coordination & Management</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Telecommunications Consultation and Specification for Basic Building Systems</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Artwork Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Security/Access Control Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Building Systems Commissioning Services (Now be Required by Code)</u>	<u>TBD</u>	<u>Town of Cornelius</u>

...

.2— Civil Engineer:

...

.3— Other, if any:

...

(List any other consultants and contractors retained by the Owner.)

...

Robert C. Crane, Jr., AIA
Managing Principal
C Design Inc
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

...

.1— Structural Engineer:

PAGE 5

<u>Design Architect</u>	<u>Holzman</u> <u>Moss Battino Architects</u>	<u>C</u> <u>Design</u>
<u>Landscape Architecture</u>	<u>Stewart</u>	<u>C</u> <u>Design</u>
<u>Civil</u>	<u>Stanley D Lindsey &</u> <u>Associates</u>	<u>C</u> <u>Design</u>
<u>Structural</u>	<u>Stanley D Lindsey &</u> <u>Associates</u>	<u>C</u> <u>Design</u>
<u>Plumbing</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>Fire Protection</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>HVAC</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>Electrical</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>

...

~~.2 Mechanical Engineer:~~

...

~~.3 Electrical Engineer:~~

...

§ 1.1.11.2 Consultants retained under Supplemental Services:

...

Consultants listed below in addition to the Consultants in Section 1.1.11.1

...

<u>Theater Design (includes fixed seating)</u>	<u>Theater Consultants</u> <u>Collaborative</u>	<u>C</u> <u>Design</u>
<u>Acoustical/Audio Visual Design</u>	<u>Jaffee Holden</u>	<u>C</u> <u>Design</u>
<u>Cost Estimating</u>	<u>RM Rutherford & Associates</u>	<u>C</u> <u>Design</u>

PAGE 6

See Exhibit A

...

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00) for each occurrence and four million dollars (\$ 4,000,000.00) in the aggregate for bodily injury and property damage.

...

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 7

§ 2.5.5 Employers' Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit~~ one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and one million dollars (\$1,000,000.00) policy limit.

...

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

...

§ 3.1.3 ~~As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a~~ The initial schedule for the performance of the Architect's ~~services.~~ services is set forth within Exhibit A. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

PAGE 9

.1 facilitating the distribution of Bidding Documents to ~~prospective bidders;~~ CM @ Risk;

...

.2 ~~organizing and conducting a pre-bid conference for prospective bidders;~~ attend pre-bid conference organized by CM@Risk;

...

.3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of ~~addenda; and~~ addenda

...

.4 ~~organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

...

§ 3.5.3 Negotiated Proposals

...

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

...

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:~~

...

~~.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~

...

~~.2 organizing and participating in selection interviews with prospective contractors;~~

...

~~.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~

...

~~.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

...

~~§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

PAGE 12

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	

§ 4.1.1.9	Landscape design	
§ 4.1.1.10	Architectural interior design	
§ 4.1.1.11	Value analysis	
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13	On-site project representation	
§ 4.1.1.14	Conformed documents for construction	
§ 4.1.1.15	As designed record drawings	
§ 4.1.1.16	As constructed record drawings	
§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect's coordination of the Owner's consultants	
§ 4.1.1.21	Telecommunications/data design	
§ 4.1.1.22	Security evaluation and planning	
§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Fast-track design services	
§ 4.1.1.26	Multiple bid packages	
§ 4.1.1.27	Historic preservation	
§ 4.1.1.28	Furniture, furnishings, and equipment design	
§ 4.1.1.29	Other services provided by specialty Consultants	
§ 4.1.1.30	Other Supplemental Services	

...

See Exhibit A

...

See Exhibit A

...

See Exhibit A

PAGE 13

- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; Owner after completion of schematic design;

...

- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; except as set forth on Exhibit A

...

- .1 ~~two~~ (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

...

- .2 ~~(-) visits to the site by the Architect during construction~~ thirty-five (35) visits to the site during the scheduled construction phase

PAGE 14

- .3 one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

...

- .4 one (1) inspections for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~(-)forty-eight (48)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 15

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. For additional clarity, the Cost of the Work is intended to be the amount of the GMP in CM@ Risk contract, as may be modified by the Owner.

...

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.[intentionally deleted]

PAGE 16

- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to ~~reduce~~reduce the Cost of the Work; or,

...

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.[intentionally omitted; See Exhibit C]

...

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the

Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.[intentionally omitted; See Exhibit C]

...

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.[intentionally omitted; See Exhibit C]

...

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.[intentionally omitted; See Exhibit C]

...

§ 7.5 Except as otherwise stated in Section 7.3, the ~~The~~ provisions of this Article 7 shall survive the termination of this Agreement.

PAGE 17

☒ Litigation in a court of competent jurisdiction

PAGE 18

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements incurred.. See Exhibit A for additional specificity and clarity.

...

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: none

...

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

...

~~.1~~ Termination Fee:

PAGE 19

~~.2~~ Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

PAGE 20

(Insert amount)

...

See Exhibit A

...

See Exhibit A

...

See Exhibit A

...

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0%), or as follows:

...

See Exhibit A

...

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Procurement Phase	percent (%)
Construction Phase	percent (%)
<hr/>		
Total Basic Compensation	one hundred percent (100 %)

...

See Exhibit A

PAGE 21

See Exhibit A

...

Employee or Category

Rate (\$0.00)

...

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: See Exhibit A

...

~~.1—Transportation and authorized out-of-town travel and subsistence;~~

...

~~:~~

...

~~.2—Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~

...

~~.3—Permitting and other fees required by authorities having jurisdiction over the Project;~~

...

~~.4—Printing, reproductions, plots, and standard form documents;~~

...

~~.5—Postage, handling, and delivery;~~

...

~~.6—Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

...

~~.7—Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~

...

~~.8—If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~

...

~~.9—All taxes levied on professional services and on reimbursable expenses;~~

...

~~.10 Site office expenses;~~

...

~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~

...

~~.12 Other similar Project-related expenditures.~~

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants ~~plus percent (—%)~~ at direct cost of the expenses incurred.

...

N/A

...

§ 11.10.1.1 An initial payment of zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

PAGE 22

~~%~~ See Exhibit A

...

See Exhibit A

...

~~.2 AIA Document E203™-2013, E203™-2013, Building Information Modeling and Digital Data Exhibit,~~
dated as indicated below:

...

(Insert the date of the E203-2013 incorporated into this agreement.)

...

N/A

...

[X] Other Exhibits incorporated into this Agreement:

...

Exhibit A – Basic Architectural & Supplemental Services proposal dated March 4, 2019

...

Andrew Grant, Cornelius Town Manager

Robert C. Crane, Jr, AIA, Managing Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:42:31 ET on 02/22/2019 under Order No. 9139692897 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES AGREEMENT

THIS PRE-CONSTRUCTION SERVICES AGREEMENT (the "Agreement"), made to be effective _____, 2019 for Cain Center for the Arts (the "Project") by and between **Rodgers Builders, Inc.** (the "Construction Manager at Risk" or "CM") and the **Town of Cornelius** (the "Owner").

WITNESSETH:

Whereas the Owner has published a Request for Qualifications dated August 17, 2018 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 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 and the Proposal Letter ("Letter Proposal") attached hereto and incorporated by reference as Exhibit B (the "Pre-Construction Services"). The agreed upon form for the Construction Management at Risk Contract (to be agreed to and executed after agreement between Owner and CM on the amount of the GMP) is attached hereto as Exhibit C. It is
2. The Owner will compensate the Construction Manager at Risk for Pre-Construction Services in the amount of **Forty Thousand (\$40,000)** payable as follows: **See Letter Proposal**. Construction Manager at Risk shall invoice as follows:
 - \$10,000 after completion of Schematic Design
 - \$10,000 after completion of Design Development
 - \$20,000 after completion of Construction Documents and determination of GMP
3. Owner and CM acknowledge the project consist of pre-construction and construction of the Cain Center for the Arts. The Cain Center for the Arts will be approximately 30,500 square feet and will include a 400-seat theater, stage, backstage elements, two (2) classrooms, gallery, offices, and other building facilities. The project to be constructed has a construction budget of approximately \$16,848,140.
4. 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.

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:

By: _____

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

Attest: (Corporation)

By: _____

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

(CORPORATE SEAL)

TOWN OF CORNELIUS:

By: _____
Title: Town Manager

This disbursement has been approved
as required by the Local Government
Budget and Fiscal Control Act.

By: _____
Title: Finance Director

DRAFT

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 value analysis at Schematic Design to ensure the Schematic Design is likely constructible within the project budget prior to moving to the Design Development.
 - d. 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. 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)

- a. Upon agreement of the Owner and CM, the GMP may be submitted by the CM 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. The CM will develop and provide to the Owner in writing a GMP which will 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. 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.
- b. In the event that the GMP exceeds the project construction budget, the Owner reserves the right to direct the CM to 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.

- c. Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM shall execute a contract (the "GMP Agreement") 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 and shall include a CM Services Fee which shall be 3% of Cost of the Work based on the final GMP and a General Conditions Fee of \$58,430 per month for the items listed in the Letter Proposal.

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 and associated final payment.
- 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.

11. Principal Trade and Specialty Contractor Pre-Qualification

All Principal Trade and Specialty Contractors shall be pre-qualified by the CM and selected in accordance with N.C.G.S. 143-128.1.

Exhibit C

Planning Project Schedule

Milestone 1 - Schematic Design (100% Cash on hand)

Milestone 2 - Design Development (100% Cash on hand)

Milestone 3 - Construction Drawings (100% Cash on hand)

Milestone 4 - Commence Construction Bids/Establish Guaranteed Maximum Price (100% Pledges; 60% Cash on hand) (Note: Sitework can begin before Milestone 4 if 100% cash on hand).

Milestone 5 – Commence Construction and contact LGC to indicate project fundraising is nearing the 85% threshold required to sell the bonds (115% outstanding pledges; 80% Cash on hand).

Milestone 6 – Obtain Local Government Commission permission to issue bonds (115% outstanding pledges; 85% Cash on hand).

Milestone 7 - Issue bonds as project cashflow is needed.

Notes:

% Pledges refers to % of fundraising pledges received by CACC (Cornelius Arts & Community Center, Inc.) relative to the applicable milestone task cost

% Cash on hand refers to % of fundraised cash on hand received by CACC relative to the applicable milestone task cost

EXHIBIT D**Payment Schedule – CACC to Town**

Milestone (estimated phases, subject to change)	Estimated duration until next phase	Estimated Amount from CACC that is to be transferred from CACC to Town prior to the associated Milestone occurring (subject to change based on actual amounts, inclusive of any agreed upon contingency funding and reimbursable expenses)	Comment
Signing Architect Contract (Architect)/Commencement of Schematic Design	13 weeks	[Schematic Design phase(\$270,300 + 1/3 of design contingency (\$40,000)] \$310,300	Note: Town will have to encumber full amount of architect contract transferring fund balance to capital project budget
Signing of CM@R Pre- Construction Construction (CM@R)/Commencement of Schematic Design		[Amount of preconstruction services for schematic design phase(\$10,000 +1/3 of CM estimated reimbursable (\$1,667] \$11,667.	Note: Town will have to encumber full amount of CM@R contract transferring fund balance to capital project budget
Commencement of Design Development Drawings(Architect & CM@R)	17 weeks	[Design Development phase(\$360,400) + CM@R Pre- Construction Fee (\$10,000) + 1/3 design contingency (\$40,000) + 1/3 of CM estimated reimbursable(1,667] (Architect & CM@R) \$412,067.	
Commencement of Construction Drawings(Architect & CM@R)	22 weeks	[Construction Drawing phase (\$720,800) + CM@R Pre- Construction Fee (\$20,000) + 1/3 design	

		contingency(40,000) + 1/3 of estimated CM reimbursable(\$1,666)] (Architect & CM@R) \$782,466	
Permitting and Bidding (Architect)	16 weeks	Permitting & Bidding (Architect only \$90,100) \$90,100	
Construction Administration (Architect)	72 weeks	Construction Administration (Architect only \$360,400)\$360,400	
Commencement of Construction; site work and building construction		[80% of estimated amount of Construction, including contingency less \$4,000,000 Town contribution] \$11,706,400	Note: Town funds its \$4,000,000 during this phase (upon LGC approval with 85% of estimated amount of construction costs provided by CACC work less \$4,000,000 Town contribution=\$12,438,050); Town will also have to encumber 20% estimated amount of construction costs work less \$4,000,000 Town contribution
Additional fundraising post-signing of GMP contract by Town in order to complete fundraising goals.		[20% estimated amount of construction work less \$4,000,000 Town contribution] \$2,926,600	Note: CACC to pay to Town as fundraising dollars collected.
Other Contracts	TBD	TBD	TBD

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Julie Niswonger, Finance Director

Action Requested:


In another item on tonight's agenda, the Town Board is being asked to approve a contract with an Architect to design the Cain Center for the Arts and a contract with a builder for Construction Manager at Risk preconstruction design services. The attached capital project ordinance provides budget for the design and preconstruction of the building for the Cain Center for the Arts with the revenue source identified as a transfer from general fund balance to the Cain Center for the Arts Capital Project Fund for \$1,967,000. However, at the beginning of each phase of design, the Cain Center for the Arts will pay the Town the contract amounts set forth in the Management Services Agreement Amendment #1.

The reason for this capital project ordinance is the project will continue for multiple fiscal years.

Manager's Recommendation:

Approve ordinance.

ATTACHMENTS:

Name:	Description:	Type:
 Cain_Center_for_the_Arts_CPO.pdf	Capital Project Ordinance Cain Center for the Arts	Cover Memo

**A CAPITAL PROJECT ORDINANCE TO AUTHORIZE THE FUNDING OF
THE CAIN CENTER FOR THE ARTS**

WHEREAS, it has been determined by the Board of Commissioners that in order to meet the demands of our growing community, it is necessary to provide performing arts and artistic educational facilities while remaining vigilant in their duty to control costs with such a facility; and

WHEREAS, the Cain Center for the Arts has been identified to provide performing arts and artistic educational facilities; and

WHEREAS, the Cain Center for the Arts will provide key theater and performing arts experiences to the Town of Cornelius; and

WHEREAS, in accordance with North Carolina General Statute §159-13.2, the Town is authorized to establish a balanced project ordinance for projects involving the construction/acquisition of a capital asset.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Cornelius that a Project Ordinance is hereby established for the Cain Center for the Arts with the following schedule of appropriations and expenditures:

REVENUES

ORIGINAL

Transfer from General Fund	<u>\$1,967,000</u>
----------------------------	--------------------

<i>Total</i>	<u><u>\$1,967,000</u></u>
---------------------	----------------------------------

EXPENDITURES

Cain Center for the Arts Design/Pre-construction	<u>\$1,967,000</u>
--	--------------------

<i>Total</i>	<u><u>\$1,967,000</u></u>
---------------------	----------------------------------

BE IT FURTHER ORDAINED that the Town Manager is authorized to transfer amounts among the aforementioned line items at his discretion as he deems necessary necessitating further action by the Board only to change the total amount of the budget.

The Town Manager or his designee is hereby authorized to expend funds in accordance with this Project Ordinance necessary to complete the project. Town Manager is hereby authorized to approve design services contract(s) scope changes that are less than \$35,000 and construction contract(s) scope changes that are less than \$75,000. Contract(s) scope changes that exceed these thresholds must be approved by the Board of Commissioners of the Town of Cornelius.

Adopted this 4th day of March, 2019.

Woodrow T. Washam Jr., Mayor

SEAL

ATTEST:

APPROVED AS TO FORM:

Lori A. Harrell
Town Clerk

Karen Wolter
Town Attorney

REQUEST FOR BOARD ACTION

 **Print**

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners
From: Tyler Beardsley, Assistant Town Manager

Action Requested:





In May of 2017, the Town and CACC sent out an Request for Qualifications for architectural services for the Cain Center for the Arts. From this RFQ, the Town and CACC hired Architect Rob Crane of C-Design, Inc. to conduct a pre-design report for the Cain Center for the Arts. This pre-design report was completed in May of 2018.

The Town and CACC have engaged and negotiated a contract with C-Design, Inc. to fully design the Cain Center for the Arts. C-Design's services in this contract include Schematic Design, Design Development, Construction Drawings, Bidding & Permitting, and Construction Administration. The current program for the Cain Center of the Arts is a 30,495 Square Foot building with a 400 seat theater, multiple classrooms, gallery space, and theater support functions with a construction budget of \$16,848,140. The total architect contract amount is \$1,802,000. This includes reimbursable expenses and numerous sub-consultants that specialize in theaters.

Manager's Recommendation:

Approve the contract and authorize the Town Manager and Town Attorney to finalize the terms and conditions and execute it.

ATTACHMENTS:

Name:	Description:	Type:
 AIA_Architect_Contract.pdf	Architect AIA Contract	Backup Material
 EXHIBIT_A_(RCC_Revisions_03-04-19).pdf	Exhibit A-Scoping Letter	Cover Memo
 EXHIBIT_B_(RCC_Revisions_03-04-19).pdf	Exhibit B-Program Outline	Cover Memo
 EXHIBIT_C_(RCC_Revisions_03-04-19).pdf	Exhibit C-Terms & Conditions	Cover Memo

AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 4th day of March in the year Two-Thousand Nineteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

and the Architect:
(Name, legal status, address and other information)

C Design Inc.
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

for the following Project:
(Name, location and detailed description)

Cain Center for the Arts
Cornelius, North Carolina

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

See Exhibit B [Exhibit B will be the new, reconciled line item breakdown of building components/program]

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

See Exhibit A

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Construction Manager at Risk (CM@R)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None
(Paragraph Deleted)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Andrew Grant, ICMA-CM
Town Manager
Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD
[Town CACC construction committee; appoint Town Manager and one CACC designee to approve "minor" amendments]

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

(Paragraph Deleted)

<i>type</i>	<i>firm</i>	<i>contracted by:</i>
-------------	-------------	-----------------------

Site Surveying	RB Phar & Associates PA	Town of Cornelius
Geotechnical-Soils	APEX	Town of Cornelius
Phase I & II Environmental or Environmental Assessments	APEX	Town of Cornelius
Special Inspections and Material Testing	TBD	Town of Cornelius
Furniture Consultation and Specification	TBD	Town of Cornelius
Signage & Graphics Consultation and Specification	TBD	Town of Cornelius
Move Coordination & Management	TBD	Town of Cornelius
Telecommunications Consultation and Specification for Basic Building Systems	TBD	Town of Cornelius
Artwork Consultation and Specification	TBD	Town of Cornelius
Security/Access Control Consultation and Specification	TBD	Town of Cornelius
Building Systems Commissioning Services (Now be Required by Code)	TBD	Town of Cornelius

(Paragraph Deleted)

(Paragraph Deleted)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

Robert C. Crane, Jr., AIA
Managing Principal
C Design Inc
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

(Paragraph Deleted)

Init.

Design Architect	Holzman Moss Battino Architects	C Design
Landscape Architecture	Stewart	C Design
Civil	Stanley D Lindsey & Associates	C Design
Structural	Stanley D Lindsey & Associates	C Design
Plumbing	McCracken & Lopez, P.A.	C Design
Fire Protection	McCracken & Lopez, P.A.	C Design
HVAC	McCracken & Lopez, P.A.	C Design
Electrical	McCracken & Lopez, P.A.	C Design

(Paragraph Deleted)

(Paragraph Deleted)

§ 1.1.11.2 Consultants retained under Supplemental Services:

Consultants listed below in addition to the Consultants in Section 1.1.11.1

Theater Design (includes fixed seating)	Theater Consultants Collaborative	C Design
Acoustical/Audio Visual Design	Jaffee Holden	C Design
Cost Estimating	RM Rutherford & Associates	C Design

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Exhibit A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00) for each occurrence and four million dollars (\$ 4,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

Init.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and one million dollars (\$1,000,00.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 The initial schedule for the performance of the Architect's services is set forth within Exhibit A. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in

terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to CM @ Risk;
- .2 attend pre-bid conference organized by CM@Risk;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda

(Paragraph Deleted)

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs Deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

Init.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

(Table Deleted)

See Exhibit A

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Exhibit A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

See Exhibit A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner after completion of schematic design;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; except as set forth on Exhibit A
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 thirty-five (35) visits to the site during the scheduled construction phase

- .3 one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 one (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. For additional clarity, the Cost of the Work is intended to be the amount of the GMP in CM@ Risk contract, as may be modified by the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 [intentionally deleted]

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 [intentionally omitted; See Exhibit C]

§ 7.3 [intentionally omitted; See Exhibit C]

§ 7.3.1 [intentionally omitted; See Exhibit C]

§ 7.4 [intentionally omitted; See Exhibit C]

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred.. See Exhibit A for additional specificity and clarity.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: none

(Paragraphs Deleted)

Init.

| (Paragraph Deleted)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of

compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

See Exhibit A

.2 Percentage Basis

(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other

(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

See Exhibit A

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0%), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

See Exhibit A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

(Table Deleted)

See Exhibit A

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit A

(Table Deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: See Exhibit A
(Paragraph Deleted)

(Paragraphs Deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants at direct cost of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

See Exhibit A

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

See Exhibit A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

N/A

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

[X] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Basic Architectural & Supplemental Services proposal dated March 4, 2019

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Andrew Grant, Cornelius Town Manager
(Printed name and title)

ARCHITECT (Signature)

Robert C. Crane, Jr, AIA, Managing Principal
(Printed name, title, and license number, if required)

Init.

Init.

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING:** This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:42:31 ET on 02/22/2019 under Order No. 9139692897 which expires on 04/09/2019, and is not for resale.
User Notes: (3B9ADA56)

Additions and Deletions Report for **AIA® Document B101™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:42:31 ET on 02/22/2019.

PAGE 1

AGREEMENT made as of the 4th day of March in the year Two-Thousand Nineteen

...

Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

...

C Design Inc.
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

...

Cain Center for the Arts
Cornelius, North Carolina

PAGE 2

TABLE OF ARTICLES

...

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

...

See Exhibit A

...

See Exhibit A

...

(Provide total and, if known, a line item ~~breakdown~~ breakdown.)

...

See Exhibit B [Exhibit B will be the new, reconciled line item breakdown of building components/program]

PAGE 3

See Exhibit A

...

TBD

...

TBD

...

TBD

...

Construction Manager at Risk (CM@R)

...

None

...

Andrew Grant, ICMA-CM
Town Manager
Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

...

TBD

...

[Town CACC construction committee; appoint Town Manager and one CACC designee to approve "minor" amendments]

...

.4—Geotechnical Engineer:

<u>type</u>	<u>firm</u>	<u>contracted by:</u>
<u>Site Surveying</u>	<u>RB Phar & Associates PA</u>	<u>Town of Cornelius</u>
<u>Geotechnical-Soils</u>	<u>APEX</u>	<u>Town of Cornelius</u>
<u>Phase I & II Environmental or Environmental Assessments</u>	<u>APEX</u>	<u>Town of Cornelius</u>
<u>Special Inspections and Material Testing</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Furniture Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Signage & Graphics Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Move Coordination & Management</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Telecommunications Consultation and Specification for Basic Building Systems</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Artwork Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Security/Access Control Consultation and Specification</u>	<u>TBD</u>	<u>Town of Cornelius</u>
<u>Building Systems Commissioning Services (Now be Required by Code)</u>	<u>TBD</u>	<u>Town of Cornelius</u>

...

.2— Civil Engineer:

...

.3— Other, if any:

...

(List any other consultants and contractors retained by the Owner.)

...

Robert C. Crane, Jr., AIA
Managing Principal
C Design Inc
1000 West Morehead Street
Suite 170
Charlotte, NC 28208

...

.1— Structural Engineer:

PAGE 5

<u>Design Architect</u>	<u>Holzman</u> <u>Moss Battino Architects</u>	<u>C</u> <u>Design</u>
<u>Landscape Architecture</u>	<u>Stewart</u>	<u>C</u> <u>Design</u>
<u>Civil</u>	<u>Stanley D Lindsey &</u> <u>Associates</u>	<u>C</u> <u>Design</u>
<u>Structural</u>	<u>Stanley D Lindsey &</u> <u>Associates</u>	<u>C</u> <u>Design</u>
<u>Plumbing</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>Fire Protection</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>HVAC</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>
<u>Electrical</u>	<u>McCracken & Lopez, P.A.</u>	<u>C</u> <u>Design</u>

...

~~.2 Mechanical Engineer:~~

...

~~.3 Electrical Engineer:~~

...

§ 1.1.11.2 Consultants retained under Supplemental Services:

...

Consultants listed below in addition to the Consultants in Section 1.1.11.1

...

<u>Theater Design (includes fixed seating)</u>	<u>Theater Consultants</u> <u>Collaborative</u>	<u>C</u> <u>Design</u>
<u>Acoustical/Audio Visual Design</u>	<u>Jaffee Holden</u>	<u>C</u> <u>Design</u>
<u>Cost Estimating</u>	<u>RM Rutherford & Associates</u>	<u>C</u> <u>Design</u>

PAGE 6

See Exhibit A

...

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000.00) for each occurrence and four million dollars (\$ 4,000,000.00) in the aggregate for bodily injury and property damage.

...

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 7

§ 2.5.5 ~~Employers' Liability~~ Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit~~ one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and one million dollars (\$1,000,000.00) policy limit.

...

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

...

§ 3.1.3 ~~As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a~~ The initial schedule for the performance of the Architect's services. services is set forth within Exhibit A. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

PAGE 9

.1 ~~facilitating the distribution of Bidding Documents to prospective bidders;~~ CM @ Risk;

...

.2 ~~organizing and conducting a pre-bid conference for prospective bidders;~~ attend pre-bid conference organized by CM@Risk;

...

.3 ~~preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and;~~ addenda

...

.4 ~~organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

...

§ 3.5.3 Negotiated Proposals

...

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

...

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:~~

...

~~.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~

...

~~.2 organizing and participating in selection interviews with prospective contractors;~~

...

~~.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~

...

~~.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

...

~~§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

PAGE 12

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	

§ 4.1.1.9	Landscape design	
§ 4.1.1.10	Architectural interior design	
§ 4.1.1.11	Value analysis	
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13	On-site project representation	
§ 4.1.1.14	Conformed documents for construction	
§ 4.1.1.15	As designed record drawings	
§ 4.1.1.16	As constructed record drawings	
§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect's coordination of the Owner's consultants	
§ 4.1.1.21	Telecommunications/data design	
§ 4.1.1.22	Security evaluation and planning	
§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Fast-track design services	
§ 4.1.1.26	Multiple bid packages	
§ 4.1.1.27	Historic preservation	
§ 4.1.1.28	Furniture, furnishings, and equipment design	
§ 4.1.1.29	Other services provided by specialty Consultants	
§ 4.1.1.30	Other Supplemental Services	

...

See Exhibit A

...

See Exhibit A

...

See Exhibit A

PAGE 13

- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; Owner after completion of schematic design;

...

- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; except as set forth on Exhibit A

...

- .1 ~~two~~ (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

...

- .2 ~~(-) visits to the site by the Architect during construction~~ thirty-five (35) visits to the site during the scheduled construction phase

PAGE 14

- .3 one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

...

- .4 one (1) inspections for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~(-)forty-eight (48)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 15

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. For additional clarity, the Cost of the Work is intended to be the amount of the GMP in CM@ Risk contract, as may be modified by the Owner.

...

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.[intentionally deleted]

PAGE 16

- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to ~~reduce~~reduce the Cost of the Work; or,

...

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.[intentionally omitted; See Exhibit C]

...

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the

Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.[intentionally omitted; See Exhibit C]

...

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.[intentionally omitted; See Exhibit C]

...

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.[intentionally omitted; See Exhibit C]

...

§ 7.5 Except as otherwise stated in Section 7.3, the ~~The~~ provisions of this Article 7 shall survive the termination of this Agreement.

PAGE 17

☒ Litigation in a court of competent jurisdiction

PAGE 18

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements incurred.. See Exhibit A for additional specificity and clarity.

...

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: none

...

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

...

~~.1—Termination Fee:~~

PAGE 19

~~.2—Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

PAGE 20

(Insert amount)

...

See Exhibit A

...

See Exhibit A

...

See Exhibit A

...

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0%), or as follows:

...

See Exhibit A

...

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Procurement Phase	percent (%)
Construction Phase	percent (%)
<hr/>		
Total Basic Compensation	one hundred percent (100 %)

...

See Exhibit A

PAGE 21

See Exhibit A

...

Employee or Category

Rate (\$0.00)

...

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows: See Exhibit A

...

~~.1—Transportation and authorized out-of-town travel and subsistence;~~

...

~~:~~

...

~~.2—Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~

...

~~.3—Permitting and other fees required by authorities having jurisdiction over the Project;~~

...

~~.4—Printing, reproductions, plots, and standard form documents;~~

...

~~.5—Postage, handling, and delivery;~~

...

~~.6—Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

...

~~.7—Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~

...

~~.8—If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~

...

~~.9—All taxes levied on professional services and on reimbursable expenses;~~

...

~~.10 Site office expenses;~~

...

~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~

...

~~.12 Other similar Project-related expenditures.~~

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants ~~plus percent (—%)~~ at direct cost of the expenses incurred.

...

N/A

...

§ 11.10.1.1 An initial payment of zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

PAGE 22

~~%~~ See Exhibit A

...

See Exhibit A

...

~~.2 AIA Document E203™-2013, E203™-2013, Building Information Modeling and Digital Data Exhibit,~~
dated as indicated below:

...

(Insert the date of the E203-2013 incorporated into this agreement.)

...

N/A

...

[X] Other Exhibits incorporated into this Agreement:

...

Exhibit A – Basic Architectural & Supplemental Services proposal dated March 4, 2019

...

Andrew Grant, Cornelius Town Manager

Robert C. Crane, Jr, AIA, Managing Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:42:31 ET on 02/22/2019 under Order No. 9139692897 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



March 4, 2019

Andrew Grant, ICMA-CM
Town Manager
Town of Cornelius
21445 Catawba Avenue
PO Box 399
Cornelius, NC 28031

Reference: **BASIC ARCHITECTURAL AND SUPPLEMENTAL SERVICES PROPOSAL
Cain Center For The Arts
Cornelius, North Carolina**

Dear Mr. Grant:

C Design, the “Architect”, would like to thank you for the opportunity to provide Basic Architectural and Supplemental Services to the Town of Cornelius, the “Owner”. The scope of services and corresponding fees are for the design and construction of the Cain Center for the Arts located at the intersection of Catawba Ave and Milling Way in downtown Cornelius, North Carolina.

The basis of the project is the Pre -Design Report dated May 8, 2018 (the “Pre-Design Report”) and the current adjusted program of 30,495 Square Feet, Exhibit B. The project to be constructed has a construction cost budget of \$16,848,140 as stipulated by the Owner, and the professional fees set forth herein are based on this cost.

A Construction Manager at Risk (CM@R) delivery model will be used for the design and construction of the project. The CM@R has reviewed the Pre-Design Report, current adjusted program and the budget.

The parties acknowledge and agree the program and budget will be further refined and reconciled during the Schematic Design phase of work in conjunction with the Construction Manager.

C Design Inc. will be the Architect-of-Record. Holzman Moss Bottino Architecture will be the “Design Architect” providing specialty design services for art and performance centers. Consultant services that are separately retained by Town are listed in the Section 1.19. Consultant services included in Basic Services are listed in Section 1.1.11.1. Consultant service included in Supplemental Services are listed in Section 1.1.11.2.

The Architect’s Scope and Fees for Basic Architectural Services are as follows:

SCOPE AND FEES FOR BASIC ARCHITECTURAL SERVICES

SCOPE

1. Schematic Design Phase Services (15% complete)

- Six (6) Owner Coordination Meetings
- Reconciliation of Pre-Design Report with current program & project budget
- One (1) Fund Raising Trip from the Pre-Design Agreement
- Preliminary Code Review
- Coordination with Engineering Team
- Development of a Schematic Design
- Basic Floor & Reflected Ceiling Plans

- Basic Elevations and Building Sections
- Basic Wall Sections
- Basic Exterior/Interior Finish Selection
- Basic Theater Plans and Sections
- Basic computer 3-D renderings
- All Documents shall be Delivered in Digital & Print Format
- All Digital Documents shall be Delivered in Color & B&W at 300DPI
- Construction Cost Estimating & Reconciliation with CM

2. Design Development Phase Services (35% Complete)

- Six (6) Owner Coordination Meetings
- Development of computer 3-D renderings
- Code Review Meeting with Local Authority
- Development of Schematic Design approved by Owner
- Floor & Reflected Ceiling Plans
- Elevations and Building Sections
- Wall Sections
- Exterior/Interior Finish Selection
- Theater Plans and Sections
- Computer 3-D renderings
- All Documents shall be Delivered in Digital & Print Format
- All Digital Documents shall be Delivered in Color & B&W at 300DPI
- Construction Cost Estimating & Reconciliation with CM

3. Construction Documents Phase Services (75% Complete)

- Six (6) Owner Coordination Meetings
- Development of Design Documents for Bidding
- Interior and Exterior Details
- Technical Specifications
- Project Manual
- Review of Substitution Requests from CM
- All Documents shall be Delivered in Digital & Print Format
- All Digital Documents shall be Delivered in Color & B&W at 300DPI
- Signed and Sealed Architectural Documents
- Signed and Sealed Engineering Documents

4. Procurement Phase Services (Permitting & Bidding) (80% Complete)

- Submittal of Documents to Local Authority for Plan Review
- Permitting Process Clarifications
- Bidder RFI Review and Execution
- Addendums as Required
- Bid Review

5. Construction Phase Services (including Contract Administration) (100% Complete)

- Submittal Review
- Contractor Payment Application Review
- Contractor RFI Review and Execution
- Review of Free Standing Mock-ups and in Place Mock-ups
- Thirty five (35) Site Visits to Observe Compliance with Contract

- Documents w/ Field Reports
- Bulletins As Required
- Review of Substitution Requests from CM
- Substantial Completion Inspection w/ Punchlist
- Final Inspection
- Record Document Preparation

TOTAL BASIC ARCHITECTURAL SERVICES FEE= \$1,542,300.00

SCOPE AND FEES FOR SUPPLEMENTAL SERVICES

SCOPE

1. Theater Design
2. Acoustical/Audio Visual Design
3. Cost Estimating

TOTAL SUPPLEMENTAL SERVICES FEE= \$ 207,700.00

ESTIMATED REIMBURSABLE EXPENSES= \$ 52,000.00

TOTAL FEE= \$1,802,000.00

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the Fee for Basic Architectural and Supplemental Services, and include expenditures made by the Architect and its Consultants in the interest of the Project. Reimbursable expenses shall be billed to the Owner at 1.0 times the direct cost. The following is a list of reimbursable expenses.

- Reasonable and necessary expenses for reproduction, photography, long distance phone calls, postage and handling, including general reproduction for office use of the Architect and its consultants.
- Expenses for local travel including mileage (at current IRS rate) and parking.
- Expenses for out-of-town transportation and lodging in connection with the project – approved in advance by the Owner.
- Additional Consultants hired in the interest of the project – approved in advance by the Owner.

AVAILABLE ADDITIONAL SERVICES

Additional Services, which are not covered under the Basic Architectural and Supplemental Services Proposal, will be provided if necessary and requested by the Owner. Generally, Additional Services deal with Owner /Contractor requested expansion to the scope of the project, or program changes and revisions required due to no fault of the Architect. All changes to the scope of the project must be signed, in writing, by both the Architect and the Owner before commencement of services. The following is a list of possible Additional Services, and it is not intended to be all-inclusive.

- Re-zoning procedures

- Services for multiple construction phases or phased bid packages
- Site surveying
- Environmental assessments
- Material testing
- Physical architectural presentation models
- Computer model fly-through
- Additional Owner coordination meetings
- Additional site visits
- Construction administration services beyond scheduled final completion
- Bid – Alternates requiring significant design & documentation over the Construction Costs Budget
- Existing equipment and furniture documentation
- Move coordination and management
- Telecommunications consultation and specification for Basic Building Systems
- Artwork consultation and specification
- Signage and Graphics consultation and specification
- Furniture consultation and specification
- Security/Access Control consultation and specification
- Presentation at any historic district commission review or committee meetings
- Special or Express Review with local code enforcement
- Reproduction of documents for Bidding
- Estimating Services for the Total Project Budget
- Participation in fund raising events
- Retrieval of Audited Back-up Documentation for Reimbursable Expenses
- Material design changes initiated by Owner, and caused by no-fault of the Architect, after completion of Schematic Design phase requiring significant additional design work in excess of the budgeted amount for the subsequent phases of the Architect's Services. For example, value engineering re-design services after submittal of the Construction Documents for Bidding would likely require significant additional design work.
- Preparation of final drawings reflecting as-built conditions provided by the Contractor
- LEED certification
- Work resulting from corrections required because of errors in construction by the Contractor
- Visits to other similar facilities for review
- Exhibit specific AV and building wide public address system design
- AHJ required Special Inspections
- Building Systems Commissioning services
- Training for the Owner/Users in the use of the building systems including AV, HVAC etc. will be part of the requirements of the Contractor
- Services to provide production assistance during rehearsals or performances
- Performance optimization services for theater
- Design of retention systems required by excavation as part of the Contractor's Means and Methods
- Investigation of adjacent existing buildings and structures for the purpose of assessing the effect of construction of the new project
- Excavation bracing (such as soil nailing or soldier piles and lagging) and/or potential underpinning of adjacent existing structures as part of the Contractor's Means and Methods
- Planned provisions for future additions
- Traffic signal design or roadway engineering
- Contaminated soil remediation design

- Design of and field observation of load tests to determine capacity of structural systems or members. Standard load tests and methods for such things as deep foundations are prescribed by codes & ASTM, and are designed and performed by the contractor and monitored by the owner's third party testing agency. A non-standard load test is rare and might apply in the case where it is known or determined that the construction in place is in some way noncompliant due to improper construction or defective materials and there is a desire to attempt to prove adequacy of the in place construction
- Building energy models
- Project delay or postponement greater than sixty (60) calendar days of the agreed schedule of work through the completion of the Construction Documents Phase (meaning a delay that extends the planned fifty-two (52) week design schedule an additional sixty (60) calendar days), due to no fault of the Architect.
- Project delay or postponement great than ninety (90) calendar days of the agreed schedule of work for the for the Procurement Phase and Construction Phase (meaning a delay that extends the eight-eight (88) week Procurement Phase and Construction Phase an additional ninety (90) calendar day) due to no fault of the Architect.

ITEMS REQUIRED FROM OWNER

The Architect may require certain items from the Owner to successfully complete the Basic Architectural and Supplemental Services. These items are listed below and are not intended to be all-inclusive

- Meetings at Pre-Approved times with consultant attendance as reasonably stipulated by the Architect
- Total Project Budget Tracking
- Reconciliation of the project program and budget
- Special Inspections Consulting
- Final Site Survey with all Utilities
- Final Geotechnical Information
- Traffic Signal or Roadway Improvements
- Telecommunications Information and Specifications for Basic Building Systems
- Furniture Information and Specifications
- Signage and Graphics Information and Specifications
- Security/Access Control Information and Specifications
- One (1) week review period at the end of each design phase included in the schedule below

PRELIMINARY PROJECT SCHEDULE

Upon the Owner's notification to proceed with the Schematic Design Phase, the Architect will begin work.

PHASE	ESTIMATED DURATION
• Schematic Design Phase	13 weeks
• Design Development Phase	17 weeks
• Construction Document Phase	22 weeks
• Procurement Phase (permitting & bidding)	16 weeks
• Construction Phase	72 weeks

DESIGN FEE CONTINGENCY

It is recommended that the Owner keep a Design Fee Contingency of **\$120,000.00** in the event Additional Services are needed from the Architect.

Any unapplied Design Fee Contingency after the closeout of the Project will be split fifty percent (50%) retained by the Owner and fifty percent shall (50%) be paid to the Architect.

INVOICE & PAYMENT SCHEDULE

Basic Architectural and Supplemental Services and Reimbursable Expenses will be billed monthly. Invoices are due upon receipt.

C Design is looking forward to a successful project with the Town of Cornelius and we thank you for this opportunity.

This Proposal is Exhibit A to the Agreement(AIA Document B101 – 2017 Standard Form of Agreement Between Owner and Architect).

Respectfully,

Approved by:

C DESIGN

TOWN OF CORNELIUS

Robert C. Crane Jr., AIA (Date)
Managing Principal

Andrew Grant, ICMA-CM (Date)
Town Manager

CDI Project Number: 0604-0422/101

Exhibit C

Attachment to Standard Form of Agreement Between Owner and Architect Dated March 4, 2019

Special Terms and Conditions

1. Design to Budget (Based on Standard of Care); Acknowledgement of Fundraising. The standard of care for the Architect's professional services is set forth in Article 2. For clarity, Architect commits that it will provide all Services and produce the Construction Documents to reasonably ensure, consistent with the standard of care, such that the actual construction cost of the Project does not exceed the Construction Contract Award Budget (CCAB). Specifically, the Construction Contract Award Budget (CCAB) under this Agreement is not to exceed the sum of \$16,848,140.

The Project Construction Budget is derived from expected available funding for the Project which is acknowledged by both Owner and Architect to require significant private contributions ("Fundraising").

If during any stages of development of the Drawings and Specifications that Fundraising goals are not being met then the Owner reserves the right to revise the CCAB.

2. Owner to Provide Written Notice to Proceed Prior to Each Phase. Architect shall commence with the provision of Services promptly upon receipt of written notice to proceed from the Owner; shall commence each phase upon receipt of written notice to proceed from Owner, and shall complete the Services in accordance with the Design Schedule set forth herein (such period of time is herein referred to as the ("Contract Time")). Time is of the essence with respect to the Contract, and each of the design phase durations as designated below. Architect shall complete the Services according to the Contract Time to enable the overall Services and the Project to proceed in a coordinated and timely manner. The Architect agrees to complete its Services in order to meet the following Design and Construction Schedule set forth in Exhibit A.
3. Acknowledgement of Risk. Professional services provided by the Architect and the Architect's consultants under this Agreement necessarily require the active participation of the Owner. It is the Owner's responsibility to establish, as may be reasonably necessary for the Architect to perform its services, goals and objectives for the project, to identify budgetary constraints, and to make key decisions involving trade-offs between time or cost and quality and, in some cases, between time or cost and economic risk. Where such decisions are made by the Owner and savings in time or cost realized as a result, the savings accrue to the benefit of the Owner. At the same time, responsibility for the trade-offs involved must be assumed by the Owner. In recognition thereof and notwithstanding anything to the contrary contained herein, it is understood and agreed that where the Owner makes a decision that is contrary to the recommendation of the Architect, then the Architect shall not be responsible for the consequences of any adverse

impact on quality and any and all economic risks attributable to any such decision, so long as the Architect, in acting on any such decision, provides architectural services in accordance with the standard of care set forth in in the Agreement. By way of example, and not limitation, the Owner and Architect intent to communicate regularly regarding status of Fundraising and cooperatively, with the CM, update decisions regarding goals and objectives for the project and budgetary constraints.

4. Standard of Care; Clarifications. The standard of care for the Architect's services is set forth Article 2 of the Agreement. For clarity, nothing contained herein shall be construed:

- a. To constitute a guarantee, warranty, or assurance, either expressed or implied, that the Architect's services will yield or accomplish a perfect outcome for the project; or
- b. To obligate the Architect to exercise professional skill or judgment greater than that required pursuant to Article 2
- c. As an assumption by the Architect of the liability of any other party except for the Architect's subcontractors; or
- d. To mean that the Architect shall be responsible for guaranteeing budget estimates.

The Architect will correct, at no additional cost or charges to the Owner, any and all errors and omissions in the drawings, specifications and other documents prepared by the Architect. The Architect further agrees, at no additional cost, to render prompt assistance to the Owner in resolving problems relating to the design or specified materials.

5. Ownership. Notwithstanding any provisions in the Agreement to the contrary, all documents, designs, models, drawings, specifications, design calculations, notes and other works developed during the Architect's performance of this Agreement shall become the sole property of the Owner and may be used by the Owner without additional compensation to the Architect. The use of the design, including tracings and specifications by any person or entity for a purpose other than the Project as set forth in this Agreement, shall be at the full risk of such person or entity and the Architect shall be relieved of any liability whatsoever, including claims for personal injury, property damage, or death as a result of such other use. Architect shall deliver all electronic and hard copies of the design documents prepared and/or furnished by Architect in the provision of the Services, regardless of any disputes between the Owner and Architect. Architect shall deliver all such design documents to the Owner upon demand as required by the Owner and in any event, not later than at the conclusion or termination of this Agreement.

6. Termination Fee (Revise Section § 9.6). Section 9.6 is hereby amended and restated as follows: "If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred prior to the termination. For the purpose of establishing the value of services rendered up to the time of termination, the following shall apply:

Completion of Schematic Design Phase	15%
Completion of Design Development Phase	20%
Completion of Construction Drawing Phase	40%

Completion of Permitting and Bidding	5%
Construction Phase	15%
Submission of Record Drawings and	
Closing Papers	<u>5%</u>
	100%

For partially completed phases of work, the percent of work complete for that phase will be mutually agreed to by the Architect and Owner at the time of termination.

7. Construction Management at Risk Delivery Method.

It is agreed and understood that the design agreement entered into between the Architect and Owner, related to this Project, was entered into with the Architect's full understanding that a CM at Risk construction delivery method would be used. The Architect agrees the fees established for the Architect's services are fair, reasonable, and are based on the Owner using the CM at Risk construction delivery method.

The Architect, CM and Owner shall cooperate to help assure that the Project is within the Project Construction Budget, commencing with the Schematic Design Phase.

The Architect will be responsible for the development of complete construction document plans and specifications that coordinate with the CM's GMP document. The Architect shall provide permit approved contract documents for use by the CM.

The cost of printing, binding, mailing and distribution of all first-tier subcontract bid documents will be the responsibility of the Construction Manager.

8 Hidden Conditions

Inasmuch as the demolition of an existing building requires that certain assumptions cannot be verified without expending great sums of additional money, the Owner agrees that, except for negligence on the part of the Architect and its Consultants, the Owner will hold harmless and indemnify the Architect and its Consultants for and against any and all claims, damages, awards, and costs of defense arising out of the demolition of the existing buildings.

[ADD SIGNATURE BLOCKS]

REQUEST FOR BOARD ACTION

 **Print**

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners
From: Tyler Beardsley, Assistant Town Manager

Action Requested:

The Town and CACC have determined the Construction Manager at Risk model is the ideal way to build the Cain Center for the Arts. The Construction Manager at Risk allow for a contractor to be involved and engaged throughout the design process. This helps the project stay on budget, with value engineering, scheduling and overall constructability of the building.




The Town conducted a Request for Qualifications in which Town staff and CACC construction committee members determined Rodgers Builders, Inc. was the most qualified to build the Cain Center for the Arts. Rodgers had the most experience building theaters and facilities similar to the Cain Center for the Arts.

The Construction Manager at Risk model has two contracts, the first is the Pre-Construction Agreement which covers the design review and cost analysis throughout Schematic Design, Design Development, and Construction Drawings. The second contract is the Guaranteed Maximum Price contract which covers the actual construction of the building. At this time, the Board will only approve the Pre-Construction Agreement with Rodgers Builders which is \$40,000 plus reimbursables.

Manager's Recommendation:

Approve the contract and authorize Town Manager and Town Attorney to finalize the terms and conditions and execute the contract.

ATTACHMENTS:

Name:	Description:	Type:
 CMAR_Pre-Construction_Agreement_Rodgers_FINAL.pdf	Pre-Construction Agreement	Cover Memo
 FORM_OF_CONSTRUCTION_MANAGER_AT_RISK_CONTRACT_FINAL.pdf	Guaranteed Maximum Price Contract	Cover Memo
 Town_of_Cornelius-Fee_proposal-022719.pdf	Letter Agreement	Cover Memo

CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES AGREEMENT

THIS PRE-CONSTRUCTION SERVICES AGREEMENT (the "Agreement"), made to be effective _____, 2019 for Cain Center for the Arts (the "Project") by and between **Rodgers Builders, Inc.** (the "Construction Manager at Risk" or "CM") and the **Town of Cornelius** (the "Owner").

WITNESSETH:

Whereas the Owner has published a Request for Qualifications dated August 17, 2018 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 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 and the Proposal Letter ("Letter Proposal") attached hereto and incorporated by reference as Exhibit B (the "Pre-Construction Services"). The agreed upon form for the Construction Management at Risk Contract (to be agreed to and executed after agreement between Owner and CM on the amount of the GMP) is attached hereto as Exhibit C. It is
2. The Owner will compensate the Construction Manager at Risk for Pre-Construction Services in the amount of **Forty Thousand (\$40,000)** payable as follows: **See Letter Proposal**. Construction Manager at Risk shall invoice as follows:
 - \$10,000 after completion of Schematic Design
 - \$10,000 after completion of Design Development
 - \$20,000 after completion of Construction Documents and determination of GMP
3. Owner and CM acknowledge the project consist of pre-construction and construction of the Cain Center for the Arts. The Cain Center for the Arts will be approximately 30,500 square feet and will include a 400-seat theater, stage, backstage elements, two (2) classrooms, gallery, offices, and other building facilities. The project to be constructed has a construction budget of approximately \$16,848,140.
4. 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.

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:

By: _____

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

Attest: (Corporation)

By: _____

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

(CORPORATE SEAL)

TOWN OF CORNELIUS:

By: _____
Title: Town Manager

This disbursement has been approved
as required by the Local Government
Budget and Fiscal Control Act.

By: _____
Title: Finance Director

DRAFT

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 value analysis at Schematic Design to ensure the Schematic Design is likely constructible within the project budget prior to moving to the Design Development.
 - d. 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. 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)

- a. Upon agreement of the Owner and CM, the GMP may be submitted by the CM 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. The CM will develop and provide to the Owner in writing a GMP which will 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. 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.
- b. In the event that the GMP exceeds the project construction budget, the Owner reserves the right to direct the CM to 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.

- c. Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM shall execute a contract (the "GMP Agreement") 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 and shall include a CM Services Fee which shall be 3% of Cost of the Work based on the final GMP and a General Conditions Fee of \$58,430 per month for the items listed in the Letter Proposal.

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 and associated final payment.
- 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.

11. Principal Trade and Specialty Contractor Pre-Qualification

All Principal Trade and Specialty Contractors shall be pre-qualified by the CM and selected in accordance with N.C.G.S. 143-128.1.

FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT FIXED GUARANTEED MAXIMUM PRICE

THIS FIXED GUARANTEED MAXIMUM PRICE AGREEMENT (the “Agreement”), made to be effective [insert date] for Town of Cornelius Arts and Community Center Project (the “Project”) by and between Rodgers Builder’s Inc. (hereinafter called the “Construction Manager at Risk” or “CM”), and the Town of Cornelius, North Carolina (hereinafter called the “Owner”).

BACKGROUND

Whereas, the Owner has published a Request for Qualifications dated [insert date] seeking the submission of qualifications to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Qualifications; and,

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

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

Whereas Owner and Construction Manager at Risk entered into that certain Pre-construction Services Agreement dated [insert date]; and,

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

AGREEMENT

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

1. PROJECT OVERVIEW

The Project is the Town of Cornelius Arts and Community Center Project located in Cornelius, North Carolina and described in more detail in the Owner’s Request for Qualifications dated August 17, 2018 and the Construction Manager at Risk’s Project proposal presentation dated September 5, 2018 .

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

2. OWNER’S ROLE

- a. DESIGN SERVICES - The Owner has retained Rob Crane and the firm of C-Design as the Project Designer. The Project Designer will provide all design

services throughout the duration of the Project.

- b. DESIGNATED REPRESENTATIVE - The Owner's Town Manager, or his/her designee shall be the CM's Owner contact, shall be the primary channel of communication to the Owner, and shall act as the Owner's liaison with the CM. The Owner may designate multiple representatives responsible for defined aspects of the Project, and may replace or re-designate any or all representatives in the Owner's sole discretion.
- c. DECISION MAKING AUTHORITY – The Owner's Town Manager is vested with final decision-making authority for the Owner.

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

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

4. RELATIONSHIP OF OWNER AND CONSTRUCTION MANAGER

- a. The CM project records will be an "open book". The Owner may attend any and all meetings and the Owner or its designated auditors or accountants and the Project Designer shall have access to any and all records maintained by the CM that relate to the Project.

- b. The CM's employees and personnel assigned to provide services with respect to the Project shall be as identified in the CM's response to the Owner's Request for Qualifications dated [insert date] and in the CM's Project proposal presentation dated [insert date]. The CM agrees not to change its employees or personnel assigned to the Project without the Owner's approval, which approval will not be unreasonably withheld.

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

- a. Pre-Construction Phase (the "Pre-Construction Phase" or "Design Phase").
[intentionally deleted; see Pre-construction services Agreement]
- b. Construction Phase (the "Construction Phase"). The CM's Project Cost Allowance & Construction Phase Fee (the "CM Fee") for construction management services shall be an all-inclusive management fee which will include all CM home office, Project site and Project related costs, including all CM overhead costs and profit. There are two "components" of the CM Fee: the management fee (the "CM Management Fee") and the CM's Project costs fee ("CM Project Costs") The CM Management Fee shall be a "flat fee" fixed amount as set forth in Section 9 below. The CM Project Costs shall be reimbursed by the Owner and shall be the CM's actual costs and expenses associated with the Project up to the maximum amount as set forth in Section 9, below, and shall include the following:
 - i. Project and home office staff costs for all CM's Project executives, superintendents, Project managers and Project assistants performing work or services in connection with the Project consisting of direct salary or wages plus customary labor burden (which is defined to mean 45.0% of actual costs paid or incurred by Construction Manager at Risk for taxes, insurance, contributions, assessments and benefits required by law and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions), transportation, vehicle, and/or subsistence allowances, cell phones & travel expenses related to the Project.
 - ii. Mobilization – establishment of job site including office & storage trailer set-up & utility connections, and CM's Project signage.
 - iii. Temporary Field Office Facilities, Utilities, and Controls – rental of field office facilities including a conference room; utilities costs for field office; rental (or purchase) of field office furniture & equipment; field office telephone(s) with voice mail, telephone service, dedicated fax lines and high speed internet connections; field office operation cost (i.e. stationary, postage, shipping, equipment maintenance, etc); temporary construction utilities (if required); small tools, first aid and safety gear, safety

inspections, photography storage yard rental (if applicable), parking lot rental (if applicable), and parking fees (if applicable). (For clarity, storage yard rental, parking lot rental and parking fees are not expected to be incurred; but if incurred shall be approved in advance by Owner.)

- iv. Plans/Surveys/Permits – reproduction of Construction Documents during the construction phase and all appropriate contractor and equipment licenses and permits.
- v. Safety/Cleanup – establishment and maintenance of an on-site safety program; installation and maintenance of temporary facilities (safety barricades, partitions, fences, ladders, stairs, safety signage, first aid, traffic control devices, etc.); dust control and pavement cleaning; trash collection and removal; maintenance of work area security; site snow removal as required; temporary weather and/or dust protection as required, vehicle wash stations as may be required; fire extinguishers and fire watch as required; safety harnesses, lanyards and fall arrest equipment as required.
- vi. Close-out/Demobilization – final site/facility clean-up; final release of bond/lien claims for all subcontractors; an as-built set of drawings in hard copy to the Project Designer for preparation of record as-built drawings; one copy of Project files and records for the Owner's archives.
- vii. Quality Control/Project Documentation – monthly reports, photographs, inspection reports, logs (RFIs, submittals, change orders, etc.).

For clarity, the maximum amount of the CM Project Costs reflects the not to exceed amount for the projected schedule of the project, calculated as follows (\$XXXXXX per month x XX months) and if the CM is unable to meet the project schedule ongoing Project Costs shall be at the sole cost and expense of CM (and at no additional cost to Owner). The remedy of liquidated damages, as set forth in Section 8.b below, shall be available one month after the intended completion date.

- c. All CM Project Costs shall be paid by the CM and shall not be passed down to the Principal Trade and Specialty Contractors or any subcontractor.
- d. The CM Project Costs shall not include costs for the following:
 - i. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract;
 - ii. The costs of tap and impact fees and site security;
 - iii. Third party inspections, special inspections, and soils and materials testing as identified or required by the drawings and specifications (reference

drawing S0.1).

- iv. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract shall be carried in the GMP as a separate line item, but not as part of the CM Fee or Cost of the Work. Reimbursement for insurance shall be calculated as follows and shall not exceed:

General Liability Insurance:	0.90% of the Cost of the Work
Builder's Risk Insurance:	0.30% of the Cost of the Work

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

6. PAYMENTS TO THE CONSTRUCTION MANAGER-AT-RISK

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

7. PRE-CONSTRUCTION SERVICES & CONTINGENCIES

- a. The Pre-construction Services shall be provided in accordance with the previously approved Pre-construction services Agreement and, to the extent any such pre-construction services remain to be performed after the execution of this Agreement, in accordance with this Agreement.
- b. Financial Contingencies are to be addressed as follows:
 - i. Owner/Owner's Construction Contingency.
 - A. An Owner's Construction Contingency will be established but shall not be included in the GMP. Expenditures against this contingency will be available to cover all costs resulting from changes in scope not specifically covered in Paragraph 7.b.ii below and initiated by the Owner's designated representative with the Owner's written approval via a change order amendment issued by the Owner.
 - ii. Construction Manager-at-Risk GMP Contingency.

- A. The GMP shall include a CM Contingency equal to **3%** of the total Cost of the Work contemplated by the GMP [for clarity, note that total Cost of the Work includes the CM Project Costs and costs for tap and impact fees and site security], to help reduce the risks assumed by the Construction Manager-at-Risk in providing the GMP for the Project. The Owner and the CM acknowledge that the CM Contingency is included to accommodate eventualities not taken into precise account in the CM's establishment of the GMP that are not reasonably anticipated by the CM including (1) scope gaps between trade contractors which a prudent CM could not have reasonably detected during the discharge of its Pre-construction services, (2) contract default by Principal Trade and Specialty Contractors or other subcontractors, (3) design omissions which a prudent CM could not have reasonably detected during the discharge of its Pre-construction services. It is understood that the amount of the CM Contingency is the maximum sum available to cover costs incurred as a result of such unanticipated causes and that cost overruns in excess of the amount of this CM Contingency will be borne solely by the CM.
- B. The CM Contingency may be applied to any items within the Cost of the Work or CM Project Costs without resulting in any change in the GMP. The CM will notify the Owner and Project Designer of the intent to apply any part of this CM Contingency to any item within the Cost of the Work or CM Project Costs prior to any such application per the "Change Order" process set forth in Article 19 of the General Conditions. The CM shall fully document the application of any part of the CM Contingency by submission of a written Change Order.
- C. Sixty-five (65) percent of any unapplied CM Contingency (the "Savings") after the closeout of the Project will be retained by the Owner and thirty-five (35) percent of any Savings shall be paid to the CM.

8. CONSTRUCTION PHASE SERVICES

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

- b. The CM shall commence provision of construction phase services under this Agreement on a date to be specified in a written order of the Owner (the “Notice to Proceed”) and shall accomplish substantial completion of the Project within 30 days after the date noted in subsection c below consecutive calendar days from the date of the Notice to Proceed. For each day in excess of the above number of days that the Project remains substantially incomplete, the Owner shall be entitled to liquidated damages from the CM in the sum of OneThousand Dollars (\$1,000.00) per day as damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to substantially complete the Project within the time specified.
- c. The CM shall fully complete all services hereunder and accomplish final completion of the Project within [insert number of days] consecutive calendar days from the date of the Notice to Proceed.
- d. The CM shall furnish to the Owner various schedules and updates as provided in the Contract Documents setting forth planned progress of the Project broken down by the various activities, divisions, or parts of the work and by calendar days, and shall fully complete all work hereunder within the time of completion specified.
- e. Without limiting the foregoing, CM Construction Phase services shall include:
 - i. Consultation During Continuing Project Development:

Upon acceptance of the GMP, the CM shall continue to advise and assist the Owner and Project Designer during any continuing Design Activities.
 - ii. Principal Trade & Specialty Contracts
 - A. One or more Principal Trade and Specialty Contract packages shall be prepared for each of the general construction, grading, electrical, mechanical, fire protection, and plumbing divisions of the work of the Project. The CM may at any time prior to the prequalification of bidders, identify and define other Principal Trade and Specialty Contract packages which the CM determines may be helpful in the timely, cost-effective construction of the Project, such as surveying, site fencing, and progress and final cleaning, with or without barrier reduction. Each Principal Trade and Specialty Contractor shall provide such bonds and insurance as the CM may require in the contract package.
 - B. In addition to Principal Trade and Specialty Contract packages including general construction, grading, plumbing, fire protection, mechanical, and electrical divisions of the work, the CM may advertise for one or more combinations of one or more Principal

Trade and/or Specialty contract packages, and may prequalify and accept bids from first-tier subcontractors who wish to submit such combined bids which fully and completely incorporate the Project specifications for two or more of the bid packages advertised to bid at a single bid opening. All requirements of N.C.G.S. §§143-128, 143-128.1, 143-128.2, and 143-129, as well as all advertised conditions for bidding, must be satisfied for such a combination bid to be considered responsive.

- C. In conformity with the public policy set forth in N.C.G.S. §143-128, no Trade Contract Package, including RBP's, may be awarded other than to the responsible bidder submitting the lowest verified responsive bid.
- D. After the CM has prequalified Principal Trade and Specialty Contractors, the CM shall advertise for receipt of bids as directed by the Owner. Bids will be received from all prequalified contractors for each Trade & Specialty Package in a public venue and publicly opened at the time specified. The CM shall tabulate the bids received on each package. Next, the CM shall determine the apparent low bidder for each package. Upon this determination, the CM shall have the right to review all bid documentation from the apparent low bid contractor to verify the scope of the bid. If this review shows that the low bid contractor fully accounted for all costs associated with the scope of the work on which he was bidding, then the contract shall be awarded to the low bid contractor. If, however, this review shows that the low bid contractor failed to account for all costs associated with the scope of the work on which he was bidding, then the bid may be disqualified at the discretion of the CM. The CM shall have the right as outlined above to verify the scope of each low bid in the same manner until he determines the lowest verified responsive bid.
- E. The CM may repeat the bidding for a Principal Trade or Specialty Contract only if 1) the initial bidding produces no responsible, responsive bids for that portion of the work, or 2) no responsible, responsive bidder will execute a contract for the bid portion of the work, or 3) in the judgment of the CM the bids represent an excessive cost based on current market value and 4) the Owner approves of such a re-bid.
- F. The CM will require the Principal Trade & Specialty Contractors to provide the applicable contract documents including insurance certificates, Historically Underutilized Businesses (HUB) and Minority Business Enterprise (MBE) participation schedules, and

verification of HUB and MBE participation (by submission of letters of intent, copies of purchase orders, etc).

- G. All contract documents between the CM and the Principal Trade and Specialty Contractors and other subcontractors shall be made available for review by the Owner. The CM shall provide to Owner the proposed terms and conditions it intends to utilize in the subcontracts for Owner's input regarding those terms and conditions that impact the Owner's risk of additional costs.

iii. Project Control & Management

- A. The CM shall accept delivery and arrange for storage, protection and security for any Owner purchased materials, systems and equipment to be incorporated in the Project until such items are turned over to the respective Principal Trade & Specialty Contractors.
- B. The CM shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the CM shall conduct bi-weekly Owner's meetings and other meetings as may be directed by the Owner, at which Principal Trade and Specialty Contractors, Owner, Project Designer, and other designated representatives, and the CM can discuss jointly such matters as progress, scheduling, and construction-related problems. The CM shall prepare and distribute complete minutes of meetings to all attendees and others as directed by the Owner or Project Designer within three (3) days of such meetings. Representatives of the Owner may attend meetings and shall in any case receive all notices and minutes of meetings.

iv. Requests for Information (RFI)

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

v. Claims Avoidance/Resolution

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

vi. Reports

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

vii. Contract Close-Out

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

viii. Separate Contracts

Without invalidating the relationship with the CM, the Owner reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the work of the CM. The CM shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the CM shall take all reasonable action to

coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the CM from carrying out his work according to the Project plans and specifications, the CM shall immediately notify the Project Designer and the Owner upon discovering such conditions.

9. GUARANTEED MAXIMUM PRICE (GMP)

The Fixed Guaranteed Maximum Price shall be as follows:

Cost of the Work (excluding CM Project Costs, tap and impact fees, and site security)	\$ XXXXXXXX
CM Management Fee (fixed fee per section 5.b)	\$ XXXXXXXX
CM Project Costs (not to exceed per Section 5.b)	\$ XXXXXXXX
CM's Bonds and Insurance (not to exceed per Section 5.d. iv.)	\$ XXXXXXXX
Tap/impact fees and site security (not to exceed per Section 5d. v.)	\$ XXXXXXXX
CM Contingency (not to exceed per Section 7.b.ii.A.)	\$ XXXXXXXX
Total Fixed Guaranteed Maximum Price	\$ XXXXXXXX

10. DEFAULT

- a. If the CM fails to commence providing the construction phase services within the time specified, or the progress of the Project is not maintained on schedule, or the Project is not completed within the time above specified, or if the CM shall allow the work to be performed unsuitably or shall discontinue the prosecution of the work, or if the CM shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice of such event in writing, sent by overnight mail or by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not correct or cure such event, then the Owner shall declare this Agreement in default, and, thereupon, the CM's surety shall promptly take over the work and complete the performance of this Agreement in the manner and within the time frame specified. In the event the CM's surety shall fail to take over the work to be done under this Agreement within fifteen (15) days after being so notified and shall fail to notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating this Agreement, to take the prosecution of the work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and

provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under this Agreement, shall be deducted from any monies due or which may become due said CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by said CM, then the CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of said excess.

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

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

Construction Manager at Risk:

RODGERS BUILDERS, INC.

By: _____
Title: _____

Attest: (Corporation)

Title: _____

(CORPORATE SEAL)

TOWN OF CORNELIUS

By: _____
Title: Town Manager

This disbursement has been approved
as required by the Local Government
Budget and Fiscal Control Act.

Approved as Form

By: _____
Title: Finance Director

By: _____
Title: Town Attorney

LIST OF EXHIBITS

- Exhibit 1: General Conditions of the Contract**
- Exhibit 2: Owner's Request for Qualifications**
- Exhibit 3: CM's Response to Request for Qualifications**
- Exhibit 4: CM's Project Proposal Presentation**
- Exhibit 5: Pre-Construction Services Agreement**
- Exhibit 6: CM's HUB Plan approved by Owner**
- Exhibit 7: Designer's drawings and specification lists**
- Exhibit 8: CM Payment and Performance Bonds**
- Exhibit 9: Guaranteed Maximum Price Cost Study Workbook, as prepared by CM**
- Exhibit 10: Contractor's Certificate of Insurance**



Our Passion is Building®

Fee Proposal

A. Proposed Fee for Preconstruction Services

Rodgers is very pleased to provide our proposal for preconstruction services for the approximate 30,500 square foot, Town of Cornelius – Cain Performing Arts and Community Center project located in Cornelius, North Carolina.

Rodgers' success, experience and expertise in regional market knowledge of construction materials, placement methods and relationships with skilled trades in commercial construction is unequalled.

Rodgers' proposed team is available immediately to begin all Preconstruction Services as outlined below.

- Estimating (Full budgeting exercise at Schematic Design, Design Development and Construction Documents/ GMP stages)
- Basic Value Engineering
- Systems Development
- Scheduling
- Phasing
- MEP Systems Analysis
- Constructability Review
- Design Review & Monitoring
- Bid Packaging
- Bidding Procedures

Preconstruction Services Fee:

Our Guaranteed Maximum Price (GMP) for Preconstruction Services, which includes the following exercises, is:
Forty Thousand and No/100 Dollars (\$40,000).

- **Schematic Stage Preconstruction Services:**
Ten Thousand and No/100 Dollars (\$10,000) plus direct reimbursable costs.
- **Design Development Preconstruction Services:**
Ten Thousand and No/100 Dollars (\$10,000) plus direct reimbursable costs.
- **Construction Documents / GMP Preconstruction Services:**
Twenty Thousand and No/100 Dollars (\$20,000) plus direct reimbursable costs.

B. Construction Fee

Rodgers is also pleased to provide our proposal for comprehensive construction phase services for the approximate 30,500 square foot, Town of Cornelius – Cain Performing Arts and Community Center project located in Cornelius, North Carolina, based on the Owner-approved Guaranteed Maximum Price for construction.

Construction Services Fee:

Rodgers' proposed fee for overhead and profit is **Three Percent (3.0%)** of the Cost of Work based on the final GMP, in accordance with intent of sample "Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price" document as provided.

Fee Proposal Continued

C. General Conditions Fee

The General Conditions Fee is based upon the following:

General Conditions Fee:

Rodgers' proposed General Conditions and Staging and Logistics fee is **Fifty Nine Thousand Twenty Dollars per month (\$59,020/month)**, approximately **4.90%** of project value.

We based the General Conditions fee on a **fourteen (14) month** project schedule, and an expected project value of **\$16,848,140** (inclusive of Preconstruction Services Fee, Construction Services Fee, General Conditions Fee, insurances, permits, contingencies and cost of the work).

General Conditions and Staging Logistics costs include items per the attached breakdown.

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

Review and discuss a draft Resolution in support of legislation authorizing the Town of Cornelius to Levy 1/2 cent municipal sales tax to support road construction and maintenance.

Manager's Recommendation:

Approve a Resolution in support.

ATTACHMENTS:

Name:	Description:	Type:
 RES-Municipal_Sales_Tax.pdf	1/2 Cent Tax Levy for Roads	Resolution Letter

**RESOLUTION IN SUPPORT OF LEGISLATION AUTHORIZING
TOWN OF CORNELIUS TO LEVY ½ CENT MUNICIPAL SALES TAX
TO SUPPORT ROAD CONSTRUCTION AND MAINTENANCE**

WHEREAS, the Town of Cornelius has an opportunity to invest in transportation improvements that will reduce congestion, increase safety, encourage pedestrian and bicycle activity, and further enhance the lifestyle and well-being of the Citizens of Cornelius; and

WHEREAS, many NCDOT projects are advanced by local funding participation, and a portion of the cost of those improvements are often the responsibility of the Town of Cornelius; and

WHEREAS, currently, the primary source of funding for transportation and road improvements by the Town of Cornelius is through the issuance of debt that is paid for by ad valorem tax revenue; and

WHEREAS, the Town is seeking an additional source of funding for transportation improvements that does not rely on property taxes and that serves to minimize the Town's need to issue debt; and

WHEREAS, legislation will be introduced in the current session of the North Carolina General Assembly that would authorize the Town of Cornelius to levy a ½ Cent Municipal Sales Tax for a period of up to seven years if an applicable referendum is approved by the voters, and allowing subsequent referendums, the purpose of which would be to support road construction within the Town; and

WHEREAS, the availability of revenue from the ½ Cent Sales Tax would help finance those transportation improvements; reducing the Town's degree of reliance on the property tax and financing, potentially saving the citizens of Cornelius money on lower interest payments by allowing some transportation projects to be paid for on a pay as you go basis.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Town of Cornelius does hereby endorse the passage of legislation authorizing the Town of Cornelius to Levy a ½ Cent Municipal Sales Tax to Support Road Construction and Maintenance.

BE IT FURTHER RESOLVED, that the Mayor of the Board is hereby authorized and directed to present this resolution to members of the General Assembly with a request that the General Assembly advocate for and support the passage of such legislation.

Adopted this the 4th day of March 2019.

Woody Washam, Mayor

ATTEST:

APPROVED AS TO FORM:

Lori Harrell, Town Clerk

Town Attorney

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019


To: Mayor and Board of Commissioners

From:

Action Requested:

Manager's Recommendation:

ATTACHMENTS:

Name:	Description:	Type:
 RES-Cornelius_2019_Legislative_Priorities.pdf	resolution	Cover Memo

**ADOPTING THE TOWN OF CORNELIUS
2019 NORTH CAROLINA STATE LEGISLATIVE AGENDA**

WHEREAS, the Town of Cornelius Mayor and Board of Commissioners offer the following specific priorities for consideration in the 2019 North Carolina State Legislative Agenda:

- Cancellation of the I-77 Toll contract outside the STI process. During cancellation process, open dialogue between NCDOT and impacted communities to determine best transportation solutions moving forward (e.i., hardening shoulders for additional GP lanes).
- Retain existing statewide Sales Tax distribution formula.
- Retain recently approved legislation that provides educational options to the citizens of our municipalities and preserves municipal funding options for education, including preserving the option of municipal charter schools and Session Laws 2018-5, Section 38.8 and 2018-97, Section 11.1.
- Enact study legislation to study the MPO/RPO Voting Structure analyzing options for weighted votes and methods to revise bylaws.
- Enact legislation to increase small brewery production limits. Currently, a brewery is allowed to self-distribute if it produces less than 25,000 barrels per year. If production is above the cap, then a third-party distributor must be utilized, which restricts the brewery's business growth. Proposed legislation would increase this cap to at least 100,000 barrels per year.
- Enact legislation to lessen financial impact on property owners through methods such as performing property tax value revaluations more frequently (e.g., at least every four years).
- Expand the Homestead Exemption to limit property tax increase on long term property owners.
- Support a future Westmoreland Interchange for regional economic development.
- Funding for regional community arts center located in north Mecklenburg (currently being planned for in Cornelius); \$100,000 capital project funding (for design and construction) and \$25,000 for program offerings (e.g., educational outreach classes to schools).
- Funding for community redevelopment in low- to moderate-income neighborhoods.
- Enact a local bill that provides for a Cornelius-specific sales tax (up to a ½ cent), subject to a voter-approved referendum to fund road construction. Tax shall have a seven year sunset, and can be renewed by referendum only.
- Support legislation that provides authority to create additional Magistrate positions in the north Mecklenburg area, and support State funding of these positions.

NOW THEREFORE BE IT RESOLVED, the Board of Commissioners hereby authorizes the Mayor of the Board of Commissioners to present this Resolution to members of the General Assembly with a request that the General Assembly advocate and support the aforementioned Cornelius 2019 priorities.

Adopted this 4th day of March, 2019.

Woody Washam, Mayor

ATTESTED:

APPROVED AS TO FORM:

Lori A. Harrell, Town Clerk

Town Attorney

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Lori Harrell, Town Clerk

Action Requested:

Review the minutes from the Feb. 18th Regular Meeting.

Manager's Recommendation:

Approve minutes.

ATTACHMENTS:

Name:	Description:	Type:
 02-18-19_Regular_Meeting_draft.pdf	Regular Minutes	Backup Material



BOARD OF COMMISSIONERS

February 18, 2019
MINUTES

PRE-MEETING – 5:45PM

❖ ASC Update

Toni Freeman, the Executive Vice President of Community Engagement gave an update on the Arts and Science Council's partnerships in building economic opportunities and social capital using various grants and offering free cultural experiences throughout the County. She outlined and identified Culture Blocks that make cultural experiences more accessible to residents. Ms. Freeman explained that a study committee in partnership with the City of Charlotte and Meck. County was formed in 2018 to study why the cultural sector had never fully recovered from the 2008 recession. The Study Committee recommended that ASC and its cultural partners commit to cultural equity, have a voter-approved sales tax designation to annually support the cultural sector and for ASC to manage the distribution of the public funds. Ms. Freeman stated that the tax designation will supersede ASC's annual funding requests to municipalities. Commissioner Naas asked how the funds would be allocated. Ms. Freeman stated that a grant panel of citizens would do so.

❖ Ada Jenkins Update

Development Assistant Melissa Atherton gave an overview of the programs and services offered at the center. Last year over 2,749 individuals received assistance from Ada Jenkins (527 from Cornelius); 725 individuals received free medical/dental services (205 from Cornelius), 27 Cornelius students were enrolled in the LEARN Works program, and 1,031 people were served through the food pantry (352 from Cornelius). Ms. Atherton thanked the Town for its continued support and expressed the importance of each public/private partnership.

❖ Safe Alliance/Victims Advocate Update

Cori Goldstein, the Deputy Chief Operating Officer gave an overview of the services provided over the past year. Their office location on West Catawba (behind the Goodwill Store) centralizes their accessibility for the Lake Norman region. Safe Alliance Services provide a 24/7 hotline for sexual assault and domestic violence victims. In 2018, the Lake Norman office served 104 victims of domestic violence and/or sexual assaults and over 1,323 services were provided to area clients. Over the past year there have been 81 claims of domestic violence, 23 claims of sexual assault and 13 claims of child abuse. Ms. Goldstein thanked the Town for its continued support.

❖ Lake Norman Community Sailing Update

Executive Director, Sean O'Donnell gave an update on Lake Norman Community Sailing's rates, annual passes, boat inventory and their continued summer camp (3 weeks) partnership with Cornelius PARC. He thanked the Town for its continued support.

REGULAR MEETING – 7:00PM

1. CALL TO ORDER

Mayor Washam called the meeting to order at 7:04PM.

2. DETERMINATION OF QUORUM

All commissioners were present with the exception of Commissioner Gilroy who was out of town.

3. APPROVAL OF AGENDA

Commissioner Miltich made a motion to approve the agenda as presented. Commissioner Ross seconded the motion and it passed unanimously, 4-0.

4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Phil Puma led the pledge after a moment of silence was observed.

5. MAYOR/COMMISSIONERS/MANAGER REPORTS

Commissioner Bilodeau reported on the following:

- Attended the Arts and Science Council (ASC) Community Investment Committee meeting on Feb. 6th
- Attended the PARC Commission meeting on Feb. 7th
- Attended the ASC North and West Advisory Council meeting on Feb. 14th
- Attended the Chamber Focus Friday on Feb. 15th
- PARC events – a public input session will be held on Feb. 19th (6:30PM-8:30PM) for the future amenities of Robbins Park and an online survey is open until Mar. 19th; the Black History Celebration will be held on Feb. 23rd (1:00PM-3:00PM); a design review will be held for the North Meck Regional Recreation Center at Bailey Middle School on Feb. 26th (6:30PM-8:00PM)
- Cain Center for the Arts and Bella Love will hold a Celebration of Arts at Brick Row on Feb. 21st
- VLN event – the Carhardt Bass Master College fishing tournament will be held out of Blythe Landing on Feb. 21st thru 23rd

Commissioner Ross reported on the following:

- Attended the COGG meeting on Feb. 13th
- Attended the County's legislative breakfast on Feb. 18th
- Chamber events – Lake Norman Regional Non-profits meeting will be held on Feb. 20th; a Health Care Summit will be held on Feb. 21st at Northstone Country Club

Commissioner Miltich reported on the following:

- Attended the MEAC meeting on Feb. 5th
- Attended a Salary Study meeting with Town staff on Feb. 5th
- Attended the TAB meeting on Feb. 5th
- Dropped in on the Cornelius Business Alliance meeting on Feb. 11th
- Attended the joint Cornelius/Huntersville Education Options Study Committees meeting on Feb. 11th
- Attended the North Meck. Historical meeting on Feb. 12th
- Attended the CRTPO meeting on Feb. 13th
- Attended the NMA meeting on Feb. 14th
- Attended the Chamber Focus Friday meeting on Feb. 15th
- Attended the Meck. County legislative breakfast on Feb. 18th
- The next Cornelius Conversation will be held at Boat Yard Eats on Feb. 28th (6:00PM)

Commissioner Naas reported on the following:

- Attended the joint Cornelius/Huntersville Education Options Study Committees meeting on Feb. 11th
- The next CEOSC meeting will be held on Feb. 19th
- Attended the TAB meeting on Feb. 5th
- Attended a Salary Study meeting with Town staff
- Secretary of Transportation Jim Trogon will present the ways to modify and alter the contract on the I-77 Toll project to the I-77 Advisory Group on Feb. 20th at the Chamber of Commerce in Raleigh

Manager Grant reported on the following:

- NCDOT will host a public meeting on the latest design for Torrence Chapel/W. Catawba intersection improvement project at Town Hall on Feb. 20th (4:00PM-7:00PM)
- Cornelius 311 Twitter account - @Cornelius311 has been created to receive updates on service changes, detours, road closures, real time emergencies
- Next Connecting Cornelius will be held on Mar. 4th @ Harvey's (8:30AM-9:30AM)
- Recognized Sgt. Figaro's recent achievement of the Advanced Law Enforcement Certificate and Sgt. Sarver's Officer of the Year Award

Mayor Washam reported on the following:

- Introduced a new Town newsletter called Cornelius Crossroads
- Lobbied in D.C. for a new post office in Cornelius, an Exit 27 interchange on I-77 and support of a new Arts District
- Attended the joint Cornelius/Huntersville Education Options Study Committees meeting on Feb. 11th
- Requested the Town Manager present recommendations and options relative to the Salary and Benefits Study on Mar. 4th

6. CITIZEN CONCERNS/COMMENTS

Dan Houser – 1932 Hwy. 73, Huntersville, stated that he supported the new proposed residential development for the Retreat @ West Catawba.

7. PUBLIC HEARING

A. REZ 10-18 Retreat @ West Catawba

Mayor Washam called for a motion to reconvene the public hearing from January 22nd.

Commissioner Miltich made a motion to reconvene the public hearing. Commissioner Ross seconded the motion and it passed unanimously, 4-0.

Asst. Planning Director Aaron Tucker gave the staff presentation on the revised site plan proposed for the Retreat @ West Catawba located at 17201 West Catawba Avenue. He explained that the applicant is now proposing all residential for the site due to the design impacts NCDOT has for the widening of West Catawba, Phase 2 project. Mr. Tucker outlined the project timeline and stated that the 2nd public hearing will be scheduled for April 1st.

Commissioner Naas asked what the process was for community meetings when a significant change has been made to a project. Deputy Manager Wayne Herron explained that the Code allows staff the discretion in determining if a new community meeting is warranted and in this case, most of comments and concerns received during the Jan. 8th meeting revolved

around the commercial component being proposed. Therefore, he did not believe the new “all residential” site plan warranted a new community meeting.

Commissioner Bilodeau asked if the Transportation Advisory Board had weighed in on the new proposal. Commissioner Naas stated that the new proposal decreases the trip generation, therefore, there were no concerns.

Mayor Washam invited the applicant to speak.

Mr. Matt Langston thanked staff for working with them through the process and believes the new residential site plan addresses the communities’ concerns with traffic, commercial noise and buffering.

Commissioner Bilodeau asked what the price point would be for the townhomes. Mr. Langston stated they would be in the \$300K-\$400K range with no age restriction.

Mayor Washam invited the public to speak and the following comments were made:

Ralph Vestuti – 17101 Grenache Court, expressed his concerns with traffic on West Catawba Avenue between Westmoreland Road and Hwy. 73; however, he did support the new plan.

Burns Whittaker – 17220 Chardonnay Court, stated that he supports the project as proposed but stressed the importance of having a safe crosswalk on West Catawba.

Julie Baker stated that she represents the Tuscany Towns HOA and they are in support of the all residential site plan.

Linda Craftwall representing the Bordeaux HOA stated they are in support of the all residential site plan.

Phil Puma – 21511 Baltic Drive stated that he supports the residential project.

Deputy Manager Herron suggested that the Board continue the public hearing again to Mar. 4th in an effort to allow the community more time to speak before the project continues with the process.

*Commissioner Miltich made a motion to continue the public hearing until Mar. 4th.
Commissioner Bilodeau seconded the motion and it passed unanimously, 4-0.*

8. CONSIDERATION OF APPROVAL

A. FY2019 Operating Budget Amendment

Finance Director explained the amendment to the FY19 operating budget allocating \$24,000 for flashing beacons along Jetton Road; \$1,300 in donations for the PARC and Police Departments; and \$142 to the 911 Fund.

Commissioner Miltich made a motion to approve Ordinance #2019-00699 amending the FY19 operating budget as presented. Commissioner Ross seconded the motion and it passed 3-2. Commissioners Nass and Bilodeau were opposed to the flashing beacon expense as it did not address their speed limit concerns along the Jetton corridor. Mayor Washam broke the tie in favor of the FY19 budget amendment.

Ordinance #2019-00699 is hereby made part of the minutes by reference.

B. Resolution Declaring Surplus Property

Asst. Manager Beardsley explained that the mileage out police vehicles and various equipment listed for surplus will be sold through on GovDeals.

Commissioner Miltich made a motion to approve Resolution #2019-00916 declaring various police vehicles and equipment as surplus property. Commissioner Ross seconded the motion and it passed unanimously, 4-0.

Resolution #2019-00916 is hereby made part of the minutes by reference.

9. CONSENT AGENDA

- A. Approve Regular Meeting Minutes (Feb. 4th) (Approved 4-0)
- B. Approve Closed Session Minutes (Feb. 4th) (Approved 4-0)
- C. FY2019 Audit Contract (Approved 4-0)

Commissioner Miltich made a motion to approve the Consent Agenda as presented. Commissioner Ross seconded the motion and it passed unanimously, 4-0.

10. COMMISSIONER CONCERNS

A. Mecklenburg County Sheriff Department Lidar (speed enforcement)

Commissioner Naas expressed concerns with the lack of warning given to Cornelius for the Sheriff's Department's Lidar (speed enforcement) event that occurred on February 19th along Jetton Road. He asked staff to invite the Sheriff to a Board meeting to discuss the event, as well as copies of any citations that were written that day on Jetton Road.

11. ADJOURNMENT

There being no further business to discuss, Commissioner Miltich made a motion to adjourn at 8:31PM. Commissioner Ross seconded the motion and it passed unanimously, 4-0.

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 4, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager


Action Requested:

Town Staff and Town Board to hold a follow-up discussion on the salary and benefits study.

Manager's Recommendation:

Town Manager recommends holding the discussion.

ATTACHMENTS:

Name:	Description:	Type:
 3-4-2019_Salary_Presentation_to_BOC-v4.pptx	Salary and Benefits Study	Presentation

Town of Cornelius Compensation & Benefits Options

1

March 4, 2019

- Summer/fall 2018 – Market Study performed by Salary and Benefits Study Committee
- Salary and Benefits Study Committee Presented Findings and Recommendations on December 3rd.
 - 39% of salary ranges are below market
 - 64% of current employees are paid below market
 - 42% of employees have less than 5 years experience
- After Presentation, Information Requests from Commissioners and Further Data Gathering from Staff.
- Staff and Commissioners have Continued Discussions.
- Since December 3rd:
 - 5 Employees Resigned Voluntarily.
 - Other Jurisdictions have Stepped up their Recruiting Efforts, Utilizing their Increased Pay Plans and Active Recruitment, Including Senior Management and Professional Positions.
 - Staff Morale Regarding Pay is an Increasing Concern.
 - Town Manager is Concerned about Retaining Experienced and Quality Staff in order to Maintain Service Levels in all Departments.

Cost of Turnover

- 6-12 months of annual salary
- Factors that impact cost
 - Recruiting
 - Onboarding & Training
 - Lost Productivity
 - Loss of Institutional Memory
 - Decline in Service
 - Lost Engagement/Employee Morale
 - Cost of overtime to maintain coverage

Cost of Turnover by Year

	Six Months – 12 Months
➤ 2016	\$379,682 - \$759,364
➤ 2017	\$191,468 - \$382,935
➤ 2018	\$259,916 - \$519,835
➤ Total	\$831,066 - \$1,662,134

Cost to Hire Patrol Officer

➤ Recruitment & HR costs	\$ 2,460
➤ Uniforms	\$ 2,831
➤ Field Training	\$17,020
➤ State Mandated Training	\$ 727
➤ Radar School	\$ 1,290
➤ Other required training	\$ 753
Total:	\$25,081*

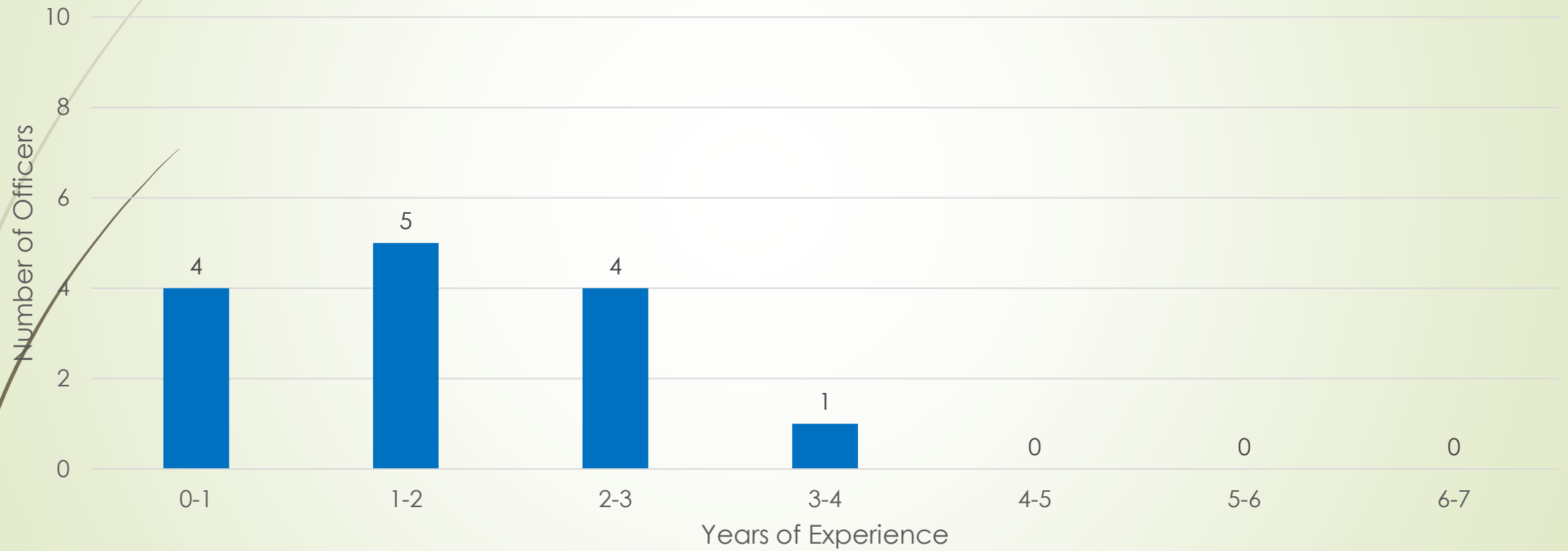
Cost to fill 5 openings per year: \$125,405**

*Represents 2/3 of the annual salary of a Patrol Officer.

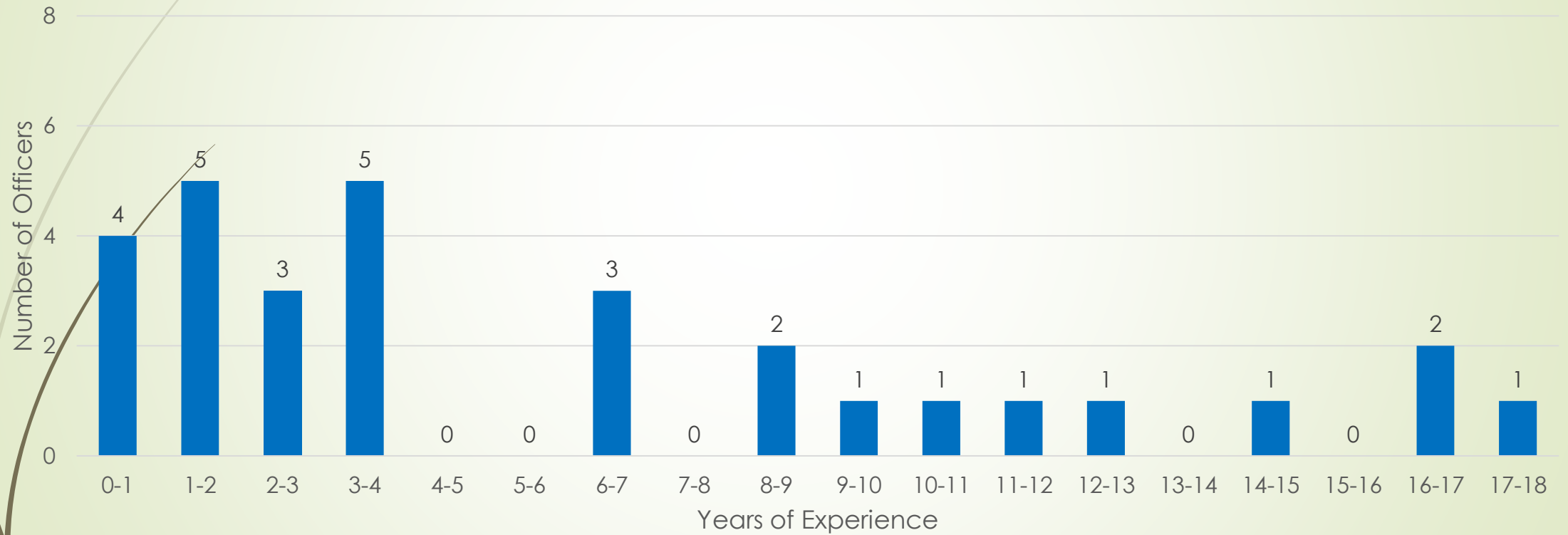
**Represents the salary of at least 3 officers.

➤ 4 Voluntary Police Officer Resignations Since January 2019

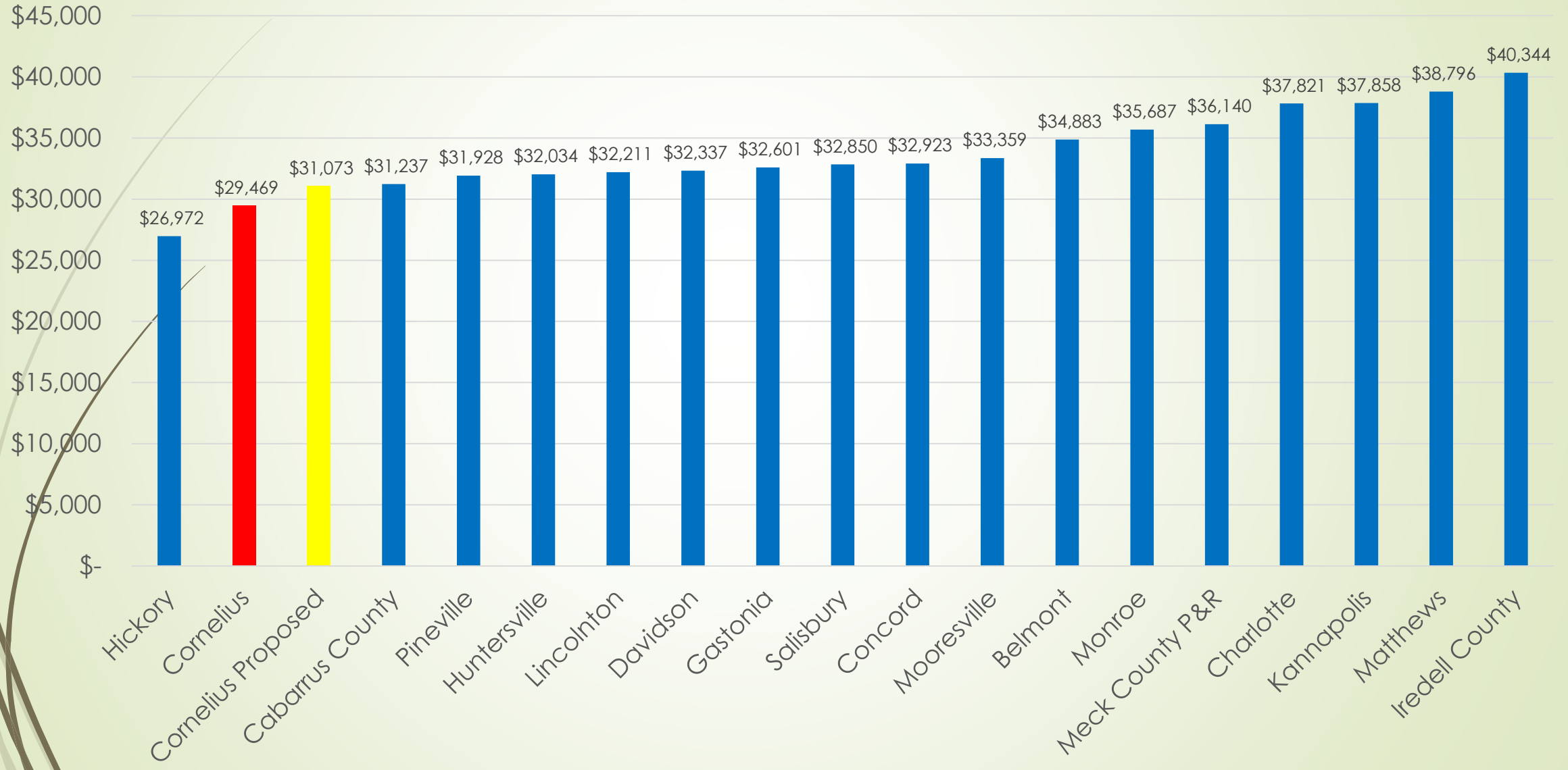
Patrol Officer Years of Experience



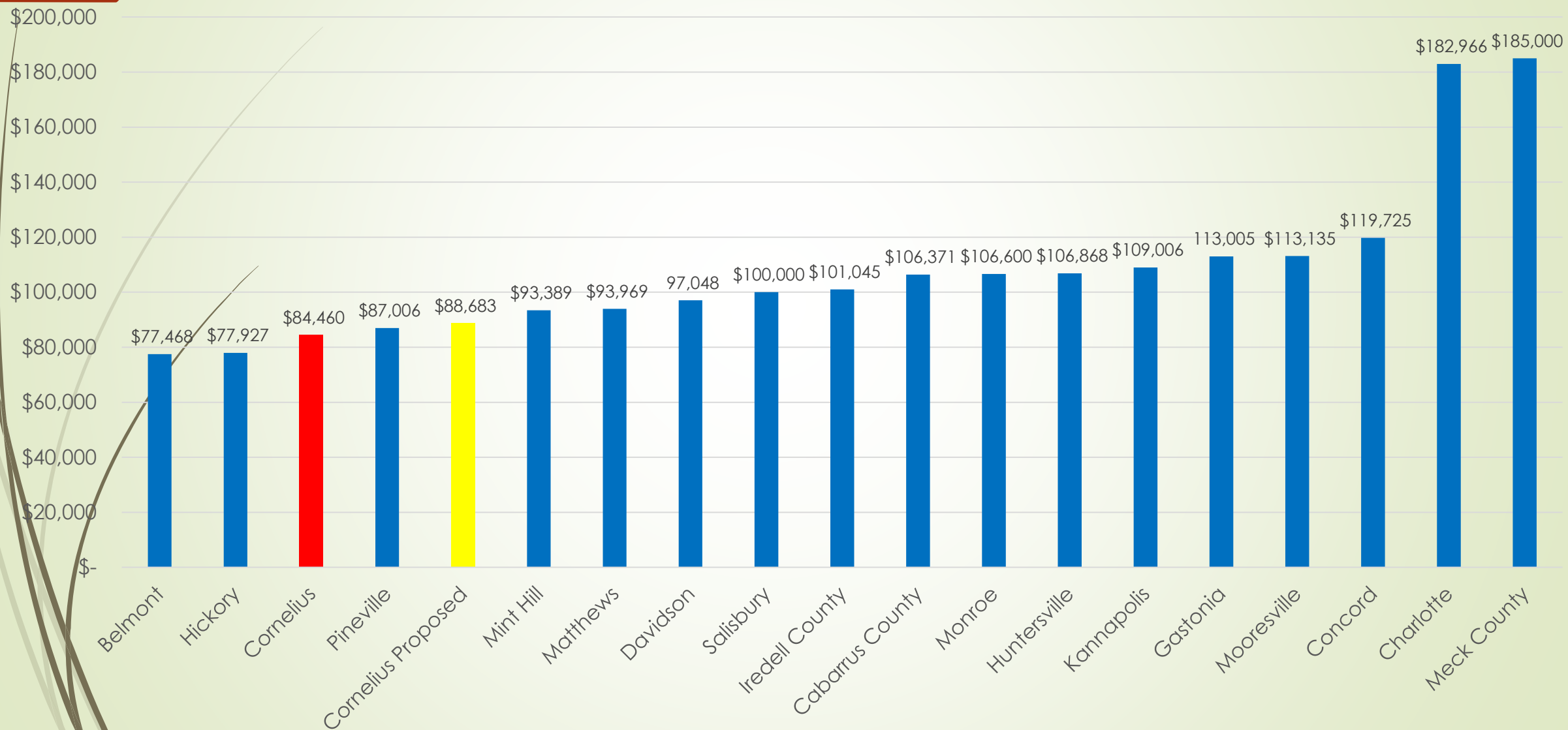
All Non-Ranking Police Officer Years of Experience



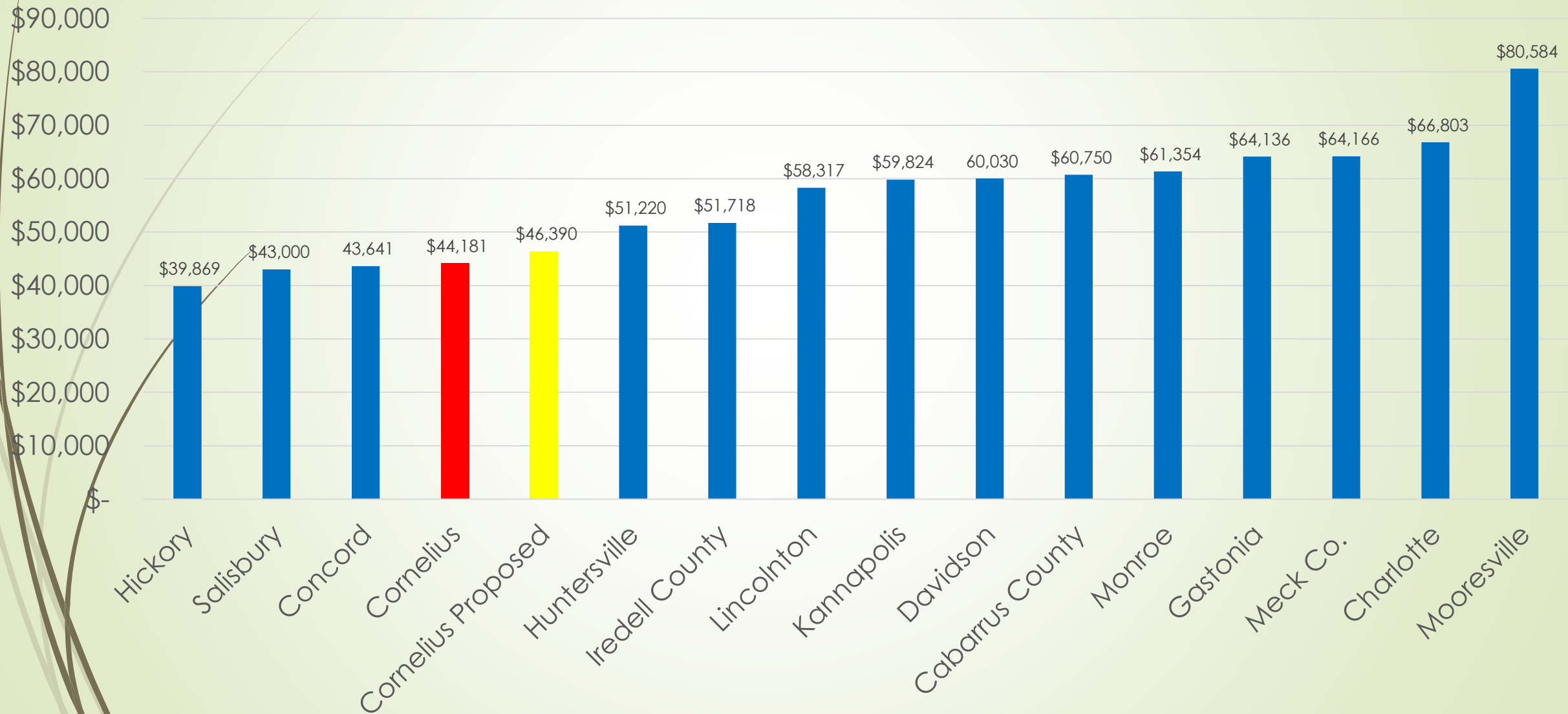
Maint. Worker



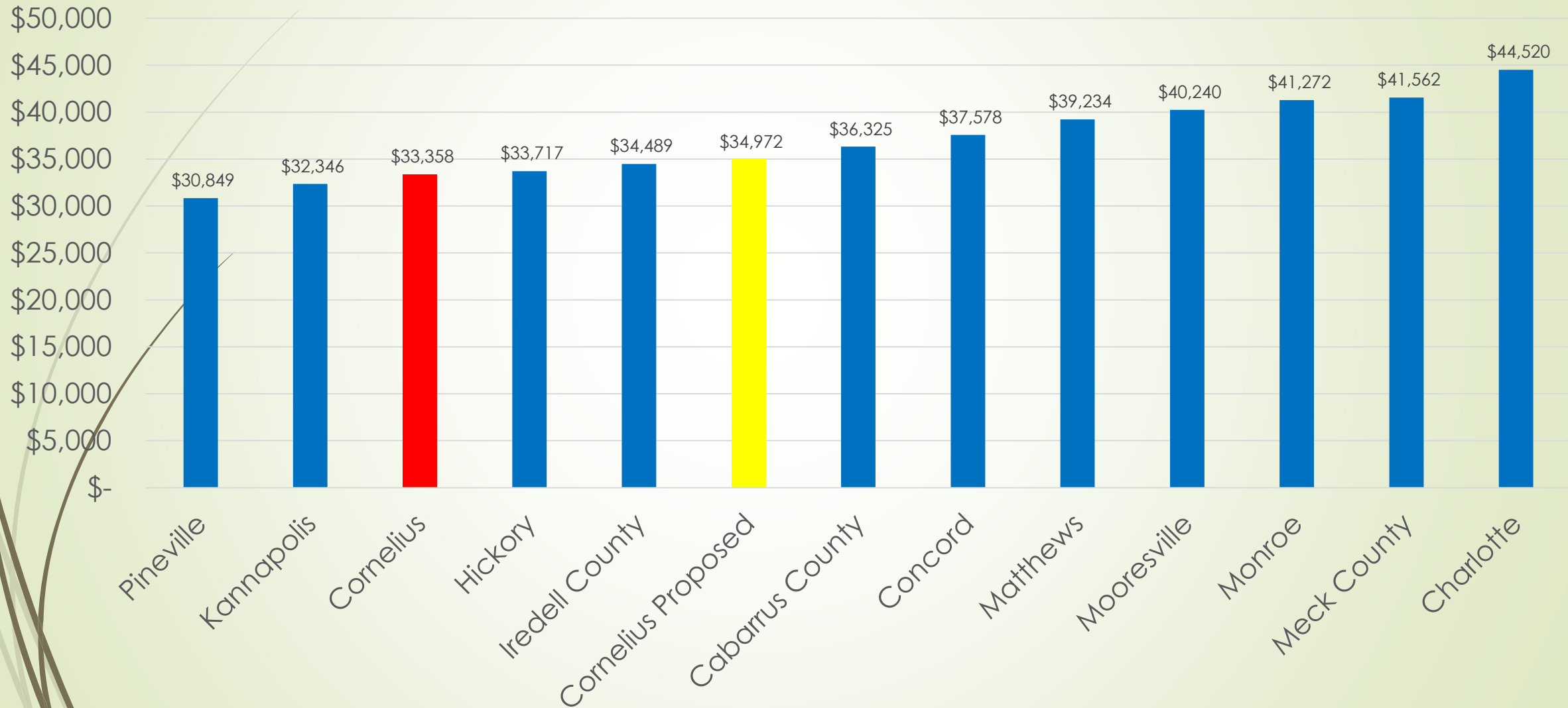
Finance Director



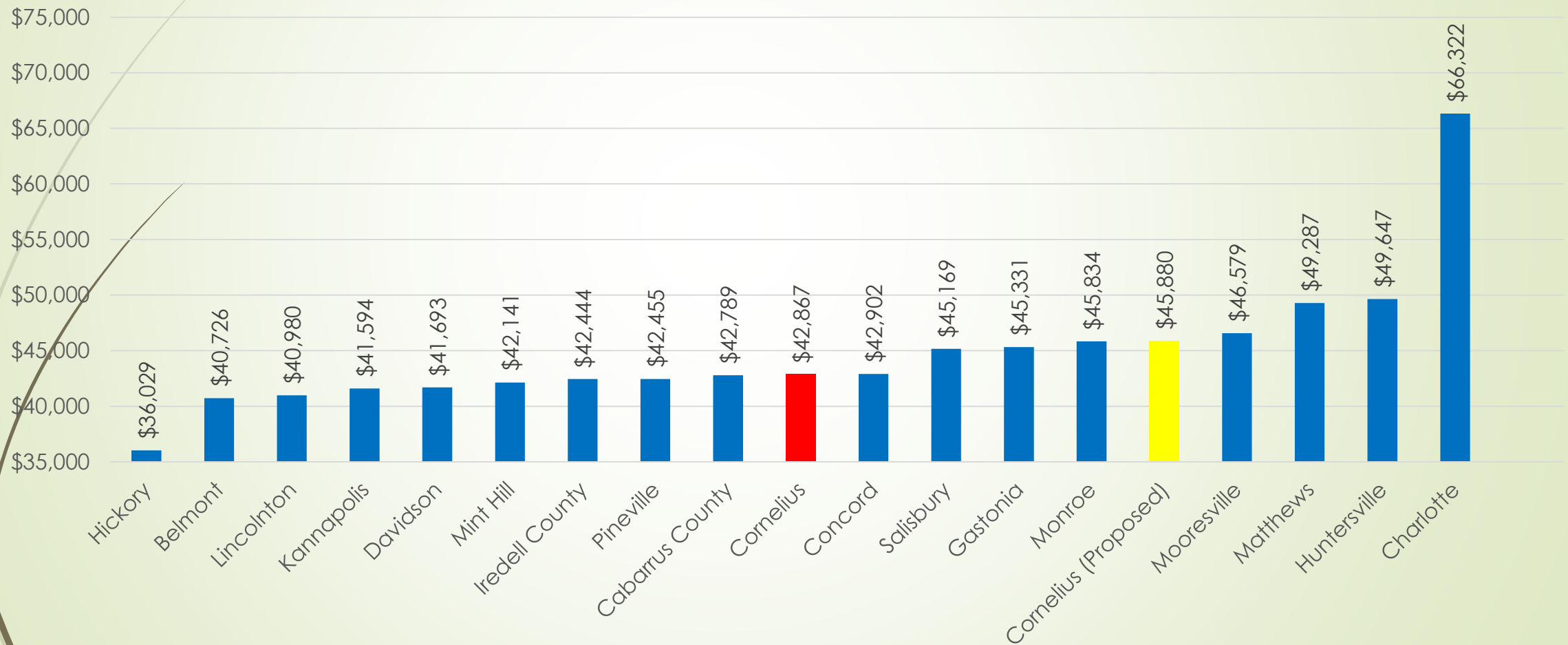
Accountant



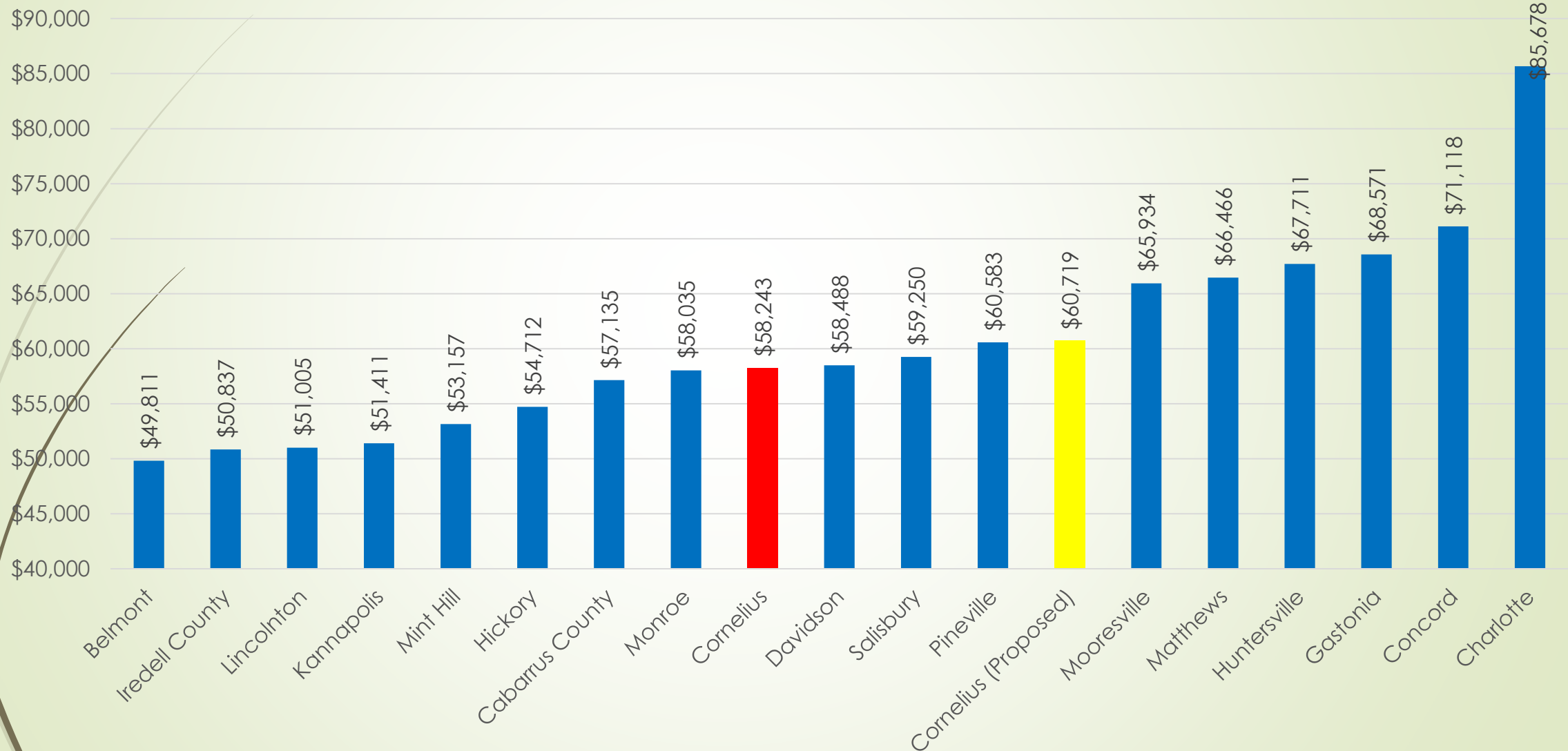
Telecommunicator



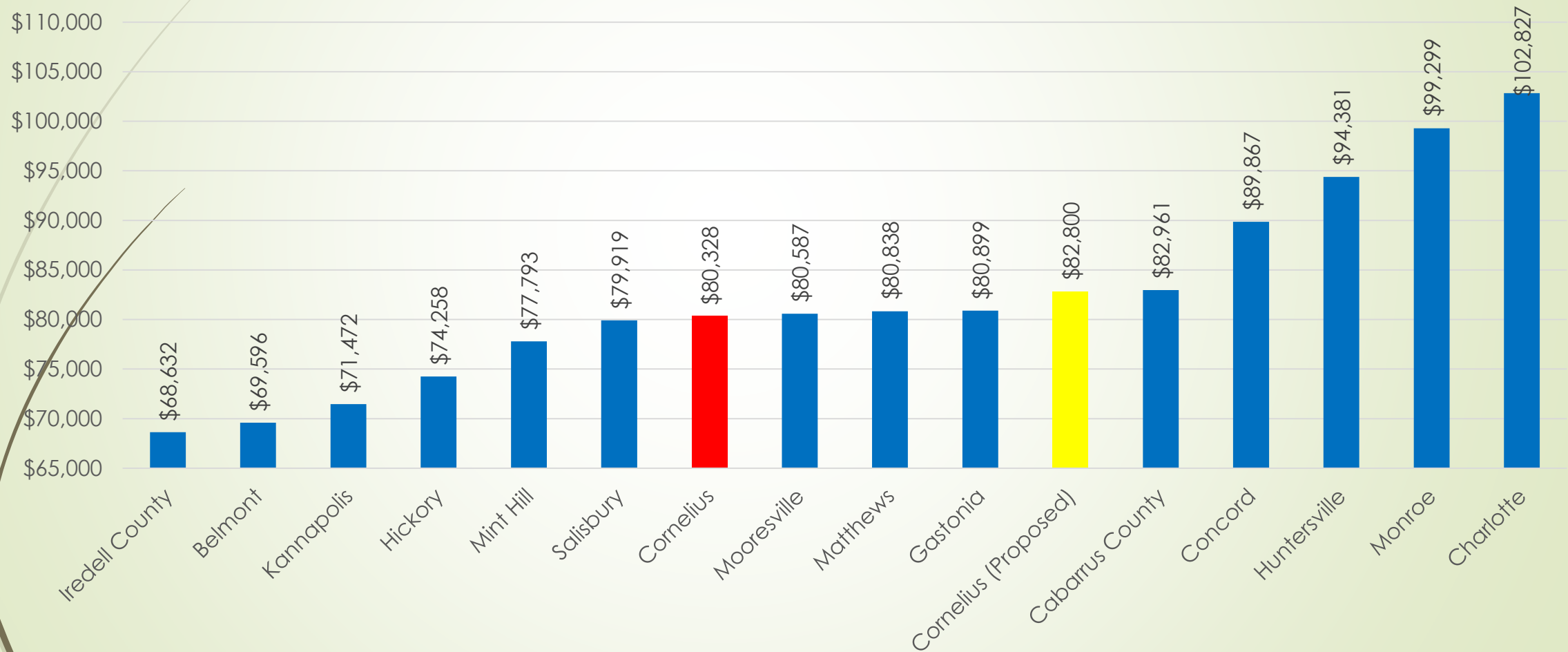
Market Survey – Average Patrol Officer Salary



Market Survey – Average Sergeant Salary



Market Survey – Average Captain Salary



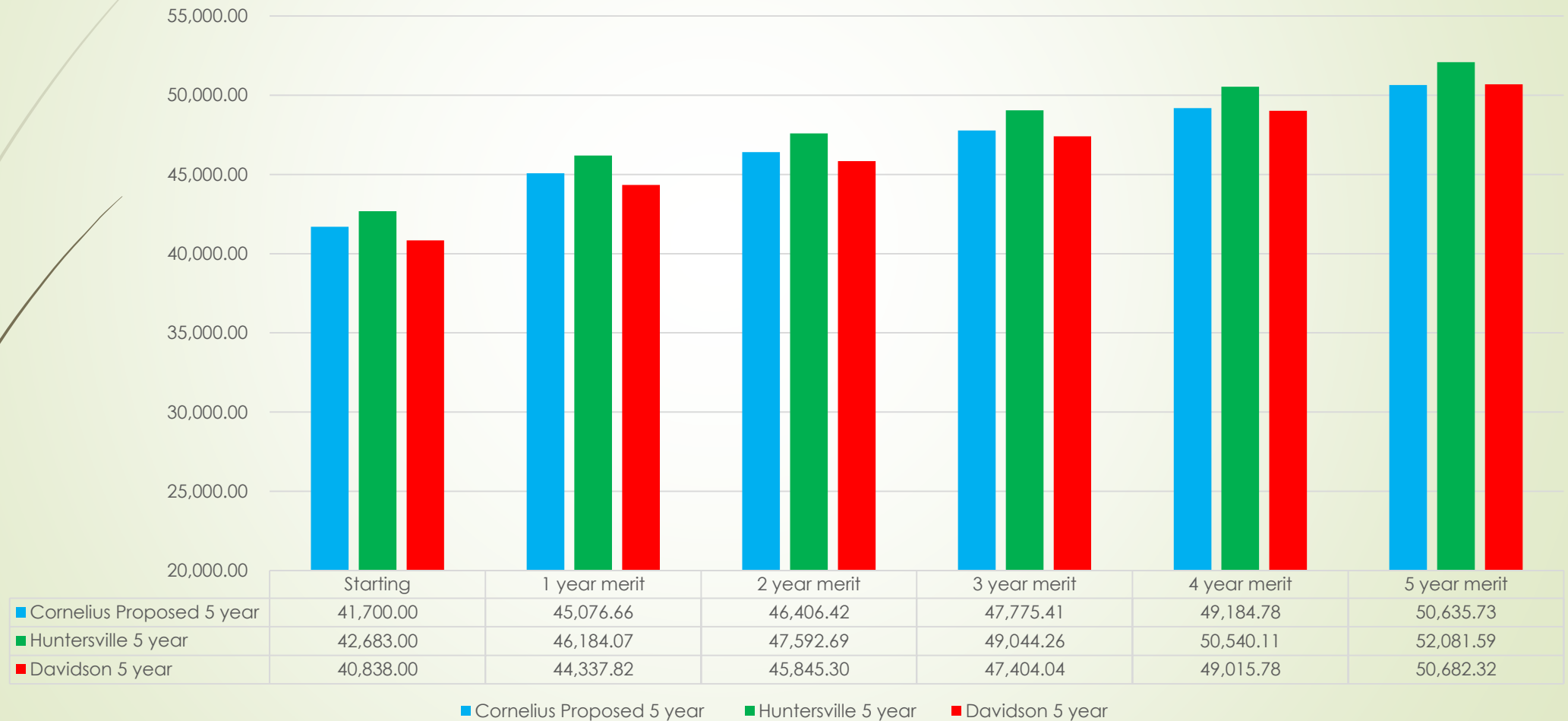
	5 Year Average Merit/COLA	Probationary Increase
Cornelius	2.95%	0%
Huntersville	3.05%	5%
Davidson	3.40%	5%

Police Officer

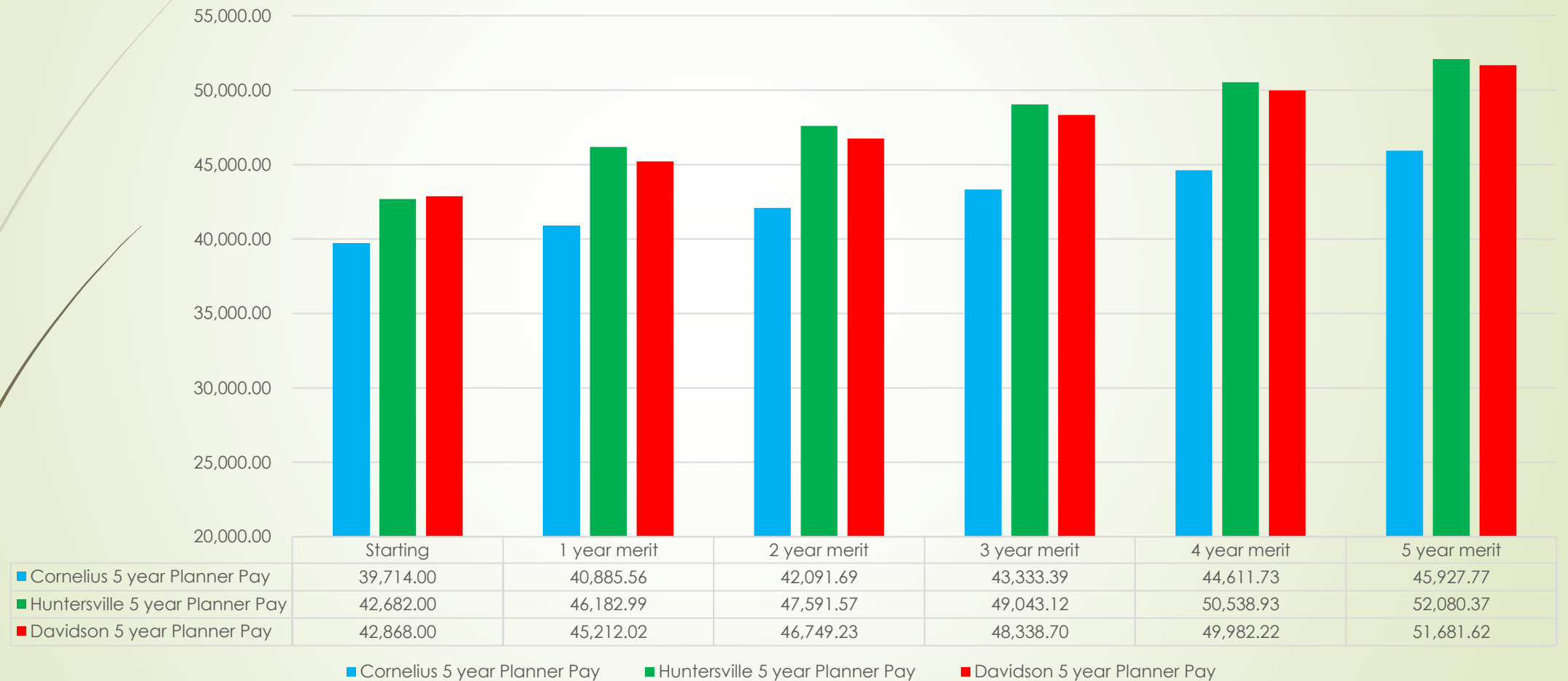


	5 Year Average Merit/COLA	Probationary Increase
Cornelius	2.95%	5%
Huntersville	3.05%	5%
Davidson	3.40%	5%

Police Officer- Proposed



Planner



Recruitment and Retention Strategies: Endorsed by Town Board

- Safety Day
- Flex time scheduling
- Discount for Park & Recreation rentals/camps
- Sick leave donation cap to increase from 160 hours to 240 hours
- Rollover of vacation hours in excess of 240 to sick leave at year end
- Employee service recognition
- Pay for BLET & a trainee wage for qualified PO candidates
- Improved and formalized Exit Interview process (prior to leaving employment; encourage meeting face-to-face with Town Manager)

Recruitment and Retention Strategies: In Process

- Optimized job postings (NCLM, relevant websites, NC Justice Academy)
- Job fairs/career days (recruit for tele-communicators at same time as officers)
- BLET (Mitchell, CPCC, Rowan) - 2 current PD instructors
- Job Fairs/Career Days (Hough High School, Mitchell, CPCC, and traditional 4 year Universities)
- Explorers Program
- Forensic Camps
- Employee Action Committee

Recruitment and Retention Strategies: Proposed

- Provide Police Officers 2% for achieving Intermediate law enforcement certification (\$2,000)
- Offer sign-on and employee referral bonuses for certain positions (currently targeted for patrol officers - \$12,000)
- Provide a 5% increase after 12 month probationary period for all new employees to move them closer to the market. Cornelius is the only North Mecklenburg Town not providing a probationary increase; (\$36,000)
- Budget 1% of salaries for recruitment/retention/compression pool for all departments to retain star employees and recruit experienced employees; (\$60,000)
- Budget .5% of salaries for annual performance bonus pool to reward exemplary performance; (\$30,000)

Short Term: Remainder FY 2019 Compensation Costs

FY 19 Compensation Includes: Salary and Benefits, Recruitment/Retention/Compression Pool, Sign on/Referral Bonus, and Intermediate Law Enforcement Certificate.

- Option A: All Departments - \$130,000
- Option B: Only Sworn PD - \$106,566
- Option C: Only Patrol, Corporals, and Sergeants - \$104,189
- Option D: Only Patrol and Corporals - \$96,036

Remainder FY 2019 Compensation

Options	# of EES	Salary Costs	Recruitment/ Retention/ Compression Pool	Sign On/ Referral Bonus	Intermediate Law Enforcement Certification	FY 19 Costs Total
Option A: All Employees	79	\$93,000	\$30,000	\$6,000	\$1,000	\$130,000
Option B: Only Sworn PD	50	\$69,566	\$30,000	\$6,000	\$1,000	\$106,566
Option C: Only Patrol, Corporals, and Sergeants	48	\$67,189	\$30,000	\$6,000	\$1,000	\$104,189
Option D: Only Patrol, and Corporals	41	\$59,036	\$30,000	\$6,000	\$1,000	\$96,036

Updated Salary Ranges

Salary Grade	Job Title	FLSA Status	Minimum	Market	Maximum
11	PW Maintenance Technician	NE	\$ 28,224	\$ 35,280	\$ 44,100
	Receptionist	NE	\$ 28,224	\$ 35,280	\$ 44,100
12	Parks Maintenance Technician	NE	\$ 29,635	\$ 37,044	\$ 46,305
	Police Records Clerk	NE	\$ 29,635	\$ 37,044	\$ 46,305
	Recreation Program Assistant	NE	\$ 29,635	\$ 37,044	\$ 46,305
	Equipment Operator	NE	\$ 29,635	\$ 37,044	\$ 46,305
13	Administrative Assistant	NE	\$ 31,117	\$ 38,896	\$ 48,620
	Animal Control Officer	NE	\$ 31,117	\$ 38,896	\$ 48,620
	Financial Assistant	NE	\$ 31,117	\$ 38,896	\$ 48,620
14	IT Technician	NE	\$ 32,673	\$ 40,841	\$ 51,051
	Telecommunicator	NE	\$ 32,673	\$ 40,841	\$ 51,051
15	Animal Shelter Manager	NE	\$ 34,307	\$ 42,883	\$ 53,604
	Police Records Manager	NE	\$ 36,022	\$ 45,027	\$ 56,284
	Senior Telecommunicator	NE	\$ 34,307	\$ 42,883	\$ 53,604
16	Crew Leader	NE	\$ 36,022	\$ 45,027	\$ 56,284
17		NE	\$ 37,823	\$ 47,278	\$ 59,098
18	Planner	NE	\$ 39,714	\$ 49,642	\$ 62,053
	Telecommunications Supervisor	NE	\$ 39,714	\$ 49,642	\$ 62,053
	Arts Center Program Manager	NE	\$ 39,714	\$ 49,642	\$ 62,053
	Recreation Ctr Program Manager	NE	\$ 39,714	\$ 49,642	\$ 62,053

Updated Salary Ranges – cont'd.

Salary Grade	Job Title	FLSA Status	Minimum	Market	Maximum
19	Police Officer	NE	\$ 41,700	\$ 52,124	\$ 65,155
	Police Analyst	NE	\$ 41,700	\$ 52,124	\$ 65,155
	Athletic Program Manager	NE	\$ 41,700	\$ 52,124	\$ 65,155
	Special Events Manager	NE	\$ 41,700	\$ 52,124	\$ 65,155
20	Accountant	NE	\$ 43,785	\$ 54,730	\$ 68,413
	Benefits/Payroll Coordinator	NE	\$ 43,785	\$ 54,730	\$ 68,413
	Police Corporal	NE	\$ 43,785	\$ 54,730	\$ 68,413
	Police Detective	NE	\$ 43,785	\$ 54,730	\$ 68,413
21	Recreation Superintendent	E	\$ 45,974	\$ 57,467	\$ 71,834
22	Town Clerk	NE	\$ 48,272	\$ 60,340	\$ 75,425
	Public Works Supervisor	NE	\$ 48,272	\$ 60,340	\$ 75,425
23	Senior Planner	NE	\$ 50,686	\$ 63,357	\$ 79,196
	Police Sergeant	NE	\$ 50,686	\$ 63,357	\$ 79,196
24			\$ 53,220	\$ 66,525	\$ 83,156

Updated Salary Ranges – cont'd.

Salary Grade	Job Title	FLSA Status	Minimum	Market	Maximum
25	Police Lieutenant	E	\$ 58,675	\$ 73,344	\$ 91,680
26			\$ 58,675	\$ 73,344	\$ 91,680
27	IT Manager	E	\$ 61,609	\$ 77,011	\$ 96,264
	Assistant Planning Director	E	\$ 61,609	\$ 77,011	\$ 96,264
	Park & Recreation Assist. Director	E	\$ 61,609	\$ 77,011	\$ 96,264
28	Captain	E	\$ 67,924	\$ 84,905	\$ 106,131
29	Public Works Director	E	\$ 67,924	\$ 84,905	\$ 106,131
30	Parks & Recreation Director	E	\$ 71,320	\$ 89,150	\$ 111,438
	Planning Director	E	\$ 71,320	\$ 89,150	\$ 111,438
	Police Major	E	\$ 71,320	\$ 89,150	\$ 111,438
31			\$ 74,886	\$ 93,608	\$ 117,010
32	Finance Director	E	\$ 78,630	\$ 98,288	\$ 122,860
	Assistant Town Manager/PW	E	\$ 78,630	\$ 98,288	\$ 122,860
33			\$ 82,562	\$103,202	\$ 129,003
34	Chief of Police	E	\$ 86,690	\$108,362	\$ 135,453
35			\$ 91,025	\$113,780	\$ 142,226
36	Deputy Town Manager	E	\$ 95,576	\$119,469	\$ 149,337

FY 2020 Compensation Costs

FY 20 Compensation Includes: Salary and Benefits, Recruitment/Retention/Compression Pool, Sign on/Referral Bonus, Intermediate Law Enforcement Certificate, Probationary Period 5% Salary Increase, and Annual Performance Bonus Pool.

- Option A: All Departments - \$419,000 (FY 19= \$130,000)
- Option B: Only Sworn PD - \$348,699 (FY 19= \$106,566)
- Option C: Only Patrol, Corporals, and Sergeants - \$341,566 (FY 19= \$104,189)
- Option D: Only Patrol and Corporals - \$317,107 (FY 19= \$96,036)

FY 2020 Compensation Costs

Options	# of EES	Salary Costs	Recruitment/ Retention/ Compression Pool	Sign On/ Referral Bonus	Intermediate Law Enforcement Certification	Probationary Period 5% Salary Increase	Annual Performance Bonus Pool	FY 20 Costs Total
Option A: All Employees	79	\$279,000	\$60,000	\$12,000	\$2,000	\$36,000	\$30,000	\$419,000
Option B: Only Sworn PD	50	\$208,699	\$60,000	\$12,000	\$2,000	\$36,000	\$30,000	\$348,699
Option C: Only Patrol, Corporals, and Sergeants	48	\$201,566	\$60,000	\$12,000	\$2,000	\$36,000	\$30,000	\$341,566
Option D: Only Patrol, and Corporals	41	\$177,107	\$60,000	\$12,000	\$2,000	\$36,000	\$30,000	\$317,107

Growth in Departmental Expenses

		Actual 2008	Actual 2009	Actual 2010	Actual 2011	Actual 2012	Actual 2013	Actual 2014	Actual 2015	Actual 2016	Actual 2017	EYE 2018	CAGR				
Department	Category												10-yr	5-yr	3-yr		
Police	Personnel	\$ 2,461,841	\$ 2,680,052	\$ 2,968,243	\$ 3,314,765	\$ 3,448,993	\$ 3,614,852	\$ 3,713,085	\$ 3,854,930	\$ 4,228,265	\$ 4,482,136	\$ 4,723,249	6.7%	5.5%	7.0%		
	Operating	\$ 509,199	\$ 551,428	\$ 716,085	\$ 697,708	\$ 811,454	\$ 795,763	\$ 971,399	\$ 966,647	\$ 971,297	\$ 1,076,730	\$ 1,328,723	10.1%	10.8%	11.2%		
	Capital	\$ 287,802	\$ 468,956	\$ 595,629	\$ 184,366	\$ 198,367	\$ 338,488	\$ 174,843	\$ 335,014	\$ 418,530	\$ 475,927	\$ 300,330	0.4%	-2.4%	-3.6%		
	Total	\$ 2,971,040	\$ 3,231,480	\$ 3,684,328	\$ 4,012,473	\$ 4,260,447	\$ 4,410,615	\$ 4,684,484	\$ 4,821,577	\$ 5,199,562	\$ 5,558,866	\$ 6,051,972	7.4%	6.5%	7.9%		
PARC (Incl. CAC)	Personnel	\$ 643,403	\$ 696,578	\$ 708,396	\$ 761,393	\$ 677,983	\$ 623,752	\$ 698,651	\$ 718,891	\$ 781,430	\$ 861,830	\$ 922,080	3.7%	8.1%	8.7%		
	Operating	\$ 694,934	\$ 599,456	\$ 613,583	\$ 734,874	\$ 753,815	\$ 760,973	\$ 779,078	\$ 975,907	\$ 996,789	\$ 1,147,864	\$ 1,542,949	8.3%	15.2%	16.5%		
	Capital	\$ 121,719	\$ 2,580,000	\$ 44,059	\$ 2,280,000	\$ 1,375,147	\$ 3,885,000	\$ 88,000	\$ 5,472,234	\$ -	\$ 1,819,068	\$ 701,894	19.1%		-49.6%		
	Total	\$ 1,338,337	\$ 1,296,034	\$ 1,321,979	\$ 1,496,267	\$ 1,431,798	\$ 1,384,725	\$ 1,477,729	\$ 1,694,798	\$ 1,778,219	\$ 2,009,694	\$ 2,465,029	6.3%	12.2%	13.3%		
Fire	Operating	\$ 900,000	\$ 965,000	\$ 953,000	\$ 1,063,000	\$ 1,199,596	\$ 1,470,626	\$ 1,328,768	\$ 1,390,813	\$ 1,477,980	\$ 1,461,410	\$ 1,526,628	5.4%	0.8%	3.2%		
	Capital	\$ -	\$ -	\$ 358,380	\$ 39,820	\$ 525,281	\$ -	\$ 28,776	\$ 399,654	\$ 861,429	\$ 71,072	\$ 986,756	***	***	35.2%		
	Total	\$ 900,000	\$ 965,000	\$ 1,311,380	\$ 1,102,820	\$ 1,724,877	\$ 1,470,626	\$ 1,357,544	\$ 1,790,467	\$ 2,339,409	\$ 1,532,482	\$ 2,513,384	10.8%	11.3%	12.0%		
Public Works	Personnel	\$ 463,545	\$ 468,383	\$ 443,043	\$ 445,815	\$ 441,741	\$ 516,808	\$ 381,570	\$ 398,795	\$ 414,563	\$ 438,140	\$ 442,046	-0.5%	-3.1%	3.5%		
	Operating	\$ 499,687	\$ 516,859	\$ 609,534	\$ 622,216	\$ 514,905	\$ 681,583	\$ 697,920	\$ 723,277	\$ 668,737	\$ 687,822	\$ 637,530	2.5%	-1.3%	-4.1%		
	Capital	\$ 577,626	\$ 637,759	\$ 394,177	\$ 212,228	\$ 226,455	\$ 469,764	\$ 74,620	\$ 503,855	\$ 360,624	\$ 256,556	\$ 875,000	4.2%	13.2%	20.2%		
	Total	\$ 963,232	\$ 985,242	\$ 1,052,577	\$ 1,068,031	\$ 1,183,101	\$ 1,668,155	\$ 1,154,110	\$ 1,625,927	\$ 1,443,924	\$ 1,382,518	\$ 1,954,576	7.3%	3.2%	6.3%		
General Govt	Personnel	\$ 961,680	\$ 983,234	\$ 1,060,831	\$ 1,079,065	\$ 1,089,564	\$ 1,058,335	\$ 1,172,293	\$ 1,081,622	\$ 1,082,231	\$ 862,856	\$ 905,836	-0.6%	-3.1%	-5.7%		
	Operating	\$ 671,962	\$ 803,640	\$ 898,052	\$ 661,361	\$ 470,452	\$ 550,063	\$ 497,921	\$ 433,338	\$ 826,247	\$ 420,145	\$ 529,773	-2.3%	-0.7%	6.9%		
	Total	\$ 1,633,642	\$ 1,786,874	\$ 1,958,883	\$ 1,740,426	\$ 1,560,016	\$ 1,608,398	\$ 1,670,214	\$ 1,514,960	\$ 1,908,478	\$ 1,283,001	\$ 1,435,609	-1.3%	-2.2%	-1.8%		
Planning	Personnel	\$ 376,632	\$ 429,846	\$ 371,848	\$ 446,981	\$ 398,021	\$ 364,750	\$ 406,671	\$ 433,511	\$ 434,378	\$ 453,155	\$ 451,555	1.8%	4.4%	1.4%		
	Operating	\$ 189,681	\$ 164,990	\$ 110,567	\$ 174,415	\$ 162,589	\$ 133,541	\$ 123,743	\$ 171,757	\$ 107,471	\$ 297,912	\$ 167,184	-1.3%	4.6%	-0.9%		
	Total	\$ 566,313	\$ 594,836	\$ 482,415	\$ 621,396	\$ 560,610	\$ 498,291	\$ 530,414	\$ 605,268	\$ 541,849	\$ 751,067	\$ 618,739	0.9%	4.4%	0.7%		
Communications	Personnel	\$ 582,953	\$ 562,022	\$ 608,531	\$ 663,802	\$ 638,249	\$ 538,738	\$ 536,816	\$ 530,848	\$ 548,219	\$ 537,305	\$ 564,305	-0.3%	0.9%	2.1%		
	Operating	\$ 86,251	\$ 71,843	\$ 58,448	\$ 65,966	\$ 24,195	\$ 33,704	\$ 32,567	\$ 43,144	\$ 36,033	\$ 40,137	\$ 49,066	-5.5%	7.8%	4.4%		
	Total	\$ 669,204	\$ 633,865	\$ 666,979	\$ 729,768	\$ 662,444	\$ 572,442	\$ 569,383	\$ 573,992	\$ 584,252	\$ 577,442	\$ 613,371	-0.9%	1.4%	2.2%		
Animal Control	Personnel	\$ 55,591	\$ 56,645	\$ 80,696	\$ 99,599	\$ 97,598	\$ 104,505	\$ 113,553	\$ 118,295	\$ 122,672	\$ 125,005	\$ 132,143	9.0%	4.8%	3.8%		
	Operating	\$ 10,253	\$ 12,602	\$ 39,881	\$ 63,989	\$ 59,288	\$ 53,366	\$ 58,881	\$ 48,248	\$ 47,786	\$ 36,220	\$ 48,696	16.9%	-1.8%	0.3%		
	Total	\$ 65,844	\$ 69,247	\$ 120,577	\$ 163,588	\$ 156,886	\$ 157,871	\$ 172,434	\$ 166,543	\$ 170,458	\$ 161,225	\$ 180,839	10.6%	2.8%	2.8%		
Cornelius Population		23,929	24,060	24,847	24,984	25,671	26,650	27,655	28,540	29,431	30,207	31,157					
Total Assessed Value		3,699,611,273	3,842,434,545	3,849,420,938	3,879,262,181	4,921,074,400	4,939,225,000	4,955,539,583	5,000,082,500	5,235,562,500	5,431,995,686	5,477,464,336					
Tax Produced		10,173,931	10,566,695	10,585,908	10,667,971	12,302,686	11,854,140	11,893,295	12,000,198	12,565,350	13,851,589	13,967,534					
Park Capital			\$ 2,580,000 Robbins Phase I			\$ 2,280,000 WAC			\$ 1,349,500 Robbins Phase 2			\$ 3,885,000 Turf Fields CSCGWAY			\$ 4,200,000 Park Bonds \$ 1,158,000 Robbins Ponds		
												\$ 1,500,000 Art Ctr. Land splashpad			\$ 701,894 BRP & Smithville playground BRP drainage		
Park Revenue		\$ (332,465)	\$ (332,910)	\$ (321,575)	\$ (352,317)	\$ (354,401)	\$ (385,189)	\$ (381,782)	\$ (366,420)	\$ (589,962)	\$ (509,744)	\$ (570,543)					
		FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018					
		Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	ACTUALS	ACTUALS	ACTUALS	ACTUALS	EYE					
Asset Forfeiture Funds		\$ (4,153.23)	\$ (7,893.39)	\$ (135,883.13)	\$ (119,919.27)	\$ (3,349.11)	\$ (6,765.00)	\$ (591,631.14)	\$ (40,591.58)	\$ (170,855.98)	\$ (21,912.33)	\$ (120,254.34)					
PD Grant Funds		\$ -	\$ (25,406.97)	\$ (31,850.89)	\$ (161,770.33)	\$ (57,572.69)	\$ (13,035.79)	\$ (10,460.67)	\$ (12,600.00)	\$ (157,370.04)	\$ (84,285.25)	\$ (66,686.32)					
School Resource Officer		\$ (58,227.00)	\$ (62,153.00)	\$ (64,017.59)	\$ (100,000.00)	\$ (100,000.00)	\$ (100,000.00)	\$ (100,000.00)	\$ (105,000.00)	\$ (105,000.00)	\$ (105,000.00)	\$ (105,000.00)					
Lake Patrol		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (367,000.00)	\$ (367,000.00)	\$ (367,000.00)					
Federal Salary Reimbursement		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (12,959.19)	\$ (16,017.42)	\$ (17,316.43)	\$ (19,936.47)					
Totals		\$ (62,380.23)	\$ (95,453.36)	\$ (231,751.61)	\$ (381,689.60)	\$ (160,921.80)	\$ (119,800.79)	\$ (702,091.81)	\$ (171,150.77)	\$ (816,243.44)	\$ (595,514.01)	\$ (678,877.13)					
PD Revenue		\$ (4,015,874.55)															

Expense Growth

Department	Category	Actual	Actual	Actual	EYE	CAGR		
		2008	2013	2015	2018	10-yr	5-yr	3-yr
Police	Personnel	\$ 2,461,841	\$ 3,614,852	\$ 3,854,930	\$ 4,723,249	6.7%	5.5%	7.0%
	Operating	\$ 509,199	\$ 795,763	\$ 966,647	\$ 1,328,723	10.1%	10.8%	11.2%
	Capital	\$ 287,802	\$ 338,488	\$ 335,014	\$ 300,330	0.4%	-2.4%	-3.6%
	Total	\$ 3,258,842	\$ 4,749,103	\$ 5,156,591	\$ 6,352,302	6.9%	6.0%	7.2%
	Total Net of Revenue	\$ 3,196,462	\$ 4,629,302	\$ 4,985,440	\$ 5,673,425	5.9%	4.2%	4.4%
PARC (Incl. CAC)	Personnel	\$ 643,403	\$ 623,752	\$ 718,891	\$ 922,080	3.7%	8.1%	8.7%
	Operating	\$ 694,934	\$ 760,973	\$ 975,907	\$ 1,542,949	8.3%	15.2%	16.5%
	Capital	\$ 121,719	\$ 3,885,000	\$ 5,472,234	\$ 701,894	19.1%	-29.0%	-49.6%
	Total	\$ 1,460,056	\$ 5,269,725	\$ 7,167,032	\$ 3,166,923	8.1%	-9.7%	-23.8%
	Total Net of Revenue	\$ 1,127,591	\$ 4,884,536	\$ 6,800,612	\$ 2,596,380	8.7%	-11.9%	-27.5%
Fire	Operating	\$ 900,000	\$ 1,470,626	\$ 1,390,813	\$ 1,526,628	5.4%	0.8%	3.2%
	VFD Operating		135 K					
	Capital	\$ -	\$ -	\$ 399,654	\$ 986,756	***	***	35.2%
	Total	\$ 900,000	\$ 1,470,626	\$ 1,790,467	\$ 2,513,384	10.8%	11.3%	12.0%
Cornelius Population				Air Packs	Radios & Truck			
		23,929	26,650	28,540	31,157	2.7%	3.2%	3.0%
Total Assessed Value			3.8%	3.2%	3.1%			
		3,699,611,273	4,939,225,000	5,000,082,500	5,477,464,336	4.0%	2.1%	3.1%
			0.4%	0.9%	0.8%	2.0% Nominal 10-year		

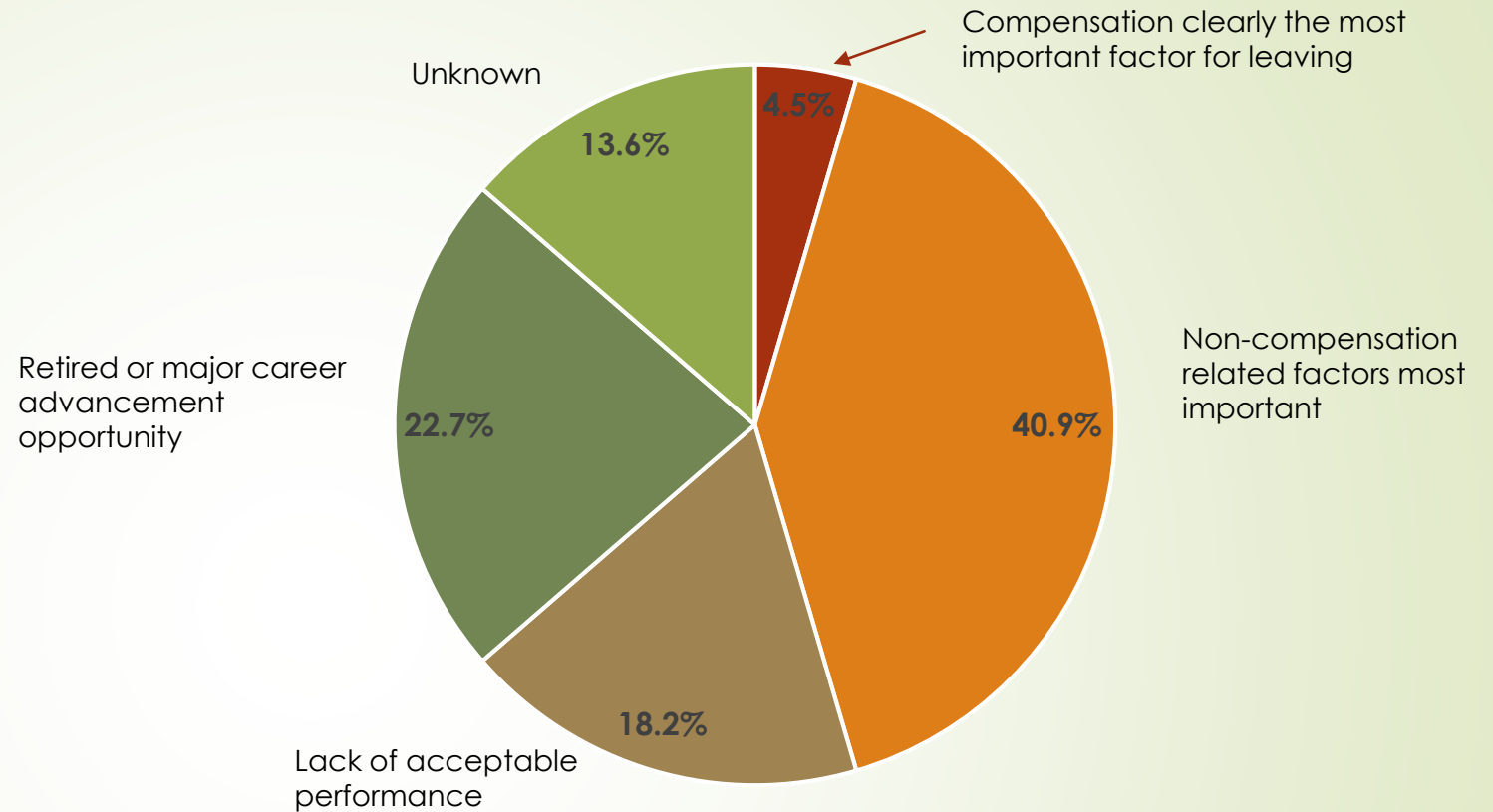
- Police Capital fairly steady \$200-500K per year, \$3.8M total
- PARC Capital lumpy with Robbins, WAC, Turf /Greenway '13, Park Bonds '15, AC land, Smithville
- Fire Capital lumpy with Fire Boat '10, Truck '12, Air packs '15, Ladder Truck '16, Truck/Radios '18, \$3.3M total
- Public Works, Planning, General Government – growth overall similar to Town's growth with some exceptions (Public Works 6% 3-yr CAGR, Animal Control new facility '10, Dispatch – Huntersville departure)

Department	Reasons for Leaving	Reasons Code	Comments
Parks and Recreation		?	Left for private sector furniture opportunity
Police Department	Resigned	3	Performance-driven
Police Department		?	Left for National Guard service
General Government	Retired	4	Simple retirement
General Government	Career opportunity/advancement	4	More responsibility and higher pay as well
Communication	Family, flexibility	2	Wants children, stay at home Mom, needs flexibility, childcare expensive
Communication	Resigned, relocation	2	Believed to relocate for personal relationship
Communication	Personal reasons, potentially pay	2?	Involved in traumatic incident; left, then came back;; pay potentially a factor
Parks and Recreation	Personal reasons, family?	2	commuting from Charlotte. Left for contract work
Communication	Work environment/mismanagement	2	Had new baby; working PT, told FT available but never happened;
Communication		?	Left for ADP opportunity
Communication		?	Left for Mooresville Dispatch, could be comp related
Police Department	Personal reasons, medical	2	Left for medical reasons
Police Department	Retired	4	Simple retirement
Police Department		?	Left for State Trooper opportunity, then came back; left again for Davidson Police
Communication	Work environment	2	Needed day shifts; told by Supervisor that she would be scheduled days, but never happened; hostile work environment; explicitly not about \$
Police Department	Resigned, disciplinary	3	Effectively let go
Police Department	Career opportunity/advancement?	4	Left for UNCC police with Masters and PhD opportunity; wants to teach long-term; comp possibly a factor
Public Works	Hearsay, compensation driven	1?	Left for private sector grading contractor opportunity, believed to be increase from \$12 to \$15
Police Department	Retirement and disability	4	Simple retirement and disability
Parks and Recreation	Let go	3	Performance-driven
Police Department	Retired	4	Simple retirement
Parks and Recreation	Compensation, other	1?	Left for Davidson, lives in Davidson, knows Mayor well, better hours, FT opportunity, \$12 to \$14
Police Department	Let go	3	Performance-driven, disciplinary actions
Police Department	Work environment	2	Police software integration stress; not have support from management; "would still be there today", except for police software concerns
Police Department	Work environment	2	Single Mom, lives in Mooresville; really liked job, but needed stable vs. rotating shifts; hostile work environment, mismanagement
Police Department	Retired	4	Simple retirement
Planning	Let go	3	Performance-driven, encouraged to move on to Concord
Police Department	Work environment, other	2	Multiple reasons, no take home vehicle, scheduling (nights vs. days), entry level disadvantages; wanted Lake Patrol
Police Department		4?	Left for Spectrum career opportunity
Public Works	Work environment	2	Left for Davidson College, complains of fights and no accountability in PW Department (employees sleep on duty)
Finance Department	Let go	3	Performance-driven
Planning		2	Left for Charlotte Planning, unique role in big city Bike planning; comp higher, but benefits lower - "big hit", "Comp had gotten very fair in Cornelius"
Police Department	New buiness opportunity	4	15 year Lake Patrol Sergeant, still works part time; left for new business opportunity, "life decision", "dream to run own business"
Police Department	Work environment, other	2	Left for Davidson position; career opportunity; Cornelius "strung me along", "did not value me enough", no title change, etc
Police Department	Flexibility, other	2	Currently works PT for Cornelius and PT for Iredell County as well
Police Department		?	Left for Huntersville
Public Works	Let go	3	Performance-driven
Parks and Recreation	Let go	3	Performance-driven
Police Department	Career, location, pay, other	2	Left for Charlotte Police, lives in Charlotte, bigger department, more opportunity, more comp also
Police Department	Work environment, other	2	Left to return to private sector; disturbed by traumatic incident; needed more support, wanted light duty assignment
Police Department	Marital status changed, financial concerns	2	Left for Logistics industry and personal/financial reasons
Police Department	NC Public Safety - Parole Dept	2	Left to work for NC in Statesville where he lives. Compensation the same. Some other advantages to the job, but misses police work too sometimes
Town Manager	Career opportunity/advancement	4	More responsibility and higher pay as well

2016-2018 Turnover

2016 - 2018 Turnover – Rates		
Year	Total Employees	Turnover Net of Firings
2016	117	17
2017	116	6
2018	119	13
	117.3333333	36

Reasons for Turnover



2016 - 2018 Turnover - Reasons for Employees Leaving

Code	Reason	% of Total
1	Compensation clearly the most important factor for leaving	4.5%
2	Non-compensation related factors most important	40.9%
3	Lack of acceptable performance	18.2%
4	Retired or major career advancement opportunity	22.7%
5	Unknown	13.6%
		100.0%