



TOWN OF CORNELIUS

Cornelius Town Hall

BOARD OF COMMISSIONERS

August 3, 2020

Agenda

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**
 - A. Public Comment Guidelines**
- 7. CONSIDERATION OF APPROVAL**
 - A. Transportation Advisory Board Bylaws Amendment**
 - B. Bailey/115 Intersection Improvements Construction Contract**
- 8. CONSENT AGENDA**
 - A. Approve Minutes - Regular Meeting**
 - B. Approve Minutes - Closed Session**
- 9. OLD BUSINESS DISCUSSION**
 - A. Code of Ordinances, Title III, Chapter 35 - Town Business Facilities and Vacant Land**
- 10. COMMISSIONER CONCERNS**
- 11. CLOSED SESSION**
 - A. Closed Session pursuant to NCGS 143-318.11(a)(3) and (5)**
- 12. ADJOURNMENT**

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

The Board will hear public comment at this time in-person and by email. In-person comments will require COVID-19 screening and temperature checks when entering the building and allowed into the Board Chambers one at a time. Emails should be sent to TownofCornelius@cornelius.org. Please include your name and address and your comment will be read into the record upon receipt.

- Comments submitted anonymously will not be read into the record.
- Comments are limited to three minutes per comment. The Board will allocate no more than (20 minutes) per meeting to the reading of submitted Public Comment.
- Comments are to be directed to the entire board as a whole and not individuals.
- Comments are expected to be civil and within reasonable standards of courtesy.
- Comments that include vulgarity, slander, name calling, personal attacks or threats will not be read into the record.

All comments will be maintained as a public record and included in the minutes of the meeting.

Manager's Recommendation:

Hear public comments.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		

REQUEST FOR BOARD ACTION

 **Print**

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Aaron Tucker, Planning Director

Action Requested:



Amend the bylaws of the Transportation Advisory Board (TAB) to include:

1. Bicycle and pedestrian improvements added to the TAB's primary focus area.
2. Designate TAB as the Bike! Cornelius Plan steering committee to review updates as necessary.
3. Allow members to serve more than two consecutive terms.

Manager's Recommendation:

Approve the TAB bylaws amendment as presented.

ATTACHMENTS:

Name:	Description:	Type:
 TAB_bylaws_2020_Redlines.docx	TAB Bylaw Changes	Backup Material
 TAB_bylaws_2020_Draft.docx	Amended TAB Bylaws	Backup Material

TRANSPORTATION ADVISORY BOARD BY-LAWS

Mission Statement

The Transportation Advisory Board (TAB) works to ensure mobility issues and potential solutions are addressed with a town-wide perspective for our Town. The TAB's primary focus shall be on roadway, bicycle, and pedestrian improvements.

1. Authority and Responsibility

- 1.1. The TAB shall have the duties and responsibilities prescribed below, or as modified or expanded at the direction of the Town Board:
 - Create and maintain a list of local-level transportation improvement projects for local bond issue consideration;
 - Working with staff, create a list of potential projects to propose for eventual inclusion in the Transportation Improvement Program (TIP);
 - If requested, advise the Planning Board and the Town Board on development applications;
 - Serve as the steering committee for potential changes or updates to the Cornelius Comprehensive Transportation Plan and Bike! Cornelius Plan.
 - Serve as the foundation for stakeholder committees for transportation-related studies. Other members are to be added to the stakeholder committees who are neighborhood and business representatives that are geographically relevant to each study.
 - Provide feedback to staff and make recommendations on specific transportation matters and issues that staff presents to the TAB.

2. Membership

- 2.1. Members shall be appointed by a majority vote of the Town Board of Commissioners.
- 2.2. The Transportation Advisory Board shall consist of up to six (6) Town residents, one to two (1-2) Town Commissioners, and the Town Manager or designee. Members shall live within the Cornelius Corporate Limits or ETJ. When possible, consideration shall be given to ensure membership comprises a broad geographic representation and nominees have demonstrated an interest in transportation-related issues. If two (2) Town Commissioners serve simultaneously, one shall serve as a delegate and the other an alternate.
- 2.3. Members shall serve for a two year term.
- 2.4. Faithful and prompt attendance shall be a prerequisite to continuing membership. If a member is absent for three (3) consecutive meetings or fails to attend seventy-five percent (75%) of regular meetings within any twelve month period, the Chairperson, with the concurrence of the TAB, may recommend to the Town Board that a vacancy be declared and the vacant position be filled.
- 2.5. Conscientious performance of the duties required shall be a prerequisite to continuing membership. If a member fails to conscientiously perform the duties required, the

Chairperson, with the concurrence of the TAB may recommend to the Town Board that the member be removed and the vacant position be filled.

- 2.6. Vacancies filled within a term shall serve the remainder of the term, and the appointee may be nominated and re-appointed for a full term subject to 2.7.

~~2.7. Members shall serve no more than two (2) consecutive terms.~~

3. Election of Officers

- 3.1. The Chairperson shall be elected by a majority of the Transportation Advisory Board. Chairpersons shall serve for a one (1) year term and may be re-elected for successive terms.
- 3.2. If the Chairperson position is vacant, the Town Commissioner delegate shall serve as the Chairperson until such time as the vacancy is filled.

4. Meetings

- 4.1. The Transportation Advisory Board shall hold monthly meetings, as necessary, at a time agreed upon by the membership.
- 4.2. Special meetings may be called by the Chairperson provided that a notice of the time and location shall be given to all members.
- 4.3. All meetings of the TAB shall be open to the public.
- 4.4. A majority of the sitting members shall constitute a quorum. A quorum shall be present before any business is transacted.
- 4.5. Meetings shall be scheduled and business transacted in such a fashion that it will not unduly impede existing approvals or actions by other boards or committees. The TAB shall render decisions and recommendations with appropriate timeliness.
- 4.6. The business of the TAB shall be coordinated by the Town Manager or designee. The Planning Department and Town Manager's staff shall provide support as necessary.
- 4.7. The TAB shall operate according to Robert's Rules of Order to the extent not they do not contradict these Bylaws.
- 4.8. The TAB shall provide periodic, but no less than semi-annual, updates to the Town Board.

5. Conflict of Interest

- 5.1. Members of the Transportation Advisory Board shall not seek to influence a decision, participate in any action or cast a vote involving any matter that is before the Transportation Advisory Board which may result in a pecuniary or personal benefit to themselves, their immediate relatives, or their business interests. In applying this rule the following procedure shall govern:
- a) A Transportation Advisory Board member who believes that a conflict of interest may exist for himself or herself shall declare that possible conflict and ask to be excused from deliberation on the matter in question. A majority vote of the remaining Transportation Advisory Board members shall be required to excuse a member from deliberation for a conflict of interest.

- 5.2. A contention of the existence of an overt conflict of interest or a contention of an undisclosed conflict of interest may be made by any interested party with the Transportation Advisory Board. Such a contention may be grounds for reconsideration of a decision or recommendation of the Transportation Advisory Board. Any such contention made to the Transportation Advisory Board shall be supported by competent and material evidence and shall be submitted to a properly convened meeting of the Transportation Advisory Board. The Transportation Advisory Board shall hear all such evidence and shall, by majority vote, make the final determination as to the existence of a conflict of interest and any further action required of the Transportation Advisory Board by such determination.
- 5.3. Excuse from participation in any matter is necessary only in those specific matters in which a conflict arises. There shall be no excuse based on entire categories of the business or profession with which a member is associated.

6. Records

- 6.1. The TAB shall keep a written summary of its discussions and recommendations. Said summaries shall be maintained in the files of the Town Manager or designee, and posted on the Town website.

7. Actions by Committee

- 7.1. All actions of the TAB shall have been put before the TAB in the form of a motion, duly seconded, and voted upon by all members present before a quorum.
- 7.2. Voting shall be done by a show of hands.

8. Adoption and Amendment

- 8.1. Transportation Advisory Board Bylaws shall be adopted by a majority vote of the Town Board.
- 8.2. Transportation Advisory Board Bylaws may be amended as needed by a majority vote of the Town Board, provided any such amendments are first reduced to writing prior to voting.

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REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 3, 2020

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

Action Requested:

The Town received three bids for the Bailey Rd./Highway 115 intersection improvements. The NJR Group was the lowest responsible bidder at \$1,833,133.76. The Town has not worked with NJR Group before, but they have done several projects for NCDOT in Division 10 and Division 9. Staff checked with the Resident Engineers for these respective Divisions and the references were very positive.





The Bailey Road/Highway 115 Intersection improvements will increase capacity at this intersection by adding and/or extending turn lanes at all four approaches.

The project will take approximately 1 year to complete.

Manager's Recommendation:

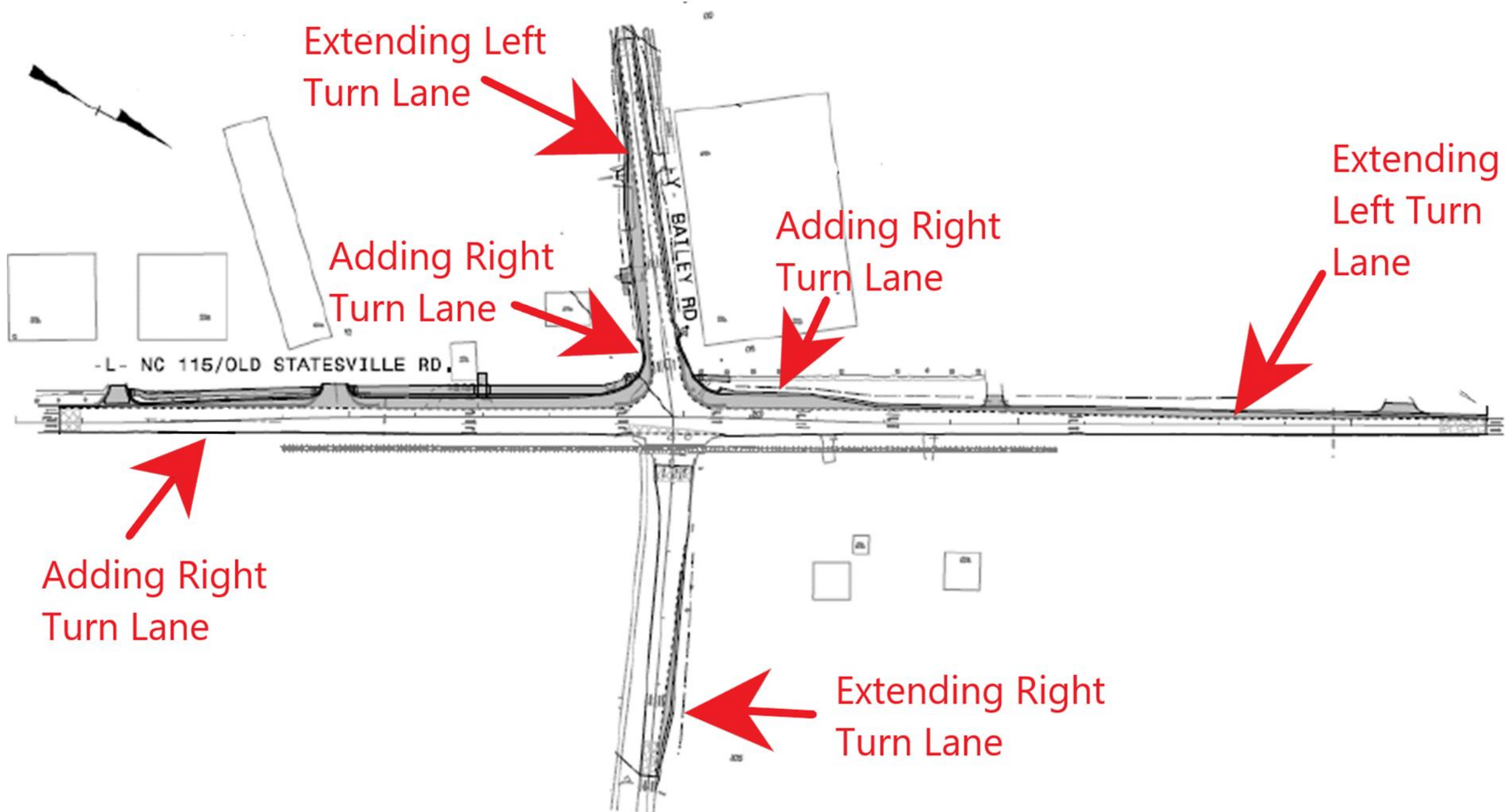
Approve a contract with NJR Group and authorize Town Manager and Town Attorney to finalize and execute the contract.

ATTACHMENTS:

Name:	Description:	Type:
 RFBA_Presentation.pdf	Intersection Improvements	Presentation
 Bid_Tab_Sheet-Final.pdf	Bid Tab	Cover Memo
 Bailey-115_Contract_NJR_Group.pdf	Contract- NJR Group	Cover Memo
 Contract_Conditions_Bailey_115-NJR_Group.pdf	Contract Conditions-NJR Group	Cover Memo

Bailey/115 Intersection Project

Contractor: NJR Group



Extending Left
Turn Lane

Adding Right
Turn Lane

Adding Right
Turn Lane

Extending
Left Turn
Lane

Adding Right
Turn Lane

Extending Right
Turn Lane

Traffic Control

- Contract states the Contractor must maintain normal traffic (no closures of lanes) Monday-Friday between
6:00AM-9:00AM
4:00PM-7:00PM
- The Town may ease these restrictions as long as CMS is all virtual. The Town would still require normal traffic during the AM and PM peaks.
- Night work is allowed, but done at the contractor's discretion.

Contractor & Schedule

- NJR Group is a contractor based in Albemarle. The Town has not worked with them in the past
 - Checked reference which all were positive
 - Done substantial amount of work with NCDOT Division 9 (Winston-Salem area) and NCDOT Division 10
- NJR Group anticipates starting in October/November timeframe
 - Grading will be done during winter
 - Paving and concrete work with start in the spring.
- Completion by late summer 2021

CONTRACTOR	Base Bid	Alternate 1A	Altnerate 1B	Alternate 1C	Alternate 1D	Alternate 1E	Alternate 1F	Alternate 1G
Blythe Construction	\$2,197,471.31	-\$1.00	\$0.00	-\$1,540.00	\$0.00	\$2,243.54	\$523.80	\$50,000.00
Blythe Development	\$1,909,204.85	\$0.00	\$0.00	\$1,980.00	\$0.00	\$1,430.00	\$540.00	\$29,325.00
NJR Group	\$1,833,133.76	\$1,000.00	\$0.00	\$1,540.00	\$0.00	\$975.00	\$1,620.00	\$36,900.00

BAILEY/HIGHWAY 115 INTERSECTION IMPROVEMENTS
BID TABULATION
7/15/2020

CONTRACTOR	Base Bid	Alternate 1A	Altnerate 1B	Alternate 1C	Alternate 1D	Alternate 1E	Alternate 1F	Alternate 1G
Blythe Construction	\$2,197,471.31	-\$1.00	\$0.00	-\$1,540.00	\$0.00	\$2,243.54	\$523.80	\$50,000.00
Blythe Development	\$1,909,204.85	\$0.00	\$0.00	\$1,980.00	\$0.00	\$1,430.00	\$540.00	\$29,325.00
NJR Group	\$1,833,133.76	\$1,000.00	\$0.00	\$1,540.00	\$0.00	\$975.00	\$1,620.00	\$36,900.00

Bids open and read aloud at 2:00 PM on July 15, 2020 at the Cornelius Town Hall

Read Aloud by: _____
Tyler Beardsley, Assistant Town Manager

Witness: _____
Ricky Overcash, Public Works Supervisor



**Town of Cornelius
Standard Form of Agreement
Between the Town and the Contractor**

AGREEMENT made as of the ____ day of _____ 2020

BETWEEN the Owner:

Town of Cornelius
PO Box 399
21445 Catawba Ave
Cornelius, NC 28031
Phone: 704-892-6031

and the Contractor:

NJR Group, Inc.
PO Box 924
Albemarle, NC 28002
980-581-8102

The Project is:

1. Bailey Road & Highway 115 Intersection Improvements

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement the Bidding Documents, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement for the Work shall be the date upon which the Contractor is given a written notice to proceed by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than August 1, 2021 subject to adjustments of this Contract Time as provided in the Contract Documents.

Contractor agrees to pay \$500.00 Liquidated Damages for each consecutive calendar day after the substantial completion date.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \$1,833,133.76, based on the quantities determined by Contractor and the Unit Prices specified in Contractor's Bid as listed below. Owner shall not pay more than the Contract Sum for the Work unless there is authorization in writing from the Town Manager.

ARTICLE 5 PAYMENT

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Upon receipt of the Contractor's application for payment by the Owner payment shall be made by the Owner not later than thirty (30) days after the Architect and Owner receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%).
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the Contract General Conditions and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 A final Certificate for Payment has been issued by the Owner after full inspection of and written acceptance of the work by Owner.
- .3 Submitted to Owner closeout documents as described in the Contract General Conditions.
- .4 The Contractor shall provide the Owner with a lien waiver that certifies that all sub-contractors and suppliers have been paid in full not later than 5 business days after payment has been made by the Owner.
- .5 Application for Final Payment shall be accompanied by a North Carolina Sales or Use Tax Statement. The statement shall show the Invoice or Receipt Total, North Carolina Sales Tax paid, County Tax paid and which county the tax was paid to.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment. Any dispute as to the amount owed of failure to issue a Certificate of Payment shall be resolved by the dispute procedures in the Contract General Conditions. Interest as provided by statute shall not accrue until 30 days after the final decision in the dispute resolution procedure.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in the Contract General Conditions.

§ 6.2 The Work may be suspended by the Owner as provided in the Contract General Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of the Contract General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due after issuance of a Certificate of Payment and unpaid after 30 days shall bear interest at the state statutory interest rate. Where there is a dispute on payment due interest shall be provided as specified in section § 5.2.2 above.

§ 7.3 The Owner's representative is:

Andrew Grant
Town Manager
Town of Cornelius
PO Box 399
Cornelius, NC 28031
Phone: 704-892-6031

§ 7.4 The Contractor's representative is:

Nathan Russell
President
NJR Group, Inc.
PO Box 924
Albemarle, NC 28002
Phone: 980-521-8102

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

Contractor shall maintain general liability, auto, and workers comp insurance coverages at coverage limits specified by Owner and shall list the Owner as an additional insured and loss payee on applicable insurance.

Contractor shall abide by all of the provisions set forth in the Contract General Conditions, Standard Provisions, Special Provisions, and shall have a copy of all these items as well as the NCDOT 2006 Standard Specifications on the project at all times.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement are enumerated as follows:

§ 8.1.2 The Contract General Conditions, Standard Provisions, & Special Provisions

§ 8.1.3 The Bid Package and Contractor's Bid submitted entitled Hwy 115/Bailey Intersection Improvements

§ 8.1.4 The specifications contained in the Bid Specifications.

Bailey Road and NC Hwy 115 Intersection Improvements Contract Proposal

§ 8.1.5 The Drawings are as follows, and are as shown below:

Town of Cornelius Bailey Road & NC Hwy 115 Intersection Improvements drawn by Kimley-Horn, dated 6/15/2017

§ 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
---------------	-------------	--------------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

Exhibits:

Exhibit A: Contractor Bid and Unit Prices

Exhibit B: Contract General Conditions

Exhibit C: Bid Bond

Exhibit D: E-Verify Affidavit

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies, of which one is to be delivered to the Contractor, one to the Owner.

Town of Cornelius:

OWNER *(Signature)*

Andrew Grant, Town Manager

CONTRACTOR *(Signature)*

Nathan Russel, President

Town of Cornelius

Contract General Conditions

For the following PROJECT:

Bailey Road & Highway 115 Intersection Improvements

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TABLE OF ARTICLES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work. The Contract Documents shall also include the invitation for Bids, Instructions to bidders, the Bid Submittal the Project Manual, Addenda, Insurance Certificates, Shop Drawings, the Bid Bond, and the Performance Bond.

§ 1.1.2 THE CONTRACT

The Contract Documents the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Owner or (4) between any persons or entities other than the Owner and Contractor.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required

only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles.

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents, including calculations and determining quantities necessary for the Work.

§ 1.6

OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Owner and the Owner's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Owner or the Owner's consultants, and unless otherwise indicated the Owner and the Owner's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Owner and the Owner's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and the Owner's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Owner and the Owner's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Owner and the Owner's consultants. Submittal or distribution to meet official regulatory requirements or

for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Owner's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and for determine quantities by Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Owner as a request for information in such form as the Owner may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner for damages resulting from errors,

inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Owner.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall determine, provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Owner. Owner shall have the right to alter work schedules to assist traffic flow and reduce congestion in the Work area.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to

record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work and shall become part of the Contract Documents.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Owner is subject to the limitations of Section 4.2.7. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Owner without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Owner without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Owner.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and return the surrounding area to its original condition, including but not limited to stamped, decorative concrete, grass next to road, gutter pans, and other areas where asphalt may have been dumped or dropped during transit.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner access to the Work in preparation and progress wherever located.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Owner will provide administration of the Contract as described in the Contract Documents, and will be represented (1) during construction, (2) until final payment is due a, from time to time during the one-year period for correction of Work described in Section 12.2.

§ 4.2.2 The Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations. The Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.8 The Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract including final payment. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in

the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the conditions are subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to an order by the Owner to stop the Work where the Contractor was not at fault, a written order for a minor change in the Work failure of payment by the Owner, termination of the Contract by the Owner, Owner's suspension or other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted on mutual agreement of the parties.

§ 4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Owner. Claims, including those alleging an error or omission by the Owner but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Owner for decision. An initial decision by the Owner shall be required as a condition precedent to mediation, arbitration of all Claims between the Contractor and Owner including whether final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner. The Owner will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 The Owner will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Owner is unable to resolve the Claim if the Owner lacks sufficient information to evaluate the merits of the Claim or if the Owner concludes that, in the Owner's sole discretion, it would be inappropriate for the Owner to resolve the Claim.

§ 4.4.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The Owner may request the Contractor to authorize retention of such persons at the Contractors' expense.

§ 4.4.4 If the Owner requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Owner when the response or supporting data will be furnished or advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 4.4.5 The Owner will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Owner shall be final and binding on the parties but subject to arbitration.

§ 4.4.6 When a written decision of the Owner states that (1) the decision is final but subject to arbitration (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Owner's decision becoming final and binding upon the Owner and Contractor. If the Owner renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Owner, by arbitration.

§ 4.5 ARBITRATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Owner or 30 days after submission of the Claim to the Owner, be subject to binding arbitration.

§ 4.5.2 The parties shall resolve their Claims by binding arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect applicable to binding arbitration. Request for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The decision of the Claim by the arbitrators shall be final and binding on the parties.

§ 4.5.3 The parties shall share the arbitrator's fee and any filing fees equally. The arbitration shall be held in the place where the Project is located, unless another location is mutually agreed upon.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2

AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work.

However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1

OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

6.1.1.1 Separate contracts may be awarded for work on the project in accordance with the requirements of Chapter 143, Article 8, General Statutes of North Carolina. In addition the Owner reserves the right to

prepare specifications, receive separate proposals, and award separate contracts for such other major items of works as may seem to be in the best interest of the Owner.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste

materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between, Contractor and Owner; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner alone. All changes must be authorized in writing by the Town Manager regardless of form.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Owner and signed by, Contractor and Owner, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.2.3 Change Order shall be accompanied by a complete cost breakdown showing computation of the cost together with a written explanation of the change and reason for the change. The cost or credit to the Owner resulting in a change in the work shall be determined by one or more of the ways listed in 7.3.3

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract

Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Owner, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3 Applications for Payment shall be accompanied by a North Carolina Sales or Use Tax Statement. The statement shall show the Invoice or Receipt Total, North Carolina Sales Tax paid, County Tax paid and which county the tax was paid to.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner determines is properly due after inspection and acceptance of the Work and amount request for such Work, or notify the Contractor reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the, based on the Owner's evaluation of the Work and the data comprising the Application for Payment including the amount requested, that the Work has progressed to the point indicated and that, to the best of the Owner's knowledge, information and belief, the quality of the Work and amount requested is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Owner 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made or the payment amount is not correct, or the payment requested is not due. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations to the Owner. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Owner.

9.6.1.1 Retainage will be five percent (5%) of the total contract amount.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Owner or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Contractor shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed and the amount requested as properly due under the Contract, the Owner will promptly issue a final Certificate for Payment stating that to the best of the Owner's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Any claims or disputes on the final payment shall be resolved by the claims procedure and binding arbitration specified in Sections 4.4 and 4.5 of this document.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing

payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.2.1 Final Application for Payment shall proceed after the receipt of the following documents:

1. Construction Record Drawings
2. Guarantees of all materials and workmanship
3. Contractor's and Subcontractor's Affidavit , Release and Waiver of Claim
4. Consent of Surety
5. Final State/County Sales/Use Tax Statement
6. Complete list of all subcontractors and areas of work preformed
7. Contractor's and Subcontractor's warranty statements

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Owner so confirms, the Owner shall, upon application by the Contractor and certification by the Owner, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- .4 In cases where construction involves additions to , or renovation in, existing facilities where said facilities remain in use, the General Contractor shall be responsible for the security of the site and its contents.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Owner.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 The Contractor shall be responsible for the safety of persons and property in compliance with all Federal, State, and Local statutes, rules, regulations, and orders relating to the conduct of his work and shall not wait or expect direction from the Owner or governing officials for compliance with said statutes, rules, regulations and orders. Contractor shall indemnify and hold harmless the Owner and Owner for any damages or liability resulting from any claim made by or on behalf of any employee of the Contractor in relation to the conduct of the work by said contractor.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Owner in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Owner the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Owner will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Owner has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Owner have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Owner, Owner's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.2.1 Automobile Liability- Bodily injury and property damage covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage or \$1,000,000 combined single limit-bodily injury and property damage.

11.1.2.2 Commercial General Liability- Bodily injury and property damage liability as shall protect the contractor and any subcontractor performing work under this contract from claims of bodily injury or property damage which arise from operations of the contract whether such operations are performed by the contractor, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury; and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/complete operation, personal injury, liability, and contractual liability assumed under the indemnity provision of this contract.

11.1.2.3 Workers Compensation and Employers Liability- Workers compensation meeting the statutory requirements of the State of North Carolina and employers liability- \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit providing coverage for employees and owners.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, Owner's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Owner, Owner's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a

reasonable time during that period after receipt of notice from the Owner or Owner, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the State of North Carolina.

13.1.1.2 Bidders shall comply with all applicable laws regulating the practice of General Contracting as required by the General Statutes of North Carolina which requires the Bidder to be licensed by the North Carolina Licensing Board for Contractors when bidding on any project where the bid is \$30,000 or more. The Bidder shall indicate his North Carolina General Contractors License Number in the space provided on the signature page of the contract.

13.1.1.3 By submitting a bid or proposal, a prospective contractor certifies that it shall comply with the Owner's drug free workplace requirements. A false certification or failure to comply with the drug free workplace requirements during the performance of this contract will be grounds for suspension, termination, or disbarment.

13.1.1.4 Contractors shall comply with all Federal, State, and Local Laws, ordinances and regulation applicable to work.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Owner or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.1.1 An independent testing laboratory will be appointed by the Owner for the purpose of conducting tests as may be required. All costs of testing shall be paid by the Owner except under circumstances in which testing is required due to improper workmanship: in which case, the cost of testing shall be borne by the Contractor whose work requires testing. The contractor shall give the testing laboratory and the owner ample advance notice before covering up items which require inspection.

§ 13.5.2 If the Owner, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be

present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner.

§ 13.5.5 If the Owner is to observe tests, inspections or approvals required by the Contract Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

§ 13.6.1 Interest payments as provided in the Contract and only when provided in the Contract, at the legal rate prevailing from time to time in the North Carolina General Statutes.

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1** Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2** Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3** After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Owner has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Owner, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Owner, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Owner that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Owner, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed.

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Lori Harrell, Town Clerk


Action Requested:

Review the minutes from July 20th - Regular Meeting.

Manager's Recommendation:

Approve minutes.

ATTACHMENTS:

Name:	Description:	Type:
 07-20-20_Regular_Meeting_draft.pdf	Regular Minutes	Backup Material



BOARD OF COMMISSIONERS

July 20, 2020
MINUTES

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 for the meeting.

3. APPROVAL OF AGENDA

Commissioner Ross made a motion to approve the agenda as presented. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.

4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Commissioner Ross led the pledge after a moment of silence was observed.

5. MAYOR/COMMISSIONERS/MANAGER REPORTS

Commissioner Duke reported on the following:

- COVID-19 has directly impacted his family and he urged everyone to wear their masks while out in public to protect themselves, as well as their family and friends.

Commissioner Bilodeau reported on the following:

- Northern Regional Recreation Center construction is well underway and is anticipated to be open by year end 2021.
- Thanked all the first responders for their continued dedication through the pandemic.

Commissioner Miltich reported on the following:

- Attended the Cornelius rally to support the Cornelius Fire Department on June 17th.
- Attended the CRTPO meeting on June 17th. Discretionary funds of \$5.5M were awarded. The formation of a Transit Education Initiative Task Force was announced and will study how transit dollars are split between all agencies within CRTPO.
- Attended the Planning Board meeting virtually on June 29th, the Alexander Farms and Bailey Forest projects were discussed.
- The first meeting of the Transit Education Initiative Task Force was held on June 30th. Topics were set for future meetings and a methodology was agreed upon on how to approve any of their findings.
- Attended the MEAC meeting on July 1st where they discussed the issues CMS is facing on going back to school and the 3 proposed plans.

- Attended the TCC meeting virtually on July 2nd.
- Attended the TAB meeting virtually on July 7th.
- Participated at the Lake Norman Rotary meeting on July 8th and spoke about transportation and transit issues.
- Attended the Metro Mayors meeting virtually on July 10th with Secretary of Health Mandy Cohen as a guest speaker.
- Attended the Lake Norman Marine Commission meeting virtually on July 13th. It was reported that there have been four fatalities on the lake this year, all were not wearing personal flotation devices and alcohol and drugs were involved in all cases.
- Attended the CRTPO meeting on July 15th. Bike/pedestrian projects for municipalities will be included in the CTP.

Commissioner Sisson reported on the following:

- Chamber COVID-19 resources can be found on www.lakenormanchamber.org
- Chamber events for July – new member orientation via Zoom will be held on July 21st (5:30PM-6:30PM). Contact Sylvia at the Chamber for the Zoom link; WINS women's networking group will meet via Zoom on July 22nd (9AM); Business After Hours will be held on July 30th at Boat Yard Eats (5:30PM) and will be limited to 75 participants; the 2020 Business Expo has been postponed.

Manager Grant reported on the following:

- COVID-19 updates – as of July 19th, Mecklenburg County has confirmed 16,683 cases and 179 related deaths; Phase 2 “Safer at Home” has been extended until Aug. 7th; Town facilities remain closed to the general public; and Mecklenburg County will be distributing extra masks throughout the county.
- Public Works project updates – Walter Henderson sidewalk project connecting Walter Henderson Park to Bethel Church Road has been completed. Nannie Potts Lane connecting Hwy. 21 to Smith Circle is nearing completion and a ribbon cutting ceremony will be announced soon.
- Mecklenburg County is seeking public input on July 22nd (5PM) via Zoom for their updated Hazard Mitigation Plan draft. The draft can be reviewed at www.mecknchmp.com. To participate in the meeting, email Abigail.moore@woodplc.com to receive a meeting invitation.
- 2020 Census update – as of July 13th, 61.4% of Mecklenburg County and 69.6% of Cornelius have been counted. Visit www.meckcounts2020.com for more information.
- Park in the Dark will be held at Robbins Park on July 24th (8:00PM-10:00PM). The event is free, but registration is required, visit www.Cornelius.org/PARC to register.
- Congratulations to the Finance Department for receiving the Certificate of Achievement for Excellence in Financial Reporting for the 10th consecutive year and the Award for Outstanding Achievement in Popular Financial Reporting for the 3rd consecutive year.

- Welcome Officer Jered England to Cornelius! Officer England is the second Cadet to be hired through the Town's Basic Law Enforcement Training program. He graduated in May and was sworn in on June 8th.

Mayor Washam reported on the following:

- Social media video updates continue. The last one was held on July 10th.
- Connecting Cornelius morning event will be held via Zoom on Aug. 3rd (8:30AM-9:30AM) and updates on COVID-19, the Town and the Cain Center will be given.
- Connecting Cornelius evening event will be held on Aug. 20th (more details to come) featuring a discussion on racial and social equity in Cornelius.
- Cornelius Housing Study Committee has been formed and will focus on housing development and alternate housing opportunities.
- Arts Center Transition Committee has been formed and will make recommendations for the transition of Cornelius Arts Center visual arts programming from the Town to the Cain Center for the Arts.

6. CITIZEN CONCERNS/COMMENTS

Mayor Washam stated that the Board would hear public comments in-person and via email to TownofCornelius@cornelius.org. Please include your name and address and your comment will be read into the record upon receipt.

Town Clerk Lori Harrell stated that there were no in-person public comments nor emails to be read.

7. PRESENTATIONS

A. Lake Norman Economic Development Commission – Rose Associates Real Estate Market Analysis and Development

Deputy Manager Herron explained that the presentation is a direct result that came from the FY21 budget discussions regarding density, development, growth and traffic throughout Cornelius and how it impacts different areas in different ways. He introduced LNEDEC Executive Director Ryan McDaniels.

Mr. McDaniels gave an overview of two property opportunities that members of the community along with the LNEDEC team identified for the highest and best use of the properties, maximize the tax base for the Town, create job opportunities and look at the market study. He introduced Kathleen Rose with Rose and Associates to present the local market study.

Ms. Rose gave a market analysis and development strategy presentation for two development sites identified in Cornelius (#1-Sefton Park, #2-HM Junker) to improve transportation and economic development expansion. She gave an overview of the development areas; trade areas; market saturation; balancing residential and commercial; findings of the study and recommendations for both Sefton Park and HM Junker properties.

Commissioner Bilodeau asked if there would be a need to offer tax credits/incentives to draw developers into the area. Ms. Rose stated that would depend on how the property is marketed (traditional, RFP process, TIF district). Commissioner Bilodeau

asked if traffic impacts were considered when looking at the study areas. Ms. Rose stated that her study focused around walkability, greenways and pedestrian connectivity.

Mayor Washam asked how Exit 27 would fit with her findings. Ms. Rose stated that would be a transportation planning conversation.

Commissioner Miltich stated that he liked the proposed concepts, land use and transit options.

8. CONSIDERATION OF APPROVAL

A. FY21 Operating Budget Amendment

Chief Black gave a presentation on the asset forfeiture items to be allocated in the proposed FY21 budget amendment ordinance.

Commissioner Bilodeau asked what items were included in the crowd control equipment. Chief Black stated the equipment includes: ballistic helmets, chest protectors, shin guards, and belts to carry larger pouches to store equipment.

Mayor Washam stated that he loved the design for the new police badges.

Finance Director Julie Niswonger gave an overview of the \$158,452 FY21 budget amendment ordinance allocating the asset forfeiture items.

Commissioner Bilodeau stated this was a great use of restricted funds.

Commissioner Miltich made a motion to approve Ordinance #2020-00738 to amend the FY 21 operating budget allocating \$158,452 of asset forfeiture funds items presented. Commissioner Bilodeau seconded the motion and it passed unanimously, 5-0.

Ordinance #2020-00738 is hereby made part of the minutes by reference.

B. Street Acceptance – Bailey’s Glen

Planning Director Aaron Tucker gave an overview of the request made by Jake Palillo to accept various streets within the Bailey’s Glen subdivision for Town maintenance. He stated that the streets identified have been inspected and meet Town standards.

Commissioner Miltich made a motion to approve Resolution #2020-00963 accepting Neville Avenue, Glenealy Drive and a portion of Meetinghouse Drive for Town maintenance. Commissioner Ross seconded the motion and it passed unanimously, 5-0.

Resolution #2020-00963 is hereby made part of the minutes by reference.

C. Street Acceptance – Jetton Place

Planning Director Aaron Tucker gave an overview of the request made by Classica Homes to accept Autumn Meadow Lane between Beaufain Street and Charles Towne Lane in the Jetton Place subdivision for Town maintenance. He stated that the street meets Town standards and is the only one that will be maintained by the Town as the others will remain private.

Commissioner Ross made a motion to approve Resolution #2020-00964 accepting Autumn Meadow Lane for Town maintenance. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.

Resolution #2020-00964 is hereby made part of the minutes by reference.

D. ANNEX 01-20 Mt. Zion Senior Center

Planning Director Aaron Tucker explained that Cornelius Woods has petitioned the Town to voluntarily annex 15.29 acres of property located on Mt. Zion Parkway. He explained that the next steps in the process is to approve a Resolution authorizing the Town Clerk to investigate the sufficiency of the petition and a Resolution setting the public hearing date.

Commissioner Miltich made a motion to approve Resolution #2020-00965 authorizing the Town Clerk to investigate the sufficiency of the voluntary annexation petition. Commissioner Ross seconded the motion and it passed unanimously, 5-0.

Resolution #2020-00965 is hereby made part of the minutes by reference.

Commissioner Miltich made a motion to approve Resolution #2020-00966 setting the public hearing date on Aug. 17th. Commissioner Ross seconded the motion and it passed unanimously, 5-0.

Resolution #2020-00966 is hereby made part of the minutes by reference.

E. Resolution Authorizing the Sale of Certain Real Property

Asst. Manager Tyler Beardsley explained that during the buyer's (the winning bidder from the original upset bid process) due diligence period to purchase the old Public Works building issues were discovered (mold, roof replacement, HVAC system) that he wished to negotiate; however, the State statutes do not allow for negotiations, therefore the buyer has withdrawn his offer and has resubmitted a new offer of \$620K. This will now start another upset bid process. If no other offers are submitted, the offer is accepted, and the sale can proceed to closing.

Commissioner Sisson made a motion to approve Resolution #2020-00967 accepting the \$620K offer to purchase and to start the upset bid process. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.

Resolution #2020-00967 is hereby made part of the minutes by reference.

9. CONSENT AGENDA

- A. Approve Minutes – Regular Meeting June 15th (Approved 5-0)
- B. Approve Minutes – Special Meeting June 18th (Approved 5-0)
- C. Tax Refunds = \$70.99 (Approved 5-0)

Commissioner Miltich made a motion to approve the Consent Agenda as presented. Commissioner Bilodeau seconded the motion and it passed unanimously, 5-0.

10. COMMISSIONER CONCERNS

No concerns were expressed.

11. CLOSED SESSION

- A. Closed Session Pursuant to NCGS 143-318.11(a)(6)

Commissioner Miltich made a motion to go into Closed Session at 8:34PM pursuant to NCGS 143-318.11(a)(6). Commissioner Sisson seconded the motion and it passed unanimously, 5-0.

Upon return from Closed Session at 9:59PM, the Board took the following action regarding Manager Grant's employment contract and annual evaluation:

Commissioner Miltich made a motion to approve Manager Grant's employment contract as amended. Commissioner Duke seconded the motion and it passed unanimously, 5-0.

Commissioner Miltich made a motion to increase Manager Grant's salary from \$144,500 to \$155,000 (retroactive to June 5, 2020) and a one-time bonus of \$5,000. Commissioner Ross seconded the motion and it passed unanimously, 5-0.

12. ADJOURNMENT

There being no further business to discuss, Commissioner Sisson made a motion to adjourn the meeting at 10:04PM. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.

Approved this 3rd day of August 2020.

ATTEST:

Lori A Harrell, Town Clerk

Woody Washam, Mayor

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Lori Harrell, Town Clerk

Action Requested:

Review the minutes from July 20th - Closed Session.

Manager's Recommendation:

Approve minutes.

ATTACHMENTS:

Name:	Description:	Type:
 07-20-20_Closed_Session.docx	Closed Session Minutes	Backup Material

REQUEST FOR BOARD ACTION

 **Print**

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:




Upon review of the Town's Code of Ordinances, Town staff determined there are gaps relative to the use of Town-owned facilities and Town-owned vacant land. The draft ordinance establishes rules and regulations, such as authorizing rentals, alcohol possession and consumption, restricting loitering, and compliance with posted signage.

On June 15th, the Town Board discussed this matter and requested a revision regarding conceal carry. Town staff has conducted legal analysis and research regarding conceal carry. Staff will present its findings and the requested revised language for further discussion with the Town Board

Manager's Recommendation:

Town Board to discuss a potential ordinance regarding Town-owned facilities and vacant land.

ATTACHMENTS:

Name:	Description:	Type:
 Code_of_Ordinances_-_Cornelius_Buildings_and_Facilities.ppt	Ordinance Amendment	Presentation
 ORD-Code_of_Ordinances_Title_III_Chapter_35_Cornelius_Buildings_and_Facilities.v3.7.29.2020.pdf	Code of Ordinance Amendment	Ordinance
 Revised_Section_35.12.docx	Code of Ordinance Amendment-Revised Section	Ordinance



Code of Ordinances

Chapter 35, Cornelius Buildings and Facilities

August 3, 2020

Code of Ordinances

- Staff review revealed gaps relative to use of Town-owned facilities and Town-owned vacant land
- Proposed Ordinance establishes rules and regulations
 - Authorizes rentals
 - Restricts loitering
 - Alcohol possession and consumption
 - Compliance with posted signage
- June 15th BOC meeting
 - Instructed staff to present a revision to the proposed ordinance to permit conceal carry of firearms, upon further legal review and analysis

Draft Ordinance

- TONIGHT – Discussion only. Consideration of approval at a future meeting
- DISPLAY
 - 1. DRAFT ORDINANCE
 - 2. REVISED SECTION 35.12

Concealed Carry Restrictions

- NC General Statutes prohibits concealed carry on campus and educational property and law enforcement facilities (police, animal control, 911 centers, courthouses)
- NC General Statutes prohibits concealed carry in buildings housing state or federal offices.
- Local governments may restrict firearms (open and conceal carry) at local government buildings and their appurtenant premises
- Local governments are prohibited from restricting conceal carry at public parks with limited exceptions
- If a local government allows conceal carry in a town hall or government center, then the local government does have authority to restrict its employees from conceal carry via a personnel policy amendment

Staff Research

- Governments that allow conceal carry:
 - Cornelius – currently silent, which is de facto allowing cc
 - Mint Hill – currently silent, which is de facto allowing cc
 - Cabarrus County, Rockingham County – allowed in government centers and libraries (small sample size survey)

Staff Research

- Governments that prohibit conceal carry:
 - US Capitol, House & Senate buildings, and departmental offices
 - NC State Legislative buildings and offices
 - Mecklenburg County
 - Charlotte
 - Huntersville
 - Davidson
 - Matthews
 - Pineville
 - Mooresville
 - Morganton, Wilkesboro, Indian Trail, Ayden, Wallace (small sample size survey)

Staff Research

- Conceal Carry Permittees
 - Not a substantial amount of data/research available
 - Data/research does identify the following:
 - A low % of accidental self-shootings occur
 - Insufficient workplace conceal carry data was found by staff
 - A low % of police officers were killed by individuals relative to all types of gun holders
 - A low % of homicides were committed by conceal carry permittees
 - Overall crimes committed by police officers are at a higher % than conceal carry permittees

Conceal Carry - Town Manager Concerns

- Firearms at Town facilities represent a risk
- Safety of citizens, employees, and elected officials
 - Common to have upset & angry citizens, groups, and customers that are emotional about certain issues or not in agreement with certain decisions at:
 - Town Board meetings, committee meetings, community meetings, meetings with staff, Monday – Friday general business hours
- Workplace violence/Employees with firearms
 - After the June 15th BOC meeting, many employees expressed concern regarding the general public bringing conceal carry into Town buildings and concern for their own safety, and some expressed bringing their own firearm to work for protection
 - Workplace violence is a significant concern due to the numerous historical events
- Government buildings violence
 - Former employees
 - Current employees
 - Customer/citizen (associated or random)

Recommendations

- Board to hold discussion tonight
- At a future meeting, Board can:
 - 1. Adopt the ordinance
 - 2. Vote on what Town facilities, if any, to post a prohibition to conceal carry of firearms
- Staff recommends adopting the proposed ordinance with revised Section 35.12, as it allows flexibility for determining specific facility regulation on conceal carry
- Statutorily excluded facilities: Police Station, Animal Shelter, and Public Works
- Allow or prohibit conceal carry at the following?
 - Town Hall
 - Arts Centers (existing CAC and site of future Cain Center)
 - Fire Stations 1 and 2

Recommendations

- Town Manager recommends adopting an amendment to the Personnel Policy to prohibit employees from open and conceal carry (granting authority to the Town Manager and Town Attorney to draft and finalize language for the personnel policy on this matter) **IF** the BOC approves the ordinance and does not prohibit conceal carry at all of the non-excluded properties/facilities (i.e., allowing conceal carry at Town Hall, Arts Centers and Fire Stations)
- If BOC does not intend to approve the personnel policy amendment, then Town Manager recommends adopting a prohibition at all Town facilities of conceal carry for general public due to concern over employee workplace violence

**AN ORDINANCE TO AMEND
THE TOWN OF CORNELIUS CODE OF ORDINANCES**

WHEREAS, it has become necessary for the Town to update specific Titles within the Town's Code of Ordinances; and

WHEREAS, this change represents a revised Code provision.

NOW THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Cornelius that the Code of Ordinances, Title 3 Administration is hereby amended to add Chapter 35, Town Business Facilities and Vacant Land attached hereto as (*Exhibit A*):

Adopted this 3rd day of August, 2020.

Woody T. Washam, Jr. Mayor

ATTEST:

APPROVED AS TO FORM:

Lori A. Harrell, Town Clerk

Town Attorney

TITLE III: ADMINISTRATION
CHAPTER 35: TOWN BUSINESS FACILITIES AND VACANT LAND

Sec. 35.01. – Cornelius Town Hall, Delegation of Authority to Establish Rules and Regulations; Applicability of Chapter.

The Board of Commissioners of Cornelius hereby delegates to the Town Manager the authority to establish rules and regulations concerning the conduct and operation of the Town of Cornelius Business Facilities and Town-owned vacant land provided such rules and regulations are consistent with the scope of this Chapter and laws and policies of the Town of Cornelius, the State of North Carolina and the law of the United States.

Sec. 35.02. – Definitions.

- a) For purposes of this chapter, the term *Town Business Facilities* shall mean those buildings, surrounding parking lots and open green spaces adjacent thereto at which the business of the Town of Cornelius is conducted. These Town Business Facilities include but are not limited to Town Hall, Public Works Facilities, Police Department, Fire Departments, and art, culture and community centers.
- b) For purposes of this chapter, the term *Town Owned Vacant Properties* shall mean those properties owned by the Town of Cornelius that are not officially designated as a Town Business Facility, public park, greenway, or right of way.

Sec. 35.03. – Rental Contracts Authorized; Waiver.

- a) The Town Manager or his duly authorized agent is hereby authorized to make contracts on behalf of the Town for the rental and use of Town Business Facilities and Town Owned Vacant Properties, (which shall include buildings, surrounding parking lots and other areas within and without the buildings) in accordance with the terms and provisions of this Chapter. It shall be unlawful to use any part of Town Business Facilities or Town Owned Vacant Properties for any purpose (other than Town business) without a valid contract for the rental thereof or written permission from the Town Manager or his agent.
- b) The Town Manager or his duly authorized agent, is authorized to waive any requirements relating to formal contracts and the payment of fees pursuant to this chapter. All waivers by the Town Manager shall be extended to all other similarly situated lessees according to uniform procedures.
- c) The Town manager or his duly authorized agent is authorized to waive the requirements herein related to formal contracts and the payment of fees with respect to Town committees, commissions and boards desiring to use Town Business Facilities and Town Owned Vacant Properties for the purpose of holding meetings or public hearings.

Sec. 35.04. – Agreement to be in Writing.

No agreement purporting to rent or lease Town Business Facilities or Town Owned Vacant Properties shall be valid or effective until and unless it shall be in written or printed form, signed by an authorized official or employee of the Town and by the lessee or his authorized agent.

Sec. 32.05. – Who May Execute Agreement for Town; Tentative Reservation.

The Town Manager or his duly authorized agent may enter into a written contract renting the facilities to any person complying with the conditions prescribed by this chapter and, pursuant to uniform procedures, may permit any person to make a tentative reservation, for any date which has not been previously rented and which is not being held under tentative reservation.

Sec. 35.06. – Cash Deposit Condition Precedent to Contract.

At the time of executing a written contract for the rental, the person desiring to rent the facility shall, as a condition precedent to a valid rental contract, make a deposit with the Town as prescribed by uniform procedures. No contract for the rental of a facility shall be made or signed on behalf of the city unless and until the deposit shall have been received by the Town.

Sec. 35.07. – Repeated Use; Waiver of Deposits.

Lessees contracting to use a Town facility repeatedly during any annual period may be classified and treated according to uniform procedures with regard to waiver of deposits and any other terms as appears in the uniform procedures.

Sec. 35.08. – Schedule of Charges.

Subject to the provisions of this code, charges for use of Town Facilities shall be made in accordance with a uniform fee schedule recommended by Town staff and approved by the Board.

Sec. 35.09. – Incompatible Uses Resolution.

The Town manager or his duly authorized agent may, in his discretion, by refusal to rent, reservation, competitive bidding, or by other means, resolve any actual or potential incompatibility of any actual or proposed uses of Town Facilities.

Sec. 35.10. – Lessee's Liability.

The lessee of a Town Business Facility or Town Owned Vacant Property or any part thereof shall be responsible and liable for any and all injuries and damages to buildings, fixtures, furnishings, or the land on which the building is located during the period of their use under rental contract. The lessee shall agree as a part of the rental contract to be so responsible and liable and reimburse the Town for any and all such damages and injuries. The lessee shall agree as a part of the consideration for the rental contract covering the use of the complex or any part thereof to save harmless the Town for any and all accounts, bills, damages, suits and claims in any way arising out of the use of the complex by the lessee pursuant to the written contract. The Town Manager or his duly authorized agent may require the person renting the complex to furnish the Town a bond or procure a public liability insurance policy from a satisfactory insurance company licensed and authorized to do business in the State (in such amounts as considered advisable by the Town Manager) to insure the Town and the lessee from any and all damages, claims and suits on account of injuries and/or damages sustained by third persons, firms or corporations arising or resulting from the use of Town Hall during the period for which rented.

Sec. 35.11. – Sponsor to Post Bond, Provide for Maintenance of Order.

- a) When required by the town manager or his duly authorized agent, the sponsor of any activity shall post a bond or certified check in an amount to be determined by the Manager or his duly authorized agent to guarantee the payment of all damages to the building, fixtures or premises as a result of its use by lessee.
- b) The sponsor shall likewise provide the number of police officers required to maintain order as may be determined by the Cornelius Police Department and the Town Manager.

Sec. 35.12. – Weapons Prohibited; Exception.

It shall be unlawful for any person to carry or have on or about his person, on Town Owned Vacant Property or in a Town Business Facility and grounds, any firearms or other weapons or articles, including but not being limited to: blackjacks; nightsticks; or flashlights, which, by their use, might constitute deadly weapons. This section shall not apply to peace officers assigned to duty, drill teams, honor guards.

Sec. 35.13. – Alcoholic Beverages Prohibited.

It shall be unlawful for any person to have in his possession or to consume any beer, wine or other intoxicating beverage at any time or event at a Town Business Facility or Town Owned Vacant Property except in connection with an event, dinner or banquet or any other activity at which food is served and then only with the consent and approval of the Town Manager and pursuant to rules and regulations promulgated by the Town Manager.

Sec. 35.14. – Hours Open.

- a) Hours of operation and charges for overtime use of Town Business Facilities shall be governed by the Town Hall rules and regulations.
- b) Town Owned Vacant Properties are not open to the public at any time and it shall be unlawful to enter and remain on Town Owned Vacant Properties without complying with the conditions of this Chapter.

Sec. 35.15. – Loitering Prohibited on Premises.

It shall be unlawful for any person to loiter within a Town Business Facility or on the grounds adjacent thereto. A loiterer is defined as a person who has no connection with a meeting or an event in progress or who does not plan to attend a meeting or an event, or who does not have legitimate business with Town Hall staff or management.

Sec. 35.16. – Preservation of Property.

Improper disposal of rubbish, willful destruction or damage to property, theft of property, creation of a hazard to persons or things; throwing of articles of any kind from or at the building, climbing upon statutes, fountains or any part of a building is prohibited.

Sec. 35.17. – Conformity with Signs and Directions.

Persons in and on property shall at all times comply with official signs of a prohibitory, regulatory or directory nature and with lawful direction of Town Management, law enforcement or other authorized individuals.

Sec. 35.18. – Disturbances.

Any disorderly conduct or other conduct on property which creates loud or unusual noise or nuisance; which unreasonably obstructs the usual use of the entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by town employees or which prevents the general public from obtaining the administrative services provided on the property in a timely manner is prohibited.

Sec. 35.99. – Penalties.

See Sec. 10.99

Sec. 35.12. – Weapons Prohibited; Exception.

It shall be unlawful for any person to carry or have on or about his person, on Town Owned Vacant Property or in a Town Business Facility and grounds, any firearms or other weapons or articles, including but not being limited to: blackjacks; nightsticks; or flashlights, which, by their use, might constitute deadly weapons. This section shall not apply to peace officers assigned to duty, drill teams, honor guards. *This section shall not apply to a handgun carried by the holder of a concealed handgun permit issued pursuant to NCGS § 14-415.10 et seq unless 1) the Town Business Facility has posted a conspicuous notice or statement declaring that a concealed handgun is prohibited at that Facility or 2) a concealed handgun is otherwise prohibited at a Facility by state or federal law.*

REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: August 3, 2020

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

Action Requested:

Enter into Closed Session pursuant to NCGS 143-318.11(a)(3) and (5).

Manager's Recommendation:

Hold a Closed Session.

ATTACHMENTS:

Name:	Description:	Type:
No Attachments Available		
