



# **TOWN OF CORNELIUS**

Cornelius Town Hall

## **BOARD OF COMMISSIONERS**

March 6, 2017

Agenda

### **PRE-MEETING - 5:45 PM**

- Hwy. 115 Utility Burial Update
- Commerce Station Internal Rate of Return (IRR) Update

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### **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. CITIZEN CONCERNS/COMMENTS
6. MAYOR/COMMISSIONERS/MANAGER REPORTS
7. PRESENTATIONS
  - A. Corporal Lee Cook Retirement Recognition
  - B. CPD Officer Recognition
  - C. NCDOT Project Updates
8. PUBLIC HEARING AND CONSIDERATION OF APPROVAL
  - A. REZ 10-16: DB Holdings (Auto Sales Dealership)
9. CONSIDERATION OF APPROVAL
  - A. Street Acceptance - Preserve at Robbins Park
  - B. 2017 Election Filing Fees
  - C. Hickory Street Extension Contract
10. CONSENT AGENDA
  - A. Approve Minutes - Regular Meeting
  - B. Approve Minutes - Closed Session
  - C. Call For Public Hearing For Economic Development Grant
  - D. FY2017 Audit Contract
11. NEW BUSINESS
  - A. Resolution in Support of Local Bill to Annex Certain Properties into the Town Limits of Cornelius
12. COMMISSIONER CONCERNS

### **13. ADJOURNMENT**

Please note that to speak during **CITIZENS CONCERNS/COMMENTS** or **PUBLIC COMMENT**, please use the signup sheet provided before the Board meeting and list your name, address and topic. Each speaker will be allowed 3 minutes to speak. A "hard stop" will occur after 3 minutes for each speaker. Any information displayed must be submitted to the Town Clerk within 48 hours prior meeting.

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

**To:** Mayor and Board of Commissioners

**From:** Anthony Roberts, Town Manager

**Action Requested:**

Hear an update on the Hwy. 115 utility burial project.

**Manager's Recommendation:**

Hear update.

**ATTACHMENTS:**

| Name:   | Description:            | Type:        |
|---|-------------------------|--------------|
|  <a href="#">CNLS_Main_Street_Utility_Line_Burial_Project_Update_02012017.pptx</a> | Hwy. 115 Utility Burial | Presentation |

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# **Town of Cornelius Utility Line Burial Project Update & North Main Street FY 2017 & FY 2018 Project Detail**

**February 20, 2017**

# **FOUR YEAR PLAN PROJECTIONS**

| Description location  | Order   | Cost        |
|---|---------|-------------|
| Substation Improvements, design, DOT plan along with back lot line relocation | FY 2016 | \$ 300,000  |
| Railroad Bridge to Food Lion (N. Main St)                                     | FY 2017 | \$ 500,000  |
| Railroad Bridge to Food Lion ( N. Main St)                                    | FY 2018 | \$ 250,000  |
| Washam Potts to Heritage Green (S. Main St)                                   | FY 2018 | \$ 250,000  |
| Hickory Street to Washam Potts Street (S. Main St)                            | FY 2019 | \$ 500,000  |
| Total   |         | \$1,800,000 |

## Note

- S. Main St projects may switch years depending on Town Center development and priority.



# OVERALL PROJECT UPDATE

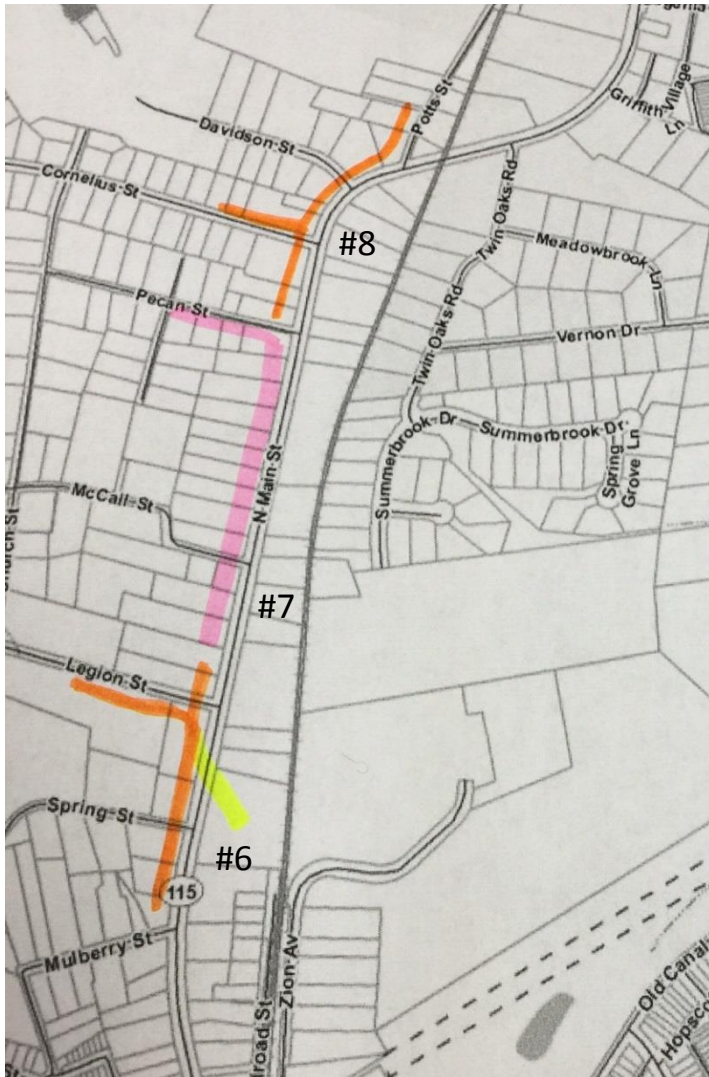
- Electric facilities include 28 poles w/ 24 street lights.
  - AT&T owns 10 of 28 poles.
  - MI Connection, Windstream, Time Warner, and Sprint are the other communication companies attached to the poles.
- Town to determine sidewalk plan and street light replacement before poles can be removed.
- When street lights are replaced and sidewalks redone provisions will be made to bury remaining communication lines if not already completed.

# **NORTH MAIN STREET – Update**



- **Project #1 – To Summerbrook Dr**
  - In design phase. Property owner ROW working in conjunction with project in Planning. Property owner has asked us to hold off for now.
- **Project #2 - To Mulberry Street**
  - Completed FY17.
- **Project #3 – Habitat to Ace**
  - In design phase.
- **Project #4 - Substation Improvement**
  - Work with Duke Energy completed FY16.
- **Project #5 – Ace to Summerbrook Dr.**
  - In design phase.

# **NORTH MAIN STREET – FY2017/18**



- **Project 6 - Mulberry to Legion St.**
  - In design for FY17 and include a bore under N. Main Street.
- **Project 7 – Legion to Pecan St.**
  - To design in FY18.
- **Project 8 – Pecan to Town Limits.**
  - To design in FY18.

# **SOUTH MAIN STREET – FY2018/19/20**



## **Washam Potts to Heritage Green**

- Electric facilities include 5 poles with 4 street lights and 4 of the 5 poles owned by AT&T.
- Other electric providers south of Heritage Green on S. Main Street not noted here.

## **Hickory Street to Washam Potts**

- 11 poles with 7 street lights and 3 of the 11 poles owned by AT&T.
- Will pursue back lot right-of-way with a single phase line existing that could be upgraded to three phase.

Orange lines designate preferred relocation.

**FY 19/20** - Other Substation improvements continue design to move substation equipment back to Zion Street Delivery substation.

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Anthony Roberts, Town Manager



**Action Requested:**

For several years, we have updated the annual accounting of the revenue and expenses associated with the Huntersville's business park, Commerce Station. Staff will display the internal rate of return (IRR) calculation associated with Cornelius investment participation in the park.

**Manager's Recommendation:**

Hear presentation on the IRR update and consider paying off the Installment Purchase Contract Financing, Series 2005 loan.

**ATTACHMENTS:**

| Name:  | Description: | Type:           |
|--|--------------|-----------------|
|  <a href="#">Comm_Station_Fund_85_expenses.pdf</a>                | IRR Update   | Backup Material |
|  <a href="#">Commerce_Station_loan_payoff_options_3.6.17.pdf</a> | IRR Payoff   | Backup Material |

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Town of Cornelius 25% Share  
Financial Impact of Commerce Station  
For Various Fiscal Years

|                                 | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Revenues                        |             |             |             |             |             |             |             |             |             |
| Sale of Land*                   | -           |             |             |             |             |             | 222,776     |             | 40,000      |
| Electricities road contribution |             |             |             |             |             |             |             |             |             |
| Pactiv taxes (25%)              |             | 18,536      | 26,166      | 34,907      | 40,274      | 41,171      | 39,076      | 36,996      | 45,327      |
| ABB (Southwire) taxes           |             |             |             |             |             |             |             | 1,241       | 1,241       |
| LKN Charter rent                |             | 6,671       | 11,200      | 37,500      |             |             |             |             |             |
| Misc                            |             |             |             |             | 750         |             |             |             |             |
| Interest income                 |             | 19,069      | 15,370      | 2,357       | 382         | 364         | 459         | 387         | 319         |
| Site #4 taxes                   |             |             |             |             |             |             |             |             |             |
| Site #3 (beh Pactiv)taxes       |             |             |             |             |             |             |             |             |             |
| Total revenues                  | -           | 44,275      | 52,736      | 74,764      | 41,406      | 41,534      | 262,310     | 38,623      | 86,886      |
| Costs                           |             |             |             |             |             |             |             |             |             |
| Infrastructure Loan             | 109,484     | 114,242     | 110,782     | 107,322     | 103,862     | 100,402     | 96,942      | 93,482      | 90,022      |
| Bridge Loan                     | -           | -           | -           | -           | -           | 20,263      | 26,430      | 58,544      | 59,775      |
| New Road Ext                    | -           | -           | -           | -           | -           | -           | -           | -           | -           |
| Incentive pmt - Pactiv          |             |             |             |             | 30,536      | 20,137      | -           | 20,585      | 19,538      |
| Incentive pmt - ABB/Swire       |             |             |             |             |             |             |             |             |             |
| Oth improvs/costs               |             |             |             |             |             |             |             | -           | 602         |
| Maint (mowing, etc)             | -           | -           | -           | -           | -           | -           | -           | -           | -           |
| Total costs                     | 109,484     | 114,242     | 110,782     | 107,322     | 134,398     | 140,802     | 123,372     | 172,611     | 169,937     |
| Net                             | (109,484)   | (69,967)    | (58,046)    | (32,558)    | (92,992)    | (99,268)    | 138,938     | (133,988)   | (83,051)    |
| Cumulative net                  |             | (179,451)   | (237,497)   | (270,055)   | (363,046)   | (462,314)   | (323,376)   | (457,364)   | (540,415)   |

Town of Cornelius 25% Share  
Financial Impact of Commerce  
For Various Fiscal Years

|                                 | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> | <u>2022</u> |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Revenues                        |             |             |             |             |             |             |             |             |
| Sale of Land*                   |             |             | 136,650     |             |             |             |             |             |
| Electricities road contribution |             |             |             |             |             |             |             |             |
| Pactiv taxes (25%)              | 52,951      | 49,400      | 49,400      | 98,800      | 98,800      | 103,740     | 103,740     | 103,740     |
| ABB (Southwire) taxes           | 45,643      | 24,339      | 24,339      | 24,339      | 24,339      | 25,556      | 25,556      | 25,556      |
| LKN Charter rent                |             |             |             |             |             |             |             |             |
| Misc                            |             |             |             |             |             |             |             |             |
| Interest income                 | 323         | 191         |             |             |             |             |             |             |
| Site #4 taxes                   |             | -           | 3,813       | 3,813       | 3,813       | 4,003       | 4,003       | 4,003       |
| Site #3 (beh Pactiv)taxes       |             |             |             | 26,166      | 34,907      | 40,274      | 41,171      | 39,076      |
| Total revenues                  | 98,916      | 73,930      | 214,202     | 153,117     | 161,858     | 173,573     | 174,470     | 172,375     |
| Costs                           |             |             |             |             |             |             |             |             |
| Infrastructure Loan             | 86,562      | 83,102      | 284,227     | -           | -           | -           | -           | -           |
| Bridge Loan                     | 60,534      | 85,222      | 84,059      | 83,000      | 81,940      | 77,976      | 76,702      | 74,832      |
| New Road Ext                    | -           | -           | 318,091     | 318,091     | -           | -           | -           | -           |
| Incentive pmt - Pactiv          | 17,211      |             |             |             |             |             |             |             |
| Incentive pmt - ABB/Swire       | 81,845      |             |             |             |             |             |             |             |
| Oth improvs/costs               | 20,037      | 7,778       | 4,977       |             |             |             |             |             |
| Maint (mowing, etc)             | -           | -           | 4,944       | 5,191       | 5,191       | 5,191       | 5,191       | 5,191       |
| Total costs                     | 266,187     | 176,102     | 696,298     | 406,282     | 87,131      | 83,167      | 81,894      | 80,023      |
| Net                             | (167,271)   | (102,171)   | (482,097)   | (253,165)   | 74,727      | 90,406      | 92,576      | 92,352      |
| Cumulative net                  | (707,686)   | (809,857)   | (1,291,954) | (1,545,119) | (1,470,392) | (1,379,986) | (1,287,410) | (1,195,058) |

Town of Cornelius 25% Share  
Financial Impact of Commerce  
For Various Fiscal Years

|                                 | <u>2023</u>    | <u>2024</u>    | <u>2025</u>    | <u>2026</u>    | <u>2027</u>    | <u>2028</u>    | <u>2029</u>    | <u>2030</u>    | <u>2031</u>    |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Revenues                        |                |                |                |                |                |                |                |                |                |
| Sale of Land*                   |                |                |                |                |                |                |                |                |                |
| Electricities road contribution |                |                |                |                |                |                |                |                |                |
| Pactiv taxes (25%)              | 103,740        | 108,927        | 108,927        | 108,927        | 108,927        | 114,373        | 114,373        | 114,373        | 114,373        |
| ABB (Southwire) taxes           | 102,225        | 72,056         | 73,097         | 73,097         | 73,097         | 76,752         | 80,589         | 80,589         | 80,589         |
| LKN Charter rent                |                |                |                |                |                |                |                |                |                |
| Misc                            |                |                |                |                |                |                |                |                |                |
| Interest income                 |                |                |                |                |                |                |                |                |                |
| Site #4 taxes                   | 4,003          | 4,203          | 4,203          | 4,203          | 4,203          | 4,413          | 4,413          | 4,413          | 4,413          |
| Site #3 (beh Pactiv)taxes       | 36,996         | 45,327         | 52,951         | 49,400         | 49,400         | 98,800         | 98,800         | 103,740        | 103,740        |
| Total revenues                  | <u>246,964</u> | <u>230,513</u> | <u>239,178</u> | <u>235,627</u> | <u>235,627</u> | <u>294,339</u> | <u>298,176</u> | <u>303,116</u> | <u>303,116</u> |
| Costs                           |                |                |                |                |                |                |                |                |                |
| Infrastructure Loan             | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| Bridge Loan                     | 82,368         | 84,204         | 81,843         | 79,522         | 77,249         | 74,575         | 71,850         | 69,126         | -              |
| New Road Ext                    | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| Incentive pmt - Pactiv          |                |                |                |                |                |                |                |                |                |
| Incentive pmt - ABB/Swire       |                |                |                |                |                |                |                |                |                |
| Oth improvs/costs               |                |                |                |                |                |                |                |                |                |
| Maint (mowing, etc)             | 5,191          | 5,191          | 5,191          | 5,191          | 5,191          | 5,451          | 5,451          | 5,451          | 5,451          |
| Total costs                     | <u>87,559</u>  | <u>89,396</u>  | <u>87,034</u>  | <u>84,713</u>  | <u>82,441</u>  | <u>80,026</u>  | <u>77,301</u>  | <u>74,577</u>  | <u>5,451</u>   |
| Net                             | <u>159,405</u> | <u>141,117</u> | <u>152,144</u> | <u>150,914</u> | <u>153,187</u> | <u>214,313</u> | <u>220,875</u> | <u>228,540</u> | <u>297,665</u> |
| Cumulative net                  | (1,035,653)    | (894,536)      | (742,392)      | (591,478)      | (438,291)      | (223,979)      | (3,104)        | 225,436        | 523,101        |

Town of Cornelius 25% Share  
Financial Impact of Commerce  
For Various Fiscal Years

|                                 | <u>2032</u>    | <u>2033</u>    | <u>2034</u>    | <u>2035</u>    | <u>2036</u>    | <u>2037</u>    | <u>2038</u>    | <u>2039</u>    | <u>2040</u>    |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Revenues                        |                |                |                |                |                |                |                |                |                |
| Sale of Land*                   |                |                |                |                |                |                |                |                |                |
| Electricities road contribution |                |                |                |                |                |                |                |                |                |
| Pactiv taxes (25%)              | 120,092        | 120,092        | 120,092        | 120,092        | 126,097        | 126,097        | 126,097        | 126,097        | 132,401        |
| ABB (Southwire) taxes           | 84,619         | 84,619         | 84,619         | 84,619         | 88,850         | 88,850         | 88,850         | 88,850         | 93,292         |
| LKN Charter rent                |                |                |                |                |                |                |                |                |                |
| Misc                            |                |                |                |                |                |                |                |                |                |
| Interest income                 |                |                |                |                |                |                |                |                |                |
| Site #4 taxes                   | 4,634          | 4,634          | 4,634          | 4,634          | 4,866          | 4,866          | 4,866          | 4,866          | 5,109          |
| Site #3 (beh Pactiv)taxes       | 103,740        | 103,740        | 108,927        | 108,927        | 108,927        | 108,927        | 114,373        | 114,373        | 114,373        |
| Total revenues                  | <u>313,085</u> | <u>313,085</u> | <u>318,272</u> | <u>318,272</u> | <u>328,739</u> | <u>328,739</u> | <u>334,186</u> | <u>334,186</u> | <u>345,176</u> |
| Costs                           |                |                |                |                |                |                |                |                |                |
| Infrastructure Loan             | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| Bridge Loan                     | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| New Road Ext                    | -              | -              | -              | -              | -              | -              | -              | -              | -              |
| Incentive pmt - Pactiv          |                |                |                |                |                |                |                |                |                |
| Incentive pmt - ABB/Swire       |                |                |                |                |                |                |                |                |                |
| Oth improvs/costs               |                |                |                |                |                |                |                |                |                |
| Maint (mowing, etc)             | 5,451          | 5,451          | 5,451          | 5,451          | 5,451          | 5,451          | 5,723          | 5,723          | 5,723          |
| Total costs                     | <u>5,451</u>   | <u>5,451</u>   | <u>5,451</u>   | <u>5,451</u>   | <u>5,451</u>   | <u>5,451</u>   | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   |
| Net                             | <u>307,634</u> | <u>307,634</u> | <u>312,821</u> | <u>312,821</u> | <u>323,288</u> | <u>323,288</u> | <u>328,462</u> | <u>328,462</u> | <u>339,453</u> |
| Cumulative net                  | 830,735        | 1,138,370      | 1,451,191      | 1,764,012      | 2,087,300      | 2,410,589      | 2,739,051      | 3,067,513      | 3,406,966      |

Town of Cornelius 25% Share  
Financial Impact of Commerce  
For Various Fiscal Years

|                                 | <u>2041</u>    | <u>2042</u>    | <u>2043</u>    | <u>2044</u>    | <u>2045</u>    |           |                    |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|-----------|--------------------|
| Revenues                        |                |                |                |                |                |           |                    |
| Sale of Land*                   |                |                |                |                |                |           |                    |
| Electricities road contribution |                |                |                |                |                |           |                    |
| Pactiv taxes (25%)              | 132,401        | 132,401        | 132,401        | 139,022        | 139,022        |           |                    |
| ABB (Southwire) taxes           | 93,292         | 93,292         | 93,292         | 97,957         | 97,957         |           |                    |
| LKN Charter rent                |                |                |                |                |                |           |                    |
| Misc                            |                |                |                |                |                |           |                    |
| Interest income                 |                |                |                |                |                |           |                    |
| Site #4 taxes                   | 5,109          | 5,109          | 5,109          | 5,365          | 126,097        |           |                    |
| Site #3 (beh Pactiv)taxes       | 114,373        | 120,092        | 120,092        | 120,092        | 120,092        |           |                    |
| Total revenues                  | <u>345,176</u> | <u>350,895</u> | <u>350,895</u> | <u>362,435</u> | <u>483,167</u> |           |                    |
| Costs                           |                |                |                |                |                |           |                    |
| Infrastructure Loan             | -              | -              | -              | -              | -              | 1,380,427 | Total debt service |
| Bridge Loan                     | -              | -              | -              | -              | -              | 1,410,015 | Total debt service |
| New Road Ext                    | -              | -              | -              | -              | -              |           |                    |
| Incentive pmt - Pactiv          |                |                |                |                |                |           |                    |
| Incentive pmt - ABB/Swire       |                |                |                |                |                |           |                    |
| Oth improvs/costs               |                |                |                |                |                |           |                    |
| Maint (mowing, etc)             | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   |           |                    |
| Total costs                     | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   | <u>5,723</u>   |           |                    |
| Net                             | <u>339,453</u> | <u>345,171</u> | <u>345,171</u> | <u>356,712</u> | <u>477,444</u> | 7.90%     | Estimated IRR      |
| Cumulative net                  | 3,746,419      | 4,091,590      | 4,436,762      | 4,793,473      | 5,270,917      |           |                    |

**Town of Huntersville, North Carolina**  
**Installment Purchase Contract Financing, Series 2005**  
**Individual Town Contribution Amounts**

| Date     | Combined            |                     |                     | Town of Huntersville |                   |                     | Town of Cornelius   |                   |                     | Town of Davidson  |                   |                   |
|----------|---------------------|---------------------|---------------------|----------------------|-------------------|---------------------|---------------------|-------------------|---------------------|-------------------|-------------------|-------------------|
|          | Principal           | Interest            | Debt Service        | Principal            | Interest          | Debt Service        | Principal           | Interest          | Debt Service        | Principal         | Interest          | Debt Service      |
| 7/1/2016 | 133,333.33          | 27,680.00           | 161,013.33          | 80,000.00            | 16,608.00         | 96,608.00           | 33,333.33           | 6,920.00          | 40,253.33           | 20,000.00         | 4,152.00          | 24,152.00         |
| 1/1/2017 | 133,333.33          | 24,220.00           | 157,553.33          | 80,000.00            | 14,532.00         | 94,532.00           | 33,333.33           | 6,055.00          | 39,388.33           | 20,000.00         | 3,633.00          | 23,633.00         |
| 7/1/2017 | 133,333.33          | 20,760.00           | 154,093.33          | 80,000.00            | 12,456.00         | 92,456.00           | 33,333.33           | 5,190.00          | 38,523.33           | 20,000.00         | 3,114.00          | 23,114.00         |
| 1/1/2018 | 133,333.33          | 17,300.00           | 150,633.33          | 80,000.00            | 10,380.00         | 90,380.00           | 33,333.33           | 4,325.00          | 37,658.33           | 20,000.00         | 2,595.00          | 22,595.00         |
| 7/1/2018 | 133,333.33          | 13,840.00           | 147,173.33          | 80,000.00            | 8,304.00          | 88,304.00           | 33,333.33           | 3,460.00          | 36,793.33           | 20,000.00         | 2,076.00          | 22,076.00         |
| 1/1/2019 | 133,333.33          | 10,380.00           | 143,713.33          | 80,000.00            | 6,228.00          | 86,228.00           | 33,333.33           | 2,595.00          | 35,928.33           | 20,000.00         | 1,557.00          | 21,557.00         |
| 7/1/2019 | 133,333.33          | 6,920.00            | 140,253.33          | 80,000.00            | 4,152.00          | 84,152.00           | 33,333.33           | 1,730.00          | 35,063.33           | 20,000.00         | 1,038.00          | 21,038.00         |
| 9/1/2019 | 133,333.43          | 1,191.78            | 134,525.21          | 80,000.06            | 715.07            | 80,715.13           | 33,333.36           | 297.95            | 33,631.30           | 20,000.01         | 178.77            | 20,178.78         |
|          | <b>4,000,000.00</b> | <b>1,573,761.78</b> | <b>5,573,761.78</b> | <b>2,400,000.00</b>  | <b>944,257.07</b> | <b>3,344,257.07</b> | <b>1,000,000.00</b> | <b>393,440.45</b> | <b>1,393,440.45</b> | <b>600,000.00</b> | <b>236,064.27</b> | <b>836,064.27</b> |

|  |            |           |                         |            |           |                         |            |           |                        |
|--|------------|-----------|-------------------------|------------|-----------|-------------------------|------------|-----------|------------------------|
| Remaining amount as of today, 2/17/17 each Town will pay if we continue loan payments through present termination at September 1, 2019 | 480,000.05 | 42,235.07 | 522,235.12              | 200,000.02 | 17,597.95 | 217,597.97              | 120,000.01 | 10,558.77 | 130,558.78             |
| If we exercise prepayment option on April 1, 2017<br>Avoided cost by paying April 1  |            |           | 491,004.98<br>31,230.14 |            |           | 204,585.41<br>13,012.56 |            |           | 122,751.24<br>7,807.54 |
| If we exercise prepayment option on May 1, 2017<br>Avoided cost by paying May  |            |           | 493,080.98<br>29,154.14 |            |           | 205,450.41<br>12,147.56 |            |           | 123,270.24<br>7,288.54 |
| If we exercise prepayment option on June 1, 2017<br>Avoided cost by paying June 1  |            |           | 495,156.98<br>27,078.14 |            |           | 206,315.41<br>11,282.56 |            |           | 123,789.24<br>6,769.54 |
| If we exercise prepayment option on July 1, 2017<br>Avoided cost by paying July 1  |            |           | 496,432.98<br>25,802.14 |            |           | 206,847.08<br>10,750.89 |            |           | 124,108.25<br>6,450.53 |

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Bence Hoyle, Police Chief


**Action Requested:**

Recognize Corporal Lee Cook's 12 years of service with the Cornelius Police Department and 18 years in law enforcement upon his retirement.

**Manager's Recommendation:**

Approve a Resolution acknowledging Corporal Lee Cook for his 12 years of police service and award him his badge and revolver upon retirement.

**ATTACHMENTS:**

| Name:   | Description:          | Type:             |
|---|-----------------------|-------------------|
|  <a href="#">RES-Corporal_Cook_Retirement_03-01-17.doc</a> | Retirement Resolution | Resolution Letter |

---

**RESOLUTION ACKNOWLEDGING THE SERVICE OF  
POLICE CORPORAL WILLARD COOK AND  
AWARDING HIS SERVICE PISTOL TO HIM**

**WHEREAS**, Police Corporal Willard Cook has served the Town of Cornelius for the past twelve (12) years, and;

**WHEREAS**, Corporal Cook has dedicated his life to law enforcement and public service encompassing eighteen 18 years, and;

**WHEREAS**, Corporal Cook retired from law enforcement on March 1, 2017.

**NOW, THEREFORE BE IT RESOLVED**, the Board of Commissioners of the Town of Cornelius, in accordance with NC General Statute 20-187.2, does hereby award Corporal Cook his Glock service pistol, serial number NWB-908 in exchange for consideration of \$1.00.

**BE IT FURTHER RESOLVED** that the Board of Commissioners of the Town of Cornelius also elects to retire Corporal Cook's badge and award it to him for his dedicated service to the Town.

Approved this 6<sup>th</sup> day of March, 2017.

SEAL

\_\_\_\_\_  
Charles L. Travis, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Karen Wolter, Town Attorney

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Bence Hoyle, Police Chief

**Action Requested:**

Corporal Derek Queen and K9 Dag have been recognized by the Cornelius Police Department as Employee of the Quarter for October - December 2016 and as the 2016 Officer of the Year.

Corporal Queen has been with the Cornelius Police Department since December, 2010 and K9 Dag had served as Officer Queen's partner since October, 2012. Sadly, on October 28, 2016, K9 Dag had to be put to sleep after his health declined rapidly.

During their 4yr. partnership, along with their daily duties they also assisted Homeland Security at the Charlotte Douglas International Airport for approximately 1½ years and were directly responsible for the seizure of approximately \$754,000 believed to be from drug trafficking. In another incident, they located almost ½ Kilo of cocaine hidden in a powder milk bag resulting in a 2-year Federal sentence for the suspect.

Congratulations Corporal Queen and K9 Dag! Thank you for your service to the Police Department and the Town of Cornelius.

**Manager's Recommendation:**

Recognize Corporal Queen.

**ATTACHMENTS:**

| Name:                    | Description: | Type: |
|--------------------------|--------------|-------|
| No Attachments Available |              |       |

---

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Andrew Grant, Asst. Town Manager

**Action Requested:**

NCDOT has retained Kimley-Horn to perform the planning and preliminary design for two of its TIP projects in Cornelius: Northcross Dr. Ext. and the Intersection Improvement at Hwy. 115/Davidson St./Potts St. Teresa Gresham of Kimley-Horn will present information regarding both projects.

**Manager's Recommendation:**

Hear presentation from Teresa Gresham, Kimley-Horn.

**ATTACHMENTS:**

| Name:  | Description:          | Type:        |
|--|-----------------------|--------------|
|  <a href="#">NCDOT Project Update 3-6-17.pptx</a> | NCDOT project updates | Presentation |

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# NCDOT STIP Project U-5873



## **NORTH CAROLINA**

Department of Transportation

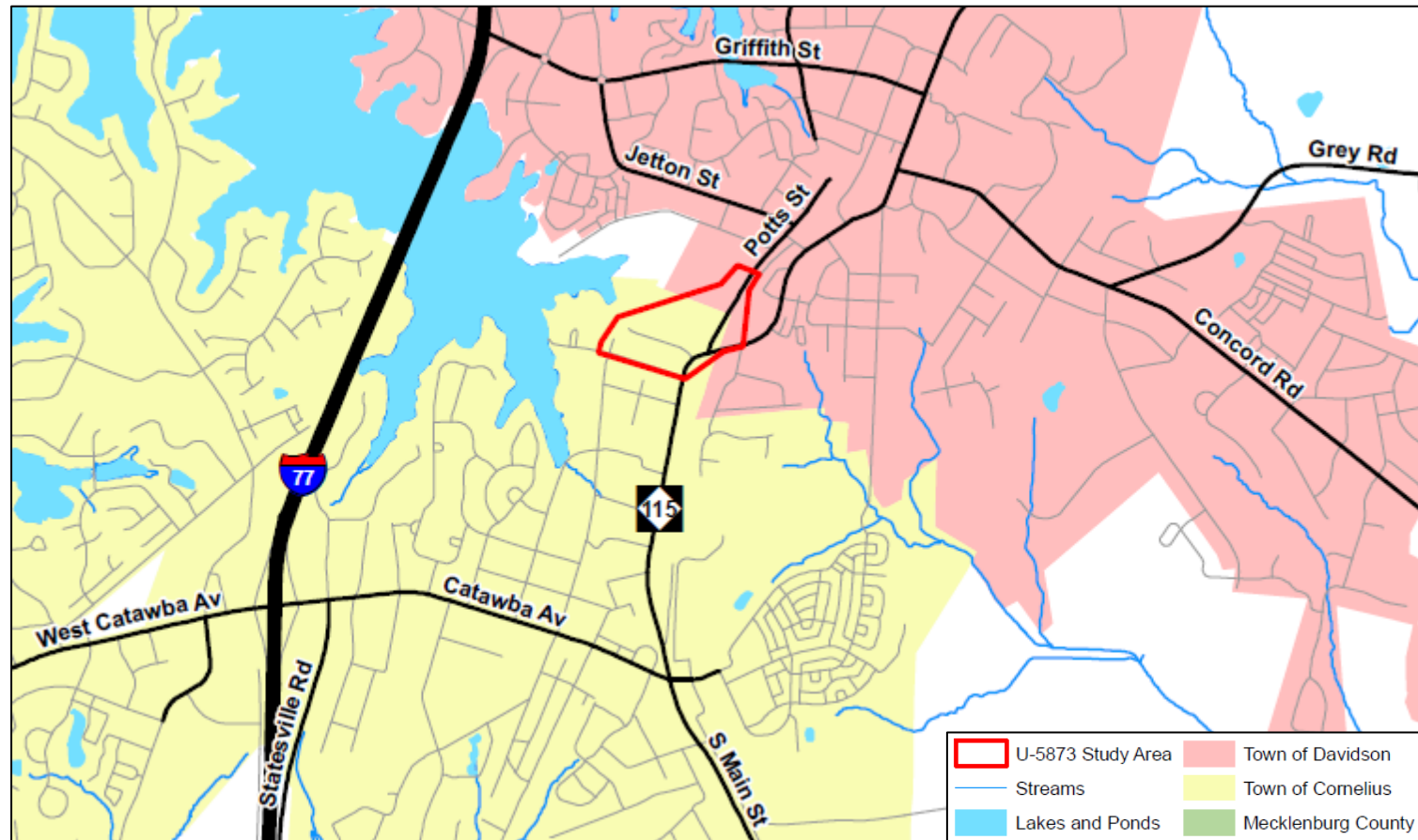


## Proposed Improvements at the Intersection of N.C. 115 (N. Main Street) and Potts Street

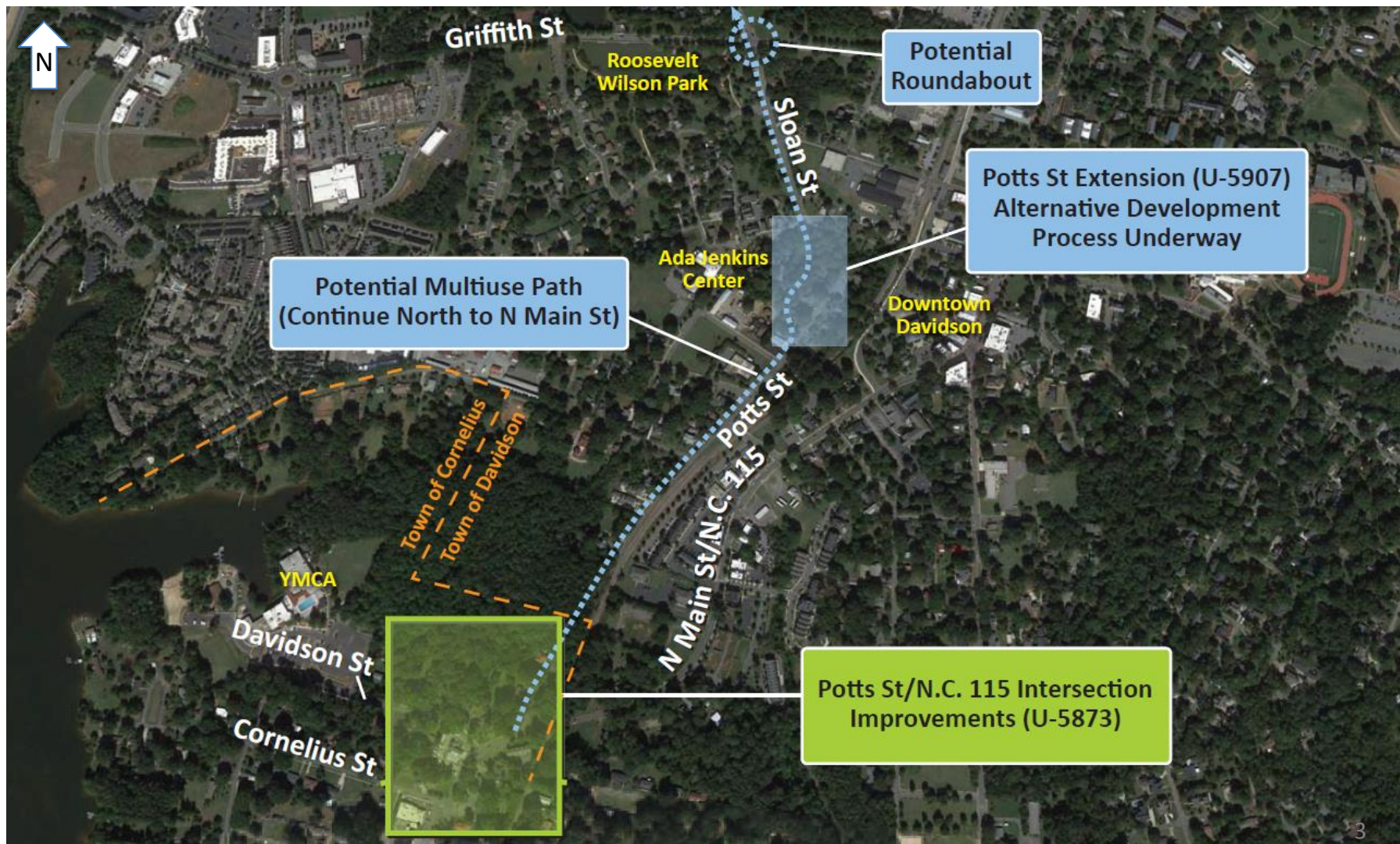
Small Group Meeting for Business & Local Officials  
February 16, 2017

# Project Description & Purpose

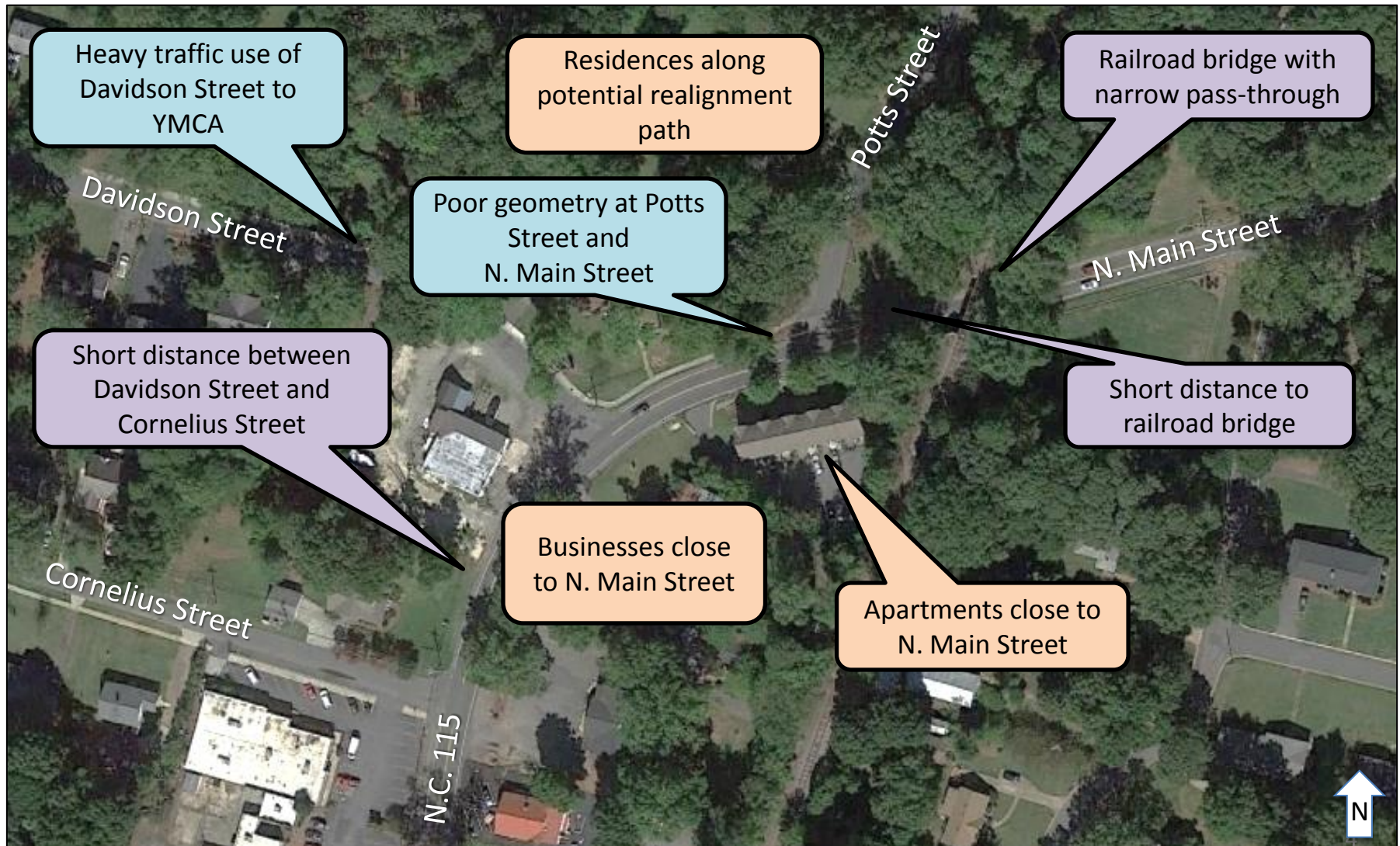
To improve traffic operations for drivers



# Nearby Projects

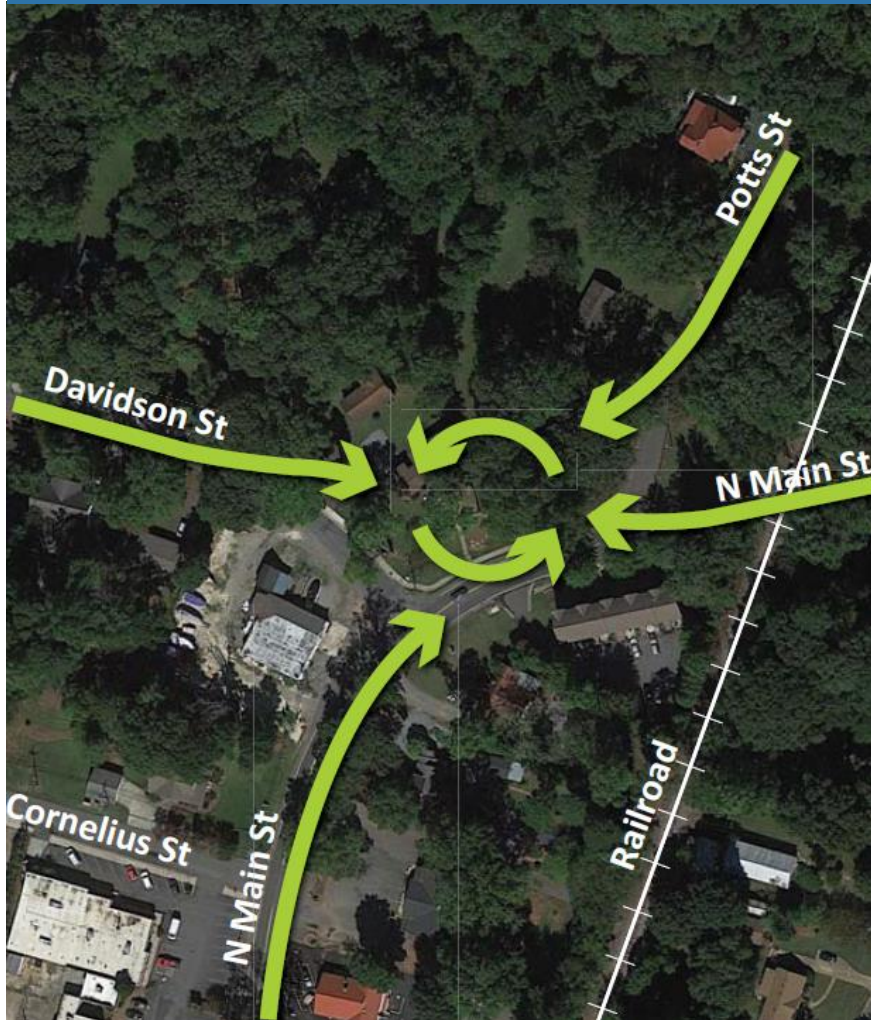


# Project Constraints

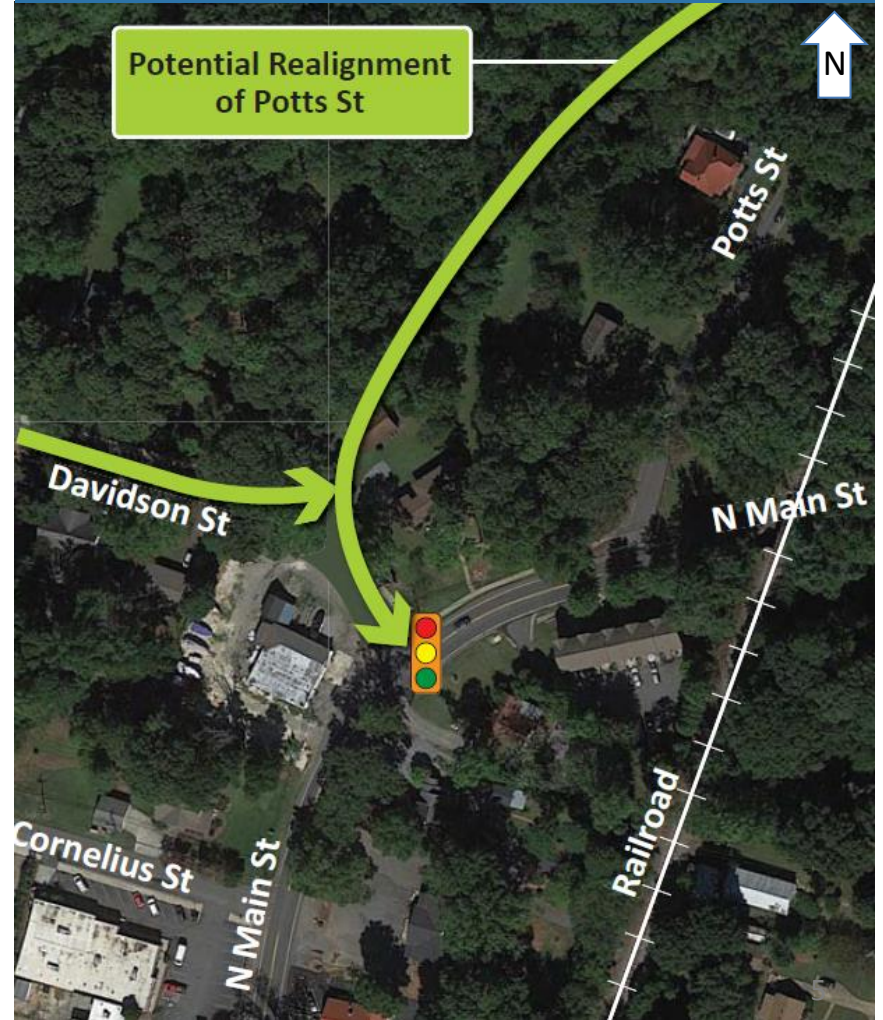


# Potential Traffic Movement Options

## Roundabout Concept



## Signalized Intersection Concept



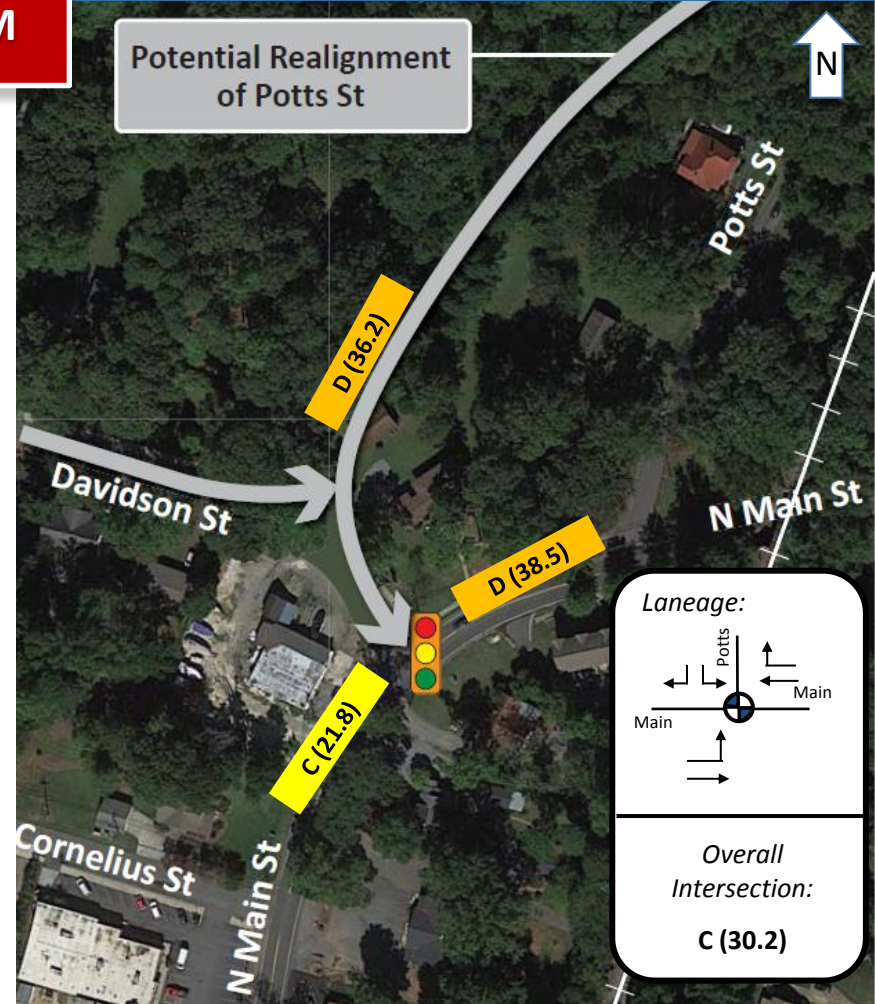
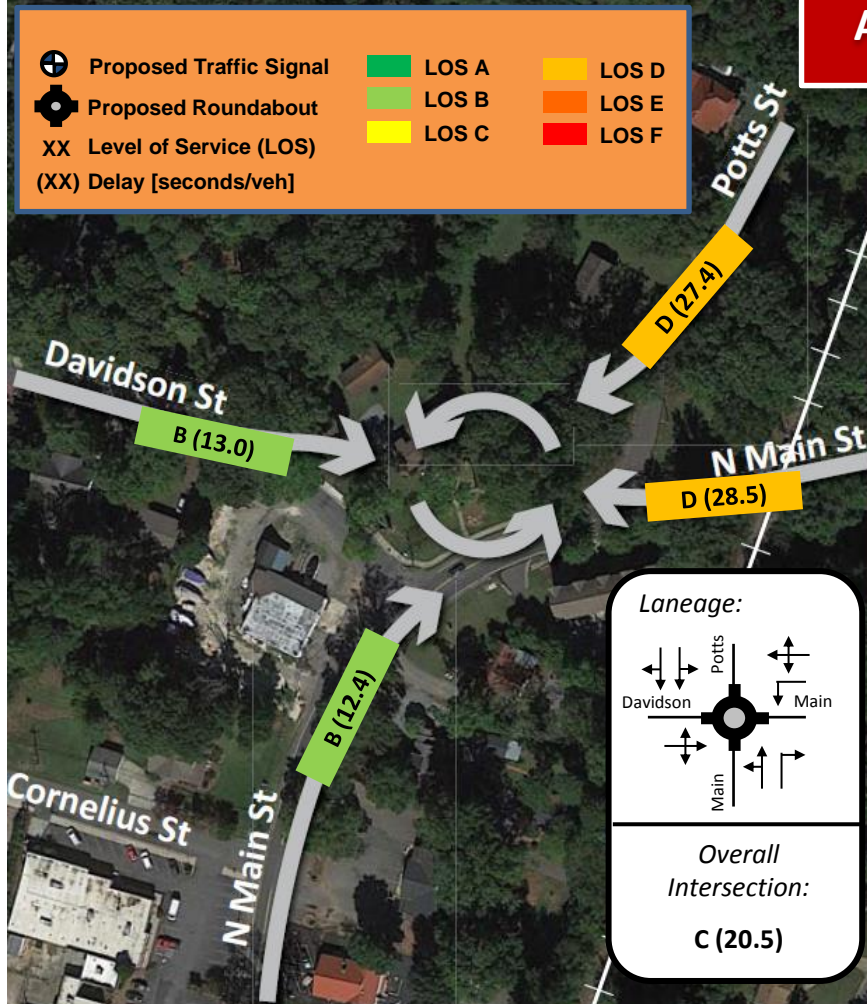
# Traffic Operations - Morning Peak

## Roundabout Concept

AM

## Signalized Intersection Concept

- |      |                         |  |       |  |       |
|------|-------------------------|--|-------|--|-------|
|      | Proposed Traffic Signal |  | LOS A |  | LOS D |
|      | Proposed Roundabout     |  | LOS B |  | LOS E |
| XX   | Level of Service (LOS)  |  | LOS C |  | LOS F |
| (XX) | Delay [seconds/veh]     |  |       |  |       |











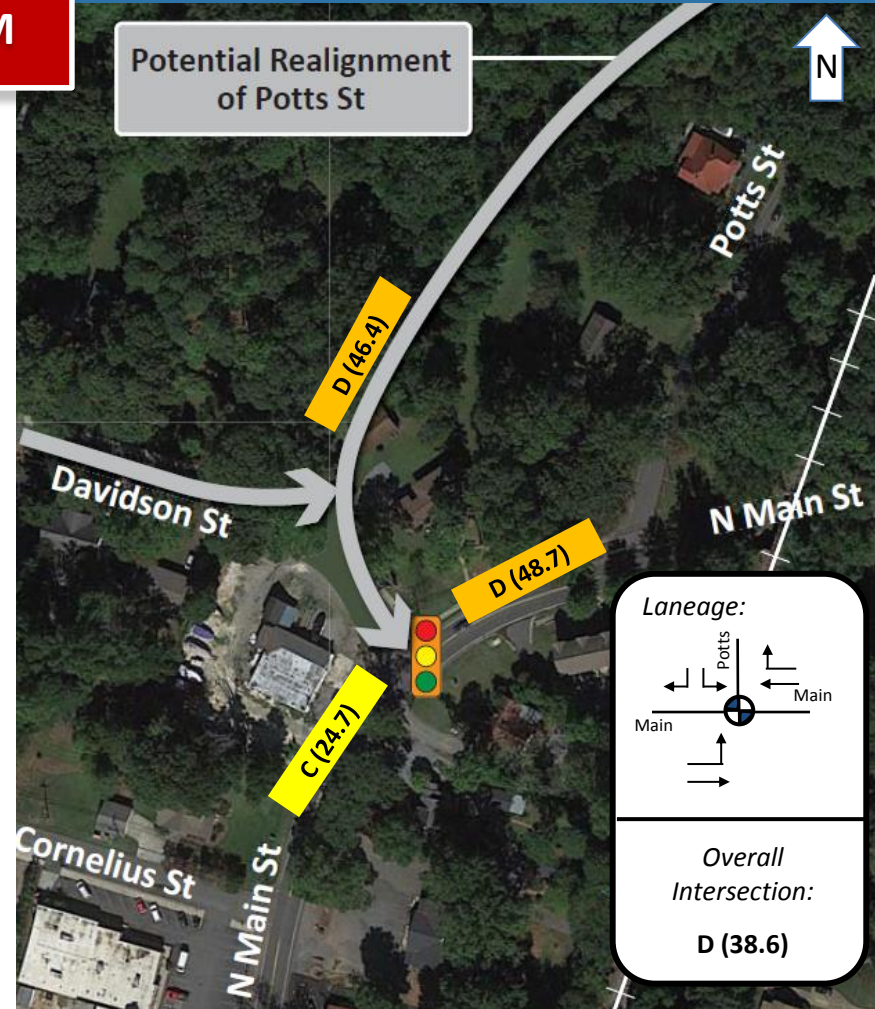
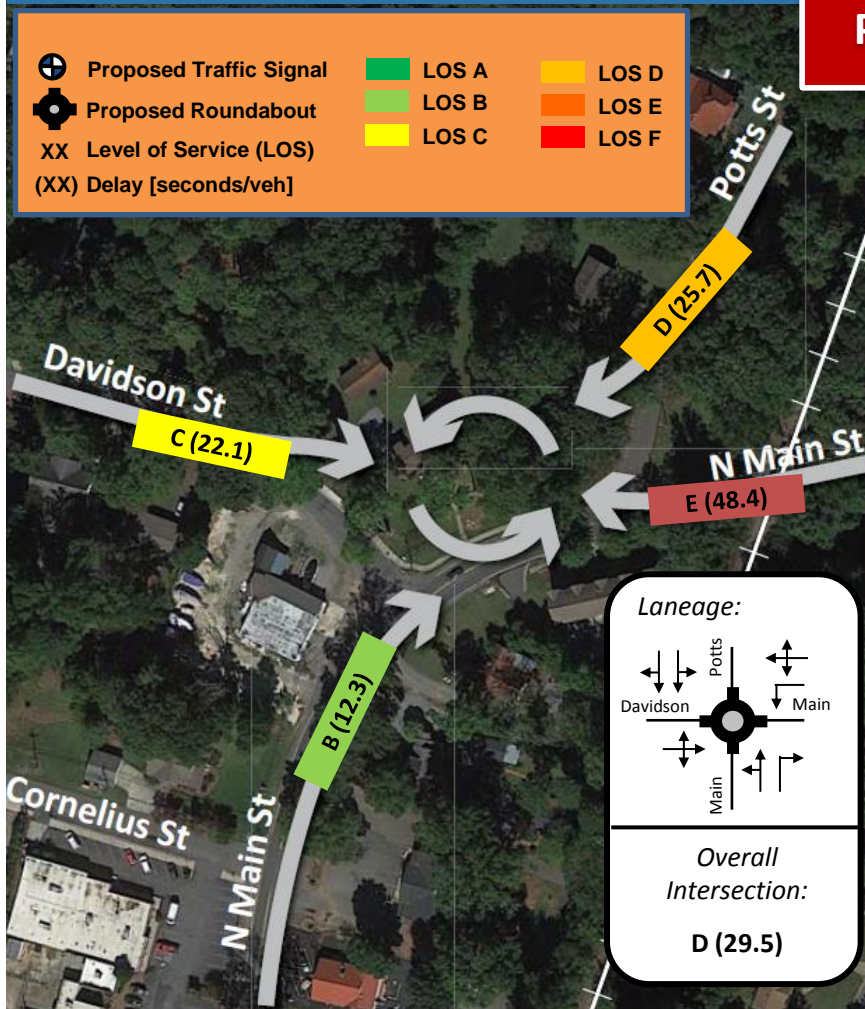
# Traffic Operations - Afternoon Peak

## Roundabout Concept

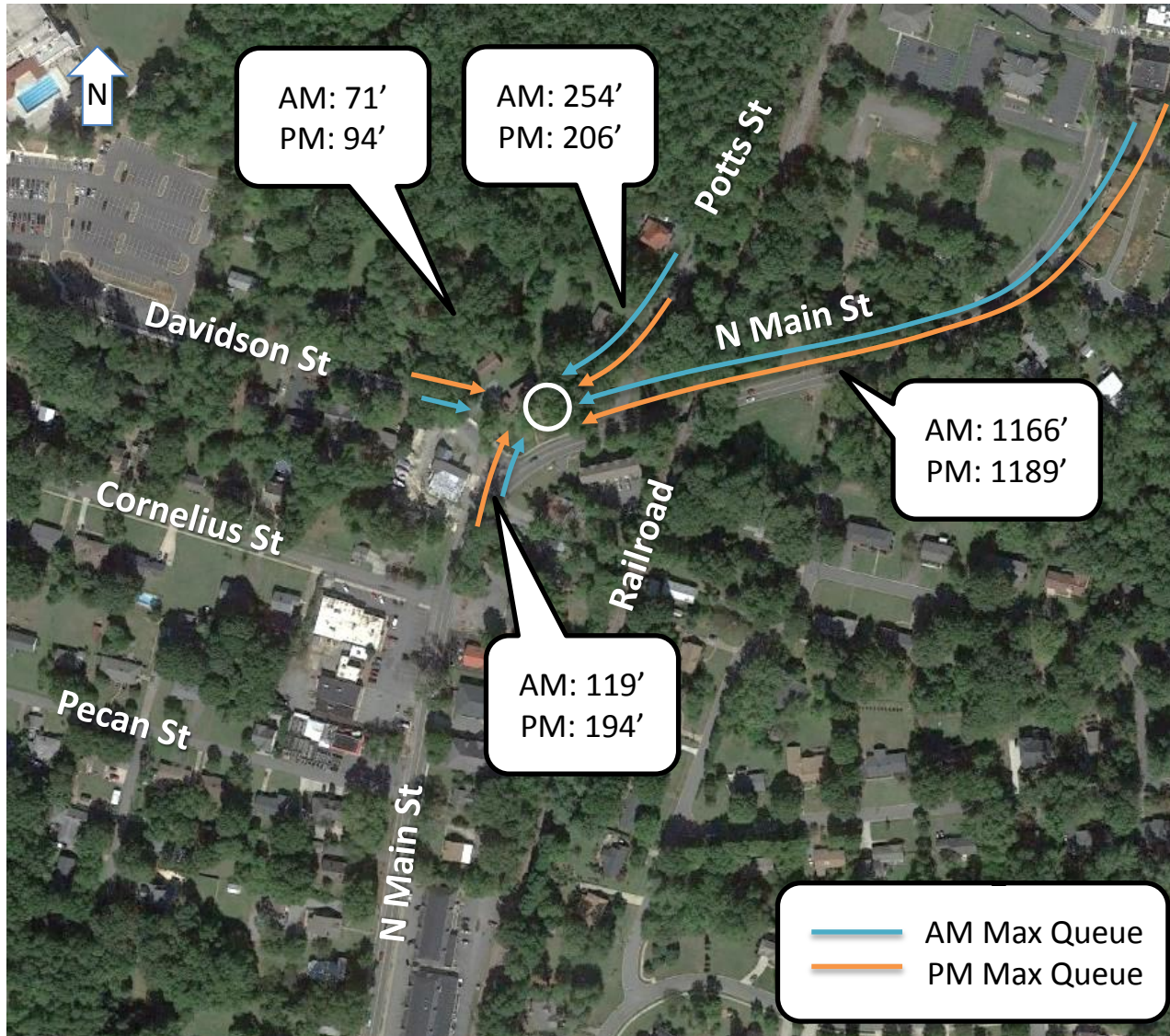
PM

## Signalized Intersection Concept

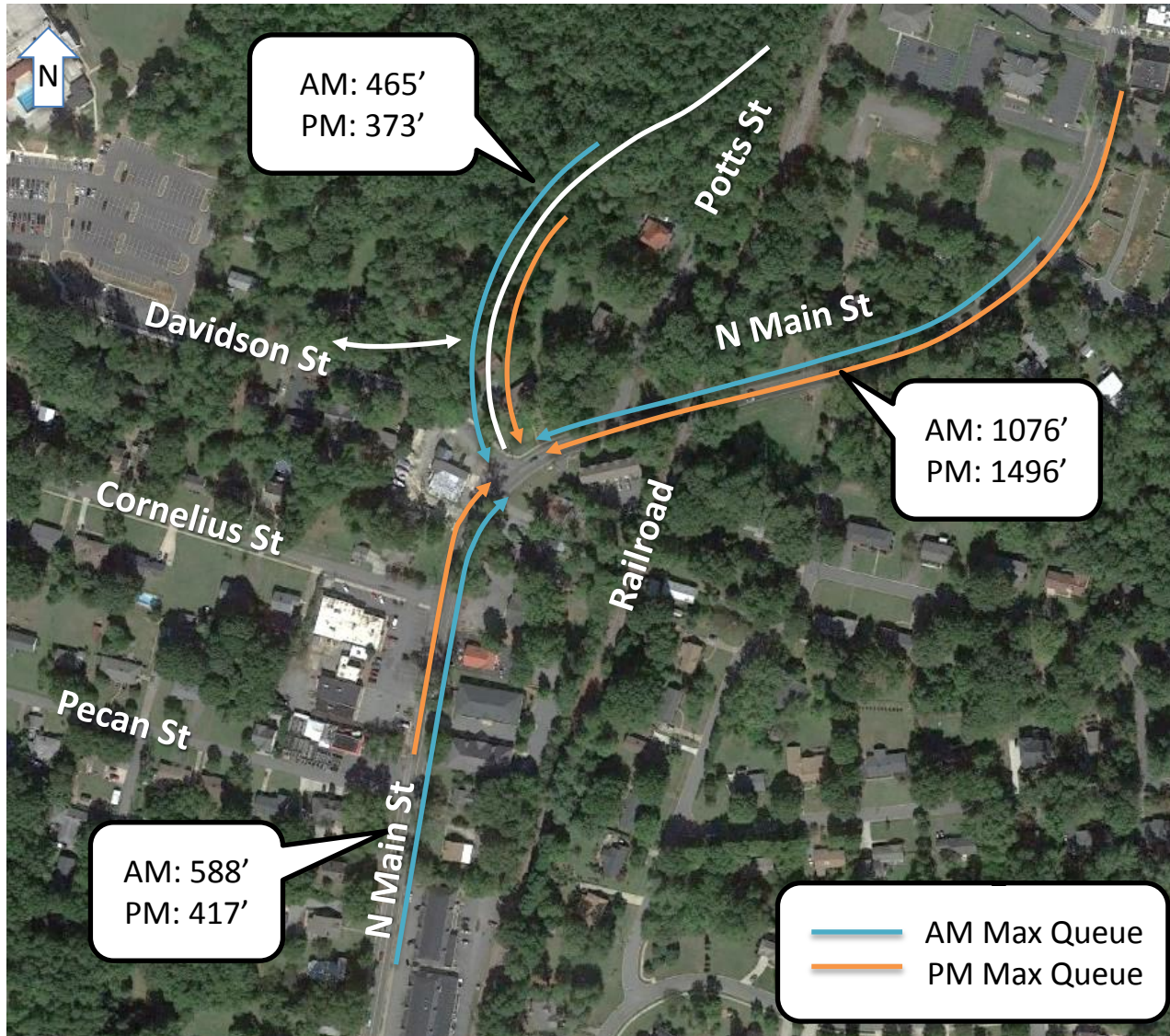
-  Proposed Traffic Signal  
 Proposed Roundabout  
 XX Level of Service (LOS)  
 (XX) Delay [seconds/veh]
- |   |       |   |       |
|---|-------|---|-------|
|  | LOS A |  | LOS D |
|  | LOS B |  | LOS E |
|  | LOS C |  | LOS F |



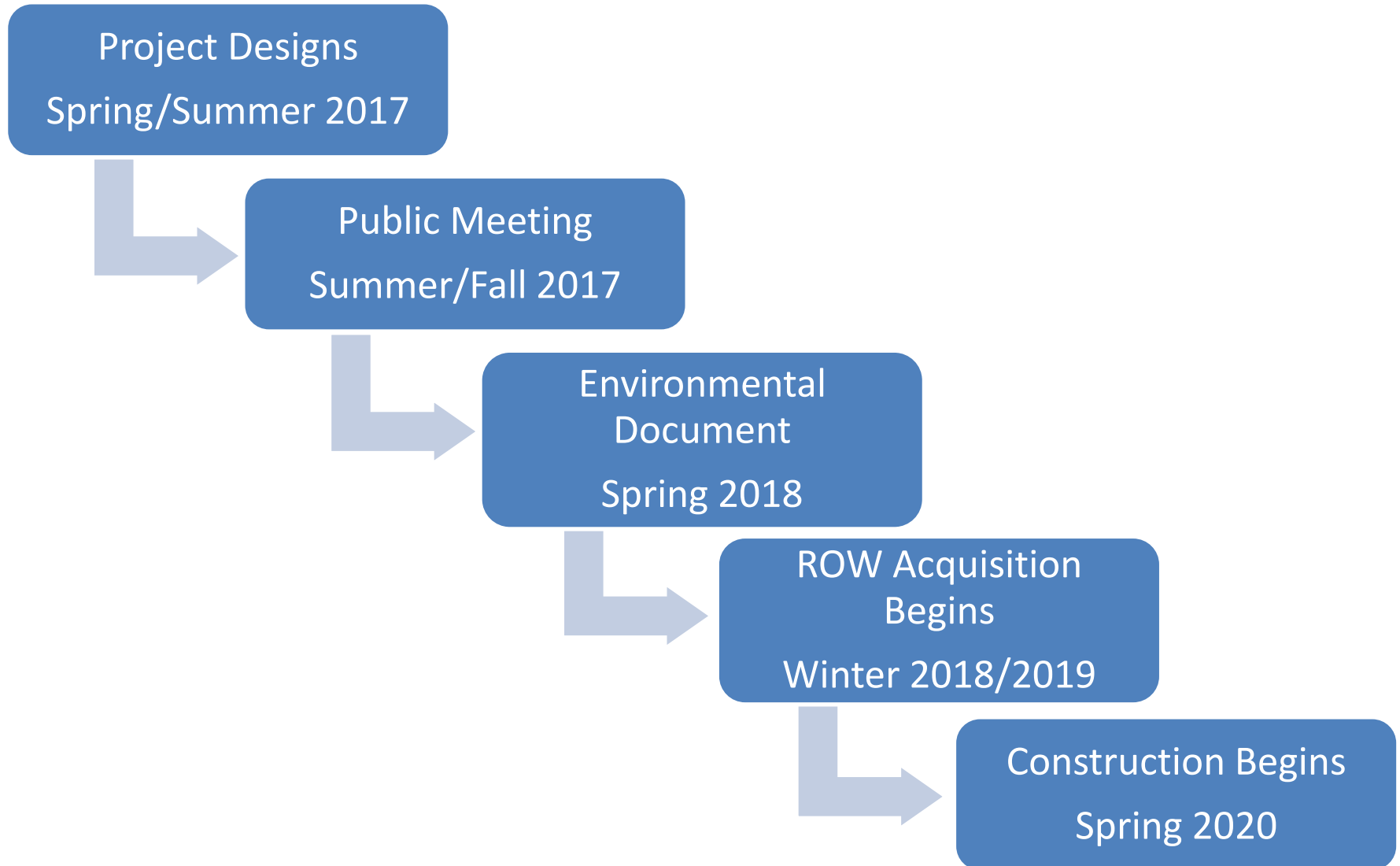
# 2040 Queues – Roundabout Concept



# 2040 Queues – Traffic Signal Concept



# Schedule & Next Steps



# NCDOT STIP Project U-5108



## **NORTH CAROLINA**

Department of Transportation



## Northcross Drive Extension

Public Meeting

February 13, 2017

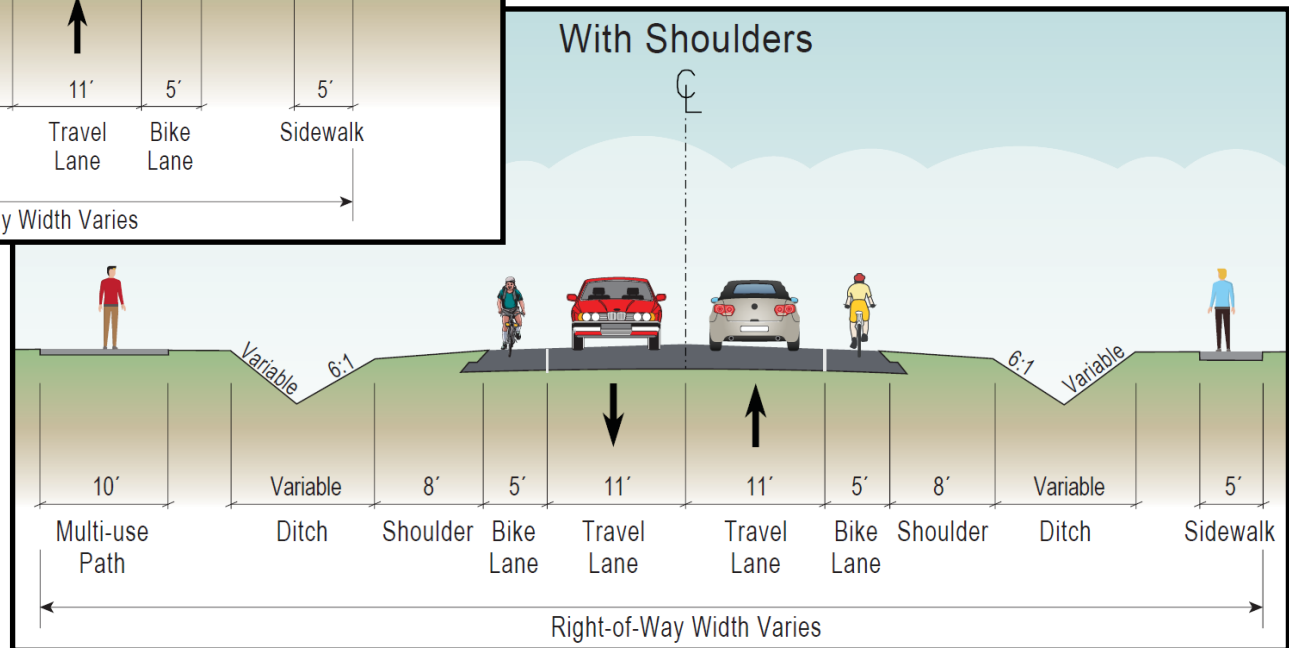
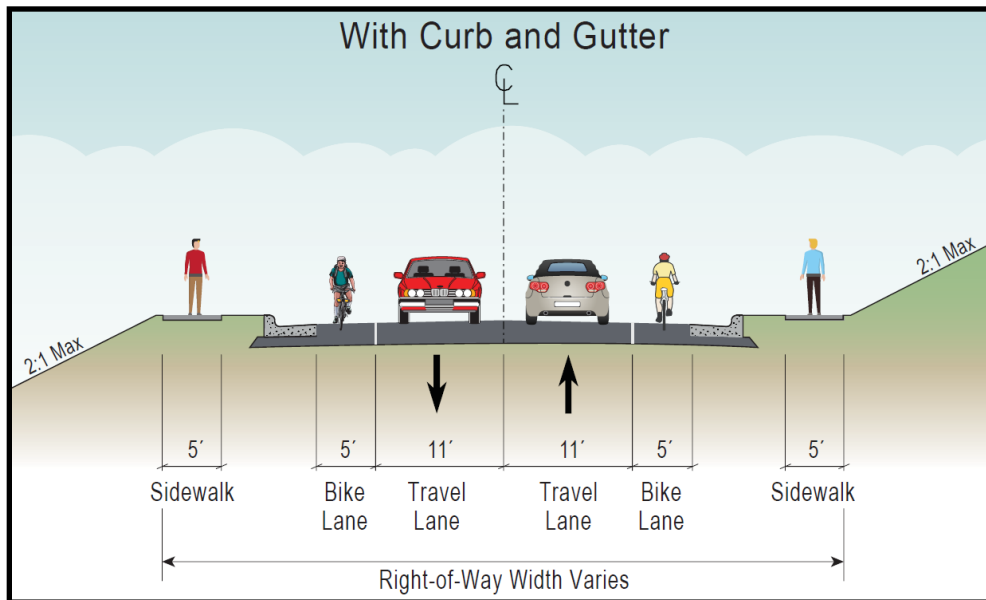
Town of Cornelius, Mecklenburg County

# Project Description & Purpose

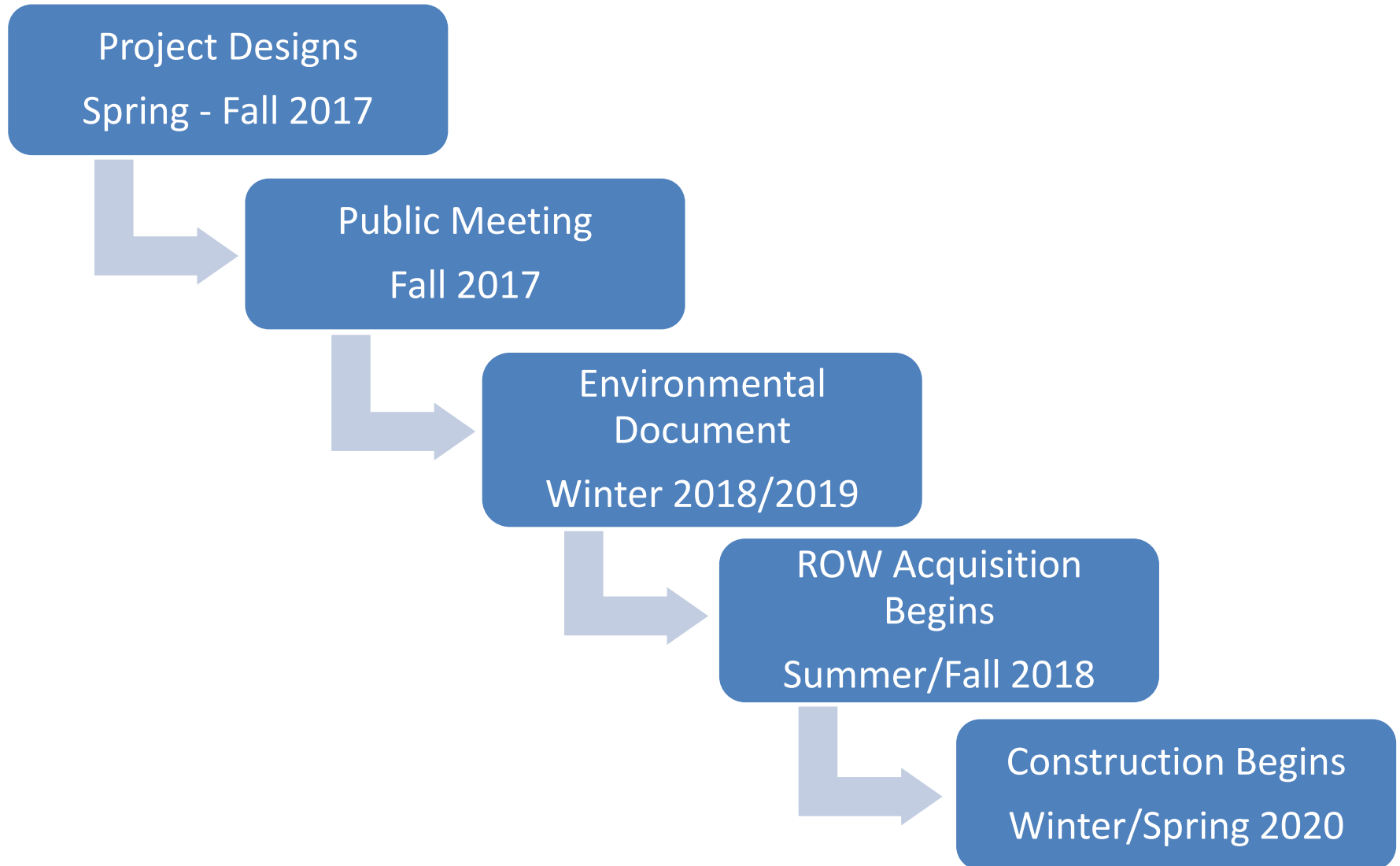
To improve roadway connectivity and provide an alternate north-south route for local traffic.



# Potential Typical Sections



# Schedule & Next Steps



# REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** March 6, 2017

**To:** Mayor Travis and Town Board of Commissioners

**From:** Jason T. Pauling, AICP - Senior Planner

**Action Requested:**

A request from DB Automotive Real Estate Holdings, LLC to develop an automotive sales, service and storage use at 18837 Statesville Road. The proposed project consists of removing two existing buildings and constructing a new 22,850 square foot building initially, which will then eventually be expanded to 26,800 square feet and include a larger auto sales showroom. The existing site is approximately 5.6 acres, and is zoned Highway Commercial (HC), and is also within the Automobile Sales Overlay District (AS-O).

The Planning Board considered the application on Monday, February 27th and unanimously recommended approval of the request.

**Manager's Recommendation:**

Approve an Ordinance to amend the zoning map and a Resolution affirming that REZ 10-16 is consistent with the Town's adopted Land Use Plan and reasonable in the public interest.

**ATTACHMENTS:**

| Name:  | Description:                                      | Type:           |
|--|---|-----------------|
|  <a href="#">DB Holdings_CZ_application.pdf</a>             | Application                                       | Backup Material |
|  <a href="#">DB Holdings_project_description_letter.pdf</a> | Project Description                               | Backup Material |
|  <a href="#">DB Holdings_ZONING.jpg</a>                     | Zoning Map  | Backup Material |
|  <a href="#">DB Holdings_LU.jpg</a>                         | Land Use Map                                      | Backup Material |
|  <a href="#">DB Holdings_VICINITY.jpg</a>                   | Vicinity Map                                      | Backup Material |
|  <a href="#">DB Holdings_PROPERTY.jpg</a>                   | Property Map                                      | Backup Material |
|  <a href="#">POLARIS_IMAGE.pdf</a>                          | Polaris Aerial Photo                              | Backup Material |
|  <a href="#">Street_View.JPG</a>                            | Street View 1                                     | Backup Material |
|  <a href="#">Street_View_2.JPG</a>                          | Street View 2                                     | Backup Material |
|  <a href="#">REZ_10-16_DB_Holdings_3.6.17_(TB).docx</a>     | Staff Report                                      | Backup Material |
|  <a href="#">AArch_Comment_Responses.pdf</a>                | PDRC, Community Meeting, ARB<br>Comment follow up | Backup Material |
|  <a href="#">ARB_Minutes_12-09-2016.docx</a>                | ARB Minutes - December 9, 2016                    | Backup Material |
|  <a href="#">ARB_Minutes_01-27-2017.docx</a>                | ARB Minutes - January 2017                        | Backup Material |
|  <a href="#">Community_Meeting_Sign_In_Sheet.pdf</a>        | Community Meeting Sign-In                         | Backup Material |
|  <a href="#">Revised_Site_Plan.pdf</a>                      | Revised Site Plan                                 | Backup Material |
|  <a href="#">Illustrative_Site_plan.pdf</a>                 | Illustrative Site Plan                            | Backup Material |
|  <a href="#">1-26-2017_REVIEW_BOARD_PRES.pdf</a>            | Elevations  | Backup Material |
|  <a href="#">Phase_I_First_Floor_Plan.pdf</a>               | Phase 1 - First Floor Plan                        | Backup Material |
|  <a href="#">Phase_I_Mezzanine_Floor_Plan.pdf</a>           | Phase 1 - Mezzanine Plan                          | Backup Material |
|  <a href="#">Phase_II_First_Floor_Plan.pdf</a>              | Phase 2 - First Floor Plan                        | Backup Material |
|  <a href="#">Phase_II_Mezzanine_Floor_Plan.pdf</a>          | Phase 2 - Mezzanine Plan                          | Backup Material |
|   |   |                 |

|  |                                      |                 |
|--|--------------------------------------|-----------------|
| <a href="#">RESOLUTION OF THE TOWN OF CORNELIUS BOARD REZ 10-16 Consistency Statement.docx</a> | RESO of Consistency & Reasonableness | Backup Material |
| <a href="#">Ordinance on Rezoning Property REZ 10-16.docx</a>                                  | ORDINANCE                            | Backup Material |

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# TOWN OF CORNELIUS

## Planning Department

PO Box 399 | Cornelius, NC 28031 | Phone: 704-896-2461 | Fax: 704-896-2462

### Staff Only:

Date Rec'd: 10/28

Rec'd by: JP

Case #: REZ 10-16

## LAND DEVELOPMENT APPLICATION FORM

### 1. Application Type

- |                                 | ✓                        | Fee   |                                 | ✓                        | Fee   |
|---------------------------------|--------------------------|-------|---------------------------------|--------------------------|-------|
| • Sketch Plan/Plat (Major Sub): | <input type="checkbox"/> | _____ | • Conditional Zoning (CZ)       | <input type="checkbox"/> | _____ |
| • Preliminary Plat (Major Sub): | <input type="checkbox"/> | _____ | • Special Use Permit (SUP)      | <input type="checkbox"/> | _____ |
| • Final Plat (Major Sub):       | <input type="checkbox"/> | _____ | • Major Architectural Variation | <input type="checkbox"/> | _____ |
| • Construction Documents:       | <input type="checkbox"/> | _____ | • Minor Architectural Variation | <input type="checkbox"/> | _____ |
| • General Rezoning              | <input type="checkbox"/> | _____ | • Other:                        | <input type="checkbox"/> | _____ |

Fee Total: \_\_\_\_\_

### 2. Project Information

Date of Application: 11-4-2016 Name of Project: DB HOLDINGS  
 Location: 18837 STATESVILLE RD. Property Size (acres): 5.62 # of Units/Lots: \_\_\_\_\_  
 Current Zoning: AG-0 Proposed Zoning: CZ (AG-0)  
 Current Land Use: AUTOMOTIVE SERVICE, STORAGE, COMMERCIAL Proposed Land Use: AUTO. SALES, SERVICE, STORAGE  
 Tax Parcel Number(s): 00541209

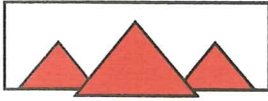
### 3. Contact Information

DB AUTOMOTIVE REAL ESTATE HOLDINGS LLC  
 Owner, Applicant, or Developer  
20700 TORRENCE CHAPEL RD  
 Address  
CORNELIUS, NC 28031  
 City, State Zip  
704-896-3800  
 Telephone  
JACK SALZMAN  
 Signature Print Name Date  
 Email: J.SALZMAN@CLAVENORMANCHRYSLER.COM

ADAM STACE ASSOCIATES ARCHITECTURE  
 Agent(s) (Engineer, Architect, Etc.)  
126 N. MAIN ST  
 Address  
MOORESVILLE, NC 28115  
 City, State Zip  
704-664-1311  
 Telephone  
LARRY SCHAEFFER 11-4-2016  
 Signature Print Name Date  
 Email: LARRY@ADAMSTACEASSOCIATESARCH.COM

### 4. The following items shall be considered as part of a complete application, please check this list to ensure all items are included:

- |   |  |
|---|--|
| <input type="checkbox"/> <b>Signed "Original" application</b>   | <input type="checkbox"/> <b>Illustrative (color) site/sketch plan</b> for presentation purposes with same layers as described above  |
| <input type="checkbox"/> <b>Project Fee(s)</b> – See Fee Schedule   | <input type="checkbox"/> <b>Official hard copy of architectural elevations</b> (at least one copy), which may include multiple pages. Must be drawn to scale by a registered architect, and include all primary and accessory buildings (including all building sides), and any other architectural elements/features of the site such as gazebos, trellis's, garden walls, retaining walls, or other items over 4-feet in height (NOT APPLICABLE FOR SINGLE-FAMILY RESIDENTIAL DEVELOPMENTS). |
| <input type="checkbox"/> <b>Written Summary/Description of Request</b> can be on company letterhead. Shall include requested use or uses, sq. feet of non-residential space, or density and number of units/lots for residential, or any other applicable information. For CZ's, must also describe any variations proposed from the Land Development Code  | <input type="checkbox"/> <b>Illustrative (color) elevations</b> for presentation purposes for all items described above, as well as perspective (3D) renderings and photograph examples  |
| <input type="checkbox"/> <b>Property Survey</b> (at least one copy), including existing buildings, topography, wetlands, streams, vegetation (trees over 18" in diameter), and other natural features.  | <input type="checkbox"/> <b>Digital Files</b> of all items listed above  |
| <input type="checkbox"/> <b>Site/sketch plan</b> (at least one copy), may contain multiple pages and must be drawn to scale by an engineer or landscape architect. Shall include locations of buildings and/or lots, streets, parking, proposed grading, landscaping/screening, open space, watershed/storm water information, associated storm water measures, and proposed utilities and lighting. Shall also include general information from adjoining lots |  |



October 25, 2016

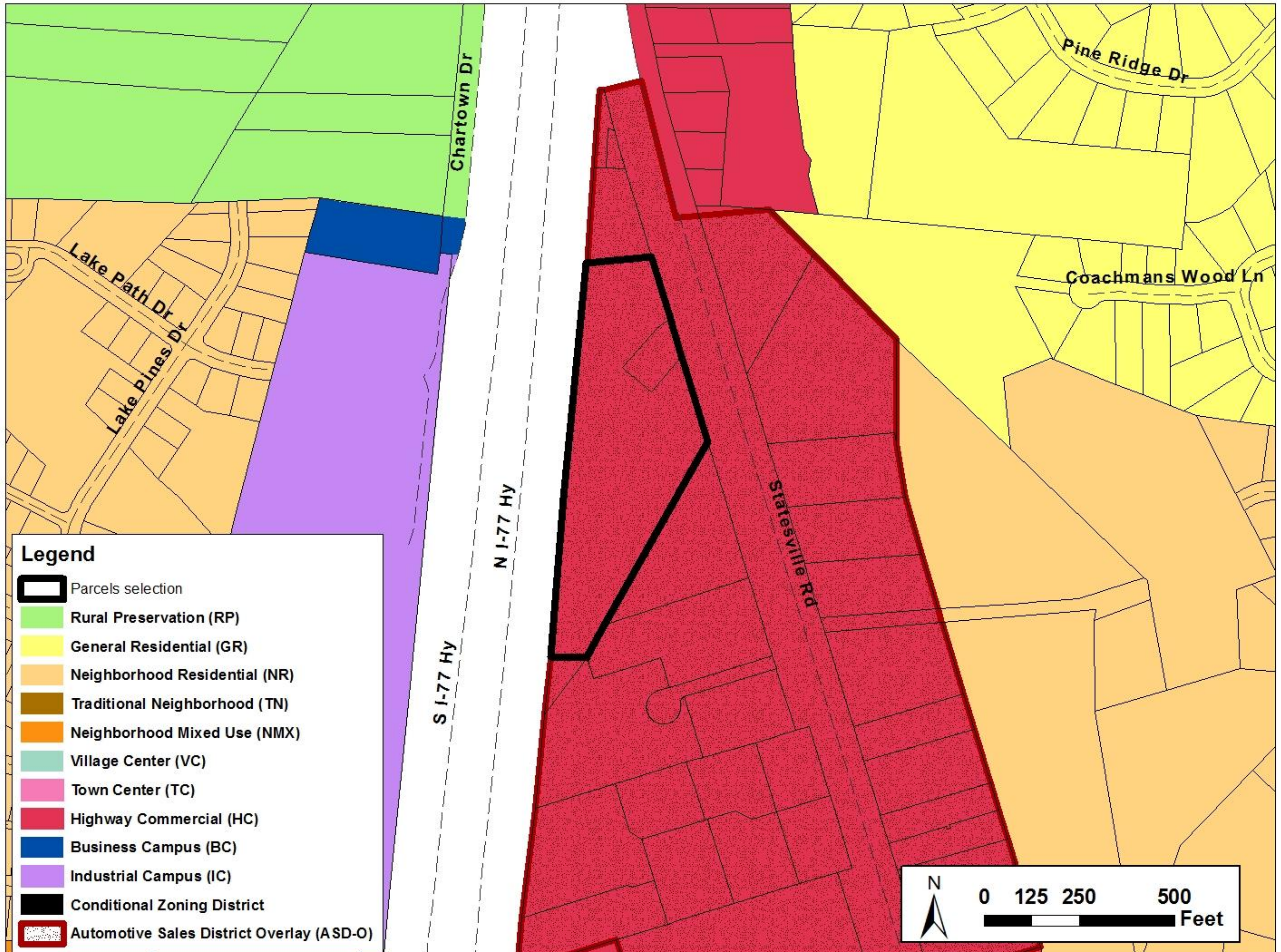
RE: DB Holdings

18837 Statesville Road

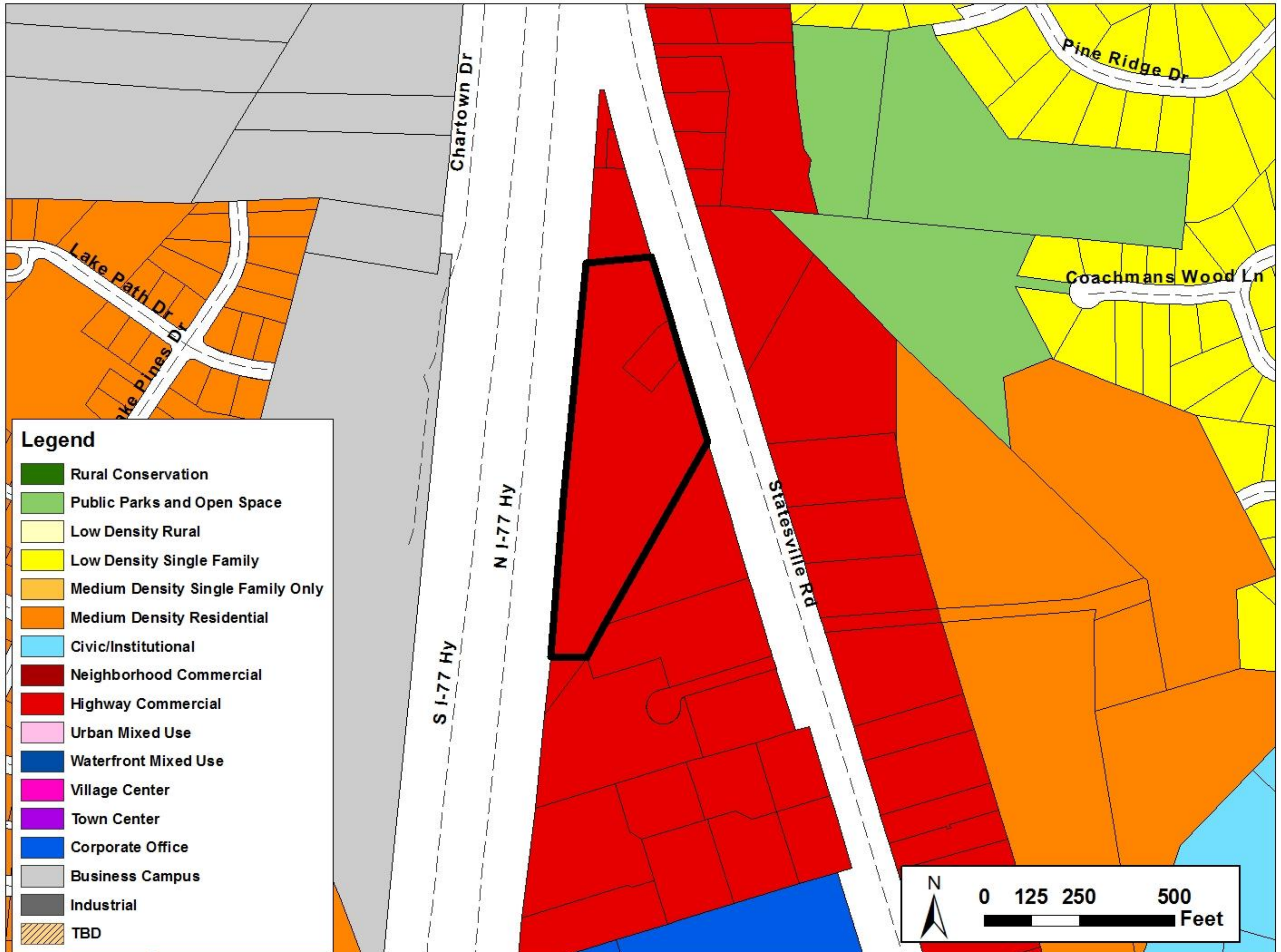
Cornelius, NC

This proposed project consists of the removal of two buildings, with an approximate square footage of 9,075. Phase I will consist of the construction of a new 22,850 square foot commercial building. Phase II will increase the building to 26,800 square feet by adding a new sales floor area to the front of the building and a drive thru wash bay. This single story building with a mezzanine, will serve as an automotive service center with automotive sales. The project includes site improvements which includes; grading, parking lots, service drives, site lighting and landscaping. The site is 5.6 acres and is zoned as HC (Highway Commercial) and will remain as Highway Commercial. There are no variations proposed from the Land Development Code.

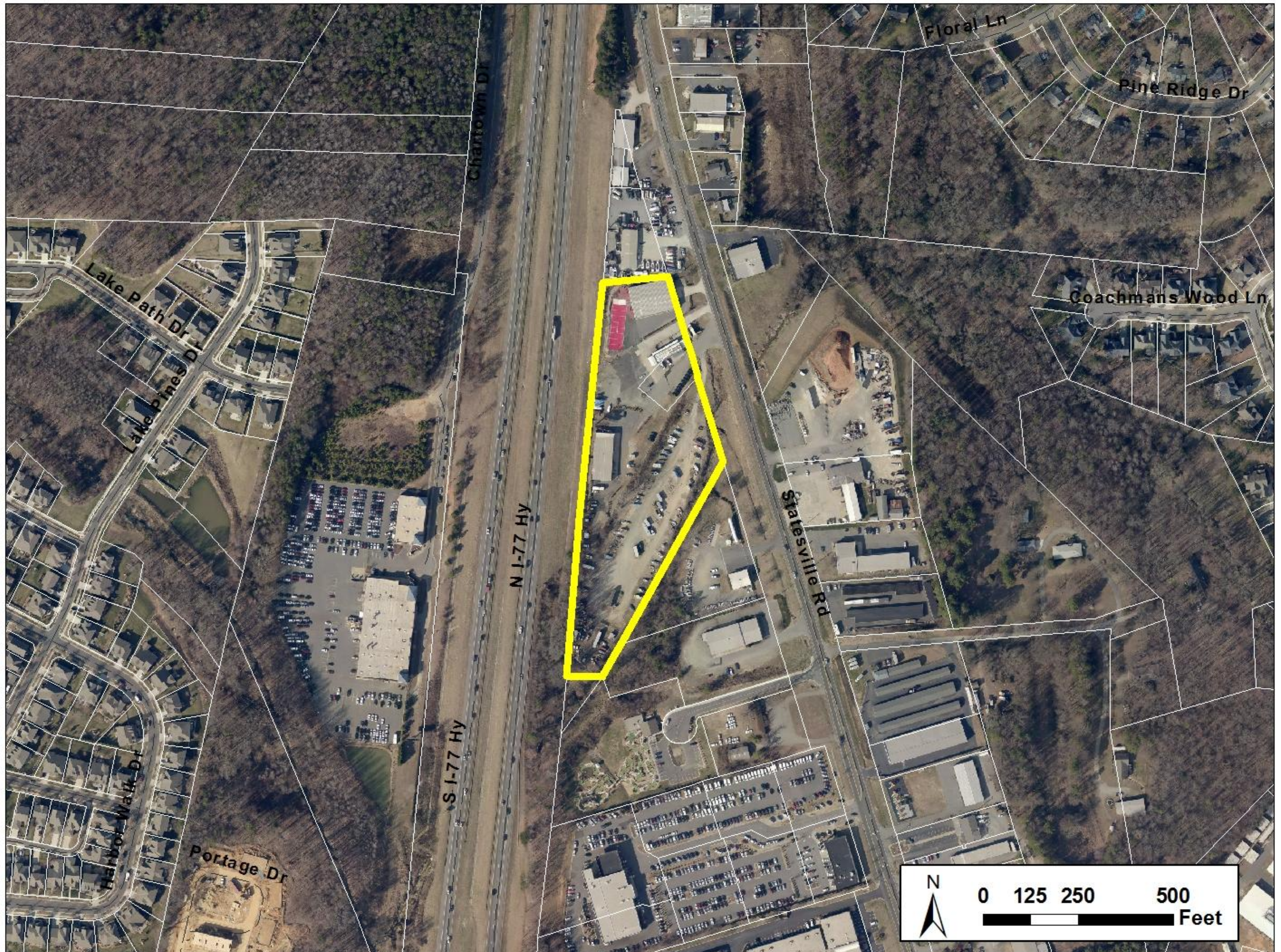
# REZ 10-16: DB HOLDINGS



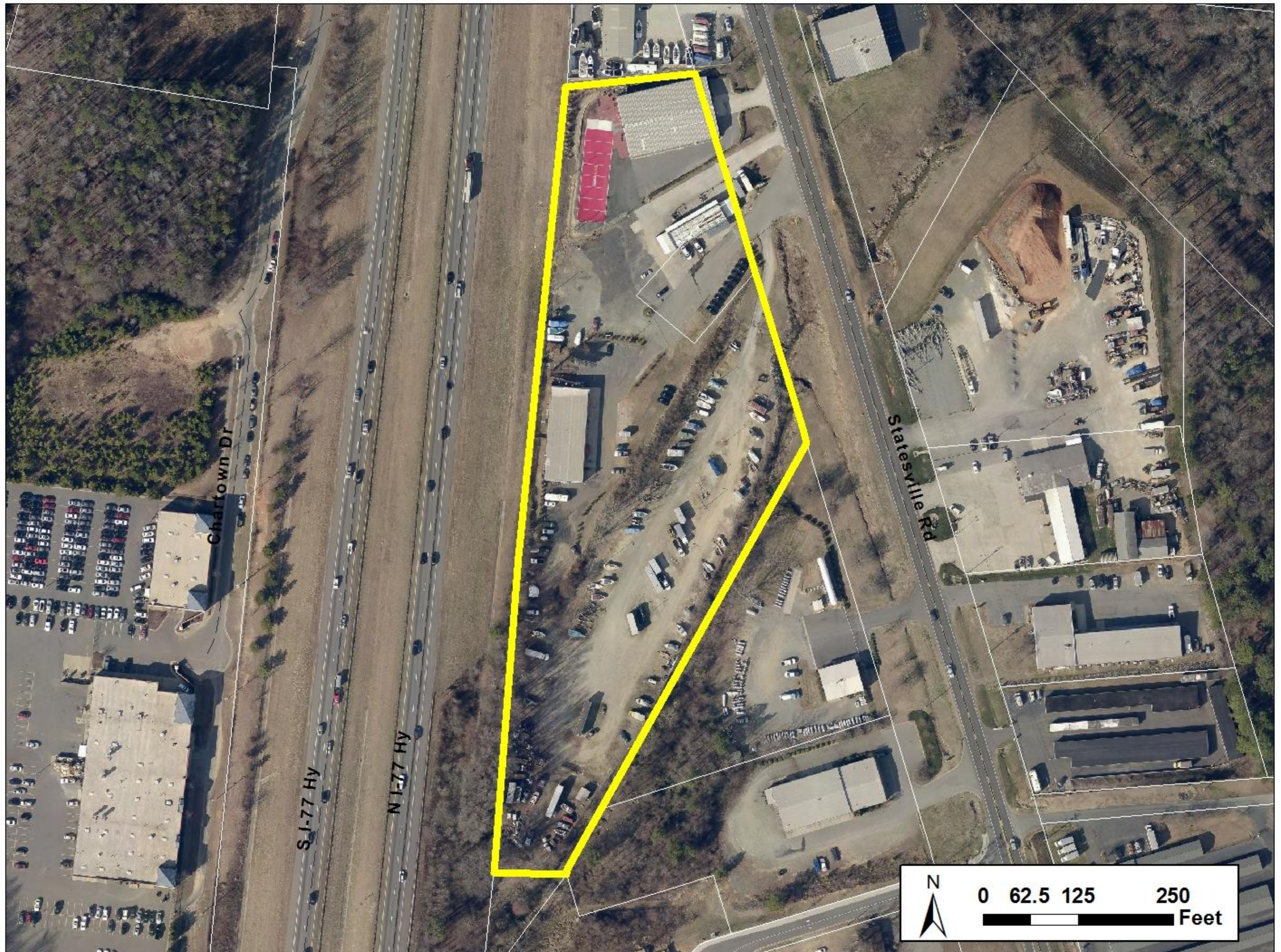
# REZ 10-16: DB HOLDINGS

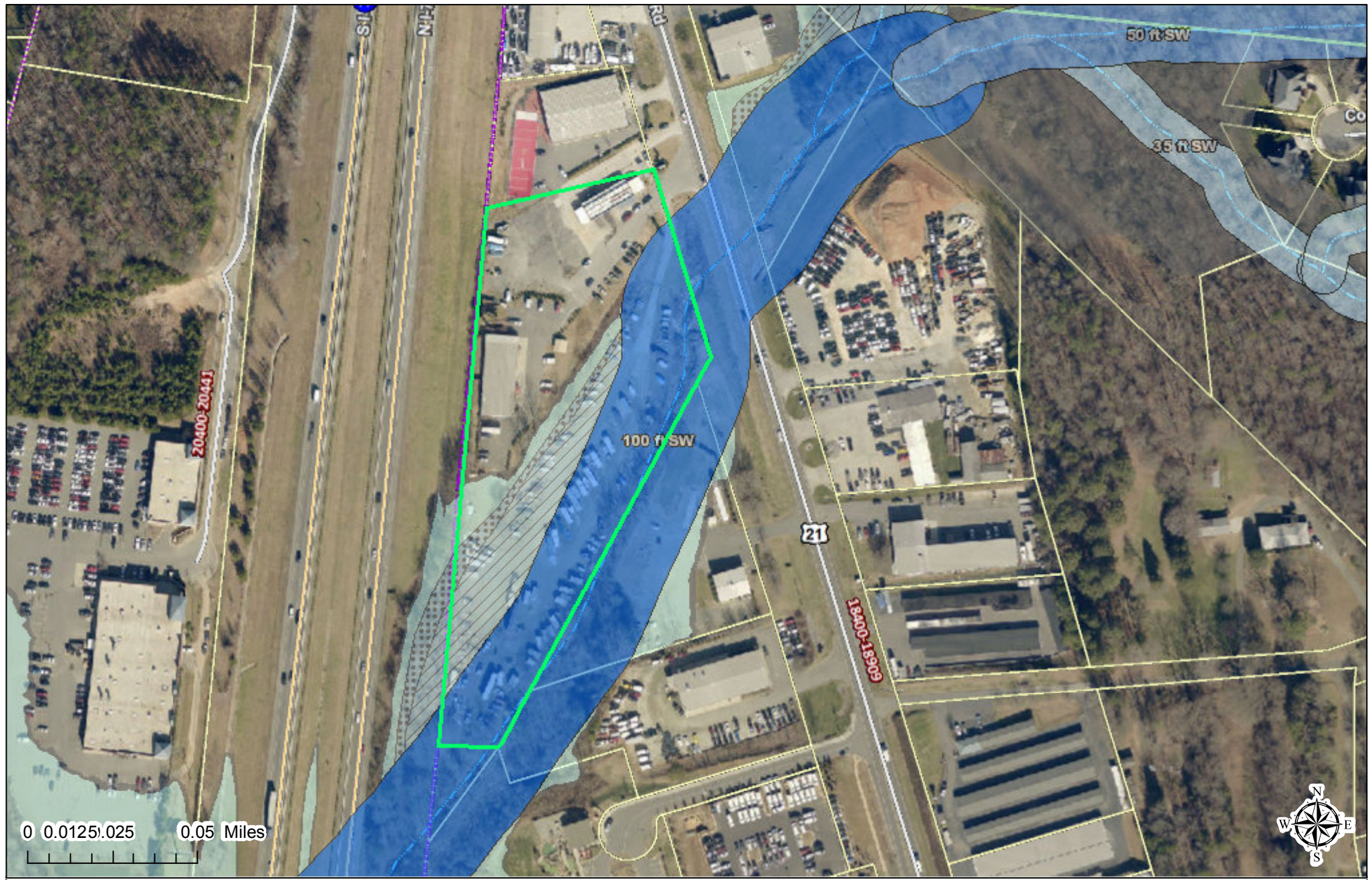


# REZ 10-16: DB HOLDINGS



# REZ 10-16: DB HOLDINGS





0 0.0125.025 0.05 Miles









**REZ 10-16  
DB Holdings**

***Conditional Zoning Request***

**Town Board Meeting  
March 6, 2017**

**OWNER:** Jack Salzman  
DB Automotive Holdings LLC  
20700 Torrence Chapel Road  
Cornelius, NC 28031

**APPLICANT:** Larry Schaeffer  
Adams & Associates Architects  
126 N. Main Street  
Mooresville, NC 28115

**PROPERTY LOCATION:** 18837 Statesville Road

**TAX PARCEL ID(S):** 00541209

**PROPERTY SIZE:** 5.62 acres

**CURRENT LAND USE:** Auto/Boat Service, Storage and Wash

**PROPOSED LAND USE:** Automobile Sales, Service and Storage, 22,850 sq. foot building, with phase 2 expansion to 26,800 sq. feet

**EXISTING ZONING:** Highway Commercial (HC), Automobile Sales Overlay (AS-O)

**PROPOSED ZONING:** Conditional Zoning (CZ)

**EXISTING CONDITIONS:**

1. *Existing Site Conditions* – Although the site is roughly 5.62 acres, it is divided topographically by a large floodplain, which is where the storage lot is located. The applicants have recently received approval to resurface and improve the existing storage lot. Approximately 3.13 acres of the property lies within the floodplain, which limits the buildable portion of the site to 2.49 acres. The site currently contains 2 buildings, one in the back near the interstate which has been used for auto and boat service, and one toward the front which is currently used as service and a car wash. The site is also predominately paved or gravel in between the two buildings. The site directly north has been subdivided, but is also under the same ownership. It contains Champions Sports Performance Center, which includes a large metal building in the front, and an outdoor rec/training area in the back. Between these two properties, there are currently three separate driveways off of Statesville Road.

2. Description of Adjoining Zoning and Land Uses – Directly north of Champions Sports Center, the site is bordered by another automotive/boat use, Pier 77 Marine. Directly across the site there exists a variety of uses, including a fabrics and furniture warehouse, Carolina Customs wheels, tires and accessories (another auto service use), and Kids Emporium. Directly to the south there is a propane sales company (Lake Norman Propane).

#### **STAFF COMMENTS:**

1. Land Development Code Consistency – In 2015, the Town Board approved a text and map amendment establishing the Automobile Sales Overlay District, whereas its intent was to establish an area on Highway 21 where automobile sales uses could be considered with conditional zoning approval. The amendment included automobile, truck, motorcycle, boat and other vehicular type sales lots along these areas between Highway 21 and the interstate intended to promote vehicular customer traffic in areas not adjoining residential neighborhoods. The Board agreed that this was the area appropriate to consider these types of uses through conditional zoning requests. Service and storage uses would only be approved as an accessory use to a designated dealership, and the minimum site area is three (3) acres. The text amendment adopted in 2015 also specified that all automobile display and storage areas must be screened from view with a type 'A' opaque buffer, which must provide a continuous, even screen and should not be clustered. Although the storage/display lot is at a much lower elevation than the road due to the floodplain, the site plan shows substantial screening to meet this requirement.
2. Land Use Plan Consistency – The Land Use Plan adopted by the Town Board on January 6, 2014 designates this property as “Highway Commercial” The goal of highway commercial uses is to encourage non-residential uses along major thoroughfares at a larger, regional scale, away from residential uses where primary access is by vehicle. The Land Use Plan also specifies that access management is a key component to highway commercial uses, and promotes that consolidation of access points is appropriate.
3. Site Plan and Building Elevations – The applicant(s) are proposing to demolish the two existing buildings on the site, which equate to about 9,075 total square feet, and to develop a new building, which will initially be 22,850 square feet, but will eventually be increased to a total of 26,800 square feet in Phase 2 to include a larger, auto showroom area. Phase 2 will also add a car wash. The building will be single story, but will include a mezzanine level for storage of parts. Although not part of the rezoning area, the applicants are also proposing to improve/replace the parking area for the fitness center, and consolidate driveways on Highway 21 from three to one. The lower, floodplain area will contain the display and auto storage area, which is already approved to have storage today. Once the project goes forward to construction documents, staff will review the lighting changes to the lower lot in detail. The existing gravel in both the lower lot and upper area will be replaced with paving, and landscaping will be added to meet code. The site plan also shows sidewalk connectivity around both phases of the building, as well as appropriate connections between the upper and lower areas of the lot. The illustrative site plan also shows proposed landscaping and buffering to meet code.

The elevations presented include mostly an EIFS façade with large glass windows, as well as glass rollup doors. The building will include on all sides a variety of accent materials, including fiber cement, polished concrete block along the foundation, and a variety of different types and colors of stucco on other parts of the building. The phase 1 front elevation consists of 54% glass and storefront, whereas the phase 2 includes 63% glass. The phase 2 (front) elevation removes the canopy, and extends the showroom forward creating additional square footage and a larger showroom. The building will also be located such that the east elevation will also be highly visible from Statesville Road. Staff and the ARB worked with the applicants to address more detail in the east elevation, including the change in the stucco color above the windows, and access to the parts department and roll up door.

The floor plan shows a smaller sales area/showroom for phase 1 (1,280 sq feet), which expands to 2,200 square feet with the phase 2 showroom. Both phase include a 1,980 square foot parts department, whereas parts delivery will be handled by forklift to the lower service roll door on the east elevation. The bulk of the building will include service bays.

4. NCDOT Review – Staff has provided the plans to NCDOT for comment, but does not have any specific recommendations from NCDOT at this time. Additional conditions may be necessary to reflect any requirements NCDOT may have related to the project.
5. Pre-Development Review Committee – This proposed development was presented to the PDRC on December 8, 2016. The site layout has not changed since that time, although there were comments made at PDRC about trying to have the building better address Statesville Road and be pulled to the front setback line. The applicants discussed difficulty with access to the service bays if the building was to be pulled up. The PDRC also asked about making sure there was adequate screening and buffering from Statesville Road for both the lower parking lot, as well as the new parking in front of the building if the building were unable to be moved. Other discussions included concerns about parapet heights from I-77, questions about the timing between phase 1 and phase 2, making sure that contours were shown on the revised plan, and making sure that amount of glazing is maximized on the front façade.
6. Architectural Review – Detailed elevations were presented to the Architectural Review Board on December 9, 2016, and again on January 27, 2017. At the December 9<sup>th</sup> meeting, the following comments were made by the board:
  - Questions about the access to the lower lot, at the time the site plan did not include the sidewalks
  - The Board asked that the front door be better addressed on phase 1, which the applicants addressed in the revisions with the covering
  - The Board asked about changing the EIFS color on the East elevation above the windows, and to continue using stucco in lieu of painted concrete block. The revised elevations show these changes
  - The Board asked to see an elevation/profile to ensure that the parapet from 77 was of adequate height to screen all mechanical equipment.

The revised elevations were presented and approved by the ARB at their January 27<sup>th</sup> meeting.

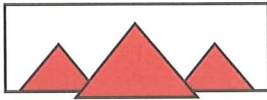
7. Community Meeting – The community meeting was held on December 7, 2016 at Town Hall in room 204 where there were about 5 people were in attendance other than staff and the applicants. Some residents had some concerns about making sure adequate screening was provided. Otherwise, there were not many concerns about the project.

## **RECOMMENDED CONDITIONS:**

Staff and Planning Board recommend approval of the requested rezoning subject to the following conditions:

1. Town approval is contingent on review and approval by other applicable local, state and federal agencies.
2. The development shall comply with all other applicable requirements of the Town of Cornelius Land Development Code.
3. Town approval incorporates and shall comply with any and all submittals in the case file and correspondence presented to the board in support of this application, including, but not limited to the following: The site/sketch plan, architectural elevations, and any and all traffic information and recommended transportation plans or improvements recommended by the Town and/or NCDOT.
4. Approval of the requested conditional zoning district, includes approval of the following architectural variations:
  - a. Section 4.6.1(J): Allow for a variation from the requirement that the front façade of the building shall extend parallel to the frontage line of the lot. The proposal sets the building back and at an angle based on the topographic constraints of the site. All parking will be screened from view with a type 'B' buffer including a low wall and shrubs in front. The sales display and storage area (lower lot) will be screened by a type 'A' opaque buffer to the greatest extent practical.
  - b. Section 4.6.3(B)(3): Allow for a variation in the requirement to provide 70% windows and doors in the front façade. The proposal includes 54% in phase 1, and 63% in phase 2. The east elevation, visible from Statesville Road contains 20% glass coverage.
5. The short wall shown on the site plan at the front parking area shall be a minimum of four (4) feet in height as required by Section 9.4.2(B)Type B-2.
6. The applicant shall submit a lighting plan based on proposed Chapter 7 lighting standards being considered by the Town Board prior to approval of construction documents for the development.

7. The applicant must either provide a five foot sidewalk along Statesville Road, or provide payment-in-lieu of sidewalk to the Town. If payment-in-lieu is provided, an estimate must be presented to the town prior to approval of the construction documents, and said payment must be received prior to certificate of occupancy.
8. The applicant shall coordinate with NCDOT and install a southbound right turn lane with sufficient storage into the site. The design of the turn lane shall be included in the construction documents, and approved by NCDOT.



**Town of Cornelius  
Community Meeting  
December 7  
6:00pm**

Duane Strong with Adams + Associates presented the project to the group.

The following topics were discussed:

- The location of the building was discussed in regards to its location to Statesville Road, the grade change between the upper and lower area, the existing highway sign (easements) and the existing property to the north.
- Screening of the lower parking lot from Statesville Road.
- The possibility of raising the lower level to match the grade elevation of the higher area.

**Town of Cornelius  
Pre-Development Meeting  
December 8, 2016  
Noon**

Duane Strong with Adams + Associates presented the project to the group.

The following topics were discussed:

- Concerns with access to the building if the building is located too close to the Statesville Road setback.
- Concerns that the parapet heights will be high enough to cover the view of the RTU's.
- Concerns with the front access drive grading to the lower lot.
- Landscape buffers off of Statesville Road for both lower and upper lots.
- Questions asked about the time period expected between phase I and phase II work.
- Discussed the delivery of parts, etc.
- Need for access walkways, ramps, etc. from upper level building and lower level parking lot.
- Amount of glazing discussed (try to maximize amount).
- Make sure the turning radius is correct for large semi-trailers.
- Add contours to Site Plan showing the grade change.



**Town of Cornelius**  
**Architectural Review Board Meeting**  
**December 9, 2016**  
**Noon**

Larry Schaeffer with Adams + Associates presented the project to the group.

The following topics were discussed:

- Requirements of 70% glazing (Question: Is this for both sides since the building sits at an angle to Statesville Road and does not have a clearly defined front elevation facing Statesville Road.)
- Must provide access from building to lower level parking lot.
- Showroom to be the entire front of the building.
- Locate entrance door to front of the showroom not the side.
- Add an entrance door to showroom on the south side leading to sidewalk/stair to lower level parking lot.
- Sidewalk around the showroom and extending to the south side of the showroom.
- Change the EIFS at the service bays to have two colors not just one color.
- Show all wooded areas on Site Plan (existing and new).
- Concerns with grading at front drive to lower level parking lot and front of the building.
- Verify that the heights of the RTU's on top of the service bay building will not be visible from I-77.

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**Minutes  
TOWN OF CORNELIUS  
ARCHITECTURAL REVIEW BOARD MEETING**

December 09, 2016

12:00 pm

**Members Present**

David Eve, Chairman  
Ivy Stroud  
Joe Harris, Vice Chair  
Teresa Hawkins  
Recah Harward  
Rick Kamakaris

**Members Absent**

**Staff Present**

Jason Pauling, Senior Planner  
Wayne Herron, Planning Director  
Summer Smigelski, Planning Admin.

**VISITORS**

See Sign-In Sheet

**DETERMINATION OF QUORUM**

Chairman Eve called the meeting to order. The meeting of the Architectural Review Board began at 12:04 p.m. He stated that a quorum was present for all items.

**APPROVAL OF MINUTES**

Mr. Harris made a motion to approve the minutes from October 28, 2016. Ms. Hawkins second. All in favor and motion approved.

**In Favor:** Chairman Eve, Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris, Ms. Harward

**Opposed:** None

**REVIEW & RECOMMENDATION ON AGENDA ITEMS**

**REZ 10-16: DB Holdings (Auto Sales Dealership)**

Mr. Pauling presented REZ 10-16: DB Holdings.

The property is located at 18837 Statesville Rd. This is a conditional zoning request. The property is in HWY commercial and Auto Services Overlay district. Land Use Plan continues to recommend Highway commercial. The applicant is proposing to open an auto service with two phases. First phase will start with the 22,856 square foot building. Phase two will include attaching the showroom and carwash. The board will be reviewing phase one only for now.

Mr. Herron: "Staff has specifically called out what needs to be addressed. We will need to verify that it is 70% or the applicant will need to recommend some modification below 70% percent. The building materials will need to be addressed. We spoke yesterday about the screening on the roof and that we would need to draft a condition that it's fully screened even from the interstate."

Mr. Larry Schaeffer presented phase one and addressed what staff has requested. Glass was added per staff's request to the south elevation. The building will have a substantial amount of glass. The lower lever will have a sealer on it; this will give it a shine, with two doors added to the parking area.

Mr. Charlie: "In phase two, when the showroom is expanded there will be greater access."

Chairman Eve: "Right, but in phase one really there is no access from the side."

Mr. Charlie: "Not through the building it will be on the site."

Mr. Herron: "So they would have to come out the front door and down stairs or sidewalk?"

Mr. Charlie: "Correct!"

The Architectural Review Board challenged the applicants to get the show room in phase one up to the corner, the other concern is the front door that they have is not a distinctive front door. The final request is to do a cross section from I77 and HWY21, in order to make sure mechanical equipment would be screened. Mr. Kamakaris asked for a continuation of the EFIS change in color/material on the south side elevation.

Mr. Harris made a motion to have the applicants come back with the changes. Ms. Stroud second. All in favor and motion approved.

**In Favor:** Chairman Eve, Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris, Ms. Harward

**Opposed:** None

### **REZ 11-16: Quick Trip**

Mr. Pauling presented REZ11-16 Quick Trip.

This is on the corner of Catawba, Holiday LN. , and Burton LN. There is a total of five parcels within 3.16 acres that are involved in this rezoning, ranging from highway commercial to neighborhood mixed use. Land Use Plan is also mixed between urban mixed use, highway commercial and residential. This is a proposed CZ (Conditional Zoning). The square footage of the proposing is 5,773sq.

The applicants are working on accommodations for the building because of the round-a-bout that is coming.

Mr. Herron: "Staff main concern is the boards thoughts on the ordinance requirement for the pedestrian appearance of what's facing the round-a-bout?"

Ms. Susan Irvin (the attorney representing Quick Trip), Mr. David Meyer and John DiBernardo presented some additional information to the board.

Ms. Irvin: "John and I have met with the adjoining owner about the two rows of Austrian pine trees and the wooden fence dividing that."

Mr. DiBernardo: "The adjoining owner owns three lots that are in a row. We met with him just to discuss what we're going do."

Ms. Irvin: "The owner's primary concern is the lot line along the rear that is right next to Acropolis. She wanted to know that the building was going to be removed and would the fence be there? The pine trees will go along the boundary of that and there will not be a lot of green space. Other than that she did not seem to have any other concerns."

Mr. DiBernardo: "She is very happy about the new fence. We will add a six foot wood fence and the thirty plus foot buffer with pines."

The board made some recommendations on the landscaping, pedestrian access and for the sign to be more proportioned. Mr. Kamakaris commented on the parapets visible from the public right of way.

Mr. Harris made a motion to approve of the direction they are going. Ms. Hawkins second. All in favor and motion approved.

**In Favor:** Chairman Eve, Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris, Ms. Harward

**Opposed:** None

### **MAV 02-16 Dynamic Ballroom**

Mr. Pauling gave a brief update on MAV 02-16 Dynamic Ballroom. It is at 19625 Bethel Church Rd, right beside the UPS building on Bethel Church. The property is about a half-acre. It contains existing parking in the back. The lots that are back there were subdivided back in 1999. A dance studio is the proposed use. It is Village Center so the building height is 26 feet minimum. The property is zoned Village Center and it is Village Center in the Land Use Plan. The proposed elevation is a mocha color stucco finish. He shared the revised increased variations based on the recommendations the board made last meeting.

Chairman Eve: "I think it is definitely an improvement."

Ms. Hawkins: "Yes, I think they have addressed our concerns."

Mr. Harris made a motion to approve MAV 02-16 to move forward. Ms. Hawkins second. All in favor and motion approved.

**In Favor:** Chairman Eve, Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris, Ms. Harward

**Opposed:** None

### **REZ 09-16 Ivybrook Academy**

Mr. Pauling gave a brief update on the revised plan. This is the site that is on the corner of Nantz and West Catawba. The property is zoned NMX. This is Courtyard at Nantz development that is under constructions right now. This is a preschool facility of 6,500 square foot building and a 3,000 square foot outdoor play area. The student count is 60 to 80. It's a better use for that corner from a traffic perspective as far as how that flows versus peak times at a traditional office building. They are proposing a wood fence that you can see and a chain-link fence around the playground.

Chairman Eve: "Wood fence and gates are nice but it depends on how well they are maintained."

Chairman Eve: "Very nice landscaping. The rendering and the elevation on the main entrance do not necessarily agree."

Mr. Herron: "We have time since they have postponed the planning board until January, they will not go to town board until February. We can have them correct the one of elevations."

Mr. Harris made a motion to approve with conditions. Ms. Hawkins second. All in favor and motion approved.

**In Favor:** Chairman Eve, Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris, Ms. Harward

**Opposed:** None

**ARB 13-16: 18835 W Catawba Commercial Bldg.**

Mr. Pauling gave a brief update on ARB 13-16. Property is zoned NMX. This is part of an old approved plan from 1998. Land Use Plan designates Neighborhood Commercial. The village at Harborside is the neighborhood to the back, and then the commons at Harborside is across the street. The entire site is about 2.6 acres but this proposal is just for a portion of the site for now. There will be a subdivision and additional buildings planned in the future. Mr. Pauling informed the board of changes to the site.

Chairman Eve: "Do they any further idea of what the usage of this building is?"

Mr. Pauling: "All I know is that it is single tenant. Last time they didn't know that."

Chairman Eve: "We need more information. I think it's hard for us to comment on the elevations without knowing the use, without seeing a floor plan, just a little more detail."

**ADJOURNMENT**

The meeting ended at 1:44 p.m.

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**Minutes**  
**TOWN OF CORNELIUS**  
**ARCHITECTURAL REVIEW BOARD MEETING**

January 27, 2017  
12:00 pm

**Members Present**

Ivy Stroud  
Joe Harris, Vice Chair  
Teresa Hawkins  
Rick Kamakaris

**Members Absent**

David Eve, Chairman  
Recah Harward

**Staff Present**

Jason Pauling, Senior Planner  
Wayne Herron, Planning Director  
Summer Smigelski, Planning Admin.

**VISITORS**

See Sign-In Sheet

**DETERMINATION OF QUORUM**

Vice Chair Harris called the meeting to order. The meeting of the Architectural Review Board began at 11:59 p.m. He stated that a quorum was present for all items.

**APPROVAL OF MINUTES**

Mr. Kamakaris made a motion to approve the minutes from December 09, 2016. Ms. Stroud second. All in favor and motion approved.

**In Favor:** Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris

**Opposed:** None

**REVIEW & RECOMMENDATION ON AGENDA ITEMS**

**REZ 10-16: DB Holdings (Auto Sales Dealership)**

Mr. Pauling gave a brief update on REZ 10-16: DB Holdings for the second time. Property is zoned HWY Commercial also in the automotive sales district overlay. Land Use Plan also designates this as HWY Commercial. Property is approximately 5.6 acres a lot of the property is in the floodplain. The applicants are proposing a conditional zoning, they want to do sales, service and storage. The existing use was an automotive and boat storage and wash area. The changes are the proposed improvements to the parking area. The applicants have added detail on the sidewalk. A roll door to the parts area was added to the floor plan with the sales feature in the front. The elevation changes are; the applicants added a canopy on the front and more definition for the windows. The applicants have changed the concrete block to stucco above the windows. For Phase II the carwash is a little bigger and it matches. Changes were made based on the comments from the board.

Ms. Hawkins made a motion to approve. Ms. Stroud second. All in favor and motion approved.

**In Favor:** Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris

**Opposed:** None

### **Courtyard's at Lake Norman Clubhouse**

Mr. Pauling presented Courtyard's at Lake Norman which is formerly called Courtyard at Nance Rd. This development was presented and approved in 2013 and is under construction now. Courtside Landing Dr. is the location of the club house. Property is zoned NMX (Neighborhood Mixed Use) and it's a conditional zoning. Land Use Plan has it as Village Center. The front elevation does meet the window requirements and still appears residential.

The applicants discussed with the board why they made the changes since 2013 and what those changes are.

Ms. Stroud made a motion to approve. Mr. Kamakaris second. All in favor and motion approved.

**In Favor:** Ms. Hawkins, Mr. Kamakaris  
Ms. Stroud, Mr. Harris

**Opposed:** None

### **Pike's Nursery**

Mr. Pauling presented Pike's nursery. This is on Statesville Rd.; this project will be south where the Arby's is planning. There are two parcels collectively 3.6 acres, zoned Highway Commercial. Land Use plan shows as Highway Commercial. The idea is to have a ten thousand square foot building roughly. The main entrance to the building will be off to the side, close to the front where there will be sidewalk accessibility. There will be two entrances to the greenhouse. On the Statesville Rd. elevation after going through the checklist does meet 70 percent, which includes the glass from the green house.

The applicants have not submitted an application for construction review at this time. Staff is working with them on requirements.

Mr. Harris: "I think in General it looks like a nice facility."

Ms. Hawkins: "I think they have evolved from their first facility in Charlotte at Toringdon Place."

Mr. Harris: "It's almost like they have over articulated. It's the opposite of what you would normally see."

### **MAV 01-17: Lake Norman Hardware**

Mr. Pauling Presented MAV 01-17 Lake Norman Hardware on Jetton Rd. extension. The applicants are requesting architectural variations. The site is on Jetton Rd., across from Aquesta Bank. On 2.12 acres, they are building half the site. Zoning and Land Use Plan is village center. The store is approximately ten thousand square feet. The proposed variations will go to planning board in March. Section 4.6.3(B) (3): Variation from 70% requirements for window and door coverage. Front façade has 34.5% glass & storefront. Section 4.6.3(B) (4): Variation from requiring window or door piercing every 16-foot. The glass on the street façade is grouped in the center to allow more space for retail display. The property is currently vacant but there is an existing road that runs through it. Applicants are proposing to move that over and add

connectivity through to Rite Aid. On the front elevations, just looking at the door is about 35 percent.

The applicants discussed a cut through that is not shown on the current site plan.

Mr. Herron: "There hasn't been a formal submittal on this."

Mr. Harris: "All Mechanicals on the roof? Where do you see the utilities coming in? "

Applicants: "Yes. The utilities is a good question, we can't do it on Catawba. It may be back where the loading dock is."

Mr. Harris: "Articulate that in your plans so staff isn't surprised by what it looks like."

Ms. Hawkins: "If you make the second driveway connection into the Rite Aid, the parking spaces will they be none conforming in terms of parking?"

Applicants: "I think it was looked at and said that we were fine as far as the parking spaces."

Ms. Hawkins: "Get something to verify because you would not want to make an existing use nonconforming."

Mr. Herron: "There were issues with that driveway cut there because of where Rite Aid's drive through is and the conflicts with their drive through. I do not think we ever settled on it. We have looked at different options for driveways and connections but we have no idea where we are settled at this point."

The board advised the applicant to get the MAV to the planning board and once this is more finalized for them, bring the project back to ARB before applying for the building permit.

#### **Arts District Joint Meeting - January 30<sup>th</sup> @ 6:30pm**

Mr. Herron discussed the Arts District Joint Meeting with the board.

#### **Proposed Lighting Ordinance and Guide**

Mr. Herron discussed the lighting ordinance with the board. He informed them if they would like to look at this in more detail and make comments to the planning board and town board they can do that.

#### **ADJOURNMENT**

The meeting ended at 12:59 p.m.



# DB Holdings Community Meeting Sign-In Sheet

December 7, 2016

| NAME           | ADDRESS   | PHONE        | E-MAIL                           |
|----------------|---|--------------|----------------------------------|
| Price Byrd     | 16500 Ashfield Dr<br>Huntersville NC              | 901 997-8064 |                                  |
| Graham McVey   | 17241 Galesfield dr<br>Huntersville               | 980 233 6007 |                                  |
| DUANE STRONG   | 126 N. MAIN ST.<br>MOORESVILLE, NC                | 704-664-1311 | DUANE@ADAMS ASSOCIATES ARCH. COM |
| Brian De-1     | 1911 CIMARRON CIRCLE LN<br>Huntersville, NC 28078 | 704-264-1252 | bdey@Deuberry.com                |
| Maria Tillar   | 16601 Spruell Street<br>Huntersville, NC 28078    | 804-901-0024 | mtillar@dawberry.com             |
| DEAN PAWLONSKI | 17135 LAUREN PATTY DRIVE<br>CARRBORO              | 704-281-7581 |                                  |
| Brown Popho    | 17720 Kings Pome Dr                               | 892-3202     |                                  |
|                |   |              |                                  |
|                |   |              |                                  |

DB HOLDINGS

CONDITIONAL ZONING SKETCH PLAN  
CORNELIUS, NORTH CAROLINA

SEAL

PRELIMINARY  
DO NOT USE FOR  
CONSTRUCTION

KEY PLAN

SCALE: 1" = 40'



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REVISIONS

DRAWN BY MNT

APPROVED BY BJD

CHECKED BY BJD

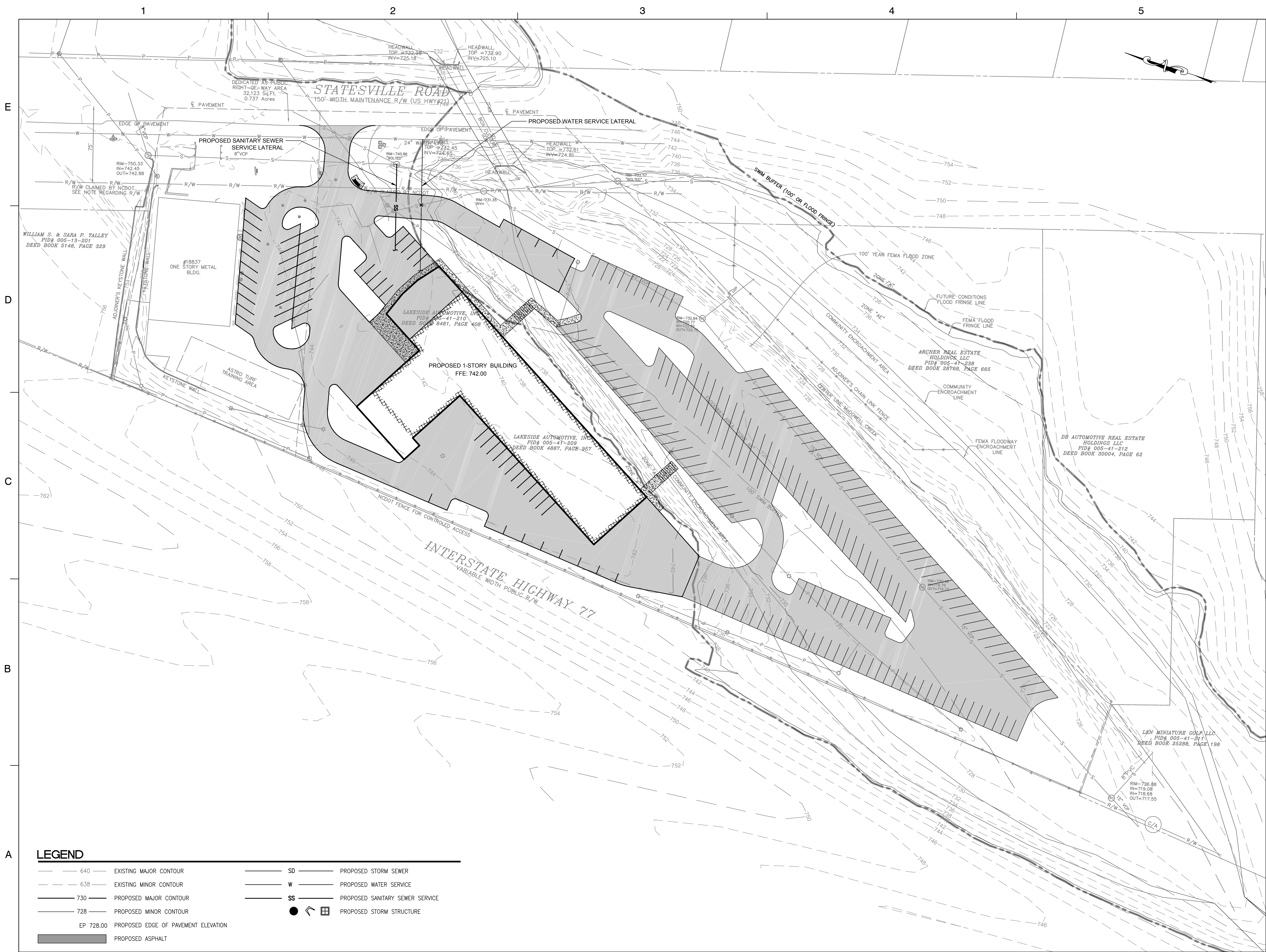
DATE 10/28/2016

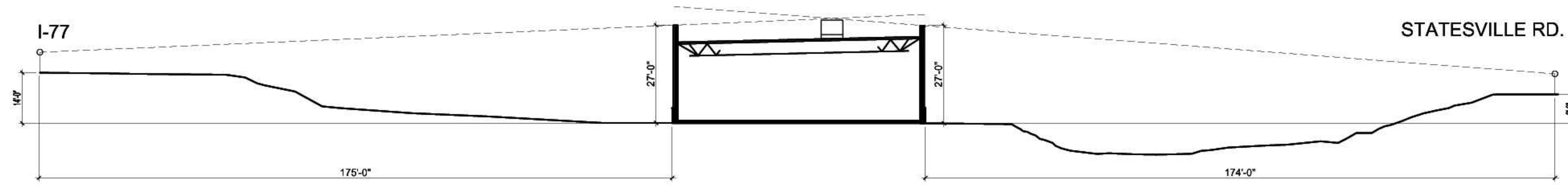
TITLE

GRADING PLAN

PROJECT NO. 50083181

C3.02





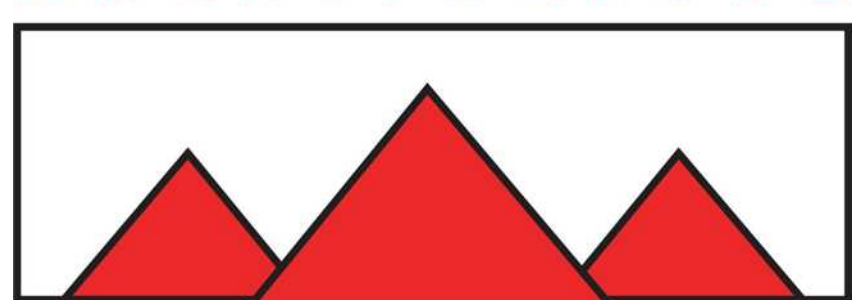
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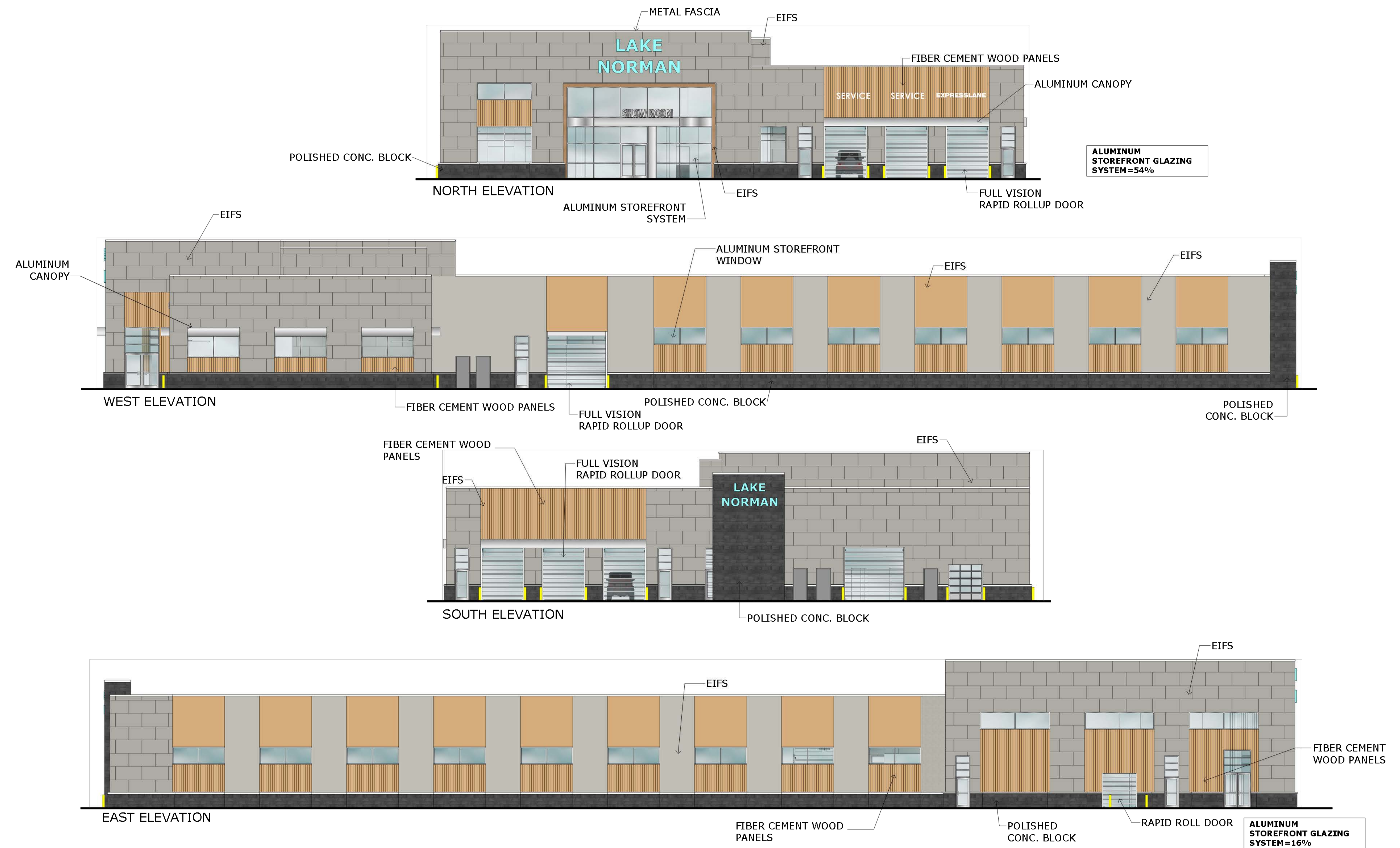
SCALE: 1/16" = 1'-0"



**CONCEPT SITE PLAN**

SCALE: 1" = 30'-0"







**PHASE II ELEVATIONS**  
 SCALE: 1/8" = 1'-0"



NORTH WEST VIEW-PHASE 1



NORTH EAST VIEW-PHASE 1

**PHASE I RENDERINGS**



SOUTH EAST VIEW-PHASE 1



SOUTH WEST VIEW-PHASE 1

## PHASE I RENDERINGS



NORTH WEST VIEW-PHASE 2



NORTH EAST VIEW-PHASE 2

## PHASE II RENDERINGS



SOUTH EAST VIEW-PHASE 2



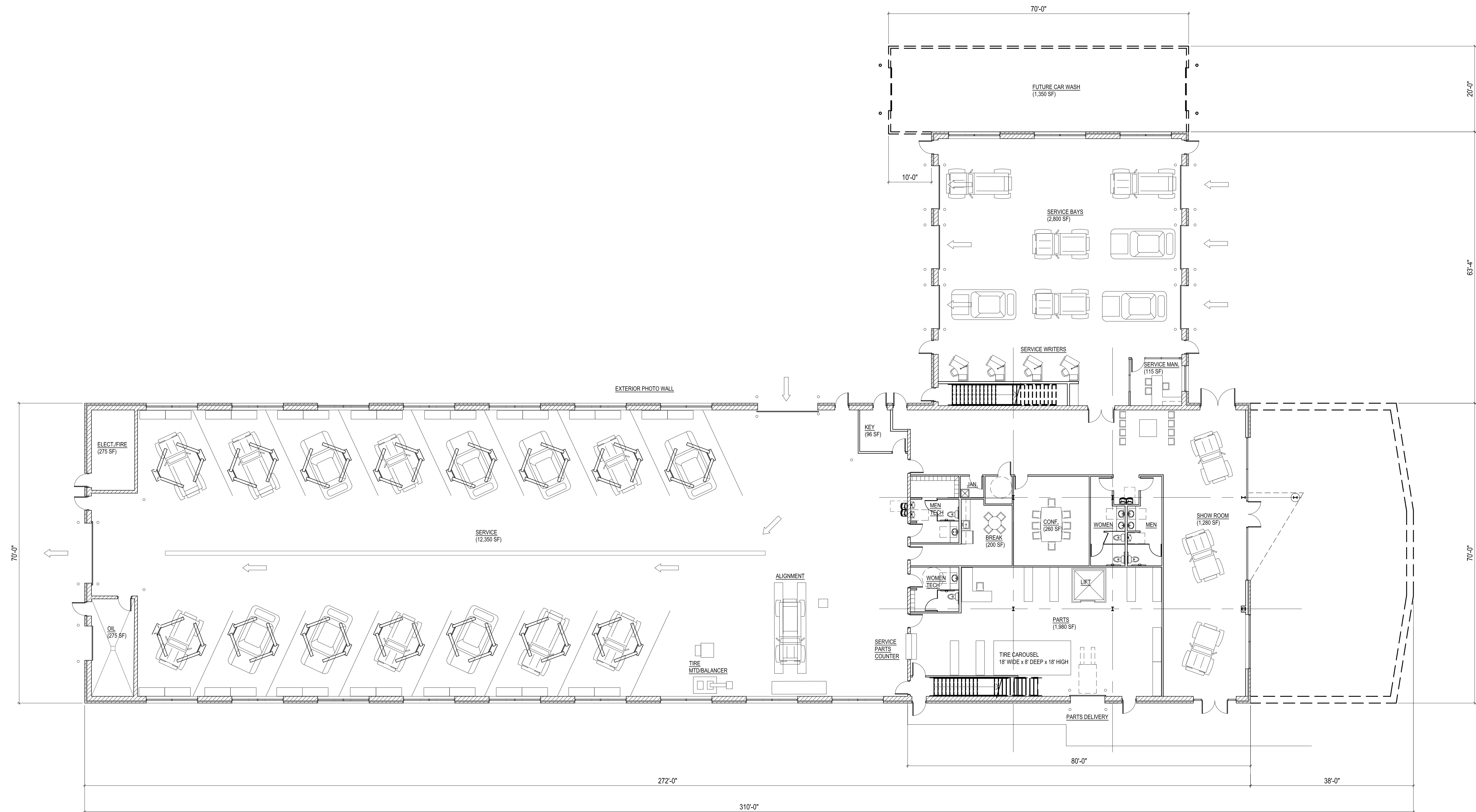
SOUTH WEST VIEW-PHASE 2

## PHASE II RENDERINGS

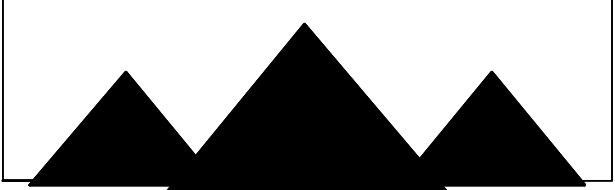
NEW AUTOMOTIVE DEALERSHIP BUILDING FOR:  
**DB HOLDINGS**

CORNELIUS, NORTH CAROLINA

Project No. : 3222.03  
Contact : D. STRONG  
Drawn By: DKS  
Date : 12-06-2016



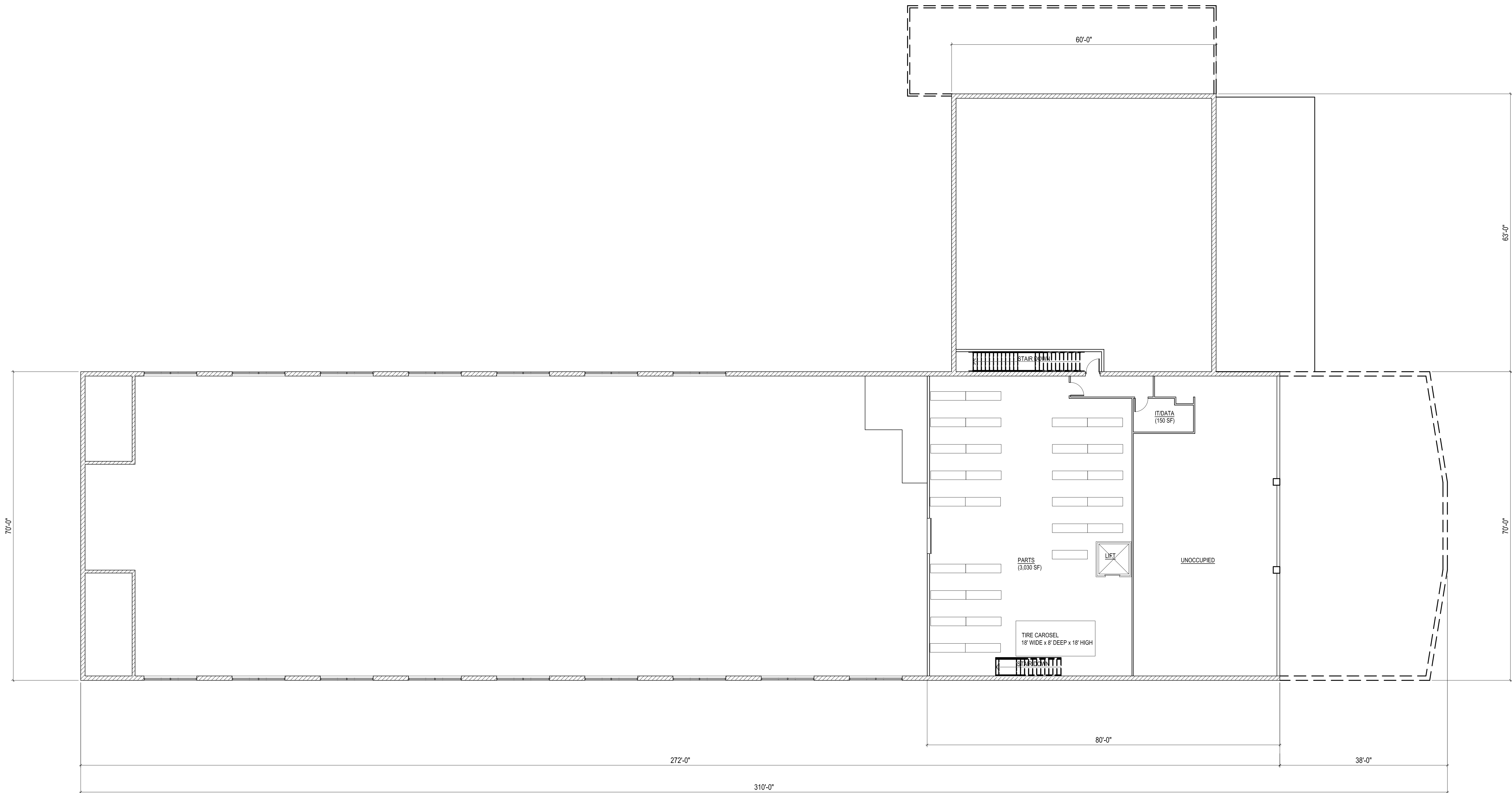
PROPOSED  
FIRST  
FLOOR PLAN  
PHASE I



NEW AUTOMOTIVE DEALERSHIP BUILDING FOR:  
**DB HOLDINGS**

CORNELIUS, NORTH CAROLINA

Project No. : 3222.03  
Contact : D. STRONG  
Drawn By: DAS  
Date : 12-06-2016

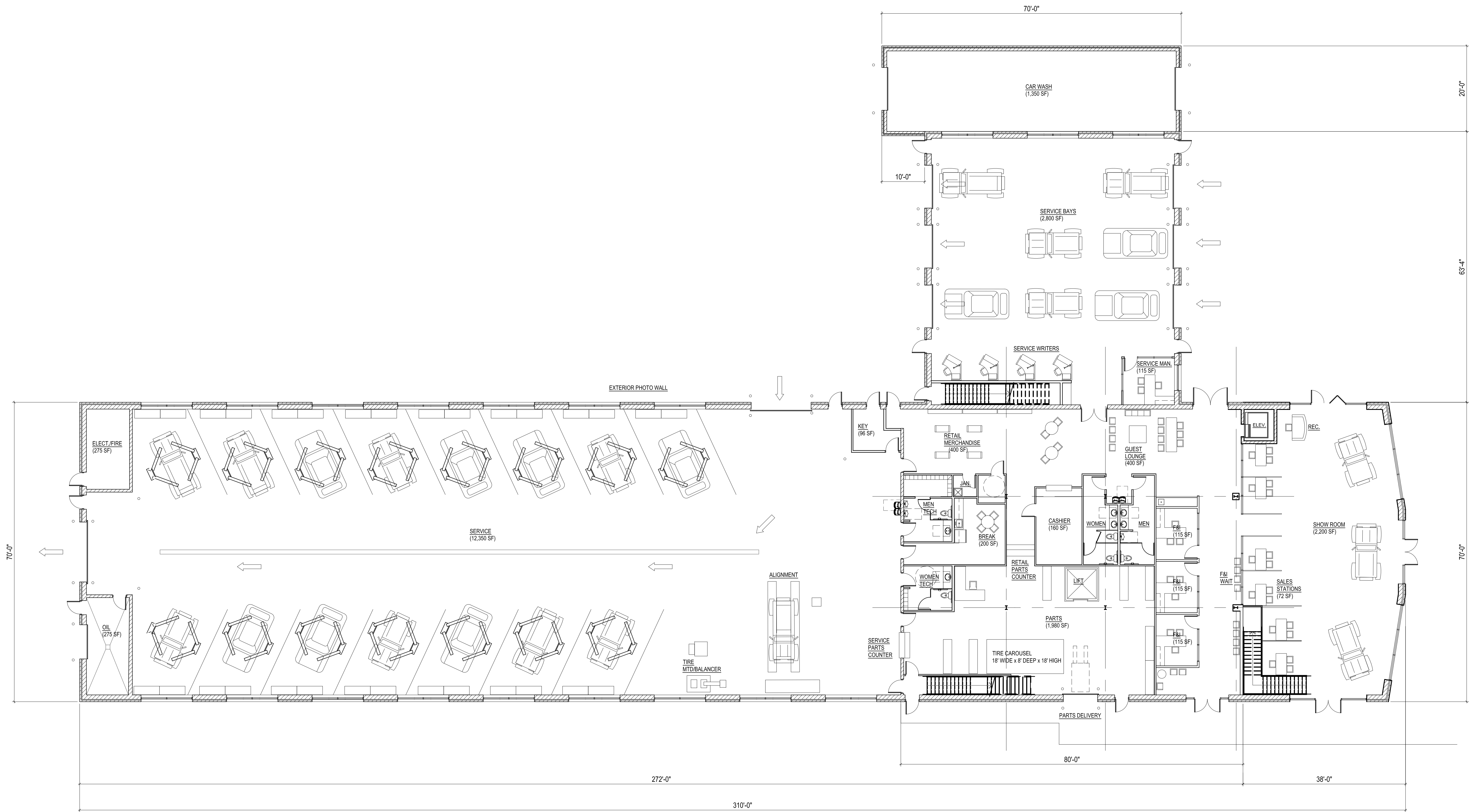


**PROPOSED  
MEZZANINE  
LEVEL  
PHASE I**

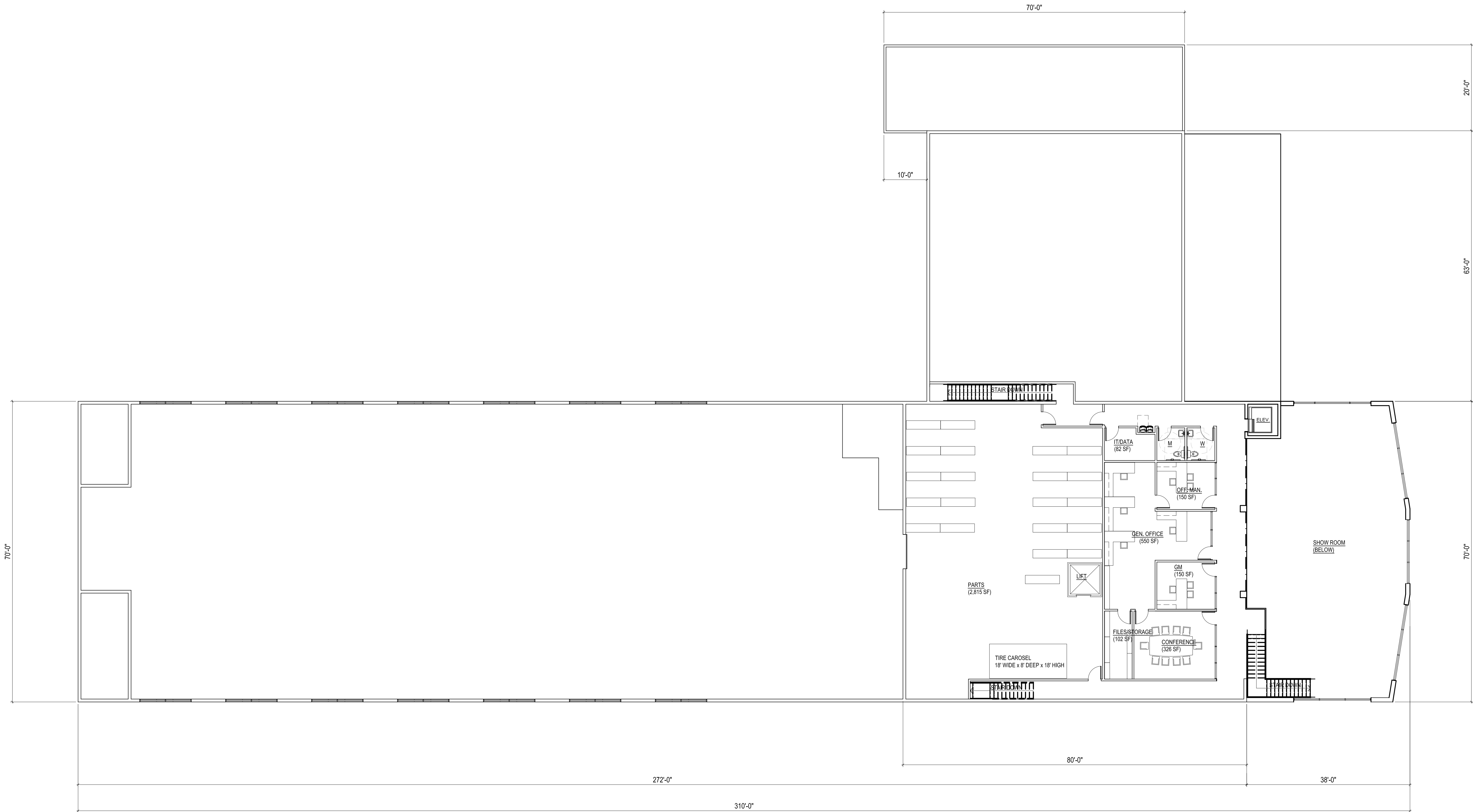
NEW AUTOMOTIVE DEALERSHIP BUILDING FOR:  
**DB HOLDINGS**

CORNELIUS, NORTH CAROLINA

Project No. : 3222.03  
Contact : D. STRONG  
Drawn By: DKS  
Date : 12-06-2016



PROPOSED  
FIRST  
FLOOR PLAN  
PHASE II



**RESOLUTION OF THE TOWN OF CORNELIUS BOARD OF  
COMMISSIONERS PERTAINING TO THE REASONABLENESS AND  
CONSISTENCY OF PROPOSED ZONING MAP AMENDMENTS**

**REZ 10-16 DB Holdings**

**WHEREAS**, DB Automotive Holdings, LLC, owners initiated the process to zone parcels of land to *Conditional Zoning District* as shown in *Exhibit A* to develop said land with a 26,800 square foot facility to be used for Automobile Sales and Service purposes located at 18837 Statesville Road (Parcel ID# 00541209); and

**WHEREAS**, in accordance with the provisions of North Carolina General Statutes 160A-382 and 383, the Town Board has considered the reasonableness and consistency of rezoning the above described property and adopts the following statement.

**NOW, THEREFORE, BE IT RESOLVED**, by the Town of Cornelius Board of Commissioners that the rezoning \_\_\_\_\_ IS \_\_\_\_ IS NOT consistent with the Town's adopted comprehensive land use plan as proposed and \_\_\_\_\_ IS \_\_\_\_ IS NOT reasonable and in the public interest.

Adopted this 6<sup>th</sup> day of March 2017.

\_\_\_\_\_  
Charles L. Travis, III, Mayor

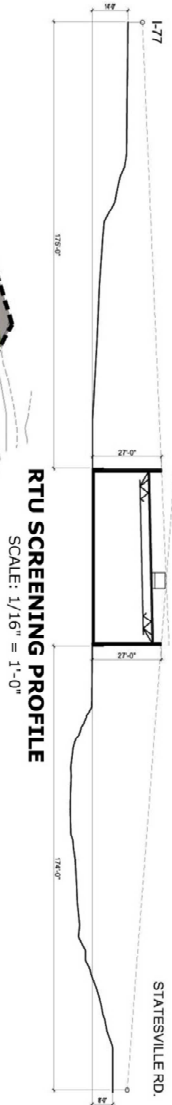
ATTEST:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Wolter, Town Attorney

# Exhibit A



DB HOLDINGS - CORNELIUS, NC  
02.02.2017



**AN ORDINANCE TO AMEND THE TOWN OF CORNELIUS ZONING MAP**

**REZ 10-16 DB Holdings**

**WHEREAS**, the Town of Cornelius has received an application requesting that the zoning classification of parcels of land subject to the zoning regulations of the Town be reclassified; and

**WHEREAS**, notice of public hearing on the question of the reclassification of the subject parcels has been provided through posting of the property; and

**WHEREAS**, notice of public hearing on the question of the reclassification of the subject parcels has been provided through advertisement in a newspaper of general circulation in the Town; and

**WHEREAS**, property owners contiguous to the subject parcels have been notified by first class mail of the public hearing on the question of the reclassification; and

**WHEREAS**, a public hearing on the question of the reclassification of the subject parcel has been held by the Board of Commissioners of the Town of Cornelius; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF CORNELIUS THAT:**

Tax Parcel Number 00541209 consisting of approximately 5.62 acres located at 18837 Statesville Road, be reclassified as *Conditional Zoning District* as shown on *Exhibit A* and as further subject to the conditions shown on *Exhibit B* attached hereto and incorporated herein by reference.

Adopted this the 6<sup>th</sup> day of March, 2017.

\_\_\_\_\_  
Charles L. Travis, III, Mayor

ATTEST:

APPROVED AS TO FORM:

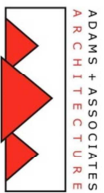
\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Karen Wolter, Town Attorney

# EXHIBIT A



DB HOLDINGS - CORNELIUS, NC  
02.02.2017



## **EXHIBIT B**

### **Conditions of REZ 10-16 – DB Holdings**

1. Town approval is contingent on review and approval by other applicable local, state and federal agencies.
2. The development shall comply with all other applicable requirements of the Town of Cornelius Land Development Code.
3. Town approval incorporates and shall comply with any and all submittals in the case file and correspondence presented to the board in support of this application, including, but not limited to the following: The site/sketch plan, architectural elevations, and any and all traffic information and recommended transportation plans or improvements recommended by the Town and/or NCDOT.
4. Approval of the requested conditional zoning district, includes approval of the following architectural variations:
  - a. Section 4.6.1(J): Allow for a variation from the requirement that the front façade of the building shall extend parallel to the frontage line of the lot. The proposal sets the building back and at an angle based on the topographic constraints of the site. All parking will be screened from view with a type 'B' buffer including a low wall and shrubs in front. The sales display and storage area (lower lot) will be screened by a type 'A' opaque buffer to the greatest extent practical.
  - b. Section 4.6.3(B)(3): Allow for a variation in the requirement to provide 70% windows and doors in the front façade. The proposal includes 54% in phase 1, and 63% in phase 2. The east elevation, visible from Statesville Road contains 20% glass coverage.
5. The short wall shown on the site plan at the front parking area shall be a minimum of four (4) feet in height as required by Section 9.4.2(B) Type B-2.
6. The applicant shall submit a lighting plan based on proposed Chapter 7 lighting standards being considered by the Town Board prior to approval of construction documents for the development.
7. The applicant must either provide a five foot sidewalk along Statesville Road, or provide payment-in-lieu of sidewalk to the Town. If payment-in-lieu is provided, an estimate must be presented to the town prior to approval of the construction documents, and said payment must be received prior to certificate of occupancy.
8. The applicant shall coordinate with NCDOT and install a southbound right turn lane with sufficient storage into the site. The design of the turn lane shall be included in the construction documents, and approved by NCDOT.

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

**To:** Mayor and Board of Commissioners  
**From:** Wayne Herron, AICP  
Director of Planning

**Action Requested:**

Adopt a Resolution accepting the following streets for Town maintenance in the Preserve at Robbins Park, Phase 2, Map 1:





- Robbins Ridge Road (a portion of)
- Preserve Pond Road (a portion of)
- Robbins Preserve Road (a portion of)
- Pennington Drive

The request, as submitted, meets all of the Town's current standards for street acceptance. You will note the County's inspection approval and the Town has also required all of the storm sewer to have a video inspection submitted. The Town's contract engineer, Dewberry Engineers, Inc., has reviewed and approved the video inspection.

**Manager's Recommendation:**

Adopt resolution as presented.

**ATTACHMENTS:**

| Name:   | Description:                               | Type:             |
|---|--|-------------------|
|  <a href="#">RES-Street Maintenance - Robbins Park Preserve.docx</a> | Street Acceptance                          | Resolution Letter |
|  <a href="#">P2M1.pdf</a>  | Exhibit 1 - Preserve at Robbins Park Map   | Exhibit           |
|  <a href="#">Petition for Street Acceptance Phase 2 Map 1.pdf</a>    | Exhibit 2 - Petition for Street Acceptance | Exhibit           |
|  <a href="#">Phase 2 Map 1 recorded plat.pdf</a>                     | P2 M1 Recorded Plat                        | Backup Material   |
|  <a href="#">asbuilt approval letter #365774 Phase 2 Map 1.pdf</a>   | Mecklenburg County Approval                | Backup Material   |

**TOWN OF CORNELIUS  
RESOLUTION TO ADOPT CERTAIN  
STREETS FOR MAINTENANCE**

**WHEREAS**, Cornelius is a rapidly growing community and is desirous of providing the most effective and efficient governmental services to its residents; and

**WHEREAS**, Cornelius has been requested by Classica Homes to accept streets currently maintained by said developer in the Preserve at Robbins Park subdivision; and

**WHEREAS**, the streets are identified in the attached Exhibit #1 and a request by the developer, Classica Homes, is attached as Exhibit #2; and

**WHEREAS**, the Town of Cornelius is desirous of accepting said streets for maintenance.

**NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COMMISSIONERS** that the Town of Cornelius does hereby accept for maintenance a portion of Robbins Ridge Road, Preserve Pond Road, Robbins Ridge Road, and Penington Drive.

Adopted this 6<sup>th</sup> day of March 2017.

SEAL

\_\_\_\_\_  
Charles L. Travis, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Karen Wolter, Town Attorney

Preserve at Robbins Park  
Street Acceptance  
P2, M1  
March 6, 2017

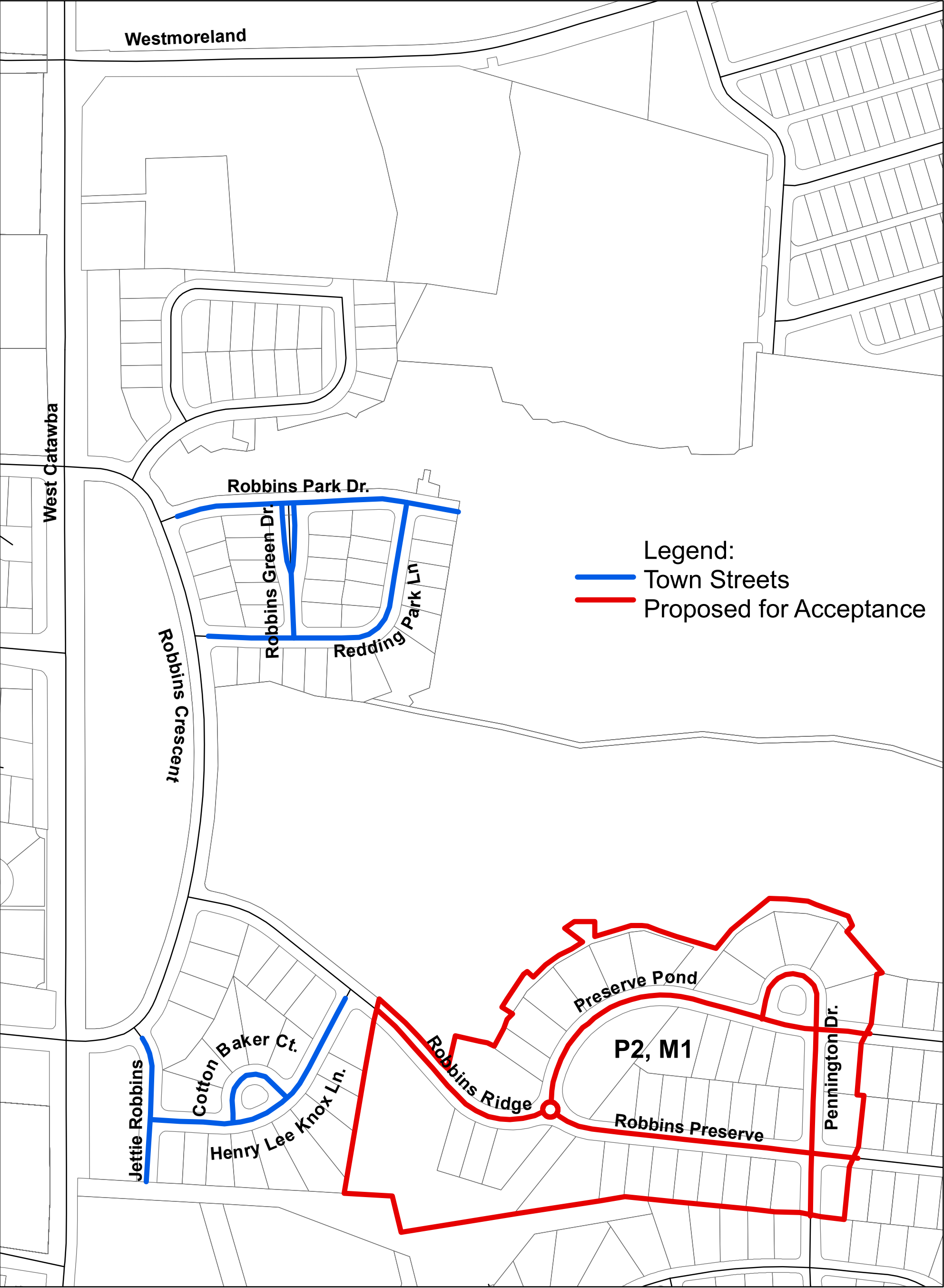


Exhibit 2

August 30, 2016

Anthony Roberts  
Town Manager  
Town of Cornelius  
P.O. Box 399  
Cornelius, NC 28031

Re: Application for Street Acceptance

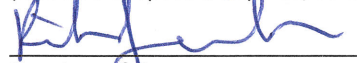
Dear Mr. Roberts:

I hereby certify, as the owner, that to the best of my knowledge the improvements in Phase 2 Map 1 of The Robbins Park subdivision have been constructed in accordance with the construction documents and are shown on a record map filed in the Mecklenburg County Register of Deeds Office in map book 54, page 860. All work must conform to the construction standards as identified in the Charlotte-Mecklenburg Land Development Standards Manual and the Town of Cornelius Land Development Code.

I, therefore, request that the following streets in Phase 2 Map 1 of Robbins Park subdivision be considered for maintenance acceptance by the Town of Cornelius. I understand that acceptance of said streets shall be made only by the Town of Cornelius Board of Commissioners in accordance with the Town's street acceptance policy.

| Street Name           | From                 | To                | Length<br>(in feet) |
|-----------------------|----------------------|-------------------|---------------------|
| Robbins Ridge Road    | Phase 1 Map 1        | Preserve Pond Rd. | 579                 |
| Preserve Pond Road    | Robbins Ridge Road   | Phase 4 Map 1     | 1047                |
| Robbins Preserve Road | Robbins Ridge Road   | Phase 4 Map 1     | 847                 |
| Pennington Drive      | Birkdale Subdivision | Preserve Pond Rd. | 837                 |
|                       |                      |                   |                     |
|                       |                      |                   |                     |

(If additional space is required, continue on back)

  
Signature of Owner  
[RJasinski@ClassicalHomes.com](mailto:RJasinski@ClassicalHomes.com)

704-201-8976

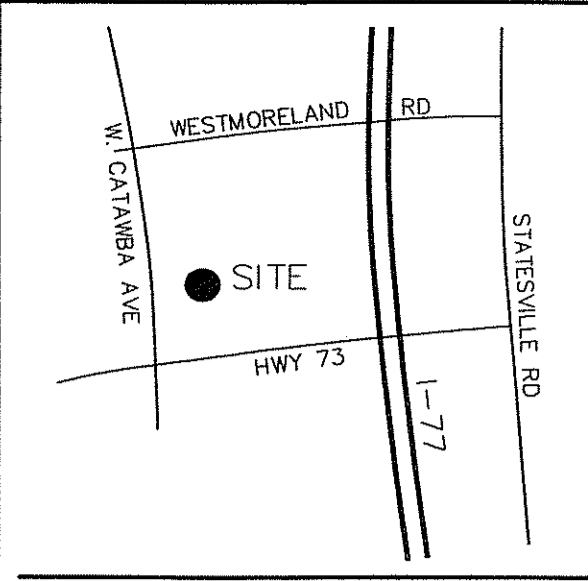
E-mail Address  
2215 Aysley Town Blvd. Suite G, Charlotte, NC 28273

Phone Number

Mailing Address (street number, street name, city, state, zip)

#2013034164

MAP BOOK 54 PAGE 860



VICINITY MAP

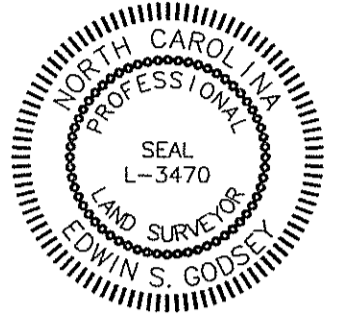
PLAT REVISION PURPOSE

THIS PLAT HAS BEEN REVISED TO REFLECT ADDRESS CHANGES TO LOTS 103, 104, 105, 106 & 107 AND ALSO TO ADD A 5' FENCE EASEMENT ALONG LOTS 103-113. UPON RECORDATION, THIS PLAT REPLACES AND SUPERSEDES THE PREVIOUSLY RECORDED PLAT OF THE PRESERVE AT ROBBINS PARK, PHASE 2, MAP 1, RECORDED ON FEBRUARY 1st, 2013 IN MAP BOOK 54, PAGE 755.

**CERTIFICATIONS**

I, EDWIN S. GOODEY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DEED BOOK 2332, PAGE 755, AS SHOWN ON PAGE 860 OF THIS MAP BOOK. I HEREBY CERTIFY THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY THE RATIO OF PRECISION AS CALCULATED IS 1:10,000. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL, THIS 28th DAY OF FEBRUARY, A.D., 2013.

EDWIN S. GOODEY, PLS - 03470 LANDTEC



I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREIN, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF CORNELIUS. THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT. ESTABLISH MINIMUM BUILDING SETBACK LINES, PRESERVE AND PROTECT ALL SIGNIFICANT TREES OVER 18 INCHES IN DIAMETER IN THE TREE AND ROOT PROTECTION AREA, PLANT SUPPLEMENTARY TREES IF REQUIRED AND DESIGN ALL STREETS, ALLEYS, WALKS, PARKS, AND OTHER SITES AND EASEMENTS TO PUBLIC OR PRIVATE USES AS NOTED. FURTHERMORE, I HEREBY DEDICATE ALL SANITARY SEWER, STORM SEWER AND WATER LINES THAT ARE LOCATED IN PUBLIC UTILITY EASEMENTS OR RIGHTS-OF-WAY TO THE TOWN OF CORNELIUS AND THE CHARLOTTE-MECKLENBURG UTILITY DEPARTMENT.

DATE 3-5-13  
SIGNATURE [Signature]  
TITLE [Title]

CERTIFICATE OF APPROVAL FOR RECORDING THIS PROPERTY IS LOCATED WITHIN A PUBLIC WATER SUPPLY WATERSHED. DEVELOPMENT RESTRICTIONS MAY APPLY. I CERTIFY THAT THE PLAT SHOWN HEREIN COMPLIES WITH THE WATERSHED PROTECTION ORDINANCE AND IS APPROVED BY THE TOWN OF CORNELIUS FOR RECORDING AT THE MECKLENBURG COUNTY REGISTER OF DEEDS OFFICE.

DATE 3-5-13  
SIGNATURE [Signature]  
TITLE [Title]

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREIN HAS BEEN FOUND TO COMPLY WITH THE LAND DEVELOPMENT CODE FOR CORNELIUS, NORTH CAROLINA, AND THAT THIS PLAT HAS BEEN APPROVED BY THE TOWN OF CORNELIUS FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS OF MECKLENBURG COUNTY. I FURTHER CERTIFY THAT THE BOARD OF COMMISSIONERS ONLY ACCEPTS THE DEDICATION OF THE PUBLIC PARKS SHOWN THEREIN IF SUCH PARKS ARE LOCATED WITHIN THE CORPORATE LIMITS OF CORNELIUS, BUT ASSUMES NO RESPONSIBILITY TO OPEN OR MAINTAIN THE SAME UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS, IT IS IN THE PUBLIC INTEREST TO DO SO.

DATE 3-5-13  
SIGNATURE [Signature]  
TITLE [Title]

**BMP PURPOSE STATEMENT**

THE PURPOSE OF THE BMP IS TO TREAT/REDUCE THE POLLUTANTS ASSOCIATED WITH STORM WATER RUNOFF IN ORDER TO MINIMIZE NEGATIVE EFFECTS TO DOWNSTREAM RECEIVING WATERS. THE INDIVIDUAL PLANTS OR DISTRIBUTION OF PLANTS OR OTHERWISE AFFECTING THE OVERALL FUNCTIONALITY OF THE BMP FOR REASONS OTHER THAN MAINTENANCE IS STRICTLY PROHIBITED. THE EASEMENT AROUND THE BMP IS TO ALLOW STORM WATER CONVEYANCE AND SYSTEM MAINTENANCE, ANY BUILDINGS AND/OR OBSTRUCTIONS WHICH IMPIDE STORM WATER FLOW OR MAINTENANCE ARE PROHIBITED.

DATE 3/4/13  
SIGNATURE [Signature]  
TITLE [Title]

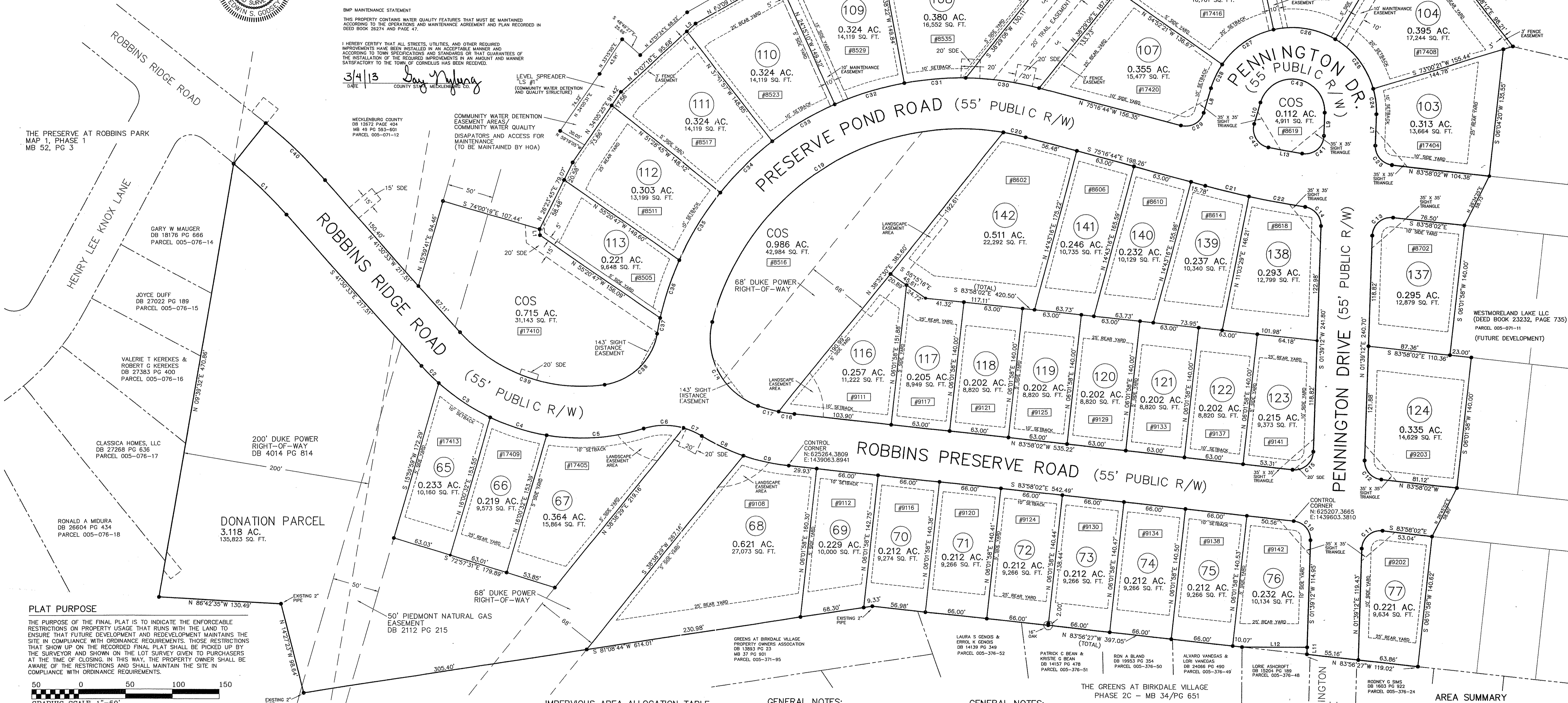
**BMP MAINTENANCE STATEMENT**

THIS PROPERTY CONTAINS WATER QUALITY FEATURES THAT MUST BE MAINTAINED ACCORDING TO THE OPERATIONS AND MAINTENANCE AGREEMENT AND PLAN RECORDED IN DEED BOOK 26274 AND PAGE 47.

DATE 3/4/13  
SIGNATURE [Signature]  
TITLE [Title]

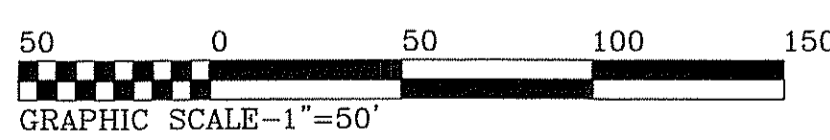
**FILED FOR REGISTRATION**

MAR 06 2013  
1:24 PM  
AT THE REGISTER OF DEEDS  
MECKLENBURG COUNTY, N.C.



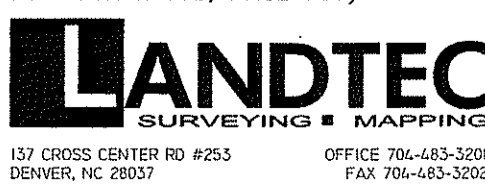
PLAT PURPOSE

THE PURPOSE OF THE FINAL PLAT IS TO INDICATE THE ENFORCEABLE RESTRICTIONS ON PROPERTY USAGE THAT RUNS WITH THE LAND TO ENSURE THAT FUTURE DEVELOPMENT AND REDEVELOPMENT MAINTAINS THE SITE IN COMPLIANCE WITH ORDINANCE REQUIREMENTS. THOSE RESTRICTIONS THAT SHOW UP ON THE RECORDED FINAL PLAT SHALL BE PICKED UP BY THE SURVEYOR AND SHOWN ON THE LOT SURVEY GIVEN TO PURCHASERS AT THE TIME OF CLOSING. IN THIS WAY, THE PROPERTY OWNER SHALL BE AWARE OF THE RESTRICTIONS AND SHALL MAINTAIN THE SITE IN COMPLIANCE WITH ORDINANCE REQUIREMENTS.



**TOWN OF CORNELIUS**  
MECKLENBURG COUNTY, NORTH CAROLINA  
REVISED FINAL PLAT FOR:  
**THE PRESERVE AT ROBBINS PARK**  
**PHASE 2 MAP 1**  
RECORD OWNER: WESTMORELAND LAKE LLC (DEED BOOK 2332, PAGE 735)

| DATE  | SURVEY DATES  | PROJECT NUMBER |
|-------|---------------|----------------|
| 10-12 | 10-12         | 12021          |
| DATE  | PLAT DATE     | DRAWING NAME   |
| 02-13 | 12021         | PLATREV        |
| DATE  | DRAWING SCALE | FIELD BOOK     |
| 02-13 | 1"=50'        | 12-01          |



| Curve | Radius   | Length  | Chord   | Chord Bear.   |
|-------|----------|---------|---------|---------------|
| C13   | 20.00'   | 32.94'  | 29.34'  | N 48°50'35" E |
| C14   | 20.00'   | 28.97'  | 26.51'  | S 39°51'00" E |
| C15   | 20.00'   | 32.94'  | 29.34'  | S 48°50'35" W |
| C16   | 172.50'  | 17.09'  | 17.09'  | N 81°07'45" W |
| C17   | 172.50'  | 22.81'  | 22.80'  | N 74°30'09" W |
| C18   | 76.50'   | 112.92' | 102.94' | N 28°25'38" W |
| C19   | 272.50'  | 407.76' | 370.77' | N 66°43'39" E |
| C20   | 272.50'  | 24.38'  | 24.37'  | S 77°50'51" E |
| C21   | 1027.50' | 48.00'  | 48.00'  | S 76°37'02" E |
| C22   | 1027.50' | 80.93'  | 80.92'  | S 78°39'17" E |
| C23   | 20.00'   | 29.69'  | 27.18'  | N 41°09'25" W |
| C24   | 90.00'   | 27.56'  | 27.46'  | N 67°07'14" W |
| C25   | 90.00'   | 68.14'  | 66.52'  | N 37°34'58" W |
| C26   | 90.00'   | 68.39'  | 66.76'  | N 81°02'25" W |

| LOT# | AREA  | LOT# | AREA  | LOT#       | AREA    |
|------|-------|------|-------|------------|---------|
| 65   | 4.000 | 106  | 4.550 | 124        | 4.500   |
| 66   | 4.000 | 107  | 4.550 | 125        | 4.500   |
| 67   | 4.550 | 108  | 4.550 | 126        | 4.500   |
| 68   | 4.550 | 109  | 4.550 | 127        | 4.500   |
| 69   | 4.000 | 110  | 4.550 | 128        | 4.500   |
| 70   | 4.000 | 111  | 4.550 | 129        | 4.500   |
| 71   | 4.000 | 112  | 4.550 | 130        | 4.500   |
| 72   | 4.000 | 113  | 4.000 | LOT TOTAL  | 184.000 |
| 73   | 4.000 | 114  | 4.000 | STREETS    | 104.500 |
| 74   | 4.000 | 115  | 4.000 | SIDEWALKS  | 31.000  |
| 75   | 4.000 | 116  | 4.000 | ROADS      | 0.000   |
| 76   | 4.000 | 117  | 4.000 | IMPERVIOUS | 25.000  |
| 77   | 4.000 | 118  | 4.000 | BANK       | 25.000  |
| 78   | 4.000 | 119  | 4.000 | TOTAL      | 325.000 |
| 79   | 4.000 | 120  | 4.000 |            |         |
| 80   | 4.000 | 121  | 4.000 |            |         |
| 81   | 4.000 | 122  | 4.000 |            |         |
| 82   | 4.000 | 123  | 4.000 |            |         |
| 83   | 4.000 | 124  | 4.000 |            |         |
| 84   | 4.000 | 125  | 4.000 |            |         |
| 85   | 4.000 | 126  | 4.000 |            |         |
| 86   | 4.000 | 127  | 4.000 |            |         |
| 87   | 4.000 | 128  | 4.000 |            |         |
| 88   | 4.000 | 129  | 4.000 |            |         |
| 89   | 4.000 | 130  | 4.000 |            |         |
| 90   | 4.000 | 131  | 4.000 |            |         |
| 91   | 4.000 | 132  | 4.000 |            |         |
| 92   | 4.000 | 133  | 4.000 |            |         |
| 93   | 4.000 | 134  | 4.000 |            |         |
| 94   | 4.000 | 135  | 4.000 |            |         |
| 95   | 4.000 | 136  | 4.000 |            |         |
| 96   | 4.000 | 137  | 4.000 |            |         |
| 97   | 4.000 | 138  | 4.000 |            |         |
| 98   | 4.000 | 139  | 4.000 |            |         |
| 99   | 4.000 | 140  | 4.000 |            |         |
| 100  | 4.000 | 141  | 4.000 |            |         |
| 101  | 4.000 | 142  | 4.000 |            |         |
| 102  | 4.000 | 143  | 4.000 |            |         |
| 103  | 4.000 | 144  | 4.000 |            |         |
| 104  | 4.000 | 145  | 4.000 |            |         |
| 105  | 4.550 | 123  | 4.000 | TOTAL      | 325.000 |

GENERAL NOTES:

- BOUNDARY SURVEY IS BASED ON EXISTING PHYSICAL EVIDENCE OBSERVED IN FIELD ON DATE(S) OF SURVEY.
- NORTH ORIENTATION IS BASED ON NCGS COORDINATE SYSTEM (NAD-83).
- NO NORTH CAROLINA STATE PLANE GRID CONTROL LOCATED WITHIN 2000 FEET OF SUBJECT PROPERTY.
- ALL DISTANCE SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED. ALL AREAS WERE CALCULATED USING THE COORDINATE METHOD.
- IRON PINS FOUND OR SET AT ALL CORNERS UNLESS OTHERWISE NOTED.
- SUBJECT PROPERTY IS WITHIN A WATERSHED AREA (MOUNTAIN ISLAND PROTECTION AREA PA-2).

GENERAL NOTES:

- PROPERTY AS SHOWN HEREON MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS, RIGHT-OF-WAYS, RESTRICTIONS, AND/OR CONDITIONS NOT OBSERVED OR INDICATED HEREON.
- MAINTENANCE OF ALL SDE'S, AS SHOWN HEREON, ARE THE RESPONSIBILITY OF THE PROPERTY OWNER OR ASSIGNS.
- UNDISTURBED OPEN SPACE AREA: FUTURE DISTURBANCE IS PROHIBITED IN THESE AREAS EXCEPT FOR GREENWAY TRAILS WITH LIMITED PUBLIC ACCESS, NEW CHARLOTTE-MECKLENBURG UTILITY LINES AND CHANNEL, WORK/MAINTENANCE ACTIVITIES BY CHARLOTTE-MECKLENBURG STORM WATER SERVICES.
- THE PURPOSE OF THE STORM DRAINAGE EASEMENT (SDE) IS TO PROVIDE STORM WATER CONVEYANCE. BUILDINGS ARE NOT PERMITTED IN THE EASEMENT AREA. ANY OTHER OBJECTS WHICH IMPIDE STORM WATER FLOW OR SYSTEM MAINTENANCE ARE ALSO PROHIBITED.

- SUBJECT PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS INDICATED BY FEMA COMMUNITY FLOOD PANEL 3710463-2004 DATED 3-2-2009.
- COMMON AREAS ARE TO BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
- COS IS AN ABBREVIATION FOR COMMON OPEN SPACE.
- THE MAXIMUM BUILT-UPON AREAS DRAINING TO LEVEL SPREADER # 1 - 0.18 AC. LEVEL SPREADER # 2 - 0.20 AC. LEVEL SPREADER # 3 - 0.18 AC. LEVEL SPREADER # 4 - 0.18 AC.

AREA SUMMARY

LOTS - 10,945 ACRES  
ROAD R/W - 3,996 ACRES  
COMMON OPEN SPACE - 1,813 ACRES  
DONATION AREA - 3,118 ACRES  
TOTAL AREA - 19,872 ACRES

ZONING NOTES:

ZONING: NEIGHBORHOOD RESIDENTIAL  
MIN. FRONT SETBACK: 10 FT. (UNLESS OTHERWISE NOTED)  
MAX. FRONT SETBACK: 25 FT.  
SIDE SETBACKS: 5 FT. (CORNER LOT 10 FT.)  
REAR SETBACKS: 25 FT.  
MIN. LOT WIDTH: 60 FT.  
ACCESSORY STRUCTURE REAR SETBACK: 5 FT.  
ACCESSORY STRUCTURE SIDE SETBACK: 5 FT.  
TYPE "E" YARD TREES REQUIRED



**MECKLENBURG COUNTY**  
Land Use & Environmental Services Agency  
*Water & Land Resources*

08/26/2016

[rhayes@colejeneststone.com](mailto:rhayes@colejeneststone.com)

ColeJenest & Stone, PA  
Robert Hayes  
200 S. Tryon St., Su 1400  
Charlotte, NC 28202

Re: **The Preserve @ Robbins Park Map 1, Ph 2 SD Asbuilt #365774**  
Approval as noted of Storm Drain As-built

Dear Mr. Hayes:

Please be advised that the Storm Drain As-built plans you submitted for **The Preserve @ Robbins Park Map 1, Ph 2 SD Asbuilt #365774 in Cornelius** has been reviewed and approved as noted by this office. If you have any questions, please give me a call at 980-314-3240.

Sincerely,

Michael MacIntyre, P. E.,  
Land Development Project Manager

cc: Casena Michael - Mecklenburg County Bonds Administrator  
Preston Hampton – Mecklenburg County Land Development Inspector  
Jason Pauling - Town of Cornelius Planning Department  
EPM Project File

**PEOPLE • PRIDE • PROGRESS • PARTNERSHIPS**

• 2145 Suttle Avenue • Charlotte, North Carolina 28208-5237 •  
[www.mecklenburgcountync.gov](http://www.mecklenburgcountync.gov)

## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** March 6, 2017

**To:** Mayor and Board of Commissioners

**From:** Anthony Roberts, Town Manager

**Action Requested:**

As outlined in G.S. 163-294.2(e), the Mayor and Board of Commissioner filing fees must be determined by the governing board for each election. The 2015 filing fees were set at \$12.00 for Mayor and \$5.00 for Commissioner. These rates can simply continue as previously set unless there is a desire to change them.

Filing dates for the 2017 elections are as follows:

- Candidate Filing - opens July 7th at noon
- Candidate Filing - closes July 21st at noon

**Manager's Recommendation:**

Set and approve the 2017 election filing fees.

**ATTACHMENTS:**

| Name:                    | Description: | Type: |
|--------------------------|--------------|-------|
| No Attachments Available |              |       |

---

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Tyler Beardsley, Assistant to the Manager




**Action Requested:**

Hickory Street Extension will connect Zion Avenue to Lovers Lawn Trace in Antiquity. This is one of our bond road projects. The lowest responsible bidder is Granite Contracting, LLC., located in Cornelius. The bid price is \$363,818.40. If the contract is approved, the work is scheduled to begin the week of March 20th and take approximately 2 months to complete.

**Manager's Recommendation:**

Approve a contract with Granite Contracting, LLC and authorize the Town Manager and Town Attorney to finalize and execute it.

**ATTACHMENTS:**


| Name:  | Description:                       | Type:      |
|--|------------------------------------|------------|
|  <a href="#">Hickory_St_Bid_Tab_Final-signed.pdf</a>    | Hickory Street Bid Tab             | Cover Memo |
|  <a href="#">Hickory_Street_Contract-Granite.docx</a> | Hickory Street Contract            | Cover Memo |
|  <a href="#">Contract_Conditions_Hickory_St.docx</a>  | Hickory Street Contract Conditions | Cover Memo |

Town of Cornelius  
Hickory Street Extension  
Bid Tabulation Sheet

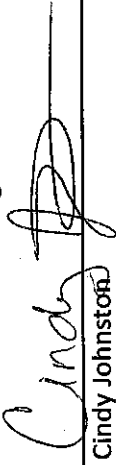
| Contractor          | Subtotal     | Contingency     | Total        |
|---------------------|--------------|-----------------|--------------|
| Blythe Development  | \$577,543    | \$57,754.30 10% | \$635,297.30 |
| Carolina Site       | \$531,903.50 | \$53,190.35 10% | \$585,093.85 |
| Granite Contracting | \$330,744    | \$33,074.40     | \$363,818.40 |
|                     |              |                 |              |
|                     |              |                 |              |
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Bids were opened and read aloud at 10:00 am on February 14, 2017 at the Cornelius Town Hall

Read aloud by:

  
Tyler Beardsley  
Assistant to the Manager

Witnessed:

  
Cindy Johnston  
Accountant



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

**AGREEMENT** made as of the \_\_ day of \_\_\_\_\_ of 2017

**BETWEEN** the Owner:

Town of Cornelius  
PO Box 399  
21445 Catawba Ave  
Cornelius, NC 28031  
Phone: 704-892-6031  
Fax: 704-892-2462

**and the Contractor:**

Granite Contracting, LLC  
18606 Northline Drive  
Cornelius, NC 28031  
Phone: 704-892-0341  
Fax: 704-895-7881

**The Project is:**

1. Hickory Street Extension

**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 September 8, 2017 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 \$363,818.40, 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 or 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:

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

**§ 7.4** The Contractor's representative is:

Steve Primm  
Project Manager  
Granite Contracting, LLC  
18606 Northline Drive  
Cornelius, NC 28031  
Phone: 704-892-0341

**§ 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

**§ 8.1.4** The specifications contained in the Bid Specifications.

***Town of Cornelius, Contract Proposal, Project Name: Hickory Street Extension***

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

***Town of Cornelius Hickory and Gem Street Extensions, drawn by SEPI Engineering & Construction dated 1/16/2017***

**§ 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: Sealed and Signed 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:**

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**OWNER** *(Signature)*

**Anthony Roberts, Town Manager**

*(Printed name and title)*

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**CONTRACTOR** *(Signature)*

**Steve Primm, Vice President**

*(Printed name and title)*

# **Town of Cornelius Contract General Conditions**

## **For the following PROJECT:**

Hickory Street Extension

## **THE OWNER:**

Town of Cornelius  
PO Box 399  
21445 Catawba Ave  
Cornelius, NC 28031  
Phone: 704-892-6031  
Fax: 704-892-2462

## **THE CONTRACTOR:**

Granite Contracting, LLC  
18606 Northline Drive  
Cornelius, NC 28031  
Phone: 704-892-0341  
Fax: 704-895-7881

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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: March 6, 2017

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk


**Action Requested:**

Approve the Regular Meeting minutes for Feb. 20th.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

| Name:   | Description:         | Type:           |
|---|----------------------|-----------------|
|  <a href="#">02-20-17_Regular_Meeting_draft.docx</a> | 2/20 Regular Meeting | Backup Material |

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## BOARD OF COMMISSIONERS

February 20, 2017  
Minutes

### PRE-MEETING – 5:45PM

- Sailing Center Building Project

Sean O'Donnell and Christy Lux gave an update on the Sailing Center that is operated out of Blythe Landing and offers year round sailing programs to adults and youth. Annual passes are offered at \$330 individuals/\$440 family for the use of paddle boards, kayaks, and sail boats. Three weeks during the summer are dedicated to the Cornelius PARC Summer Camp program that teach children to sail, kayak and paddle board Monday through Friday. Ms. Lux stated that the Town has annually contributed \$8,000 to the Center and that generally covers the overhead costs for the youth summer camp programs. Mr. O'Donnell explained that last year the Town contributed \$18,000 and \$10,000 was used towards the construction of the new maintenance building. He said that this year's goal is to update the log cabin and expand the storage area located behind the office and that Mecklenburg County is contributing staff hours towards the renovation work. He asked the Town to consider contributing \$18,000 (\$8,000 for camps and \$10,000 towards building renovations) in FY18 to allow for the necessary improvements.

Commissioner Washam asked what the attendance was for the Center. Ms. Lux stated that attendance has grown approximately 20% each year and last year's attendance was 215 so they are projecting 250 this year. Mr. O'Donnell added that most of the members are older adults from Cornelius and Huntersville. Mayor Travis asked what the long term vision was. Mr. O'Donnell stated that the back bone of the Center is the adult program and he believed they would max out at approximately 400 because the property could not support anything larger.

- DCCDC Grant Request

Ellen Donaldson introduced the Board of Directors and staff members from DCCDC that were present. She gave a brief overview of the Center and outlined their expansion and remodeling project that will allow for 40 additional children. Ms. Donaldson explained the needs assessment for the expansion and the timeline for phases 1 and 2. She asked the Board to consider contributing \$25,000 for Phase 1.

Commissioner Gilroy stated that the Center should be charging a market rate for high income customers with being a social organization. Ms. Donaldson stated that their mission is to provide affordable child care. Commissioner Gilroy stated that a high income customer should pay a market rate. Executive Director, Libby Johnston explained that she sets the rates through assessments made with the Child Care Resources in Charlotte and that there are some families that have a higher income than others but the way children learn best is working and playing with their peers, so the low income children are learning alongside children of educated families.

The Board really encouraged the DCCDC Board members to look at the pricing structure for high income families as they consider funding their project with public dollars. Ms. Donaldson said she believed they could tighten up the fee structure but it would never be at a level such as Goddard Child Care.

- FY2017 Goals Update

Manager Roberts gave an update on the FY17 operating budget goals.

## **REGULAR MEETING – 7:00PM**

1. CALL TO ORDER

Mayor Travis called the meeting to order at 7:03PM.

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 Washam seconded the motion and it passed unanimously, 5-0.*

4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Zach Borkowski with Boy Scout Troop 72 led the pledge after a moment of silence was observed.

5. CITIZEN CONCERNS/COMMENTS

Ralph Gettings – 19925 Schooner Drive, expressed his concerns with the PARC Commission minutes being incomplete, non-residents attending Town sponsored events, and the demographics for those attending summer camps. He suggested that a standing committee be created to handle the Town's cultural events and Arts District.

6. MAYOR/COMMISSIONERS/MANAGER REPORTS

Manager Roberts reported on the following:

- Paving project along Bailey Road in Oakhurst will begin on Tuesday and should be complete by Friday

Commissioner Miltich reported on the following:

- Attended the Northcross Drive Ext. public meeting
- Attended NCDOT's briefing on the Hwy. 115/Potts Road improvements plan
- Attended the Black History Celebration
- Attended the North Meck Alliance meeting
- Held my Cornelius Conversation meeting and shared the takeaway comments with staff
- Displayed Nantz Road realignment pics (*Exhibit Book 30*)

Commissioner Duke reported on the following:

- VLN – fishing tournaments were held at Blythe Landing on Feb. 11<sup>th</sup> and 18<sup>th</sup> with 269 boats/538 anglers
- HPC – hosting a walking tour on Mar. 18<sup>th</sup> at 3PM

- PARC – ‘Twaba Walk will be held on April 29<sup>th</sup>; next Coffee Chat will be held on Mar. 6<sup>th</sup> with a PARC’s program/projects update; Summer Camp registration opens in 8 days

Commissioner Gilroy reported on the following:

- Attended the NCDOT briefing on Hwy. 115/Potts Road

Commissioner Washam reported on the following:

- CRTPO - Attended the meeting where the CMAQ project list was presented and Cornelius has applied for this grant to install a traffic signal at the corner of Hwy. 115 and Hickory Street (\$1M grant)
- EDC – OMB announced they are opening a location in Cornelius (51,000s.f. Curtis Screw bldg.); 14 active projects in Cornelius; creating a Workforce Development Committee
- CACC – Greg Wessling the chairman, will be featured at the News Makers breakfast on Thursday at the Peninsula
- Former Fire Chief Jim Barbee received the Distinguished Service Award from the Volunteers Firemen’s Association of Mecklenburg County

Commissioner Ross reported on the following:

- Chamber – saluting entrepreneurship Feb. 20<sup>th</sup> – 24<sup>th</sup>; Before Hours with Small Businesses at Matty’s Fatty on Wednesday; Business Leaders United on Thursday

Mayor Travis reported on the following:

- Displayed pictures (*Exhibit Book 30*) from the events that he attended (PARC sponsorship recognition/ lunch with the Mayor/Heart 2 Heart Jazz Series/Black History celebration)

## 7. PRESENTATIONS

### A. Black History Celebration “Sharing Our Heritage”

Davidson College Activist, Jan Blodgett displayed a video presentation that was given at the Black History Celebration held on February 18<sup>th</sup> at Town Hall. Mayor Travis thanked her for her hard work and sharing the video again.

### B. MI-Connection Update

Mark McDowell, the Cornelius liaison on the MI-Connect Board gave an update on the communication system. He covered the financial highlights, the debt held between Mooresville and Davidson, customer distribution, and the future management changes with CEO David Auger leaving in July. When discussing the system’s performance, Mr. McDowell encouraged the Board to let him know when they are experiencing service problems. He also asked that MI-Connect be involved with new developments through the Planning Department. Planning Director, Wayne Herron said he would speak with the town attorneys to see what can be included on the front end of development. Commissioner Washam asked how MI-Connect remains competitive within the industry. Mr. McDowell stated that most cable companies offer similar pricing minus the initial promotion startups.

C. Town GO Bonds

Manager Roberts gave an update on the calendar sale of the GO Bonds Phase II and identified those projects that would be covered within Phase II. He then showed a timeline that would have to be followed if the Board desired to add a new bond referendum to the November 2018 ballot. Additional discussion will take place during the budget retreat in March.

8. CONSIDERATION OF APPROVAL

A. Historic Preservation Committee Appointment

Manager Roberts explained that Ron Potts has applied to serve on the HPC and he recommended approval of his appointment.

*Commissioner Miltich made a motion to approve the appointment of Ron Potts to the HPC. Commissioner Washam seconded the motion and it passed unanimously, 5-0.*

B. FY2017 Budget Amendment

Finance Director, Julie Niswonger explained that the Ordinance to amend the FY17 operating budget is to increase the PD budget by \$1,718 for insurance proceeds and allocate \$37K received from Quick Trip to complete a TIA study.

*Commissioner Miltich made a motion to approve Ordinance #2017-00641 amending the FY17 operating budget. Commissioner Washam seconded the motion and it passed unanimously, 5-0.*

**Ordinance #2017-00641 is hereby made part of the minutes by reference.**

9. CONSENT AGENDA

- A. Approve Minutes – Regular Meeting (Jan. 17<sup>th</sup> & Feb. 6<sup>th</sup>) (Approved 5-0)
- B. Approve Minutes – Closed Session (Feb. 6<sup>th</sup>) (Approved 5-0)
- C. Tax Refunds = \$365.65 (Approved 5-0)

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

10. NEW BUSINESS

A. House Bill 64 Opposition

Mayor Travis explained that state legislators have introduced HB64 which mandates that all municipal elections would happen on even years, along with the national elections. The Resolution is in opposition of the State mandating local municipal elections.

Commissioner Gilroy disagreed with opposing HB64 as he believes more people would actually vote if held with national elections. Commissioner Duke agreed with Commissioner Gilroy. Commissioners Washam, Miltich and Ross stated they were not comfortable with the State mandating when municipal elections are held and believe that decision should be held by each municipality according to the citizens' desire.

*Commissioner Duke made a motion to table the discussion so that the Resolution could be revised to capture the Board's true intent. Commissioner Gilroy seconded the motion and it failed 2-3, Commissioners Washam, Ross and Miltich opposed.*

*Commissioner Miltich made a motion to revise and approve Resolution #2017-00836 by changing the Now Therefore, Be It Resolved to read: that the Board of Commissioners of the Town of Cornelius is opposed to House Bill 64. Commissioner Washam seconded the motion and it passed 4-1, Commissioner Duke opposed.*

**Resolution #2017-00836 is hereby made part of the minutes by reference.**

11. COMMISSIONER CONCERNS

A. Bicycle Lanes on Jetton Road

Commissioner Washam asked if Jetton Road would have designated bike lanes along the corridor. Manager Roberts stated that he would look back at the bike plan and report back on what has been identified for that corridor.

12. CLOSED SESSION

A. Economic Development Projects

Mayor Travis called for a motion to go into Closed Session to discuss 2 economic development projects.

*Commissioner Ross made a motion to go into Closed Session at 8:51PM. Commissioner Washam seconded the motion and it passed unanimously, 5-0.*

13. ADJOURNMENT

*Upon return from Closed Session, there being no further business to discuss, Commissioner Miltich made a motion to adjourn at 9:41PM. Commissioner Washam seconded the motion and it passed unanimously, 5-0.*

Approved this 6<sup>th</sup> day of March, 2017.

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Charles L. Travis, III, Mayor

ATTEST:

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Lori A. Harrell, Town Clerk

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk

**Action Requested:**

Approve the Closed Session minutes for Feb. 20th.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

| Name:  | Description:        | Type:           |
|--|---------------------|-----------------|
|  <a href="#">02-20-17_Closed_Session_draft.docx</a> | 2/20 Closed Session | Backup Material |

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## REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** March 6, 2017

**To:** Mayor and Board of Commissioners

**From:** Wayne Herron, Director of Planning

**Action Requested:**

Call for a public hearing for an Economic Development Grant to be held at the Board's regular meeting on the 20th day of March, 2017 at 7:00pm.

The purpose of the public hearing is to receive public comments on proposed economic development incentives to Olde Mecklenburg Brewery, Inc. (WMHY, LLC), relating to their establishment of a new manufacturing facility in Cornelius. The project will consist of a capital investment of approximately \$10 million. The Business Investment Program grant will be for a period of ten years and will be equal to 90 percent of new ad valorem tax revenue created by the development.

**Manager's Recommendation:**

Set date and time for public hearing for March 20, 2017 at 7:00pm.

**ATTACHMENTS:**

| Name:                    | Description: | Type: |
|--------------------------|--------------|-------|
| No Attachments Available |              |       |

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## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Julie Niswonger, Finance Director

**Action Requested:**

Approve a contract with Martin Starnes & Associates to audit the Town of Cornelius FY17 financial statements.

Staff has negotiated with Martin Starnes & Associates, the firm that has prepared our audit the previous seven years, to audit the current year financial statements. We have agreed upon a fee of \$30,100, an increase of 1% from FY16. This \$30,100 contract price includes \$1,500 in fees associated with single audit additional procedures applicable to Powell Bill and grant funds.

**Manager's Recommendation:**

Approve audit contract.

**ATTACHMENTS:**

| Name:   | Description:           | Type:      |
|---|------------------------|------------|
|  <a href="#">Town of Cornelius - 2017 Audit Contract.pdf</a>                  | FY17 Audit Contract    | Cover Memo |
|  <a href="#">Town of Cornelius - 2017 Single Audit Engagement Letter.pdf</a> | FY17 Engagement Letter | Cover Memo |

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**CONTRACT TO AUDIT ACCOUNTS**

Of Town of Cornelius, NC  
Primary Governmental Unit

N/A

Discretely Presented Component Unit (DPCU) if applicable

On this 20th day of February, 2017,

Auditor: Martin Starnes & Associates, CPAs, P.A. Auditor Mailing Address:

730 13th Avenue Dr. SE, Hickory, NC 28602

Hereinafter referred to as The Auditor

and Board of Commissioners (Governing Board(s)) of Town of Cornelius, NC  
 (Primary Government)

and N/A : hereinafter referred to as the Governmental Unit(s), agree as follows:  
 (Discretely Presented Component Unit)

1. The Auditor shall audit all statements and disclosures required by generally accepted accounting principles (GAAP) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit (s) for the period beginning July 1, 2016, and ending June 30, 2017. The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion will be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).
2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with generally accepted auditing standards. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards*, (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit and auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC CPA Board).

County and Multi-County Health Departments: The Office of State Auditor will designate certain programs that have eligibility requirements to be considered major programs in accordance with OMB *Uniform Guidance* for the State of North Carolina. The LGC will notify the auditor and the County and Multi-Health Department of these programs. A County or a Multi-County Health Department may be selected to audit any of these programs as major.

3. If an entity is determined to be a component of another government as defined by the group audit standards - the entity's auditor will make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unqualified opinion being rendered. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2011 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he has met the requirements for a peer review and continuing education as specified in *Government*

Discretely Presented Component Units (DPCU) if applicable

*Auditing Standards.* The Auditor agrees to provide a copy of their most recent peer review report regardless of the date of the prior peer review report to the Governmental Unit and the Secretary of the LGC prior to the execution of the audit contract (See Item 22). **If the audit firm received a peer review rating other than pass**, the Auditor shall not contract with the Governmental Unit without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to Government Accounting Standards or if financial statements are not prepared in accordance with GAAP and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment..

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to the State and Local Government Finance Division (SLGFD) within four months of fiscal year end. Audit report is due on: October 31, 2017. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay must be submitted to the secretary of the LGC for approval.
7. It is agreed that generally accepted auditing standards include a review of the Governmental Unit's systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor will make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his findings, together with his recommendations for improvement. That written report must include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. **Invoices for services rendered under these contracts shall not be paid by the Governmental Unit until the invoice has been approved by the Secretary of the LGC.** (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work must be submitted by email in PDF format to the Secretary of the LGC for approval. The invoices must be sent via upload through the current portal address: <http://nctreasurer.slgfd.leapfile.net> Subject line should read "Invoice – [Unit Name]. The PDF invoice marked 'approved' with approval date will be returned by email to the Auditor to present to the Governmental Unit for payment. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.
9. In consideration of the satisfactory performance of the provisions of this contract, the Primary Governmental Unit shall pay to the Auditor, upon approval by the Secretary of the LGC, the fee, which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (Federal and State grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. (Note: **Fees listed on signature pages.**)
10. If the Governmental Unit has outstanding revenue bonds, the Auditor shall include documentation either in the notes to the audited financial statements or as a separate report submitted to the SLGFD along with the audit report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor should be aware that any other bond compliance statements or additional reports required in the authorizing bond documents need to be submitted to the SLGFD simultaneously with the Governmental Unit's audited financial statements unless otherwise specified in the bond documents.

11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the client or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board as soon as practical after the close of the accounting period.
12. If the audit firm is required by the NC CPA Board or the Secretary of the LGC to have a pre-issuance review of their audit work, there must be a statement added to the engagement letter specifying the pre-issuance review including a statement that the Governmental Unit will not be billed for the pre-issuance review. The pre-issuance review must be performed **prior** to the completed audit being submitted to the LGC. The pre-issuance report must accompany the audit report upon submission to the LGC.
13. The Auditor shall electronically submit the report of audit to the LGC as a text-based PDF file when (or prior to) submitting the invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the SLGFD by any interested parties. Any subsequent revisions to these reports must be sent to the Secretary of the LGC. These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings, by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and other lawful purposes of the Governmental Unit without subsequent consent of the Auditor. If it is determined by the LGC that corrections need to be made to the Governmental Unit's financial statements, they should be provided within three days of notification unless another time frame is agreed to by the LGC.

If the OSA designates certain programs to be audited as major programs, as discussed in item #2, a turnaround document and a representation letter addressed to the OSA shall be submitted to the LGC.

The LGC's process for submitting contracts, audit reports and invoices is subject to change. Auditors should use the submission process in effect at the time of submission. The most current instructions will be found on our website: <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>

14. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the LGC, this contract may be varied or changed to include the increased time and/or compensation as may be agreed upon by the Governing Board and the Auditor
15. If an approved contract needs to be varied or changed for any reason, the change must be made in writing, on the Amended LGC-205 contract form and pre-audited if the change includes a change in audit fee. This amended contract needs to be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract, and then must be submitted through the audit contract portal to the Secretary of the LGC for approval. The portal address to upload your amended contract is <http://nctreasurer.slgfd.leapfile.net>. No change shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.
16. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit should be attached to the contract, and by reference here becomes part of the contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract will control. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item #25 of this contract. Engagement letters containing indemnification clauses will not be approved by the LGC.

17. Special provisions should be limited. Please list any special provisions in an attachment.
18. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU must be named along with the parent government on this audit contract. Signatures from the DPCU Board chairman and finance officer also must be included on this contract.
19. The contract must be executed, pre-audited, physically signed by all parties including Governmental Unit and Auditor signatures and submitted in PDF format to the Secretary of the LGC. The current portal address to upload your contractual documents is <http://nctreasurer.slgfd.leapfile.net>. Electronic signatures are not accepted at this time. Included with this contract are instructions to submit contracts and invoices for approval as of November 2016. These instructions are subject to change. Please check the NC Treasurer's web site at <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx> for the most recent instructions.
20. The contract is not valid until it is approved by the LGC Secretary. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. **The audit should not be started before the contract is approved.**
21. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.
22. **E-Verify.** Auditor **shall comply** with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor **shall require** such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.
23. Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Contractor shall not utilize any subcontractor that is identified on the List.
25. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted: (See Item 16 for clarification).

***SIGNATURE PAGES FOLLOW***

Contract to Audit Accounts (cont.)

Town of Cornelius, NC

Primary Governmental Unit

N/A

Discretely Presented Component Units (DPCU) if applicable

Town of Cornelius, NC

- FEES

Year-end bookkeeping assistance – [For audits subject to Government Auditing Standards, this is limited to bookkeeping services permitted by revised Independence Standards]

Audit \$24,900 + \$1,500 for Single Audit procedures

Preparation of the annual financial Statements \$3,700

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees above. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee.

The 75% cap for interim invoice approval for this audit contract is \$ 22,575

\*\* NA if there is to be no interim billing

Communication regarding audit contract requests for modification or official approvals will be sent to the email addresses provided in the spaces below.

Audit Firm Signature:

Martin Starnes & Associates, CPAs, P.A.

Name of Audit Firm

By Amber Y. McGhinnis, Senior Audit Manager

Authorized Audit firm representative name: Type or print



Signature of authorized audit firm representative

Date February 20, 2017

amcghinnis@martinstarnes.com

Email Address of Audit Firm

Governmental Unit Signatures:

Name of Primary Government

By Chuck Travis, Mayor

Mayor / Chairperson: Type or print name and title

Signature of Mayor/Chairperson of governing board

Date

By N/A

Chair of Audit Committee - Type or print name

N/A

\*\*

Signature of Audit Committee Chairperson

Date N/A

\*\* If Governmental Unit has no audit committee, mark this section "N/A"

Town of Cornelius, NC

PRE-AUDIT CERTIFICATE: Required by G.S. 159-28

(a)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act. Additionally, the following date is the date this audit contract was approved by the governing body.

By Julie Niswonger, Finance Director

Primary Governmental Unit Finance Officer:

Type or print name

Primary Government Finance Officer Signature

Date

(Pre-audit Certificate must be dated.)

jniswonger@cornelius.org

Email Address of Finance Officer

Date Primary Government Governing Body  
Approved Audit Contract - G.S. 159-34(a )

Contract to Audit Accounts (cont.)

Town of Cornelius, NC

Primary Governmental Unit

N/A

Discretely Presented Component Units (DPCU) if applicable

**\*\* This page to only be completed by Discretely Presented Component Units \*\***

N/A

**FEES**

Year-end bookkeeping assistance – [For audits subject to Government Auditing Standards, this is limited to bookkeeping services permitted by revised Independence Standards] N/A

**Audit**

N/A

**Preparation of the annual financial Statements**

N/A

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees above. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee.

**The 75% cap for interim invoice approval for this audit contract is \$** N/A

**\*\* NA if there is to be no interim billing**

*Communication regarding audit contract requests for modification or official approvals will be sent to the email addresses provided in the spaces below.*

**DPCU Governmental Unit Signatures:**

N/A

Name of Discretely Presented Component Unit

By N/A

**DPCU Board Chairperson:** Type or print name and title

N/A

Signature of Chairperson of DPCU governing board

Date N/A

By N/A

**Chair of Audit Committee** - Type or print name

N/A

**\*\***

Signature of Audit Committee Chairperson

Date N/A

**\*\* If Governmental Unit has no audit committee, mark this section "N/A"**

**PRE-AUDIT CERTIFICATE: Required by G.S. 159-28 (a)**

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act. Additionally, the following date is the date this audit contract was approved by the governing body.

By N/A

**DPCU Finance Officer:**

Type or print name

N/A

**DPCU Finance Officer Signature**

**Date**

*(Pre-audit Certificate must be dated.)*

N/A

**Email Address of Finance Officer**

**Date DPCU Governing Body Approved Audit Contract - G.S. 159-34(a)**

N/A

**Steps to Completing the Audit Contract**

1. Complete the Header Information – **NEW: If a DPCU is subject to the audit requirements as detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not issued for the DPCU and is to be included in the Primary Government's audit, the DPCU must be named with the parent government on this Audit contract. The Board chairman of the DPCU also must sign the Audit contract.**
2. Item No. 1 – Complete the period covered by the audit
3. Item No. 6 – Fill in the audit due date. For Governmental Unit (s), the contract due date can be no later than 4 months after the end of the fiscal year, even though amended contracts may not be required until a later date.
4. Item No. 8 – If the process for invoice approval instructions changed, the Auditor should make sure he and his administrative staff are familiar with the current process. Instructions for each process can be found at the following link. <https://www.nctreasurer.com/sl原因/Pages/Audit-Forms-and-Resources.aspx>
5. Item No. 9 – **NEW: Please note that the fee section has been moved to the signature pages, Pages 5 & 6.**
6. Item No. 16 – **NEW: It is now expected that an engagement letter will be attached to the contract. Has the engagement letter been attached to the contract submitted to the SLGFD?**
  - a. Do the terms and fees specified in the engagement letter agree with the Audit contract? *“In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract will control.”*
  - b. Does the engagement letter contain an indemnification clause? **The audit contract will not be approved if there is an indemnification clause – refer to LGC Memo # 986.**
7. Complete the fee section for BOTH the Primary Government and the DPCU (if applicable) on the signature pages, please note:
  - The cap on interim payments is 75% of the current audit fee for services rendered if the contracted fee amount is a fixed amount. If any part of the fee is variable, interim payments are limited to 75% of the prior year's total audit fee. If the contract fee is partially variable, we will compare the authorized interim payment on the contract to 75% of last year's actual approved total audit fee amount according to our records. There is a report of audit fees paid by each governmental unit on our web site: <https://www.nctreasurer.com/sl原因/Pages/Non-Audit-Services-and-Audit-Fees.aspx> - Auditors and Audit Fees.  
Please call or email Darrus Cofield at 919-814-4299 [darrus.cofield@nctreasurer.com](mailto:darrus.cofield@nctreasurer.com) if you have any questions about the fees on this list.
  - For variable fees for services, are the hourly rates or other rates clearly stated in detail? If issued separately in an addendum, has the separate page been acknowledged in writing by the Governmental Unit?

Discretely Presented Component Units (DPCU) if applicable

- For fees for services that are a combination of fixed and variable fees, are the services to be provided for the fixed portion of the fee clearly stated? Are the hourly rates or other rates clearly stated for the variable portion of the fee? (Note: See previous bullet point regarding variable fees.)

- If there is to be no interim billing, please indicate N/A instead of leaving the line blank.

8. Signature Area – There are now 2 Signature Pages: one for the Primary Government and one for the DPCU. Send the page(s) that are applicable to your Unit of Government. Make sure all signatures have been obtained, and properly dated. **The contract must be approved by Governing Boards pursuant to G.S. 159-34(a).** NEW - If this contract includes auditing a DPCU that is a Public Authority under the Local Government Budget and Fiscal Control Act it must be named in this Audit contract and the Board chairperson of the DPCU **must also sign** the Audit contract in the area indicated. If the DPCU has a separate Audit, a separate Audit contract is required for the DPCU.
9. Please place the date the Unit's Governing Board and the DPCU's governing Board (if applicable) approved the audit contract in the space provided.
  - a. Please make sure that you provide email addresses for the audit firm and finance officer as these will be used to communicate official approval of the contract.
  - b. Has the pre-audit certificate for the Primary Government (and the DPCU if applicable) been signed and dated by the appropriate party?
  - c. Has the name and title of the Mayor or Chairperson of the Unit's Governing Board and the DPCU's Chairperson (if applicable) been typed or printed on the contract and has he/she signed in the correct area directly under the Auditor's signature?
10. If the Auditor is performing an audit under the yellow book or single audit rules, has year-end bookkeeping assistance been limited to those areas permitted under the revised GAO Independence Standards? Although not required, we encourage Governmental Units and Auditors to disclose the nature of these services in the contract or an engagement letter. Fees for these services should be shown in the space indicated on the applicable signature page(s) of the contract.
11. Has the most recently issued peer review report for the audit firm been included with the contract? This is required if the audit firm has received a new peer review report that has not yet been forwarded to us. The audit firm is only required to send the most current Peer Review report to us once – not multiple times.
12. After all the signatures have been obtained and the contract is complete, please convert the contract and all other supporting documentation to be submitted for approval into a PDF file. Peer Review Reports should be submitted in a separate PDF file. These documents should be submitted using the most current submission process which can be obtained at the NC Treasurer's web site – <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>.
13. NEW: If an audit is unable to be completed by the due date, an Amended Contract should be completed and signed by the unit and auditor, using the new "Amended LGC-205" form (Rev. 2015). The written explanation for the delay is now included on the contract itself to complete, and must be signed by the original parties to the contract.



**Koonce, Wooten & Haywood, LLP**  
CERTIFIED PUBLIC ACCOUNTANTS

## SYSTEM REVIEW REPORT

To the Partners of Martin Starnes & Associates, CPAs, P.A.  
and the Peer Review Committee of the North Carolina Association  
of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Martin Starnes & Associates, CPAs, P.A. (the firm) in effect for the year ended December 31, 2014. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary).

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Martin Starnes & Associates, CPAs, P.A. in effect for the year ended December 31, 2014, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Martin Starnes & Associates, CPAs, P.A. has received a peer review rating of *pass*.

*Koonce, Wooten & Haywood, LLP*

Koonce, Wooten & Haywood, LLP

May 21, 2015

**Raleigh**

4060 Barrett Drive  
Post Office Box 17806  
Raleigh, North Carolina 27619

919 782 9265  
919 783 8937 FAX

**Durham**

3511 Shannon Road  
Suite 100  
Durham, North Carolina 27707

919 354 2584  
919 489 8183 FAX

**Pittsboro**

10 Sanford Road  
Post Office Box 1399  
Pittsboro, North Carolina 27312

919 542 6000  
919 542 5764 FAX

# MARTIN ♦ STARNES

## & ASSOCIATES, CPAs, P.A.

*"A Professional Association of Certified Public Accountants and Management Consultants"*

February 20, 2017

Julie Niswonger  
Town of Cornelius  
21445 Catawba Avenue  
Cornelius, NC 28031

You have requested that we audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Cornelius, NC, as of June 30, 2017, and for the year then ended, and the related notes to the financial statements, which collectively comprise the Town of Cornelius' basic financial statements as listed in the table of contents.

In addition, we will audit the entity's compliance over major federal and State award programs for the period ended June 30, 2017. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the entity's major federal and State award programs.

Accounting principles generally accepted in the United States of America require that certain supplementary information, such as Management's Discussion and Analysis, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by accounting principles generally accepted in the United States of America. This RSI will be subjected to certain limited procedures but will not be audited:

- Management's Discussion and Analysis
- Law Enforcement Officers' Special Separation Allowance schedules
- Other Post-Employment Benefits schedules
- Local Government Employees' Retirement System's schedules

Supplementary information other than RSI will accompany the Town of Cornelius' basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- Combining and individual fund financial statements
- Budgetary schedules
- Other schedules
- Schedule of Expenditures of Federal and State Awards

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information:

- Introductory section
- Statistical tables

### **Schedule of Expenditures of Federal and State Awards**

We will subject the Schedule of Expenditures of Federal and State Awards to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on whether the Schedule of Expenditures of Federal and State Awards is presented fairly in all material respects in relation to the financial statements as a whole.

### **Data Collection Form**

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, Schedule of Expenditures of Federal and State Awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the Federal Audit Clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the Federal Audit Clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the *earlier* of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

## **Audit of the Financial Statements**

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act. Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts, tests of the physical existence of inventories, the direct confirmation of cash, investments, and certain other assets and liabilities by correspondence with creditors and financial institutions. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance (whether caused by errors, fraudulent financial reporting, misappropriation of assets, detected abuse, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective and *Government Auditing Standards* does not require auditors to detect abuse.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Our responsibility as auditors is, of course, limited to the period covered by our audit and does not extend to any other periods.

We will issue a written report upon completion of our audit of the Town of Cornelius' basic financial statements. Our report will be addressed to the governing body of the Town of Cornelius. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

## **Audit of Major Program Compliance**

Our audit of the Town of Cornelius' major federal and State award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; the Uniform Guidance, and the State Single Audit Implementation Act, and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance and the State Single Audit Implementation Act and other procedures we consider necessary to enable us to express such an opinion on major federal and State award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance and the State Single Audit Implementation Act require that we also plan and perform the audit to obtain reasonable assurance about whether the entity has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal and State award programs. Our procedures will consist of determining major federal and State programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of those procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance and the State Single Audit Implementation Act.

Also, as required by the Uniform Guidance and the State Single Audit Implementation Act, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the entity's major federal and State award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the entity's major federal and State award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

## **Management's Responsibilities**

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements;
3. For safeguarding assets;
4. For identifying all federal and State awards expended during the period including federal awards and funding increments received prior to December 26, 2014, and those received in accordance with the Uniform Guidance generally received after December 26, 2014;
5. For preparing the Schedule of Expenditures of Federal and State Awards (including notes and noncash assistance received) in accordance with the Uniform Guidance and State Single Audit Implementation Act requirements;
6. For the design, implementation, and maintenance of internal control over compliance;
7. For identifying and ensuring that the entity complies with laws, regulations, grants, and contracts applicable to its activities and its federal and State award programs and implementing systems

designed to achieve compliance with applicable laws, regulations, grants and contracts applicable to activities and its federal and State award programs;

8. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objective of the audit, including whether related recommendations have been implemented;
9. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
10. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
11. For submitting the reporting package and data collection form to the appropriate parties;
12. For making the auditor aware of any significant vendor/contractor relationships where the vendor/contractor is responsible for program compliance;
13. To provide us with:
  - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal and State award programs, such as records, documentation, and other matters;
  - b. Additional information that we may request from management for the purpose of the audit; and
  - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
14. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole; and
15. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets; and
16. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility (a) for the preparation of the supplementary information in accordance with the applicable criteria, (b) to provide us with the appropriate written representations regarding supplementary information, (c) to include our report on the supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information, and (d) to present the supplementary information with the audited financial statements, or if the supplementary information will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

We will provide copies of our reports to the Town of Cornelius; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

With regard to using the auditor's report, you understand that you must obtain our prior written consent to reproduce or use our report in bond offering official statements or other documents.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

## **Fees**

Marcie Spivey is the engagement partner for the audit services specified in this letter. Her responsibilities include supervising Martin Starnes & Associates, CPAs, P.A.'s services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report. To ensure that our independence is not impaired under the AICPA Code of Professional Conduct, you agree to inform the engagement partner before entering into any substantive employment discussions with any of our personnel.

Our fees for these services are stated in the Contract to Audit Accounts. Our invoices for these fees will be rendered in four installments as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for non-payment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our reports. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination.

We will notify you immediately of any circumstances we encounter that could significantly affect this initial fee estimate. Whenever possible, we will attempt to use the Town of Cornelius' personnel to assist in the preparation of schedules and analyses of accounts. This effort could substantially reduce our time requirements and facilitate the timely conclusion of the audit.

We want our clients to receive the maximum value for our professional services and to perceive that our fees are reasonable and fair. In working to provide you with such value, we find there are certain circumstances that can cause us to perform work in excess of that contemplated in our fee estimate.

Following are some of the more common reasons for potential supplemental billings:

### *Changing Laws and Regulations*

There are many governmental and rule-making boards that regularly add or change their requirements. Although we attempt to plan our work to anticipate the requirements that will affect our engagement, there are times when this is not possible. We will discuss these situations with you at the earliest possible time in order to make the necessary adjustments and amendments in our engagement.

### *Incorrect Accounting Methods or Errors in Client Records*

We base our fee estimates on the expectation that client accounting records are in order so that our work can be completed using our standard testing and accounting procedures. However, should we find numerous errors, incomplete records, or the application of incorrect accounting methods, we will have to perform additional work to make the corrections and reflect those changes in the financial statements.

### *Failure to Prepare for the Engagement*

In an effort to minimize your fees, we assign you the responsibility for the preparation of schedules and documents needed for the engagement. We also discuss matters such as availability of your key personnel, deadlines, and work space. If your personnel are unable, for whatever reasons, to provide these items as previously agreed upon, it might substantially increase the work we must do to complete the engagement within the scheduled time.

### *Starting and Stopping Our Work*

If we must withdraw our staff because of the condition of the client's records, or the failure to provide agreed upon items within the established timeline for the engagement, we will not be able to perform our work in a timely, efficient manner, as established by our engagement plan. This will result in additional fees, as we must reschedule our personnel and incur additional start-up costs.

The contract fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our fees for such services range from \$75-\$300 per hour.

### **Other Matters**

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

The audit documentation for this engagement is the property of Martin Starnes & Associates, CPAs, P.A. and constitutes confidential information. However, we may be requested to make certain audit documentation available to the Local Government Commission, Office of the State Auditor, federal or State agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Martin Starnes & Associates, CPAs, P.A.'s personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

Further, we will be available during the year to consult with you on financial management and accounting matters of a routine nature. With respect to any nonattest services we perform, the Town of Cornelius' management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

*Government Auditing Standards* require that we document an assessment of the skills, knowledge, and experience of management, should we participate in any form of preparation of the basic financial statements and related schedules or disclosures as these actions are deemed a non-audit service.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

We agree to retain our audit documentation or work papers for a period of at least five years from the date of our report.

You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

At the conclusion of our audit engagement, we will communicate to management and those charged with governance the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm to the Contract to Audit Accounts for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements and compliance over major federal and State award programs, including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Respectfully,

*Martin Starnes & Associates, CPAs, P.A.*

Martin Starnes & Associates, CPAs, P.A.  
Hickory, North Carolina

RESPONSE:

This letter correctly sets forth the understanding of the Town of Cornelius.

Acknowledged and agreed on behalf of the Town of Cornelius by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: March 6, 2017

To: Mayor and Board of Commissioners

From: Anthony Roberts, Town Manager


**Action Requested:**

Consider approving a Resolution requesting Rep. John Bradford sponsor a House Bill to support annexing all ETJ properties west of Old Statesville into the Town limits, eliminating "doughnuts" throughout the Town's jurisdiction.

**Manager's Recommendation:**

Approve a Resolution of support.

**ATTACHMENTS:**

| Name:  | Description:          | Type:             |
|--|-----------------------|-------------------|
|  <a href="#">RES-Identifying areas to be annexed 2017.doc</a> | Resolution of Support | Resolution Letter |

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**A RESOLUTION IN SUPPORT OF A LOCAL BILL TO ANNEX  
CERTAIN PROPERTIES INTO THE TOWN LIMITS OF CORNELIUS**

**WHEREAS**, there are numerous properties west of Old Statesville Road within our Extra-Territorial Jurisdiction (ETJ) that create “doughnut holes” in the Town limits; and

**WHEREAS**, the unincorporated property owners currently pay Mecklenburg County, a separate Police Service District Tax of \$0.2114 per \$100 of assessed value, and a Cornelius Fire District Tax of \$0.057 per \$100 of assessed value for a total of \$0.2684; and

**WHEREAS**, the Town of Cornelius currently provides all town services for \$0.255 per \$100 of assessed value; and

**WHEREAS**, the Board of Commissioners desire to annex all ETJ properties west of Old Statesville Road into the Town limits to better serve the residents with police service and fire protection.

**THEREFORE BE IT RESOLVED** by the Board of Commissioners of the Town of Cornelius does hereby respectfully request Representative John Bradford sponsor a local bill, such as SB6 sponsored by Senator Tarte, to annex various properties into the Town limits of Cornelius

Adopted this 6th day of March, 2017.

\_\_\_\_\_  
Charles L. Travis, III, Mayor

ATTEST:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

APPROVED TO FORM:

\_\_\_\_\_  
Karen Wolter, Town Attorney