



**July 11, 2022**  
 Stallings Government Center  
 321 Stallings Road  
 Stallings, NC 28104  
 704-821-8557  
[www.stallingsnc.org](http://www.stallingsnc.org)

## Town Council Agenda

	Time	Item	Presenter	Action Requested/Next Step
	7:00 p.m.	<b>Invocation</b> <b>Pledge of Allegiance</b> <b>Call the Meeting to Order</b>	Wyatt Dunn, Mayor	NA
	7:05 p.m.	<b>Public Comment</b>	Wyatt Dunn, Mayor	NA
	7:15 p.m.	<b>Citizen Award for Litter Pick-Up</b>	Chief Dennis Franks	Citizen recognition
1.	7:20p.m.	<b>Consent Agenda</b> <b>A. Minutes from the following meetings:</b> <b>(1) 06-13-2022</b> <b>(2) 06-27-2022</b> <b>B. Centralina Regional Council Charter</b> <b>Change Resolution</b> <b>C. Amended Budget Ordinance 1 –</b> <b>Annual Audit Fees</b> <b>D. Amended Budget Ordinance 2 –</b> <b>Police Department Community Service</b> <b>Programs.</b> <b>E. Stallings Park Grass Cutting</b>	Wyatt Dunn, Mayor	Approve/Modify Consent Agenda
2.	7:17 p.m.	<b>Reports</b> <b>A. Report from Mayor</b> <b>B. Report from Council Members/Town</b> <b>Committees</b> <b>C. Report from Town Manager/Town</b> <b>Departments</b>	Council and Staff	NA
3.	7:45 p.m.	<b>Agenda Approval</b>	Wyatt Dunn, Mayor	Approve/modify agenda
4.	7:50 p.m.	<b>Annexation 56 – Castlebridge Lane</b> <b>A. Open Public Hearing</b> <b>B. Public Hearing</b> <b>C. Close Public Hearing</b> <b>D. Council Discussion</b> <b>E. Council Vote</b>	Erinn Nichols, Assist. Town Mgr./Town Clerk	Approve/Deny Annexation

5.	7:55 p.m.	<b>TX22.05.01 - Article 8, Table 8.1</b> A. Table of Uses to allow certain uses with supplemental regulations S (10.1-36) in the Vehicle Service and Repair (VSR) zoning district 1) Open Public Hearing 2) Public Hearing 3) Close Public Hearing 4) Council Discussion 5) Council Vote B. Statement of Consistency and Reasonableness	Max Hsiang, Planning Director	Approve/Deny text amendment and statement
6.	8:05 p.m.	<b>TX22.06.01</b> A. Amended Duties and Responsibilities of the Planning Board 1) Open Public Hearing 2) Public Hearing 3) Close Public Hearing 4) Council Discussion 5) Council Vote B. Statement of Consistency and Reasonableness	Max Hsiang, Planning Director	Approve/Deny text amendment and statement
7.	8:15 p.m.	<b>Ordinance Amendment to the Town Code of Ordinances Section 1. §32.10(A)</b> <i>Amended Duties and Responsibilities of the Planning Board</i>	Max Hsiang, Planning Director	Approve/Deny ordinance amendment
8.	8:20 p.m.	<b>Condemnation Ordinance</b> <i>400 Short Street</i>	Ruben Ortiz, Code Enforcement Ofc.	Approve/Deny ordinance
9.	8:35 p.m.	<b>Union County's Transit Study</b> <i>Exploring Possible Funding Efforts</i>	Alex Sewell, Town Manager  Max Hsiang, Planning Director	Discussion and possible action
10.	8:50 p.m.	<b>Vickery Greenway Bid Results</b>	Alex Sewell, Town Manager	Approve/Deny vendor for project
11.	9:05 p.m.	<b>Lawyers Road Roundabout Sidewalk</b>	Alex Sewell, Town Manager	Approve/Deny sidewalk construction
12.	9:20 p.m.	<b>Stallings Park Oktoberfest Event (Hall)</b>	Council Member Graham Hall	Discussion and possible action
13.	9:30 p.m.	<b>Adjournment</b>	Wyatt Dunn, Mayor	Motion to adjourn

**MINUTES OF TOWN COUNCIL MEETING  
OF THE  
TOWN OF STALLINGS, NORTH CAROLINA**

The Town Council of the Town of Stallings met for its regular meeting on June 13, 2022, at 7:00 p.m. at the Stallings Government Center, 321 Stallings Road, Stallings, North Carolina.

Those present were: Mayor Wyatt Dunn; Mayor Pro Tempore David Scholl; Council Members Steven Ayers, Heather Grooms, Graham Hall and Brad Richardson.

Those absent were: Council Member Taylor-Rae Drake.

Staff present were: Alex Sewell, Town Manager; Erinn Nichols, Assistant Town Manager/Town Clerk; Chief Dennis Franks; Max Hsiang, Planning Director; Patrick Blaszyk, Planning Technician; Marsha Gross, Finance Officer; Brian Price, Public Works Director; Eunice McSwain, Parks and Recreation Director; and Melanie Cox, Town Attorney.

Invocation, Pledge of Allegiance and meeting called to order

Mayor Wyatt Dunn welcomed everyone to the meeting and Council Member Ayers delivered the invocation. Mayor Dunn then led the Pledge of Allegiance and called the meeting to order.

Public Comments

Joyce Rupert, 3026 Fresia Place, stated that she was not happy with the state of the Stallings Park bathrooms, that the gates were left open, no signs stating that the park was closed, the lights were not working, and there was no Stallings Road crossing into the park.

*Council Member Hall arrived at 7:03 p.m.*

1. Approval of Consent Agenda Items

- A. Minutes of the following meetings:
  - (1) 05-09-2022 – special
  - (2) 05-09-2022
  - (3) 05-16-2022 – special
  - (4) 05-23-2022
  - (5) 05-23-2022 - closed
- B. Union County Tax Assessors Office - Stallings Tax Collection Interlocal Amendment (Collection Fee Reduction)
- C. Amended Budget Ordinance 5 for FY2021-2022

Council Member Scholl made the motion to approve the Consent Agenda Items as presented. The motion was seconded by Council Member Richardson which passed unanimously by Council. Amended Budget Ordinance 5 – FY2021-2022 is attached to these minutes and therefore incorporated herein.

2. Reports

A. Report from the Mayor

Mayor Dunn reported that he enjoyed visiting the Farmers Market and it was nice to see the produce. He also stated that he was communicating with NCDOT about the barrels piling up in front of the new hospital in Stallings.

B. Reports from Council Members/Town Committees

Council Members Graham, Grooms, and Ayers had no reports.

Council Member Scholl stated that the music in the park was good. He also enjoyed a ride along with Stallings Police Department.

Council Member Richardson had no report.

C. Report from Town Manager/Town Departments

Town Manager Sewell reported the following:

- Eunice McSwain was introduced as the new Parks and Recreation Director.
- Planner Director Hsiang introduced the new Planning Technician Patrick Blaszyk.

3. Agenda Approval

Mayor Dunn requested that Agenda Item 8.A., *Stallings Elementary School Safety Discussion*, be added to the Agenda.

Council Member Scholl made the motion to adopt the Agenda with the above addition as requested by the Mayor. The motion received Council's unanimous support after a second from Council Member Richardson.

4. FY2022-23 Proposed Budget

Mayor Dunn opened the public hearing. Town Manager Sewell presented the budget (general and stormwater) to the Council. No one was present to speak to the budget. The Mayor then closed the public hearing.

Council Member Hall made the motion to approve the FY2022-23 Budget as presented. The motion was seconded by Council Member Grooms and approved unanimously by the Council. The FY2022-23 Budget is attached to these minutes and therefore incorporated herein.

5. Streetscape Design Direction

Planning Director Hsiang reminded the Council of the Streetscape Design Proposal and the potential timeline for utilizing DFI for the plan. Mr. Hsiang presentation is attached to these minutes and therefore incorporated herein.

Council Member Richardson made the motion to approved finalizing the streetscape concept plan and have staff work with DFI for final implementation. Council Member Scholl seconded the motion to which Council approved unanimously.

6. Annexation 56 – Castlebridge; Resolution to Direct the Clerk to Investigate

Assistant Town Manager Nichols explained the Town had received a petition for annexation and this item would be the first step in the annexation process. Council Member Hall made a motion to approve the Resolution to Direct the Clerk to Investigate Annexation 56. The motion was passed unanimously by the Council after a second from Council Member Ayers. Resolution to Direct the Clerk to Investigate Annexation 56 is attached to these minutes and therefore incorporated herein.

7. Resolution Approving Bid Advertisements By Solely Electronic Means

Assistant Town Manager Nichols reminded the Council it requested for staff to bring a resolution to advertise all bid advertisements electronically as allowed by NC General Statutes. Council Member Scholl made the motion approving the Resolution Approving Bid Advertisements By Solely Electronic Means. The motion was passed unanimously after a second from Council Member Ayers. The Resolution Approving Bid Advertisements By Solely Electronic Means is attached to these minutes and therefore incorporated herein.

8. Citizen Survey Feedback

Assistant Town Manager reminded Council that the Town had teamed up with Western Carolina University's (WCU) Public Policy Institute, Department of Political Science and Public Affairs to complete a citizen survey for the Town of Stallings free of charge to the Town. A draft Citizen Survey was submitted to the Council for feedback.

Council held consensus to send feedback on the draft to Ms. Nichols.

8.A. Stallings Elementary School Safety Discussion

Chief Franks explained that he, Town Manager Sewell, the Stallings Elementary Principal and Union County Public School Safety representative had met to discuss school safety from Stallings Elementary and a potential fulltime Stallings Elementary School Resource Officer (SRO).

It was noted that at the present time, Union County Sheriff's Office managed the majority of schools SROs. Stallings Elementary would like to see a fulltime SRO and wanted it to be a Stallings Police Officer. Council held consensus to pass along its thoughts on the topic to Chief Franks.

9. Adjournment

Council Member Richardson moved to adjourn the meeting, seconded by Council Member Ayers, and the motion received unanimous support. The meeting was adjourned at 8:34 p.m.

Approved on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

\_\_\_\_\_  
Erinn E. Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Cox Law Firm, PLLC

**MINUTES OF THE TOWN COUNCIL MEETING  
OF THE  
TOWN OF STALLINGS, NORTH CAROLINA**

The Town Council of the Town of Stallings met for a meeting on June 27, 2022, at 7:00 p.m. via Zoom, a virtual electronic platform, due to the North Carolina declared state of emergency because of COVID-19. Public could access the meeting via phone (1-646-558-8656), web link (<https://us06web.zoom.us/j/88434721622?pwd=REkrOWtW0XJjYmtvM282c3RUNUo0QT09>) or the Zoom app (Meeting ID: 884 3472 1622; Password: 865350).

Those present and visible on camera were: Mayor Pro Tempore David Scholl; Council Members Steven Ayers, Taylor-Rae Drake, Graham Hall.

Those absent were: Mayor Wyatt Dunn; Council Members Heather Grooms, and Brad Richardson.

Staff present were: Alex Sewell, Town Manager; Erinn Nichols, Assistant Town Manager/Town Clerk; Chief Dennis Franks; Max Hsiang, Planning Director; Patrick Blaszyk, Planning Technician; Marsha Gross, Finance Officer; Brian Price, Public Works Director; and Eunice McSwain, Parks and Recreation Director.

Invocation, Pledge of Allegiance and meeting called to order

Mayor Pro Tem Scholl welcomed everyone to the meeting and Council Member Ayers gave the invocation. Mayor Pro Tem Scholl then led the Pledge of Allegiance and called the meeting to order.

Public Comments

No one joined the meeting who wished to give public comment.

1. Consent Agenda

- A. 2021-22 Completed Project Funds Close Out Ordinances
- B. ARPA Financial Policies
  - (1) Cost Principles Policy
  - (2) Eligible Use Policy
- C. Audit Contract for FY2022

Council Member Ayers made the motion to approve the Consent Agenda as presented and Council Member Hall seconded the motion. The motion was passed unanimously by the Council. The 2021-22 Completed Project Funds Close Out Ordinances and ARPA Financial Policies are attached to these minutes and therefore incorporated herein.

2. Agenda Approval

Council Member Hall made the motion to approve the Agenda as presented. The motion was seconded by Council Member Ayers and passed unanimously by Council.

3. Street Maintenance

A. Pavement Project List and Bidding

Interim Engineer Bo Conerly recapped the street maintenance over the past year. Mr. Conerly's memo regarding street maintenance is attached to these minutes and therefore incorporated herein.

Council Hall made the motion to move forward with the advertising of the 2022-2023 Town of Stallings Pavement Maintenance project for the pavement segments presented with the memo presented. Council Member Ayers seconded the motion to which Council approved unanimously.

B. Small Pavement Remediation Projects

Interim Town Engineer Conerly explained the need for smaller repairs arose periodically (i.e., potholes) that required equipment beyond what is available to the Public Works Department. There was a need to address these smaller repairs in an expeditious manner instead of waiting until the annual pavement management project began. The Town could solicit bids through an informal process and award the contract to the lowest responsive, responsible bidder even if only one (1) contractor submitted a bid. Council Member Scholl made the motion to move forward with the solicitation and award of bid for small pavement repair projects with a total project budget not to exceed \$70,000 which included a scenario where only one contractor submits a bid. The motion was passed unanimously by Council after a second from Council Member Hall.

4. Annexation 56 – Castlebridge Lane

A. Certificate of Sufficiency

Assistant Town Manager Nichols presented the Council with the Certificate of Sufficiency for Annexation 56 – Castlebridge Lane. This Certificate of Sufficiency for Annexation 56 – Castlebridge Lane is attached to these minutes and therefore incorporated herein.

B. Resolution Fixing the Public Hearing Date

Council Member Ayers made the motion to adopt the Resolution Fixing the Public Hearing Date for Annexation 56 – Castlebridge Lane. The motion was passed unanimously by Council after a second

from Council Member Hall. The Resolution Fixing the Public Hearing Date for Annexation 56 – Castlebridge Lane is attached to these minutes and therefore incorporated herein.

5. Adjournment

Council Member Hall moved to adjourn the meeting, seconded by Council Member Drake, and the motion received unanimous support. The meeting was adjourned at approximately 7:39 p.m.

Approved on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

\_\_\_\_\_  
Erinn E. Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Cox Law Firm, PLLC



**A RESOLUTION RATIFYING THE UPDATED CHARTER OF  
CENTRALINA REGIONAL COUNCIL**

**WHEREAS**, Stallings is a member of Centralina Regional Council (Centralina), a council of governments serving the needs of the nine-county region that includes Anson, Cabarrus, Gaston, Lincoln, Iredell, Mecklenburg, Rowan, Stanly and Union counties; and

**WHEREAS**, on February 9, 2022, the Centralina Board of Delegates adopted a resolution amending the organization’s Charter to add language prohibiting private entities from benefitting from or having an interest in the organization’s earnings or assets; and

**WHEREAS**, each member government must endorse the Charter as Centralina’s governing document.

**NOW, THEREFORE, BE IT RESOLVED** by the Stallings Town Council that the Town of Stallings hereby ratifies the amended Centralina Regional Council Charter.

This the 11<sup>th</sup> day of July, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Erinn Nichols, Town Clerk

\_\_\_\_\_  
Cox Law Firm, PLLC



# MEMO

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To: Mayor and Council  
From: Marsha Gross, Finance Officer  
Via: Alex Sewell, Town Manager  
Date: 07-5-2022  
RE: **FY2022-2023 Budget Amendment No. 1 - Audit Contract**

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The Town received the contract from Potter & Company, P.A. for the FY2022 audit which was approved by Council at the June 27, 2022 Council meeting. As previously discussed, the FY2023 budget currently has \$26,000 included for the audit and the new contract amount is \$32,000. The contract amount includes the audit and financial statement preparation, but we will have additional hourly charges for any single audits that need to be completed on grant funds in excess of \$500,000. These hourly charges are estimated to be no more than \$2,500 to \$3,000. This increase is largely due to grant requirements, GASB changes and firm inflationary costs.

Management is recommending an increase of \$10,000 to the budget which would include the additional base fee of \$6,000 plus another \$4,000 to cover single audits and any other items that may arise throughout the year that would require the firm's assistance.

Attached is a copy FY2022-2023 Budget Amendment No. 1 which makes this change.

**Recommended Action:** Management is requesting the approval of FY2022-2023 Budget Amendment No. 1 for the upcoming financial statement audit with Potter & Company P.A.

**AMENDED BUDGET ORDINANCE – NO. 1**  
**TOWN OF STALLINGS, NORTH CAROLINA**  
**FISCAL YEAR 2022-2023**

BE IT ORDAINED by the Town Council of the Town of Stallings, North Carolina, that the estimated expenditures for the fiscal year 2022-2023 are hereby amended as set forth below:

Category	Account Number	Budgeted Amount	Amend to the Following	Net Increase or (Decrease)
<b>Revenue:</b>				
<b>Appropriated General Fund Balance</b>	10-99-3991-600	\$ 208,200	\$ 218,200	\$ 10,000
<b>Expense:</b>				
General Government Audit/Accounting Expense	10-00-4120-018	\$ 1,408,500	\$ 1,418,500	\$ 10,000

*Explanation: amendment is to appropriate funds from the General Fund Unrestricted Fund Balance to the General Government Department for additional annual audit fees.*

This Amendment to the Budget Ordinance shall be effective upon adoption.

The said Budget Ordinance, except as amended, shall remain in full force and effect.

ADOPTED this the 11th day of July, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

\_\_\_\_\_  
Erinn Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Melanie Cox, Town Attorney, Cox Law Firm, PLLC



# MEMO

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To: Mayor and Council  
From: Marsha Gross, Finance Officer  
Via: Alex Sewell, Town Manager  
Date: 07-5-2022  
RE: **FY2022-2023 Budget Amendment No. 2 - PD Fundraising**

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During FY2022, the Town's Police Department received contributions totaling \$9,200 from various sources for use for the department's community services efforts. These efforts included a back-to-school drive as well as other programs designed to help the children of our community.

The total expense related to the FY2022 efforts was \$2,301.03 with an unused balance of \$6,878.97. This amount was folded into unrestricted fund balance at the end of FY2022 and will need to be appropriated in order to use during FY2023.

Attached is FY2022-2023 Budget Amendment No. 2 which makes these fund available in FY2023.

**Recommended Action:** Management is requesting the approval of FY2022-2023 Budget Amendment No. 2 for upcoming Police Department Community Services efforts.

**AMENDED BUDGET ORDINANCE – NO. 2**

**TOWN OF STALLINGS, NORTH CAROLINA**

**FISCAL YEAR 2022-2023**

BE IT ORDAINED by the Town Council of the Town of Stallings, North Carolina, that the estimated expenditures for the fiscal year 2022-2023 are hereby amended as set forth below:

<b>Category</b>	<b>Account Number</b>	<b>Budgeted Amount</b>	<b>Amend to the Following</b>	<b>Net Increase or (Decrease)</b>
<b>Revenue:</b>				
<b>Appropriated General Fund Balance</b>	10-99-3991-600	\$ 218,200	\$ 225,079	\$ 6,879
<b>Expense:</b>				
Police Department Fundraising Expense	10-10-4420-047	\$ 3,500,200	\$ 3,507,079	\$ 6,879

*Explanation: Amendment is to appropriate funds from General Fund Balance previously donated to the town to the Public Safety Department for use for the Police Department's community service programs.*

This Amendment to the Budget Ordinance shall be effective upon adoption.

The said Budget Ordinance, except as amended, shall remain in full force and effect.

ADOPTED this the 11th day of July, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

\_\_\_\_\_  
Erinn Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Melanie Cox, Town Attorney, Cox Law Firm, PLLC



# MEMO

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To: Stallings Town Council  
Via: Alex Sewell, Town Manager  
From: Eunice McSwain, Parks & Recreation Director  
Date: July 6<sup>th</sup>, 2022  
RE: **Landscape Maintenance | Stallings Municipal Park**

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## **Background/History:**

The Parks and Recreation Department is seeking services from Smith Grounds Management LLC to contract out landscape maintenance in Stallings Municipal Park from July 2022 to June 30, 2023. Smith Grounds Management currently oversees Blair Mill Park & the Town Hall campus. We have worked with Smith Grounds on an accountability system to ensure the work gets done in an efficient manner up to our standard.

## **Scope of Work:**

SMITH GROUNDS MANAGEMENT, LLC will furnish all Horticultural Supervision, Labor, Equipment, Materials and Transportation necessary to maintain the landscape per the Practical Specifications for Contract Landscape Management and the General Terms and Conditions. This work would include:

### ***TURF MANAGEMENT***

Mowing, Trimming, Edging, Turf Fertilization/Herbicide/Fungicide, Insect & Disease Control, Lime, Aeration & overseeding

### ***TREE & SHRUB CARE***

Fertilization, Weed Control, Insect and Disease Control, Tree & Shrub Pruning, Leaf Removal

The Town would pay twelve equal installments of \$2,485.00 (**\$29,820 annual**) due at the first of each month.

## **Requested Actions:**

- 1) Approval to proceed with adding Stallings Municipal Park to the current Smith Grounds Management LLC contract to take care of Stallings Municipal Park Landscape maintenance now till June 30<sup>th</sup>, 2023.



## Ordinance to Extend the Corporate Limits of the Town of Stallings, North Carolina

**WHEREAS**, the Town Council has been petitioned under N.C.G.S. 160A-31 to annex the area described below; and

**WHEREAS**, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

**WHEREAS**, the Town Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at the Government Center of the Town of Stallings at 7:00 p.m. on July 11, 2022, after due notice by the Enquirer-Journal on June 28, 2022; and

**WHEREAS**, the Town Council finds the petition meetings the requirements of N.C.G.S. 160A-31;

**NOW, THEREFORE, BE IT ORDAINED** be the Town Council of the Town of Stallings, North Carolina that:

Section 1. By virtue of the authority granted by N.C.G.S. 160A-31, the area proposed for voluntary annexation encompasses parcel number 07099176 - Castlebridge Lane is hereby annexed and made part of the Town of Stallings effective immediately:

**Parcel number: 07099176; 15,652 sq. ft.**

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND LOCATED THEREON LYING, BEING SITUATED IN VANCE TOWNSHIP, UNION COUNTY, NORTH CAROLINA, SAID TRACT BEING LOT 84 OF MADISON RIDGE SUBDIVISION AS SHOWN IN PLAT CABINET F, FILE 349 RECORDED IN THE UNION COUNTY REGISTER OF DEEDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EASTERLY MARGIN OF CASTLEBRIDGE LANE (50' PUBLIC RIGHT-OF-WAY) BEING THE COMMON CORNER OF LOT 83 AND LOT 84, MADISON RIDGE SUBDIVISION AS SHOWN IN PLAT CABINET F, FILE 349 RECORDED IN SAID REGISTRY; AND RUNS THENCE WITH THE EASTERLY MARGIN OF CASTLEBRIDGE LANE N 13-46-37 E 163.00 FEET TO A POINT ON THE SOUTHERLY MARGIN OF CAMERON COMMONS WAY (50' PUBLIC RIGHT-OF-WAY); THENCE WITH THE SOUTHERLY MARGIN OF CAMERON COMMONS WAY THE FOLLOWING TWO COURSES AND DISTANCES; 1) WITH A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, ARC LENGTH OF 31.42 FEET AND

CHORD: N 58-46-37 E 28.28 FEET TO A POINT, 2) S 76-13-23 E 66.00 FEET TO A POINT BEING THE NORTHWESTERLY CORNER OF LOT 85, MADISON RIDGE SUBDIVISION AS SHOWN IN PLAT CABINET F, FILE 349 RECORDED IN SAID REGISTRY; THENCE WITH THE WESTERLY LINE OF LOT 85 S 13-46-37 W 183.00 FEET TO A POINT BEING THE SOUTHWESTERLY CORNER OF LOT 85 AND ON THE NORTHERLY LINE OF AFOREMENTIONED LOT 83; THENCE WITH THE NORTHERLY LINE OF LOT 83 N 76-13-23 W 86.00 FEET TO THE POINT AND PLACE OF BEGINNING CONTAINING 15,652 SQUARE FEET AS SHOWN IN PLAT CABINET F, FILE 349 RECORDED IN SAID REGISTRY ON NOVEMBER 17, 1998.

Section 2. Immediately, the above described territory and its citizens and property shall be subject to all debts, laws, and ordinances and regulations in force in the Town of Stallings and shall be entitled to the same privileges and benefits as other parts of the Town of Stallings. Said territory shall be subject to municipal taxes according to N.C.G.S. 160A-58.10.

Section 3. The Mayor of the Town of Stallings shall cause to be recorded in the office of the Register of Deeds Union County, and in the office of the Secretary of State at Raleigh, North Carolina, as accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Union County Board of Elections, as required by N.C.G.S 163-288.1.

Adopted this the 11<sup>th</sup> day of July, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

Attest:

\_\_\_\_\_  
Erinn E. Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Cox Law Firm, PLLC



# MEMO

To: Town Council  
From: Max Hsiang, Planning Director  
Date: 7/11/2022  
Re: TX22.05.01

## Request:

Edgar Gary and Teresa Moya-Mendez submitted a Text Amendment application to amend Article 8, Table 8.1 – Table of Uses to allow the following uses with supplemental regulations S(10.1-36) in the Vehicle Service and Repair (VSR) zoning district:

- Floor Covering and/or Upholstery Sales
- Market Showroom

S(10.1-36) means that it is an allowed use with supplemental regulations.

## 10.1-36 Outdoor Storage.

(A.) Applicable to any Zoning Districts where Table 8.1, appearing in Article 8 of this Ordinance includes the Outdoor Storage of materials associated with a use listed with additional standards.

(B.) Exclusions include licensed motor vehicles titled to a resident and/or occupant of the property, provided such vehicles are not in violation of the provisions of Section 10.1-22 of this Article.

(C.) Performance Standards for Outdoor Storage:

(1.) In all zoning districts where storage of bulk materials, inventory, customer-owned property, and/or equipment is stored outdoors more than three (3) consecutive calendar days the site shall:

(a.) consist of a minimum of five (5) acres;

(b.) provide for the screening and buffering along all site perimeter of the area designated for Outdoor Storage on an approved site plan with a Type D Buffer, except where the site abuts an adjacent Zoning District requiring the provision of a Buffer Yard in accordance with Table 11.1 appearing in Article 11 of this Ordinance.

## VSR District:

The VSR district consists of 8 parcels in the Town.

The Vehicle Service and Repair District (VSR) is established to provide locations for specific uses that, due to their unique characteristics and importance to the community and the traveling public, require different criteria and specifications than typical commercial development.



**Future Land Use:**

The future land use designation for the areas where VSR zoning is located calls for Suburban Commercial Center.

Suburban shopping centers serve the daily needs of surrounding residential neighborhoods. They typically locate near high-volume roads and key intersections, and are designed to be accessible primarily by automobile. Buildings are set back from the road, typically behind large surface parking lots, with little connectivity between adjacent businesses. Common types of suburban centers include smaller, multi-tenant strip centers, big-box stores, small outparcels with a drive-through, and large shopping malls.

**Primary Land Uses**

- General Commercial Services
- Sit down or Fast Food Restaurant
- Multi-tenant Commercial
- Big Box Commercial
- Bank
- Hotel
- Professional Office

**Staff Recommendations:**

Staff recommends approval.

Staff believes that adding Floor Covering and/or Upholstery Sales and Market Showroom is consistent with the Comprehensive Land Use Plan.



# TEXT AMENDMENT APPLICATION

315 Stallings Road  
Stallings, NC 28104  
704-821-8557  
Fax 704-821-6841

Date Filed: 5/10/22 Fee Paid: MAY 10 2022

Fee: \$500

### Applicant Information

Applicant Name: Edgar Gary & Tereasa Moya-Mendez

Address: 645 Stallings Rd.

Phone: 704-517-9269 Email: tmoyame@gmail.com

Proposed Text Amendment - Include Article and Section Numbers

Table 8.1

Add Line 86 Floor Covering, Drapery and/or Upholstery  
S10.1-36 Sales

Add Line 127 Market Showroom S10.1-36

Please include a statement addressing the following:

- 1) In order to maintain sound, stable and desirable development within the planning jurisdiction of the Town of Stallings, it is intended that this ordinance be amended to:
  - (a.) To correct manifest error in the ordinance;
  - (b.) Because of changed or changing conditions in a particular neighborhood or community as a whole; and/or
  - (c.) To promote and forward the purposes of the adopted Stallings Land Use Plan.
- 2) It is the further intent of this ordinance that if amended it will promote the general health, safety, and welfare of the citizens of Stallings.

Completed applications must be filed with the Planning Office no later than the first business day of the month in order to be placed on the Planning Board and Town Council agendas. For additional information or assistance, call the Town of Stallings Planning Office at (704) 821-8557.

Applicant Signature: Tereasa Moya-Mendez Date: May 10, 2022



## Statement of Consistency and Reasonableness

ZONING AMENDMENT: TX22.05.01

REQUEST: Amend the Stallings Development Ordinance to amend Article 8, Table 8.1 – Table of Uses to allow Floor Covering and/or Upholstery and Market Showroom with supplemental regulations S (10.1-36) in the Vehicle Service and Repair (VSR) zoning district.

**WHEREAS**, The Town of Stallings Town Council, hereafter referred to as the “Town Council”, adopted the Stallings Comprehensive Land Use Plan on November 27, 2017; and

**WHEREAS**, the Town Council finds it necessary to adopt a new land development ordinance to maintain consistency with the Comprehensive Land Use Plan; and

**WHEREAS**, the Town Council finds it necessary to revise the Unified Development Ordinance to comply with state law found in NCGS § 160D.

**THEREFORE**, The Town Council hereby recommends that the proposed text amendment is consistent and reasonable with the Comprehensive Land Use Plan adopted on November 27, 2017, based on the goals and objectives set forth in the document of promoting quality development and consistency with all state-mandated land-use regulations established through NCGS § 160D. The Town Council recommends to **APPROVE** the proposed amendment and stated that the Town Council finds and determines that the text amendment is consistent and reasonable with the key guiding principles, goals, and objectives of the Comprehensive Land Use Plan for the following reasons:

- 1) The proposed amendment is consistent with the Comprehensive Land Use Plan.

**Recommended** this the \_\_\_ day of \_\_\_\_\_, 2022.

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Mayor

Attest:

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Clerk



# MEMO

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To: Town Council  
From: Max Hsiang, Planning Director  
Date: 7/11/2022  
Re: TX22.06.01

---

**AN ORDINANCE TO AMEND §§4.2-1 THROUGH 4.2-5 TO CLARIFY AND UPDATE THE DUTIES AND RESPONSIBILITIES OF THE STALLINGS PLANNING BOARD AND TO HARMONIZE THE DEVELOPMENT ORDINANCE WITH §32.10 OF THE TOWN CODE**

**Section 1. §4.2, and all of the subsections of that Section, are rewritten to read as follows:**

4.2 Planning Board

4.2-1 Authority. There is hereby created a planning agency, pursuant to G.S. § 160D-301 to be known as the Town of Stallings Planning Board.

4.2-2 Membership and Officers.

(A.) Membership and Term. The Planning Board shall consist of seven (7) members and two (2) alternates. ~~four~~ All members shall be appointed for three (3) year terms and there are no term limits.

"(B.) Alternates. The Town Council may, in its discretion, appoint alternate members to serve on the Planning Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, simultaneously, and in the same manner as regular members. Each alternate member, while attending any regular or special meetings of the Board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member."

(C.) Officers. The members of the Planning Board shall elect a Chairman and Vice-Chairman during the Board's first regular meeting of a new calendar year or at the next regular meeting following a vacancy in the office of Chairman or Vice-Chairman.

4.2-3 Purpose and Objectives. In accordance with state law the Planning Board may, at the request of the Town Council :

(A.) Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;

(B.) Facilitate and coordinate citizen engagement and participation in the planning process;

(C.) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(D.) Advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. § 160D-604;

(E.) Exercise any functions in the administration and enforcement of various means of carrying out plans that the Council may direct; and

(F.) Perform any other duties that the Council may direct.

4.2-4 Conflict of Interest. Members of the Planning Board shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to G.S. § 160D or the Stallings Development Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Planning Board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

4.2-5 Rules of Procedure. Rules of Procedure that are consistent with the provisions of G.S. § 160D may be adopted by the Town Council for the Planning Board. In the absence of action by the Town Council, the Planning Board is authorized under G.S. § 160D-308 to adopt their own rules of procedure. A copy of any adopted rules of procedures shall be maintained by the Town Clerk or Development Administrator and posted on the Town's website. The Planning Board shall keep minutes of its proceeding.

4.2-6 Oath of Office. All members of the Planning Board shall, before entering their duties, qualify by an oath of office as required by G.S. § 160A-61.

**Section 2. This ordinance shall be effective upon adoption.**



## Statement of Consistency and Reasonableness

**ZONING AMENDMENT:** TX22.06.01

**REQUEST:** Amend the Stallings Development Ordinance to amend Article 8, Table 8.1 – Table of Uses to allow Floor Covering and/or Upholstery and Market Showroom with supplemental regulations S (10.1-36) in the Vehicle Service and Repair (VSR) zoning district.

**WHEREAS**, The Town of Stallings Town Council, hereafter referred to as the “Town Council”, adopted the Stallings Comprehensive Land Use Plan on November 27, 2017; and

**WHEREAS**, the Town Council finds it necessary to adopt a new land development ordinance to maintain consistency with the Comprehensive Land Use Plan; and

**WHEREAS**, the Town Council finds it necessary to revise the Unified Development Ordinance to comply with state law found in NCGS § 160D.

**THEREFORE**, The Town Council hereby recommends that the proposed text amendment is consistent and reasonable with the Comprehensive Land Use Plan adopted on November 27, 2017, based on the goals and objectives set forth in the document of promoting quality development and consistency with all state-mandated land-use regulations established through NCGS § 160D. The Town Council recommends to **APPROVE** the proposed amendment and stated that the Town Council finds and determines that the text amendment is consistent and reasonable with the key guiding principles, goals, and objectives of the Comprehensive Land Use Plan for the following reasons:

- 1) This recommendation is a simple, efficient, and practical way to address the inconsistency between the SDO and other adopted Town ordinances, policies, and practices.

**Recommended** this the \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk



# MEMO

To: Town Council  
From: Max Hsiang, Planning Director  
Date: 06-27-2022  
Re: Code of Ordinances 32.10 Amendment

---

An ordinance to amend and update the duties and responsibilities of the Planning Board was brought before the Town Council on February 28, 2022.

The Town Council directed Planning Board to review and comment on the Code of Ordinance 32.10 Amendment before Council consideration.

**Section 1. §32.10(A) is rewritten to read:**

§ 32.10 BOARDS ~~REQUIRED~~ ~~DEFINED~~ BY STATUTE.

(A) *Planning Board.*

- (1) *Membership.* Seven members and two alternate members.
- (2) *Membership term.* Three years; no term limit.
- (3) *Officers.* The members of the Planning Board shall elect a Chairman and Vice-Chairman during the Board's first regular meeting of a new calendar year or at the next regular meeting following the vacancy of the Chairman or Vice-Chairman.
- (4) *Purpose/objective.* In accordance with state law, the Planning Board ~~shall~~ **may, at the request of the Town Council:**
  - ~~(a) Make studies of the area within its jurisdiction and surrounding areas;~~
  - ~~(b) Determine objectives to be sought in the development of the study area;~~
  - ~~(c) Prepare and adopt plans for achieving these objectives;~~
  - (a) Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;
  - (b) Facilitate and coordinate citizen engagement and participation in the planning process;
  - (c) ~~(d)~~ Develop and recommend policies, ordinances, **development regulations**, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

- (d) ~~(e)~~ Advise the Council concerning the ~~use and amendment of means for carrying out implementation of~~ plans, including but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604;
- (e) ~~(f)~~ Exercise any functions in the administration and enforcement of various means for carrying out plans that the Council may direct;
- (f) ~~(g)~~ Perform any other related duties that the Council may direct.

**Section 2.** The provisions of §32.10(A) shall control over any inconsistent provisions contained in the Stallings Development Ordinance.

**Section 3.** This Ordinance is effective upon adoption.



## AN ORDINANCE TO UPDATE THE DUTIES AND RESPONSIBILITIES OF THE STALLINGS PLANNING BOARD TO MATCH THE PROVISIONS OF CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, The North Carolina Legislature revised the planning and zoning statute of North Carolina and enacted a new Chapter 160D of the General Statutes, and

WHEREAS, the duties and responsibilities of local planning boards were revised and updated by the adoption of Chapter 160D, and

WHEREAS, the Town of Stallings desires to update the Town Code of Ordinances establishing the Planning Board to better match the revised provisions of state law.

NOW THEREFORE, the Town Council of the Town of Stallings hereby amends the Town Code of Ordinances as follows:

### **Section 1. §32.10(A) is rewritten to read:**

§ 32.10 BOARDS ~~REQUIRED~~ DEFINED BY STATUTE.

(A) *Planning Board.*

(1) *Membership.* Seven members and two alternate members.

(2) *Membership term.* Three years; no term limit.

(3) *Officers.* The members of the Planning Board shall elect a Chairman and Vice-Chairman during the Board's first regular meeting of a new calendar year or at the next regular meeting following the vacancy of the Chairman or Vice-Chairman.

(4) *Purpose/objective.* In accordance with state law, the Planning Board ~~shall~~ **may, at the request of the Town Council:**

~~(a) Make studies of the area within its jurisdiction and surrounding areas;~~

~~(b) Determine objectives to be sought in the development of the study area;~~

~~(c) Prepare and adopt plans for achieving these objectives;~~

(a) Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;

(b) Facilitate and coordinate citizen engagement and participation in the planning process;

(c) ~~(d)~~ Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(d) ~~(e)~~ Advise the Council concerning the use and amendment of means for carrying out implementation of plans, including but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604;

(e) ~~(f)~~ Exercise any functions in the administration and enforcement of various means for carrying out plans that the Council may direct;

(f) ~~(g)~~ Perform any other related duties that the Council may direct.

**Section 2.** The provisions of §32.10(A) shall control over any inconsistent provisions contained in the Stallings Development Ordinance.

**Section 3.** This Ordinance is effective upon adoption.

ADOPTED this the 11<sup>th</sup> day of July, 2022.

\_\_\_\_\_  
Wyatt Dunn, Mayor

Attest:

\_\_\_\_\_  
Erinn Nichols, Town Clerk

Approved as to form:

\_\_\_\_\_  
Cox Law Firm, PLLC



# MEMO

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To: Town Council  
From: Ruben Ortiz, CEO  
Date: July 11, 2022  
Re: Adoption of Ordinance for Demo of 400 Short Street, Matthews, 28104

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All procedural steps have been taken concerning enforcement of the minimum housing code on this property at 400 Short Street. The owner, Mr. Bryant, did not comply with orders given his circumstances. If passed, the ordinance will be recorded and posted on the property, and a copy will be sent to the owner. We will need to submit bids for demolition and asbestos abatement/testing once the ordinance has been passed. Please see the case history outline below, including the additional required steps needed.

#### Case history:

- 7/26/2021 - Inspection for minimum housing completed on this property. Elder Social Services (ESS) alerted them to the living conditions. The hearing was scheduled for August 30, 2021, at 2 p.m
- 7/27/2021 - Contact made with Mr. Charles Thompson from ESS, who went to check the conditions of the house and stated that Mr. Bryant could not return to the house based on the conditions found.
- 8/23/2021 - Notified by Mr. Charles Thompson (ESS) that MR. Bryant (Owner) was placed in adult care and would not be returning to the home.
- 8/23/2021 - Certified [7020 0640 0002 3268 8545] and Regular mail notification of hearing sent. The hearing was scheduled for August 30, 2021, at 3 p.m.
- 8/30/2021 - Hearing scheduled for 3 p.m. No one showed for the hearing.
- 8/31/2021 - Fact and Finding report sent a 60-day notice to Repair or demolished. DEADLINE November 5, 2021.
- 12/3/2021 - Letters were sent to all of the individual mortgage companies and others listed in the title search on 8/31/2021.
- 6/29/2022 - Drafted ordinance for demolition

#### Additional steps required:

- Town Council to adopt the ordinance to declare unfit and demolish
- Recording of ordinance
- Posting of the property being unfit
- Obtain asbestos report/abatement
- Obtains bids for demo
- Select demo contractor
- Supervise demo process
- Collect invoices for the demo, asbestos testing abatement, and consultant of N focus
- Record lien on the property

# 400 Short St, Parcel 07126076

## Minimum Housing Case



# 400 Short St – What brings us here today

- Based on information from the Stallings Police Department and complaints from neighboring properties an inspection was conducted on July 26, 2021, (Chapter 153, Minimum Housing). Exhibit “A” is in your packet.
- Hearing took place on August 30, 2021 at 2 p.m. No one showed for the hearing.
  - Findings of Fact and Order: repairing, altering, improving or vacating and demolishing the dilapidated structure by a date not later than November 1, 2021.
  - Lis pendens filed on August 25, 2021.
- In addition, based on the conditions of the house I contacted Union County Elder Social Services (ESS) to get them involved.
  - Mr. Bryant went to the hospital for surgery. After that surgery Mr. Bryant had fallen and broke his hip while at his house. Other medical issues continued to happen, and he was placed in the hospital and not released until a nursing care unit was found for him.
  - ESS placed Mr. Bryant in Adult Protected Services on August 23, 2021 and said he would not be returning to the house.
  - As of April 30, 2022, Mr. Bryant has been placed in a nursing home.
- Two dogs were also at the property during this process that were not being taken care of. Involved Union Control Animal Control. Both dogs were removed from the site on August 24, 2021.

# Cost to Repair/Renovate

- Not estimated – too many variables. Structural issues are noted throughout the house to include the foundation and exterior of the house
  - The estimate to repair is \$ 136,629.52
  - Costs to repair have many “unknown” prices
    - This figure does not include the foundation repair or associated HVAC system repairs. Many unknowns based on today’s cost to repair and other items like
- Rehab Inspection Check is enclosed in the packet



# Front Portacle

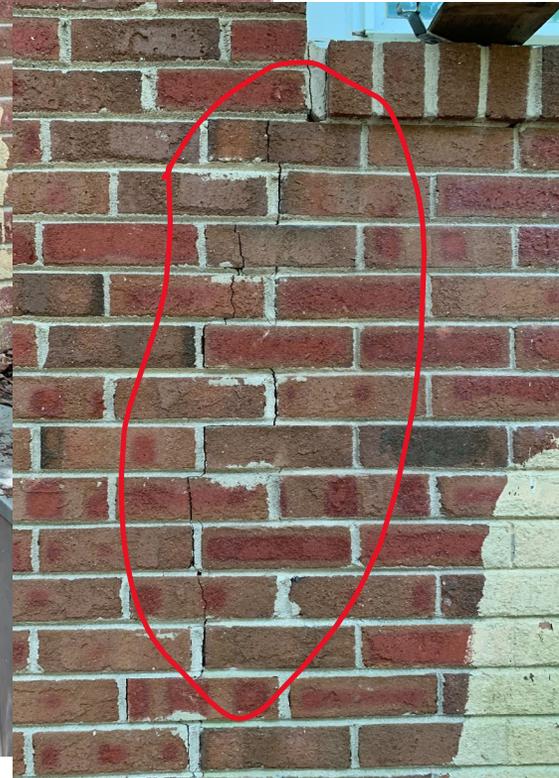


# Front porch

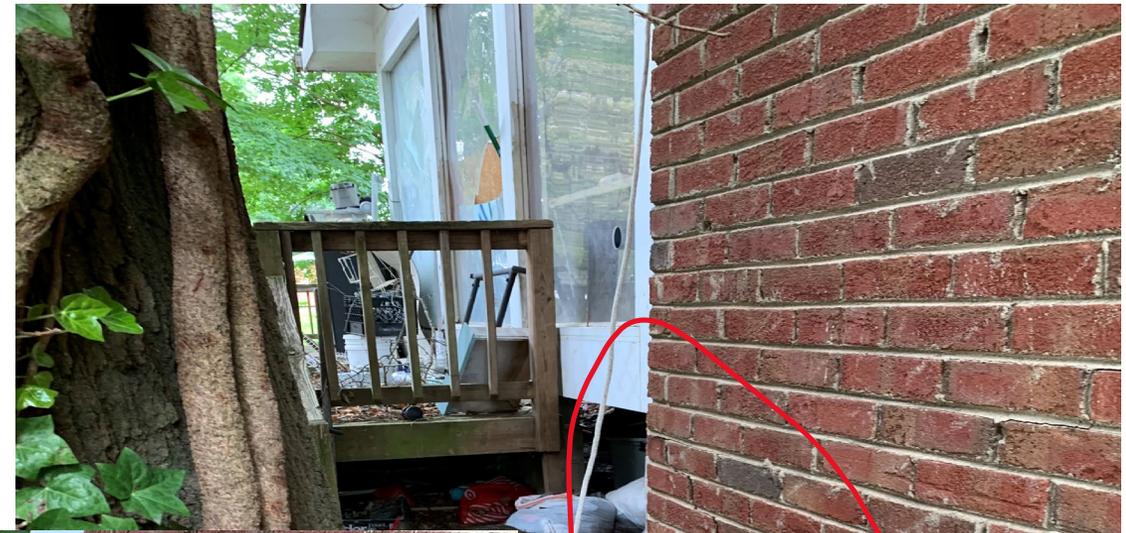
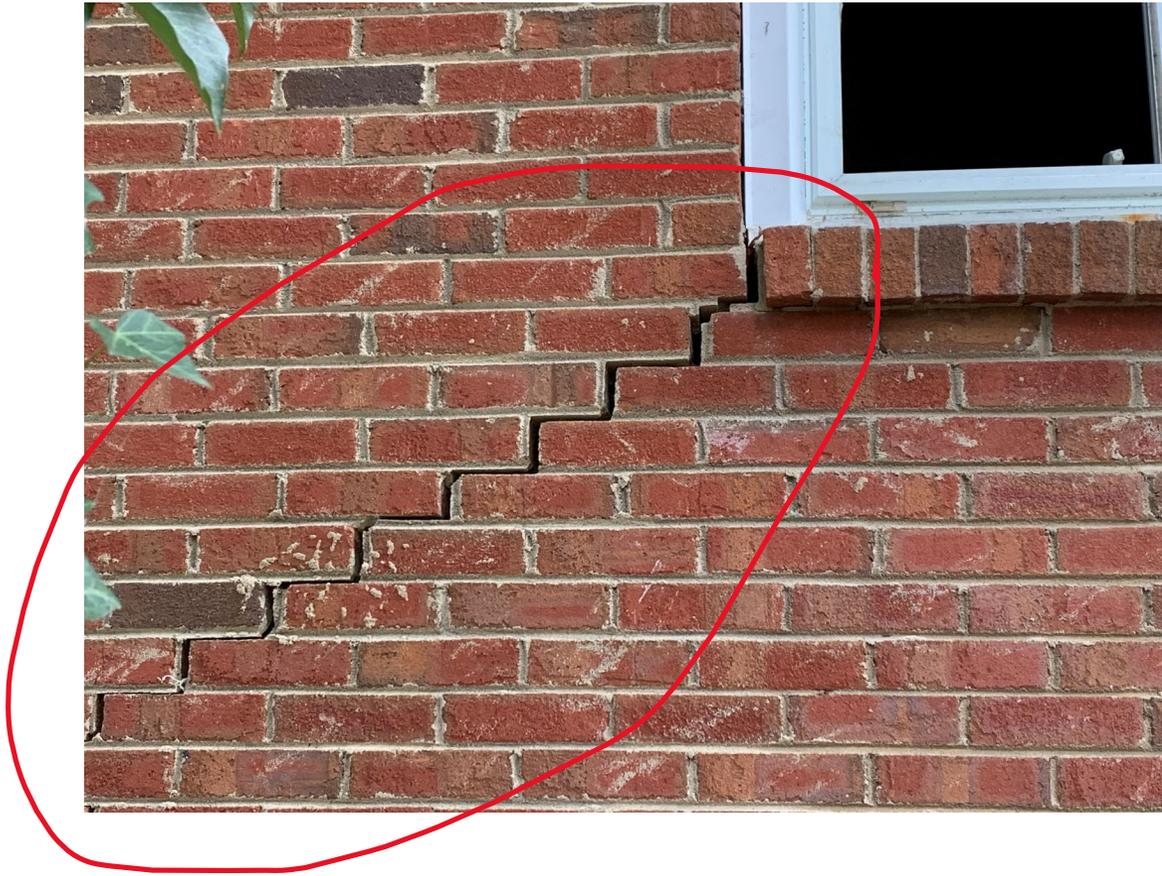




- AC Unit - nonfunctioning

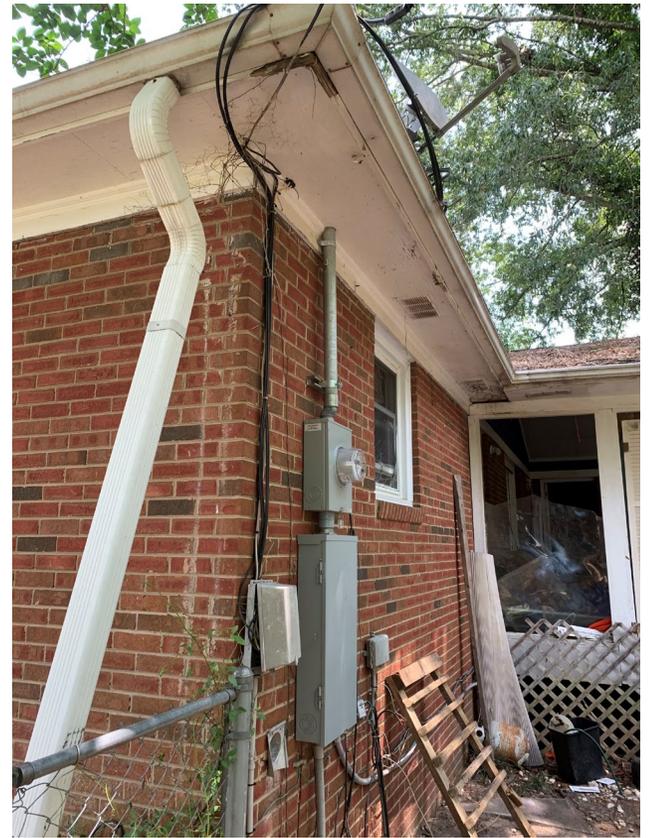


# Structural Exterior



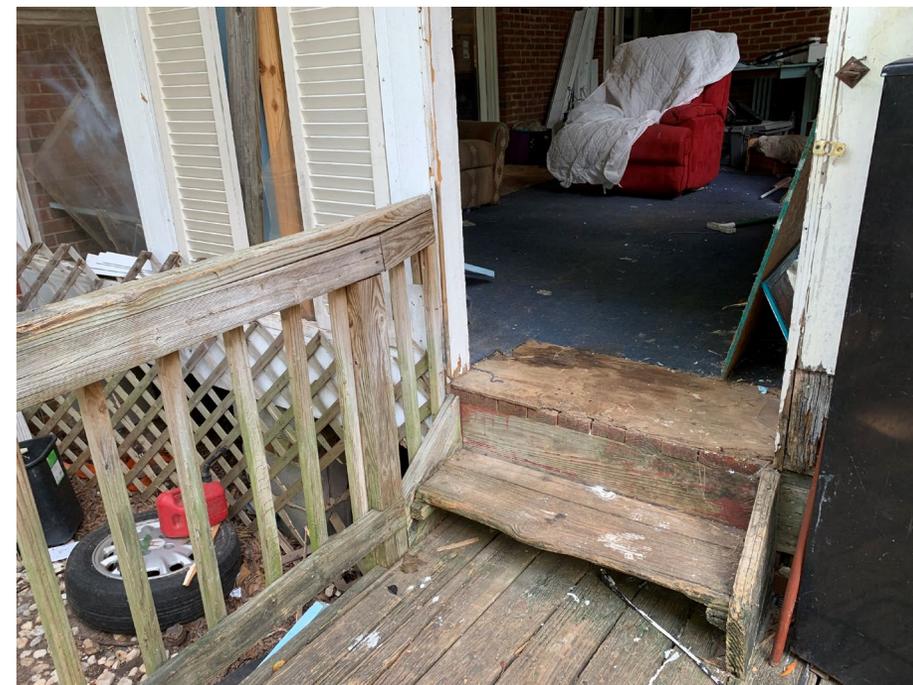








# Under the back porch

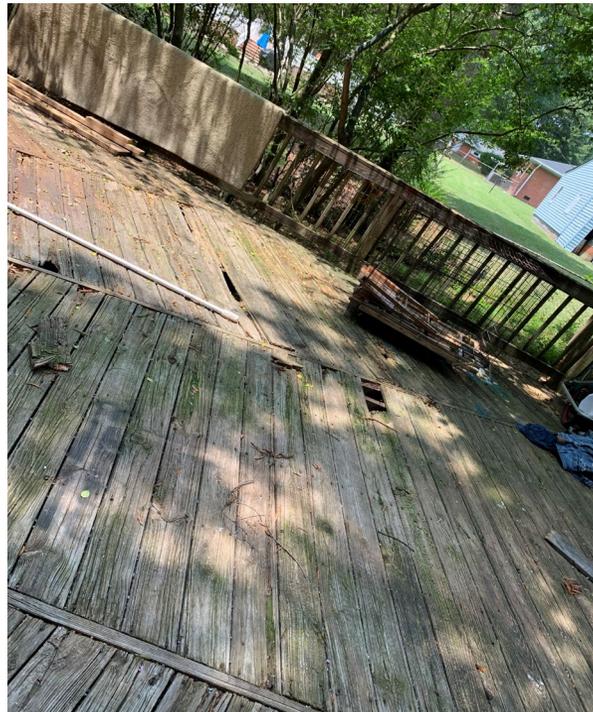


# Backroom/porch





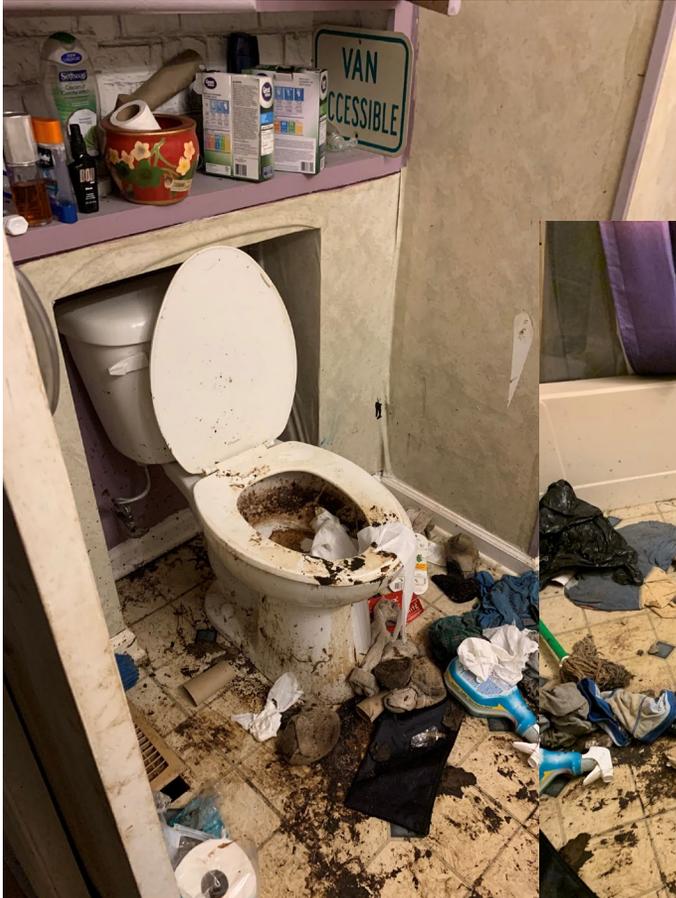
# Decking, Pool





# Interior

- Master Bedroom
- Main Bathroom

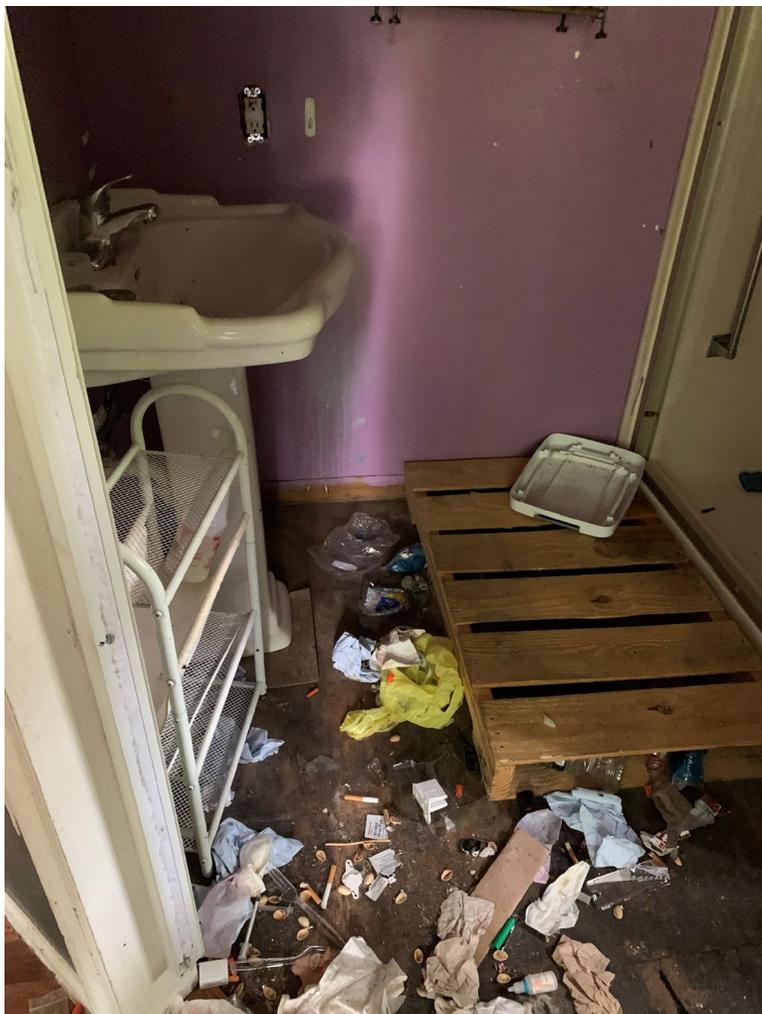




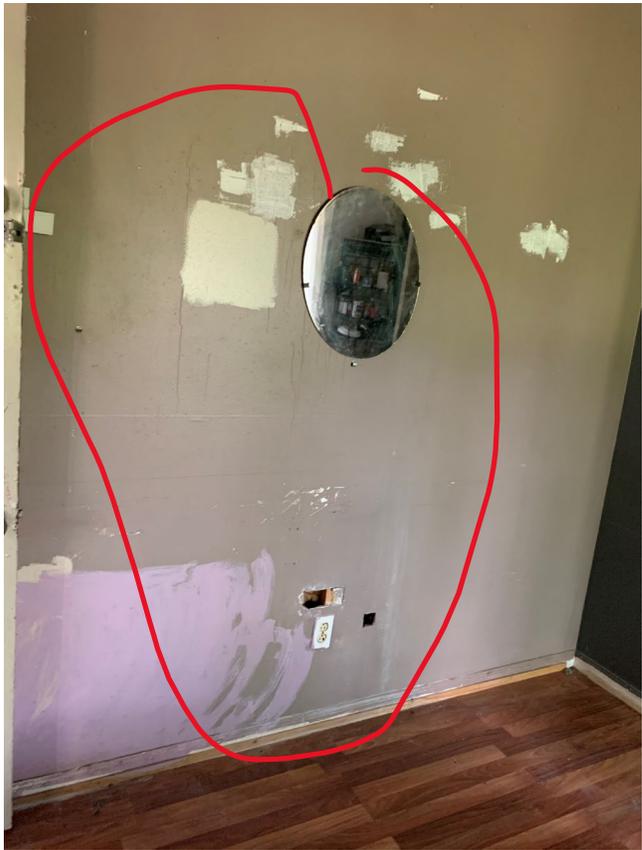
# 2<sup>nd</sup> bathroom



# 3rd bathroom







Interior



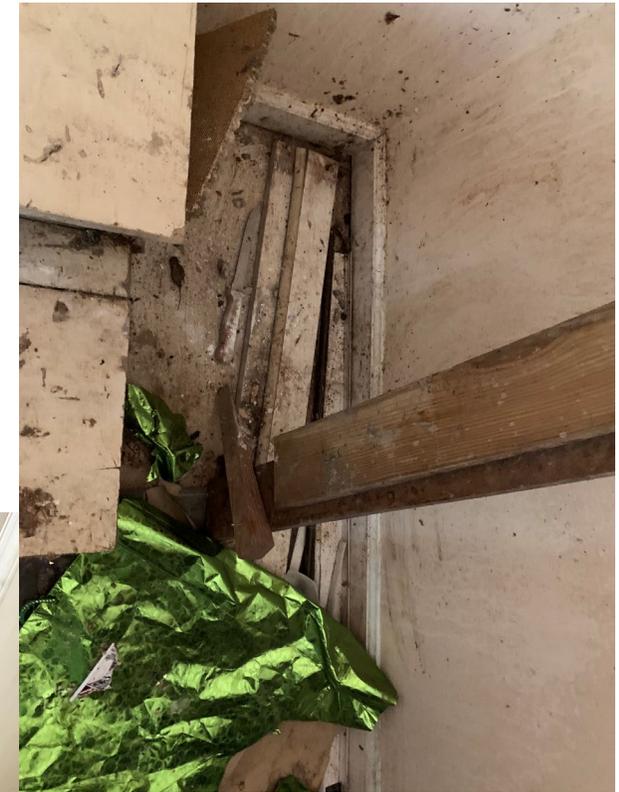
Laundry room





# Interior

- Den area





**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE DIRECTING THE PLANNING DIRECTOR TO DEMOLISH THE  
STRUCTURE LOCATED AT 400 SHORT ST,  
MATTHEWS, NORTH CAROLINA AS UNFIT FOR HUMAN HABITATION.**

WHEREAS, the Town Council of the Town of Stallings finds that the house and all accessory structures located at 400 Short St, Matthews, North Carolina, is unfit for human habitation under the Town of Stallings Minimum Housing Code, and that all of the provisions of the minimum housing code have been complied with by the Code Enforcement Officer as a condition of the adoption of this ordinance; and

WHEREAS, the repair, alteration, or improvement of said dwelling can be made only at a cost exceeding 50% of the value of dwelling, and accordingly, said dwelling should be demolished as directed by the Code Enforcement Officer; and

WHEREAS, the owner of said dwelling William M. Bryant Jr. has been given a reasonable opportunity to repair the dwelling to the standards of the North Carolina Building Code and Town of Stallings Code of Ordinances or to demolish said dwelling pursuant to an order issued by the Code Enforcement Officer on **August 30<sup>th</sup>, 2021** to demolish said building by **November 1<sup>st</sup>, 2021** and the owner and parties in interest having failed to comply with the order or to make sufficient repairs to bring said dwelling to the standards of the minimum housing code; and

WHEREAS, a notice to the general public was duly given notifying them of a public hearing to be held by the Town Council on **July 11<sup>th</sup>, 2022**, regarding said order for demolishing, and

WHEREAS, said public hearing was held on **July 11<sup>th</sup>, 2022**, and all person's present were given an opportunity to be heard on said proposed ordinance prior to any action being taken by the Town Council thereon; and

WHEREAS, the said dwelling was posted, notifying the owner, all parties in interest, and the general public of the public hearing; and

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Stallings, North Carolina, that:

1. This house and all accessory buildings located at 400 Short St, Matthews, North Carolina are declared unfit for human habitation.
2. The Code Enforcement Officer is hereby authorized to demolish the house and all accessory buildings located at **400 Short St, Matthews, North Carolina**, in accordance with the order of the Code Enforcement Officer to the owner and parties in interest dated **August 30<sup>th</sup>, 2021**.
3. The legal description of the above-named house as found in **Deed Book 763 at Pages 086-087** Union County Register of Deeds is as follows:

**Being all of Lot 34 of KINGSBERRY Subdivision as shown on a plat of survey recorded in Plat Book 6 at Page 62 in the Union County Registry, and being the same property conveyed to William Manley Bryant, Jr. by deed of Rebecca B. Woodruff and husband Thomas O. Woodruff, Jr., dated January 31st, 1995, and recorded in Deed Book 763, at page 086, Union County Registry.**

**Parcel Number: 07126076**

**Property address: 400 Short St, Matthews, NC 28104**

4. This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
5. This ordinance shall become effective on the **July 11<sup>th</sup>, 2022** and shall be recorded with the Union County Register of Deeds and **shall be indexed in the Grantor section in the name of William M. Bryant Jr.**, in accordance with G. S. 160D-1203(6).

This ordinance is to be in full force and effect from and after the **11<sup>th</sup> day of July 2022**.

TOWN OF STALLINGS

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

By: \_\_\_\_\_  
TOWN ATTORNEY

ATTEST:

\_\_\_\_\_  
TOWN CLERK

**Index in the Grantor section in the name of William M. Bryant Jr. in accordance with G. S. 160D-1203(6).**

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# MEMO

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To: Town Council  
From: Max Hsiang, Planning Director  
Date: 7/11/2022  
Re: Union County Monroe Rd/US 74 Corridor Transit Study Request

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**Purpose:**

Union County is requesting Stallings to share costs with the County and other municipalities for micro-transit and local circulator services in Stallings.

**Background:**

Union County currently provides two public transportation options:

- 1.) Human Services Agency Transportation (UCT) Demand-Response “Dial-a-Ride” services
- 2.) 74x/Union County Express bus service from Monroe and Indian Trail to Uptown Charlotte (Funded by Union County, operated by Charlotte Area Transit System (CATS)).

Union County recently completed a transit study due to increasing costs, decreasing ridership, and changes in demands for service. Union County contacted Stallings Planning staff requesting input on their Union County Transit study. They also contacted other municipalities in Union County about potential cost-sharing, but those discussions are preliminary.

**Brief Transit Study Report overview:**

- Out of 850 total survey responses, Stallings had around 20 respondents.
- This was a non-scientific survey.
- Demand- Response: 72% support keeping service the way it is
- Local Service-59% support an Uber/Lyft Microtransit service
- 80% feel a local circulator service (fixed route) could be useful
- Top Fixed Route desired locations: Shopping locations are #1 but also Downtown Monroe, Stallings Atrium Hospital, Charlotte, Downtown Matthews, and Downtown Indian Trail.
- 72% support building the light rail

Union County has inquired whether the Town would be willing to consider helping to fund the expansion of any micro-transit and local circulator services in Stallings. Union County indicated there is not a plan currently being implemented to bring the light rail into Union County, which is concerning given the Town Council’s previously strong support for bringing the light rail to Stallings. With that being said, additional transit opportunities could benefit Stallings residents.

**Next Steps:** Staff is seeking Council direction on the following questions:

- 1.) Whether the Town Council requests the County to prioritize planning and additional funding for the proposed light rail into Union County.
- 2.) Whether the Town Council is willing to consider contributing funding towards expanding microtransit and local circulator services in Stallings.

- a. If so, staff would suggest requesting the County develop a formal business evaluation proposal defining and evaluating the potential service expansion, including the following information:
  - i. The specific proposed service to be offered;
  - ii. Projected ridership data;
  - iii. Total funding;
  - iv. Cost for implementing a stop at the Atrium Hospital;
  - v. Cost for local circulator service for Stallings;
  - vi. How much funding does each municipality provide towards each particular service; and
  - vii. Alternative service options and why the proposed service is the most cost-effective.



# MEMO

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To: Town Council

From: Alex Sewell, Town Manager

Date: 7/6/22

RE: Vickery Greenway Segment – Bid Results & Potential Contract Award

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**Purpose:** This memorandum provides background information on the Vickery Greenway segment, shares bid results, and requests Council direction on potentially awarding a contract to the lowest responsive bidder and other related items.

**Background:**

- In the 2011 Stallings Citizen Survey, 90% of respondents indicated they would like to see more walking trails and greenways.
- The Town’s adopted Comprehensive Land Use Plan discusses greenways repeatedly (“greenway” is mentioned seventy-five times) and establishes several goals/strategies related to a Town greenway system.
- The developer of the Vickery subdivision dedicated property to the Town to be developed as a Town trail.
- The Town funded, developed, and adopted the CONNECT Stallings Recreation & Greenway Master Plan.
- The Town Council funded and authorized the development of construction documents for the Vickery Greenway section by Blair Mill Park. Subsequently, the Council authorized the letting the project.
- This designed greenway segment project includes the installation of approximately 1,900 linear feet of greenway trail along the North Fork Crooked Creek tributary. The 10’ wide asphalt trail incorporates several culvert crossings. The Scope of Work includes new electrical service and installation of a HAWK signalized pedestrian crossing at Stevens Mill Road along with any required traffic control. Landscape elements include landscaping, fencing, basic signage, and erosion control measures. Please note that there is an allowance to install landscaping as previously requested by the Vickery HOA leadership in a “Pinch Point” area of the greenway where the trail gets closer to the residential lots. The Town’s design firm recommended determining what landscaping is to be installed once the main portion of the project is complete to help better determine the area soil conditions and thus the appropriate vegetation type. Please note that the proposed greenway trail

does not go all the way to the property line to allow for space for the contractor to work and because the property line splits a drainage way. There is a greenway requirement in the approved development agreement project (Idlewild Mixed Use Development) in the adjoining property heading north towards the shopping center and the Town hopes to facilitate connecting these two together so that residents can walk from the shopping center area to Blair Mill Park and vice versa. The Town will seek to have the developer align its greenway trail with the proposed Vickery trail, but the Town may need to fund in the future a small connection between the two trails.

**Bid Results:** The Town held a bid opening on Friday, June 24, 2022. The Town received three bids and the bid tabulation is enclosed. The Town’s design firm (Destination by Design) has reviewed the bids and has advised that J.D. Goodrum Company, Inc. as the lowest responsive bidder with a base bid of \$517,199.85. The Town’s design firm has researched the lowest responsive bidder’s references who all felt the contractor would be able to execute the work laid out in the contract documents. The contractor has completed numerous greenway and park construction projects including the Romare Bearden Park in Uptown Charlotte beside the Charlotte Knights baseball facility, Kannapolis’ Irish Buffalo Creek Greenway, and the second and third phases of the Mecklenburg County Sportsplex in Matthews.

**Necessary Budget:** If the Town Council approves awarding the project, there would be additional costs that would need to be budgeted for in addition to the base bid. If Council seeks to move forward, the sections **highlighted in yellow** below would be staff’s recommendation:

<b><u>Expenditure Item</u></b>	<b><u>Cost/Estimate</u></b>
Base Bid	\$517,119.85
Alt. 1 - Thermoplastic Crosswalk	\$16,609.45
Alt. 2 - Gateway Signage	\$8,106.11
Vickery "Pinch Point" Landscaping Allowance	\$15,000
Contract Administration/Phase Services, Base Inspection, Geotech base test, As-Built Survey, ADA Cert.	\$36,000
Contingency/Misc. (15%)	Varied Based on Selection
Total Just Base Bid	\$653,337.83
Total Base Bid + Alt. 1	\$672,438.70
<b>Total Base Bid + Alt. 2</b>	<b>\$662,659.85</b>
Total Base Bid + Alt. 1 & 2	\$681,760.72
Contract Potential Award Amount	\$525,225.96

As indicated above, Council could eliminate alternative #2 (gateway signage) and the project could still move forward. All other expenditures are deemed essential to moving the project forward. Please note that the base project budget is based on nothing unexpected occurring. As we know, sometimes in construction the unexpected can occur which could potentially increase cost beyond the budgeted number. However, the project budget does include a 15% contingency to help deal with unforeseen circumstances. If costs exceed the contingency amounts during construction, staff will need to revisit the discussion with Council.

**Finances:** Enclosed is a memorandum from the Town's Finance Officer discussing the finances/impact of this project moving forward. The approved FY 22-23 Budget has \$550,000 for this project. If the recommended budget is set, the Town Council would need to approve an additional budget amendment for an additional \$112,660 to cover the difference between \$662,659.85 and \$550,000.

**Options:** The Town Council can choose to:

- 1.) Not Award the Contract. If so, the project would not move forward and if the project wanted to be constructed in the future, the Town may have to update the plans and would certainly have to bid out the project again.
- 2.) Award the project to the lowest responsive bidder and move the project forward. If Council chose this route, the Council would need to:
  - a. Authorize the Town Manager to determine if a suitable contract can be negotiated contingent on Town Attorney approval/alternations with the lowest responsive bidder and, if so, to award the contract to J.D. Goodrum for the base bid plus alternative #2 (gateway signage) in the amount of \$525,225.96. (Contingency funds can be expended if authorized).
  - b. Request staff to bring back a budget amendment for an additional \$112,660.
  - c. Authorizing the Town Manager to award the attached contract for contract administration/phase services, base inspections, etc. \$35,980 to Destination by Design contingent on Town Attorney approval/alterations (note – the Town previously went through an RFQ process and selected this design group). (Contingency funds can be expended if authorized).
  - d. Approve the overall project budget of \$662,660 moving forward and authorize the Town Manager to expend contingency funds if necessary.



# MEMO

To: Mayor and Council  
 From: Marsha Gross, Finance Officer  
 Via: Alex Sewell, Town Manager  
 Date: 07-6-2022  
 RE: **Funding for Vickery Greenway**

The Town received the bids for the Vickery Greenway and the amount needed pending Council approval will be approximately \$662,660 to complete the project. Upon reviewing the FY2023 Budget, the Park and Recreation Department has \$550,000 budgeted for this project which leaves an unfunded balance of \$112,660.

The current Vickery Greenway funding includes \$426,800 of restricted funds in lieu of park land and \$123,200 of unrestricted fund balance. The additional funding needed of \$112,660 can be appropriated from either unrestricted fund balance or by increasing ARPA Funds transfer into the General Fund. Since the Town has chosen revenue replacement for the ARPA Funds, we can take the transfer into the General Fund up to \$2.0 million. The amount ARPA funds already appropriated is \$1.6996M which would have enough to cover the unfunded balance needed for this project.

Fund balance projections for June 30, 2022 are outlined below:

	7/1/2021	Change in Balance	6/30/2022
Unassigned Fund Balance	\$ 6,424,313	\$ (391,211)	\$ 6,033,102
Stabilization by State Statute	475,157	-	\$ 475,157
Powell Bill	568,898	90,373	\$ 659,271
Drug Forfeiture	46,008	(2,135)	\$ 43,873
Capital Project Fund - Potter/Pleasant Plains	960,273	(10,948)	\$ 949,325
Fees in Lieu of Park Land	426,858	2,336	\$ 429,194
Subsequent year expenditures	747,982	-	\$ 747,982
20 Percent Reserve	1,770,640	409,360	\$ 2,180,000
Restricted ARPA Funds	-	2,572,685	2,572,685
<b>Total Fund Balance - General Fund</b>	<b>\$ 11,420,129</b>	<b>\$ 2,670,460</b>	<b>\$ 14,090,589</b>

Overall fund balance is projected to increase by \$2,670,460 even with the purchase of the Old Monroe Road investment property. Even if we remove the effects of the ARPA funds, fund balance increases by \$97,775. I feel that the Town can afford to use an additional amount needed for the Vickery Greenway without jeopardizing the financial position of the Town. The subsequent year expenditures and 20% additional reserves will be met and the Unassigned Fund balance would remain at an amount over \$6M going into FY2023.

In summary, the Town can comfortably move forward and approve the additional funding needed. If approved a budget amendment will be presented at the following council meeting.

**BID TABULATION**

6/24/2022



PLANNING | ENGINEERING | COMMUNICATIONS

Organization: Town of Stallings, NC

Project Title: Stallings Greenway

BIDDERS (Name GC): J.D. Goodrum Company, Inc Eaglewood, Inc. Hall Contracting

Rank: 1 2 3

**BID ITEMS:**

Base Bid	\$ 517,119.85	\$ 624,601.00	\$ 840,000.00		
----------	---------------	---------------	---------------	--	--

**ADDITIVE ALTERNATES:**

(1) Thermoplastic Crosswalk	\$16,609.45	\$9,211.00	\$5,150.22		
(2) Gateway Signage	\$8,106.11	\$10,500.00	\$13,420.30		
(3)					
(4)					

**UNIT PRICES (\$\$/SY)**

(1) Undercutting	\$30.00	\$40.00	\$288.47		
(2) Imported Fill	\$35.00	\$40.00	\$288.47		
(3)					
(4)					
Alternate Sub-total:	\$ 24,716	\$ 19,711	\$ 18,571	\$ -	\$ -

(Base Bid + Alternates) \$ 541,835 \$ 644,312 \$ 858,571 \$ - \$ -

**Explanation of Rejected Bidder(s):**

I certify that this is a true tabulation of bids received.

*Charles A. Gotherman*

Charles A. Gotherman

6/24/2022

Date



Destination by Design Studios, PLLC  
136 Furman Road, Suite 6  
Boone NC 28607

---

June 29, 2022

Mr. Alex Sewell  
Town Manager  
315 Stallings Road  
Stallings, NC 28104

Re: Stallings Greenway

Dear Mr. Sewell,

We have reviewed the bids submitted for the above-referenced project on June 24, 2022. Following the Bid Opening, the apparent low Bidder was J.D. Goodrum Company, Inc.

Pending funding agency approval, we recommend the project be awarded to the lowest responsive and responsible Bidder as follows:

J.D. Goodrum Company, Inc.	\$517,119.85 (Base Bid)
----------------------------	-------------------------

Please find attached a copy of the bid tabulation sheet for this Project.

If you have any questions or comments, please contact us at your earliest convenience.

Thank you,

A handwritten signature in black ink that reads "Charles A. Gotherman".

Charles A. Gotherman, PLA  
Destination by Design Studios, PLLC



SECTION 00 40 00

BID FORM  
STALLINGS GREENWAY  
Stallings, NC

Bid of: J.D. Goodrum Company, Inc.  
(Name of Bidder)

Address 18339-F Old Statesville Road

City State Cornelius, NC 28031

Phone 704-895-8842

Date 06/24/2022

The undersigned, having carefully examined the Site, the conditions affecting the Work, the Bidding Documents dated May 2, 2022, entitled "Stallings Greenway" prepared by Destination by Design Studios PLLC, Boone, North Carolina, do hereby offer to furnish all labor, materials, tools, equipment, plant transportation, machinery, supplies, taxes and services necessary to complete the Work in compliance with the Contract Documents, including Addenda Nos. 1;2;3;4;5 issued prior to the Bid Date, which is/are hereby acknowledged, for the following considerations:

**BASE BID**

For all Work complete, the lump sum amount of:

Five Hundred Seventeen Thousand One Hundred Nineteen Dollars and Eighty-Five Cents Dollars (\$ 517,119.85 )

**ADD-ALTERNATE PRICE**

Alternate Price #1: Thermoplastic Crosswalk Cost \$ 16,609.45  
Sixteen Thousand Six Hundred and Nine Dollars and Forty-Five Cents  
Contractor to mill and replace existing asphalt to receive thermoplastic. Refer to sheet C-2.2 for site layout and detail 3-ALT/ Sheet C-3.2 for thermoplastic crosswalk detail.

Alternate Price #2: Gateway Signage Cost \$ 8,106.11  
Eight Thousand One Hundred and Six Dollars and Eleven Cents  
Contractor to fabricate and install Stallings Greenway Gateway Sign. Refer to sheet C-2.2 for site layout and detail 4 Sheet C-3.3 for elevation detail. Refer to "Gateway Sign C-2" in the Stallings Greenway Signage package for complete construction documents.

**UNIT PRICES**

In the event native soils are unable to reach the specified soil bearing capacity, undercutting and fill will be provide by the unit prices below:

Undercutting (Removal and Disposal Off-Site) Cost \$ 30.00 /Cubic Yard  
Imported Fill (Import and Placement) Cost \$ 35.00 /Cubic Yard

**TIME FOR COMPLETION OF THE WORK**

The undersigned agrees to commence work within thirty (30) days of acceptance of the bid and complete the project within 365 calendar days.

**SUPPLEMENTS TO THE BID FORM**

The following items shall be supplied with this Bid Form and must be included for the Bid to be considered complete.

1. Bid Security.
2. Bid Envelope (attached).
3. List of at least three projects similar in scope to this project successfully completed by the Bidder including the name of the project, location, scope of work, cost of construction, and owner's name and contact with phone number.
4. Bidder's Statement of Disputes, Litigation, Arbitration, and Surety Completion
5. Contractor's Proposed Schedule of Values (See included form). The Contractor's Schedule of Values is solely for the comparison of bids.
6. DBE Identification of Hub Certified/ Minority Business Participation, Affidavit A, Affidavit B.

**ACCEPTANCE OF PROPOSAL**

If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within thirty days after the date of the opening of the Bids, the Owner and Bidder will execute an Agreement in accordance with the Bid as accepted.

BID FORM

The Bidder will furnish a Performance Bond and Labor and Material Payment Bond with such surety or sureties as the Owner may approve. It is understood that the costs for the bonds are included in the Base Bid amount.

By submitting a Bid, the Bidder agrees that from his/her own investigation he/she has satisfied himself/herself as to the nature and location of the Work, the general and local conditions, and all matters which may, in any way, affect the Work or its performance. As a result of such examination and investigation, Bidder fully understands the intent and purpose of the Documents and conditions of bidding. Claims for additional compensation and/or extensions of time because of the Contractor's failure to follow the foregoing procedure and to familiarize himself/herself with the Documents and all conditions that might affect the Work will not be allowed.

The Bidder further agrees that this Bid is based upon the materials, equipment and systems required by the Documents without exception and that no substitutions have been made.

SIGNATURE OF BIDDER



Bidder J.D. Goodrum Comapny, Inc.  
(Firm Name)

By Jamie Yoxtheimer 

Title President

State of Incorporation North Carolina

Names of Officers:  
President

Jamie Yoxtheimer

Secretary

Jennifer Yoxtheimer

Treasurer

Jennifer Yoxtheimer

Names of Key Members of the Firm: (unincorporated organizations)

\_\_\_\_\_  
\_\_\_\_\_

END OF SECTION

**BID ENVELOPE**

Bid to: **Town of Stallings, NC**

For the Project: **STALLINGS GREENWAY**

Project Designer: **Destination by Design Studios, PLLC.**

**Any blank spaces may cause bid to be unacceptable and rejected.**

*Provide state contractor license number, expiration date, and classification for Bidder and listed subcontractors, as applicable. Provide all names as used for licensing or other legal transactions.*

**Bidder Identification:**

Bidder: J.D. Goodrum Company, Inc.  
Address: 18339-F Old Statesville Road, Cornelius, NC 28031  
Project Manager: Rick Eagle  
Superintendent: TBD

**North Carolina Contractor License Information:**

License Number: 19284  
License Classification applicable to Project: Highway  
License expiration date: 12/31/2022 \$( Unlimited )  
Dollar Limit

**Subcontractors to be used on this Project: (or Bidder, if Bidder is to perform the work)**

- If **any** work, regardless of dollar value, is required for subcontractor category, list subcontractor that will perform that work. Or, if Bidder will perform that work in a category with Bidder's own forces, fill in Bidder's name as subcontractor.
- If **no** work is required in a subcontractor category, write "N/R" (None Required) or "N/A" (Not Applicable).
- If the monetary amount of a subcontractor's work is such that no license is required, "N/A" may be written in the license number column, but still write name.

Landscape Name Ingle & Sons Landscaping  
N/A N/A

Note: This space must be filled in or the bid may not be opened. License Number Expiration Date Classification

Electrical Name Lake Electric  
10515-U 04/30/2023 Electrical

Note: This space must be filled in or the bid may not be opened. License Number Expiration Date Classification

Paving Name Precision Paving  
53973 01/01/2023 Highway

Note: This space must be filled in or the bid may not be opened. License Number Expiration Date Classification

This Bid Envelope approved for public opening   

Signature of Designer or their representative

**BIDDER'S STATEMENT OF DISPUTES, LITIGATION, ARBITRATION, AND SURETY  
COMPLETION (LAST 3 YEARS)**

Not Applicable



Project	Name and Address of Owner or Engineer	Name and Phone Number of Owner or Engineer Representative	Contract Date	Amount	Status
McDowell Creek Greenway Phase II	Town of Cornelius	Troy Fitzsimmons 704-892-6031	04/20/2020	\$2,504,952.69	Complete
Lower Little Sugar Creek GW & Stream Rehab	Mecklenburg County	Kimley-Horne & Associates, Inc. 704-575-4947 - Karen Chien	04/07/2021	\$10,592,706.02	In Progress
Stuart Creek GW & Stream Rehab-Lakewood Ave to Yellowstone	Mecklenburg County	Kimley-Horne & Associates, Inc. 704-954-7464, Jason Diaz	11/17/2021	\$4,714,896.83	In Progress

**BIDDER'S SCHEDULE OF VALUES  
(FOR BIDDING PURPOSES ONLY)**

ITEM	DESCRIPTION	AMOUNT
1	MOBILIZATION	\$8,943.55
2	GENERAL CONDITIONS	\$30,315.15
3	TRAFFIC CONTROL	\$4,181.40
4	EROSION & SEDIMENT CONTROL	\$14,292.26
5	GRADING & DRAINAGE	\$167,302.46
6	ASPHALT GREENWAY	\$65,653.79
7	CONCRETE SIDEWALK	\$11,518.89
8	ROADWAY STRIPING	\$3,484.50
9	ELECTRICAL	\$19,844.23
10	HAWK BEACON	\$112,450.62
11	LANDSCAPING	\$36,414.19
12	FENCING (ALUMINUM & WOOD)	\$29,595.02
13	SIGNAGE (EXCLUDES ADD ALTERNATE)	\$13,123.79
	<b>TOTAL (EQUAL TO BASE BID)</b>	<b>\$517,119.85</b>



## Identification of HUB Certified/ Minority Business Participation

I, Jamie Yoxheimer, J.D, Goodrum Company, Inc.  
(Name of Bidder)

do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work Type	*Minority Category	**HUB Certified (Y/N)
Maybury Fencing (704) 474-5807	Fencing	F	Y
PO Box 1185			
Norwood, NC 28128			
On Time Construction, Inc. (704) 289-4000	Concrete	F	Y
2917 Chamber Drive			
Monroe, NC 28110			
Affordable Source Trucking (704) 347-9501	Hauling	B	Y
4822 Autumn Oak Drive			
Charlotte, NC 28269			
Mid-Atlantic Erosion Control	Silt Fence	AA	Y
PO Box 505			
Denver, NC 28037			

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

**The total value of minority business contracting will be (\$) \$54,898.00**



# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of Mecklenburg

(Name of Bidder)

Affidavit of J.D. Goodrum Company, Inc.

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts) Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

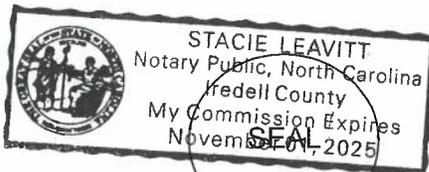
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 06/24/2022 Name of Authorized Officer: Jamie Yoxtheimer

Signature: \_\_\_\_\_

Title: President



State of North Carolina, County of Mecklenburg

Subscribed and sworn to before me this 24th day of June 2022

Notary Public Stacie Leavitt

My commission expires November 1, 2025

# State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

**N/A**

(Name of Bidder)

\_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

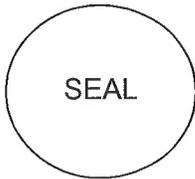
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

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



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_

J.D. Goodrum Co., Inc. \_\_\_\_\_ as principal, and Fidelity and Deposit Company of Maryland \_\_\_\_\_, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto Town of Stallings \_\_\_\_\_ as obligee, in the penal sum of Five Percent of Amount Bid \_\_\_\_\_ 5% DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this 24th day of June, 2022

WHEREAS, the said principal is herewith submitting proposal for

Stallings Greenway \_\_\_\_\_ and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1

J.D. Goodrum Co., Inc. \_\_\_\_\_ (SEAL)

By:  \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

Fidelity and Deposit Company of Maryland \_\_\_\_\_ (SEAL)

By:  \_\_\_\_\_ (SEAL)  
Wendy E Lahm Attorney-in-Fact

Surety Phone No. 847-605-6000



Bond Number Bid Bond

Obligee Town of Stallings

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Wendy E Lahm**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

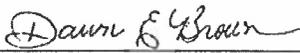
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 19th day of June, A.D. 2019.

ATTEST:  
ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By: *Robert D. Murray*  
Vice President



By: *Dawn E. Brown*  
Secretary



State of Maryland  
County of Baltimore

On this 19th day of June, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Constance A. Dunn*  
Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2023

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 24th day of June, 2022.



A handwritten signature in cursive script that reads "Brian M. Hodges".

Brian M. Hodges, Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:**

Zurich Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056  
[www.reportsfclaims@zurichna.com](mailto:www.reportsfclaims@zurichna.com)  
800-626-4577

## SECTION 00 73 00

### MODIFICATIONS TO GENERAL CONDITIONS

#### PART 1 – GENERAL

##### 1.01 INSURANCE REQUIREMENTS

The contractor and all subcontractors, at their own expense, shall provide and maintain insurance as follows, in companies acceptable to the county:

- A. Workman's Compensation as required by all federal, state, maritime or other laws including employer's liability with a limit of at least \$500,000.00.
- B. Comprehensive general liability including contractors liability, contingent liability, contractual liability, completed operation and product liability all on the occurrence basis with personal injury coverage:
  - 1. Personal injury each person \$1,000,000.00
  - 2. Each occurrence \$1,000,000.00
  - 3. Property damage \$1,000,000.00
- C. Comprehensive automobile liability including non-ownership and hired car coverage as well as owned vehicles:
  - 1. Bodily injury each person \$1,000,000.00
  - 2. Each occurrence \$1,000,000.00
- D. The contractor and all contractors in connection with the above-mentioned insurance shall furnish to the owner duly executed forms showing proof of insurance and that insurance is in full force prior to commencement of the contract.
  - 1. Umbrella liability: Limit of liability \$1,000,000.00

##### 1.02 WARRANTY

- A. The contractor shall assemble and duly guarantee all warranties as required by these specifications. They shall assemble and deliver to the Town all bonds, guarantees, releases, etc. required by these specifications before final payment is made.
- B. The contractor shall guarantee all work against defective workmanship and materials for a period of one (1) year after acceptance of the project by the Town. The contractor at no cost shall make any equipment or work found to be faulty during this period good to the Town.

##### 1.03 TIME LIMIT TO COMMENCE AND COMPLETE WORK

- A. The successful bidder shall commence work within thirty (30) days after Notice to Proceed given to them by the Town. Once the project has begun, the successful bidder shall complete all the work within **365** calendar days.
- B. For each and every day that any work remains uncompleted after the contract time specified for completion of the work, the Town may assess liquidated damages against the contractor the sum of three hundred dollars (\$300.00) for each and every calendar day that the work remains uncompleted.

## **SECTION 00 73 00**

- 1.04 Binding Dispute Resolution (Modifies A101 Section 6.2)
- A. Binding Dispute Resolution shall be (other) with the following specification: This Contract is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this contract shall lie in Union County unless the Town agrees to another location in its sole discretion. The American Arbitration Association will not oversee any disputes unless expressly approved by the Town. In lieu of any binding dispute resolution/arbitration, the parties agree to attempt to attend mediation prior to filing a lawsuit.
- 1.05 Indemnification (Modifies A201 Section 3.18.1)
- A. Indemnification text shall be replaced as follows:  
Contractor agreed to defend, pay on behalf of, indemnify, and hold-harmless the Town of Stallings, its elected and appointed officials, employees, agents, design consultants, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Stallings, its elected or appointed officials, employees, agents, and volunteers by reason of injury, including but not limited to bodily injury or death and/or property damage and/or economic loss, including loss of use thereof resulting from the negligence and/or intentional acts of the Contractor, to the fullest extent permitted by law. See 3.18.1 in A201

**END OF SECTION**

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

<< >>  
<< >>

**THE OWNER:**

*(Name, legal status and address)*

<< >>< >>  
<< >>

**THE ARCHITECT:**

*(Name, legal status and address)*

<< >>< >>  
<< >>

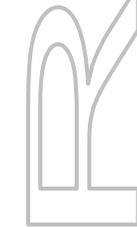
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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of 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 issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form 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 Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 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 and 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 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 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.

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

**§ 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 that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

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 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 1.7 Digital Data Use and Transmission**

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

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 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. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. 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 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly 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.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### 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 Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. 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 its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, 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 coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 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 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** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

### **§ 3.5 Warranty**

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

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that 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, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that 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, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 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.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 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.

**§ 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 that 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. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, 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.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) 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 Architect.

**§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect 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 Architect'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 Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, 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. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect'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 that 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 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## 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 the 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period 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 or Architect 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect 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 substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 Subcontractual Relations

By appropriate written agreement, 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 that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect 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 that 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 that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 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.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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

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 Architect 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 among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect 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 Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, 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 Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The 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.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment 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, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect 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.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement 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.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim 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 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### 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 Architect 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent 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 Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to 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 Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) 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 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect 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 Architect'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 suppliers 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 a Separate 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 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect 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 Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the 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 Architect 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 Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

If the Architect 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 Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, 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 shutdown, 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 Architect 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 Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect'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 Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with 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 Architect'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.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 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 Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, 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 the 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 Architect 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a 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**

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, a Subcontractor, or a Sub-subcontractor; 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.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect 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 Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If either party 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, notice of the 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.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, 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 cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect 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 Architect has an objection to a person or entity proposed

by the Owner, the Owner shall propose another to whom the Contractor and the Architect 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. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect'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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency 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 reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

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 Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** 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 authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

### **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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect'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 that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect'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 any 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 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 Architect, the Owner may correct it in accordance with Section 2.5.

§ 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 completion of that portion 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 that 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 of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that 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 the Contractor has 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

If the Owner prefers to accept Work that 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

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives 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 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 a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 No action or failure to act by the Owner, Architect, 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 upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. 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 Architect

timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect 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 Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 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 Architect.

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

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

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## 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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly 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' notice to the Owner and the Architect, 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 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession 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 written 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 Architect'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 Initial Decision Maker, 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 under 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.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall 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.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 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.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

**§ 15.1.6.2** 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.

#### **§ 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a 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 Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker 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 the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, 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.

§ 15.2.8 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.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



**Town of Stallings**  
**Phase 1 Greenway Implementation: Construction Phase Services Agreement**

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by the Town of Stallings, referred to as “Client” or “Owner” and Destination by Design Studios, PLLC (DbD), referred to as “DbD” or “Design Team” or “Consultant.”

**1.0 Task 1. Bidding and Construction Phase Services/ Contract Administration.** DbD shall advise and consult with Client during the Construction Phase. DbD shall have authority to act on behalf of the Client only to the extent provided in this Agreement. DbD shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with facility construction, nor shall DbD be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. DbD shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. DbD’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date that DbD issues the final Certificate for Payment. Contract Administration services include a preconstruction meeting, evaluations of work at monthly on-site progress meetings, certificates for payment to contractor, submittal review, minor changes to work, substantial completion, and punch lists. The Consultant shall conduct up to one (1) soil compaction test, notifying the Client in advance, to ensure base soils meet specifications and provide recommendations accordingly.

**Task 2. As-Built Survey.** Provide an as-built survey (Lawrence Surveyors) of the project to show all hardscape improvements, the crosswalk, storm drainage, and verify ADA slopes for compliance.

**2.0 Schedule of Fees, Reimbursable Expenses, and Hourly Rates**

2.1 The fees below are lump sum and in accordance with the Scope of Services identified in 1.0 above, barring substantial change in the project budget, scope of service, or schedule.

Task 1: Bidding and Contract Administration	\$28,480
Task 2: As-Built Survey	\$ 7,500
<b>Total Fee:</b>	<b>\$35,980</b>

**3.2 Hourly Rates**

If requested in writing by the Owner, DbD shall provide additional services at the hourly rates listed below.

1.	Principal/ Professional Engineer/ Landscape Architect	\$ 185/hour
2.	Senior Planner/Landscape Designer	\$ 165/hour
3.	Administrative	\$ 75/hour

#### **4.0 Payment Schedule**

- 4.1 Upon contract execution, the Consultant shall be paid a 15% deposit and then subsequently submit monthly or bi-monthly billings in accordance with project progress. Invoices shall not exceed the amounts listed for each phase or total lump sum fee, unless approved in advance by the Owner. The Consultant shall be paid within thirty (30) days of receipt of a detailed invoice.
- 4.2 Consultant's services under the phases listed in 2.0 above, shall each be considered complete at the earlier of: 1) the date when the submissions for that phase have been accepted by the Owner; or 2) fourteen (14) days after the date when such submissions are delivered to the Owner for final acceptance.
- 4.3 DbD or the Owner shall be allowed to renegotiate this Agreement upon substantial change in the project budget, scope of service, or schedule.
- 4.4 Hourly rates to be in effect throughout the entirety of the project.

#### **5.0 Abandonment of Improvements**

If the Owner finds it necessary to abandon the project, the Consultant shall be given seven (7) days written notice and compensated for all work completed under 2.0 above and according to the schedule of payments designated under 3.0 above. Scheduled items not completed but upon which work has been performed, shall be paid for upon the basis of estimated extent of completion.

#### **6.0 Indemnification**

Owner and Consultant each agree to indemnify and hold harmless the other, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Owner and Consultant, they shall be borne by each party in proportion to its negligence.

#### **7.0 Ownership of Documents**

- 7.1 The Consultant shall be deemed the author and owner of all deliverables provided to the Owner, including but not limited to plans, drawings, specifications, Construction Documents, displays, graphic art, photographs, and other images and devices of any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Consultant (collectively, the "Deliverables").
- 7.2 Subject to payment by the Owner of all fees and costs owed to the Consultant, the Consultant grants to the Owner a nonexclusive license to reproduce the Deliverables solely for the construction and use of the Project. The license hereby granted shall survive termination of this Agreement prior to the completion of the Project for any Deliverable that is finalized and for which DbD has received compensation from the Client at the time of Termination. Termination of this Agreement prior to the completion of the Project shall terminate this license as to any Deliverable that is not finalized and for which DbD has not received compensation from RHI at the time of Termination. For said Deliverables that are not finalized and for which payment has not been made by the Client and copies thereof in the Owner's possession or control shall be returned to the Consultant within 21 days of the notice of termination.

- 7.3 The Owner, to the fullest extent permitted by law, shall indemnify and hold harmless the Consultant for any Costs, including legal fees or defense costs, liability or loss, which result from any unauthorized modification of the Deliverables or the use of the Deliverables for any purpose other than the Project.
- 7.4 In the event this Agreement is terminated prior to the completion of the Project, the Consultant shall have no Liability to the Owner or to anyone claiming through the Owner for any claims, liabilities, or damages resulting from the use, misuse, or modification of the Deliverables without the Consultant's approval, and the Owner agrees to indemnify and defend the Consultant against all such claims.

**8.0 Other Parties**

It is mutually agreed that this Agreement is not transferable by either signatory to a third party without the consent of the other principal party. Plans and specifications are instruments of service and remain the property of the Consultant.

**9.0 Termination**

This Agreement shall be terminated at any time by the Owner or the Consultant upon giving written notice. Termination by the Owner shall comply with 5.0 above. This Agreement, unless previously terminated by written notice, shall be terminated by the final payment for the finished work.

**10.0 Severability**

If any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions shall, to the fullest extent permitted by law, remain in full force and effect.

**11.0 Governing Law**

This Contract shall be construed in accordance with the laws of the State of North Carolina.

**12.0 Complete Agreement**

This Agreement represents the entire understanding between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement only may be amended in writing signed by both the Owner and the Consultant.

**13.0 Signatures**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**Town of Stallings**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title Date

**Destination by Design Studios, PLLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title Date



# MEMO

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To: Town Council

From: Alex Sewell, Town Manager

Date: 7/6/22

RE: W-5170AA – Lawyers Road/Emerald Lake – Funding Additional Sidewalk

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**Purpose:** This memorandum provides background information on an NCDOT roundabout project (W-5170AA) and seeks Council direction on whether the Town should commit funding to add additional sidewalk as part of this project.

**Background:**

- NCDOT has a funded Project (W-5710AA) to upgrade the intersection of Lawyers Road at Hawthorne Drive/Emerald Lake Drive to a roundabout.
- There is currently a sidewalk gap of approximately 250 feet on the northern side of Lawyers Road in front of the Emerald Lake subdivision entrance. A map of this area is enclosed for illustrative purposes.
- Town staff previously requested that NCDOT add this sidewalk connection as part of the roundabout project. NCDOT has advised that the funding source for this project is limited and NCDOT typically only replaces existing sidewalk that is torn out as part of a project and do not install new sidewalk. However, NCDOT advised that it is willing to add sidewalk if a municipality is willing to pay for it as a betterment.
- NCDOT advised that it would install sidewalk in the gap described above if the Town would be willing to pay for it including the Town being responsible for any cost overruns. NCDOT estimates the cost to install the sidewalk would be between \$40,000 to \$55,000, which would be the Town's responsibility. This does not include any potential cost overages which again would be the Town's responsibility.
- Because NDCOT anticipates letting the project on October 5, 2022, NCDOT needs confirmation as soon as possible on whether the Town wishes to cover the cost of adding the sidewalk in the gap as describe above. If so, the Town and NCDOT would need to subsequently enter into an agreement.

**Decision-Point:** Whether the Town Council seeks to cover the cost of installing sidewalk in the gap on Lawyers Road as part of NCDOT's Project (W-5170AA).



Stafford  
Temporarily closed

approx. 250 feet of missing sidewalk connection

ers Rd

Lawyers Rd

Lawyers Rd

Bogey Ct

Emerald Lake Dr

Emerald Lake Dr

Flagstick Dr

Flagstick Dr

Flagstick Dr

Albatross Ln

Lawyers Rd

Hawthorne Dr

Hawthorne Dr

1004

horne Dr