



County of Dare

P.O. Box 1000 | Manteo, NC 27954

DARE COUNTY BOARD OF COMMISSIONERS

Dare County Administration Building
954 Marshall C. Collins Dr., Manteo, NC

Monday, August 05, 2019

“HOW WILL THESE DECISIONS IMPACT OUR CHILDREN AND FAMILIES?”

AGENDA

- 9:00 AM** **CONVENE, PRAYER, PLEDGE OF ALLEGIANCE**
- ITEM 1** Opening Remarks - Chairman's Update
- ITEM 2** Presentation of County Service Pins - August 2019
- ITEM 3** Employee of the Month
- ITEM 4** Public Comments
- ITEM 5** Garage Band Charities
- ITEM 6** Memorandum of Understanding for Dare Guarantee College Tuition Scholarship Program Between Dare County and College of The Albemarle Foundation
- ITEM 7** Economic Development - Extension of Agreement with the Outer Banks Chamber of Commerce
- ITEM 8** DCDHHS Public Health Division Child Telepsychiatry Program Update
- ITEM 9** Annual Settlement and Charges to the Tax Collector
- ITEM 10** Hurricane Season Update
- ITEM 11** Construction Management At Risk Contract for New Animal Shelter with The Whiting Turner Contracting Company
- ITEM 12** Proposed Zoning Amendments to Section 22-58.1 Sand Dune Provisions
- ITEM 13** Proposal for Development of Dredge Material Management Plan
- ITEM 14** GIS Community Map Introduction and Demo
- ITEM 15** Designation of Voting Delegate to NCACC Annual Conference
- ITEM 16** 1T

1. Approval of Minutes
2. Town of Kitty Hawk Sanitation Contract
3. Report to Board on County Manager Budget Actions for Approved FY 2020 CIP
4. Southern Albemarle Association, Annual Meeting Invitation List
5. Memorandum of Understanding for the Dare Soil & Water Conservation District Partnership
6. Right of Access Agreement Charter Communications
7. North Carolina Governor's Highway Safety Program (GHSP)
Local Government Grant Award

ITEM 17 1T

1. Dare County ABC Board
2. Dare County Center Advisory Board
3. Jury Commission
4. Juvenile Crime Prevention Council
5. Parks and Recreation Advisory Council
6. Stumpy Point Community Center Board
7. Upcoming Board Appointments

ITEM 18 Commissioners' Business & Manager's/Attorney's Business

ADJOURN UNTIL 5:00 P.M. ON AUGUST 19, 2019



Opening Remarks - Chairman's Update

Description

Dare County Chairman Robert Woodard will make opening remarks.

Board Action Requested

Informational Presentation

Item Presenter

Chairman Robert Woodard



Presentation of County Service Pins - August 2019

Description

The following employees are scheduled to receive service pins this month:

1. Emily Gould, DSS Administration - 10 year pin
2. Sheila Pledger, DSS Personal Care Services - 15 year pin
3. Neva Lee, DSS Personal Care Services - 20 year pin

Board Action Requested

None

Item Presenter

Robert Outten, County Manager



Employee of the Month

Description

The Employee of the Month Certification will be presented.

Board Action Requested

None

Item Presenter

To Be Determined



Public Comments

Description

The Board of Commissioners encourages citizen participation and provides time on the agenda at every regularly scheduled meeting for Public Comments. This is an opportunity opportunity for anyone to speak directly to the entire Board of Commissioners for up to five minutes on any topic or item of concern.

Comments can be made at the Commissioners Meeting Room in Manteo or through an interactive video link at the Fessenden Center Annex in Buxton.

Commissioners Meeting Room - Administration Building, 954 Marshall Collins Drive, Manteo
Video Link - Fessenden Center Annex, 47017 Buxton Back Road, Buxton

Board Action Requested

Hear Public Comments

Item Presenter

Robert Outten, County Manager



Garage Band Charities

Description

Garage Band Charities, a non-profit organization, will recognize the Dare County Sheriff Department for their assistance with their fund-raising events, and present a donation to the Dare County Motorsports Charity Group and the Dare County Youth and Children Partnership.

Board Action Requested

None - Certificate and Donation will be presented

Item Presenter

Michael Tillett and Richard Quidley



Memorandum of Understanding for Dare Guarantee College Tuition Scholarship Program Between Dare County and College of The Albemarle Foundation

Description

The Board of Commissioners will review the drafted terms of the Memorandum of Understanding between Dare County and College of The Albemarle Foundation

Board Action Requested

Discuss and Take Appropriate Action

Item Presenter

Robert Outten, County Manager

**MEMORANDUM OF UNDERSTANDING
FOR DARE GUARANTEE COLLEGE TUITION SCHOLARSHIP PROGRAM
BETWEEN
DARE COUNTY
AND
COLLEGE OF THE ALBEMARLE FOUNDATION**

THIS AGREEMENT, made and entered into this the _____ day of _____, 2019, by and between Dare County, a political subdivision of the State of North Carolina ("County") and the College of The Albemarle Foundation, Inc., a 501(c)(3) nonprofit corporation, located at P.O. Box 2327 Elizabeth City, NC 27906 ("Foundation").

WITNESSETH:

WHEREAS, The College of The Albemarle Foundation is a charitable organization instituted to enhance the mission of College of The Albemarle to benefit students and the community; and

WHEREAS, The Foundation is a vital resource for the acceptance and solicitation of all gifts for the support of education and the continued growth and progress of College of The Albemarle; and

WHEREAS, The Foundation manages funds that enable students that meet certain financial need or other criteria to defray the costs of education; and

WHEREAS, it is in the interests of the County that said program be assisted by the County and thereby enhance its availability to residents of the County, and said program addresses an important public purpose in the public education of Dare County residents and the furtherance of education at public institutions within Dare County, as identified by the Board of Commissioners;

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the County and the Foundation agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall continue until the funds have been fully expended or the agreement is terminated by mutual agreement.
2. **Scope of Services.** The Foundation agrees to utilize the funds provided by the County to establish and fund a program of tuition scholarship payment for Dare County citizens to attend College of The Albemarle. The Foundation shall be responsible for the means, methods, techniques, sequence, program and procedures necessary to properly and fully complete the work set forth herein, but it is agreed between the parties that the program shall include the following characteristics and requirements:
3. **Characteristics and Requirements:**
 - a. **Priority of Scholarship Award:**
 - i. First Priority-Eligible students enrolled in 96 hours or higher Continuing Education (CE) and Curriculum (CU) programs at the Dare Campus of College of The Albemarle.
 - ii. Second Priority-Eligible students enrolled in CE and CU programs at College of The Albemarle (All Campuses).
 - b. **Eligibility**
 - i. Dare County Resident.
 - ii. High School Graduate for Dare County Public Schools, private schools, or home school.
 - iii. US Citizen or documented lawful permanent resident.
 - iv. Must be enrolled at COA within 16 months of graduation from high school, private school or home school.

4. Requirements for Continuation:
 - i. Complete COA Scholarship Application
 - ii. Students must remain in good academic standing with COA, meaning a minimum of a 2.0 in college coursework and completion of at least 67% of credit hours attempted each semester.
 - iii. Qualified students will be allowed no more than two (2) programs of study changes.

5. Additional:
 - i. The Dare Guarantee will cover any unmet tuition (at the in-state rate) and fees while funds are available. Dare Guarantee will provide up to \$1,000 per year per student for instruction required textbooks and software while funds are available.
 - ii. Students must first complete the COA Foundation scholarship and federal financial aid application processes. Any funds awarded through those channels will be utilized first.

6. Funding:
 - i. The County agrees to appropriate for the provision of services described in the above Scope of Services a sum of up to two hundred-fifty thousand dollars (\$250,000.00) per program year. The funds can be increased at the approval of Dare County Officials.
 - ii. All funds appropriated shall be used for purposes described in this Agreement. The Foundation certifies that the funds provided to the agency under the terms of this Agreement will be used for a public purpose and shall only be used for the purposes intended.
 - iii. Any changes in the use of funds must be authorized in writing by the County prior to any expenditure of the funds by the Foundation. If the funds are not expended in accordance with the Scope of Services, then the County may cease payment, terminate this Agreement, and the Foundation may be required to repay the funds to the County.
 - iv. The Dare Guarantee Fund will cover the remaining balance of a student's tuition, fees, and cost of books by the census date of that semester.
 - v. The Foundation shall be allowed to use up to twenty-five thousand dollars (\$25,000.00) per program year to assist in the administrative costs of the program. The remaining funds shall be made available to the Foundation for tuition scholarships awarded under the outlined criteria. The Foundation shall invoice the County each fiscal year for payment of tuition scholarships with documentation and satisfactory proof of the program expenditure for eligible students, but total payment by the County for the fiscal year shall not exceed two hundred and fifty thousand dollars (\$250,000.00)
 - vi. The County's obligation to make payments is contingent upon receipt of Progress Reports, which show satisfactory progress toward completion of performance criteria and an accounting of expenditures in fulfillment of the Scope of Services.
 - vii. The County is not obligated to provide any other support to Foundation in this or in succeeding fiscal years beyond the terms of this Agreement.

7. Agency Reporting.

- i. The Foundation will provide Dare County with an annual Progress Report to include a fiscal report, breakdown of programs and the number of students enrolled in each CE and CU program, and the number of students who have completed their CE or CU program based on the criteria as outlined in the Scope of Services. Progress Reports are due on June 30 of the fiscal year.
- ii. Foundation agrees to allow the County to inspect its financial books and records, which documents costs of those services, upon reasonable notice during normal working hours

8. Termination.

- a. In the event of any of the circumstances set forth below (hereinafter referred to as "default"), the County may immediately terminate this Agreement, in whole or in part. Notice of termination must be in writing, state the reason or reasons for the termination, and specify the effective date of the termination:
 - i. In the event that the Foundation shall cease to exist as an organization or shall enter bankruptcy proceedings, be declared insolvent, or liquidate all or substantially all of its assets, or significantly reduce its services or accessibility to Dare County residents during the term of this Agreement; or
 - ii. In the event that the Foundation shall fail to render a satisfactory accounting as provided section 6.iv. above, the County may terminate this Agreement and the Foundation shall return all payments already made to it by the County for services which have not been provided or for which no satisfactory accounting has been rendered; or
 - iii. In the event of any fraudulent representation by the Foundation in an invoice or other verification required to obtain payment under this Agreement or other dishonesty on a material matter relating to the performance of services under this Agreement.
 - iv. Nonperformance, incomplete service or performance, or failure to satisfactorily perform any part of the work identified in the Scope of Services or to comply with any provision of this Agreement. In the event of default by the Foundation, the county may elect to terminate this Agreement, in whole or in part and/or require the Foundation to repay the funds within ten (10) business days from written notice of default. The County may (but shall not be required to) grant the Foundation an opportunity to cure the default without termination of this Agreement. This clause shall not be interpreted to limit the County's remedies in law or in equity.

9. Relationship of the Parties. The Foundation represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services. Foundation is an independent contractor of the County.
10. Compliance with all Laws. The Foundation, at its sole expense, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as its respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.
11. Subcontract. The County and The Foundation deem the services provided under this Agreement to be personal in nature and The Foundation may not subcontract any rights or duties under this Agreement to any other party without prior written consent from the County.
12. Assignment. The Foundation shall not assign this Agreement, including the rights to payment, to any other party without the prior written consent of the County.
13. Non-Appropriation. This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.
14. Notice. The Parties hereto agree and understand that written notice, mailed or delivered, to the last known address shall constitute sufficient notice to the County and the Foundation. All notices required and/or made pursuant to this Agreement to be given to the County and the Foundation shall be in writing and mailed to the party addressed as follows:

County: County Manager
Dare County Post
PO Box 1000
Manteo, NC 27954

Foundation: College of The Albemarle Foundation
PO Box 2327
Elizabeth City, NC 27906

15. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and the Foundation have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and the Foundation.
16. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid

17. Governing Law. The laws of the State of North Carolina shall govern all aspects of this Agreement. If it is necessary for either party to initiate legal action regarding this Agreement, the venue shall lie in Dare County, North Carolina.

18. Signatures. This Agreement, together with any amendments or modifications, may be executed electronically. All electronic signatures affixed hereto evidence the intent of the parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

IN WITNESS WHEREOF, Dare County and the Foundation have signed this Agreement, effective on the last date this Agreement signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of the Foundation

Signature Date
Douglas S. Gardner / President, Foundation Board of Directors

Signature Date
Amy Alcocer / Executive Director,
Foundation and Development, College of The Albemarle

For and on behalf of Dare County Commissioners

Signature Date
Robert L. Outten / County Manager, County of Dare

Signature Date
Robert L. Woodard, Sr. / County Commissioner, County of Dare



Economic Development - Extension of Agreement with the Outer Banks Chamber of Commerce

Description

Attached is an extension to the agreement between Dare County and the Outer Banks Chamber of Commerce regarding implementation of the Economic Development and Diversification Strategic Plan.

The one year extension at the rate of \$35,000 to be paid in four quarterly installments.

Board Action Requested

Approval

Item Presenter

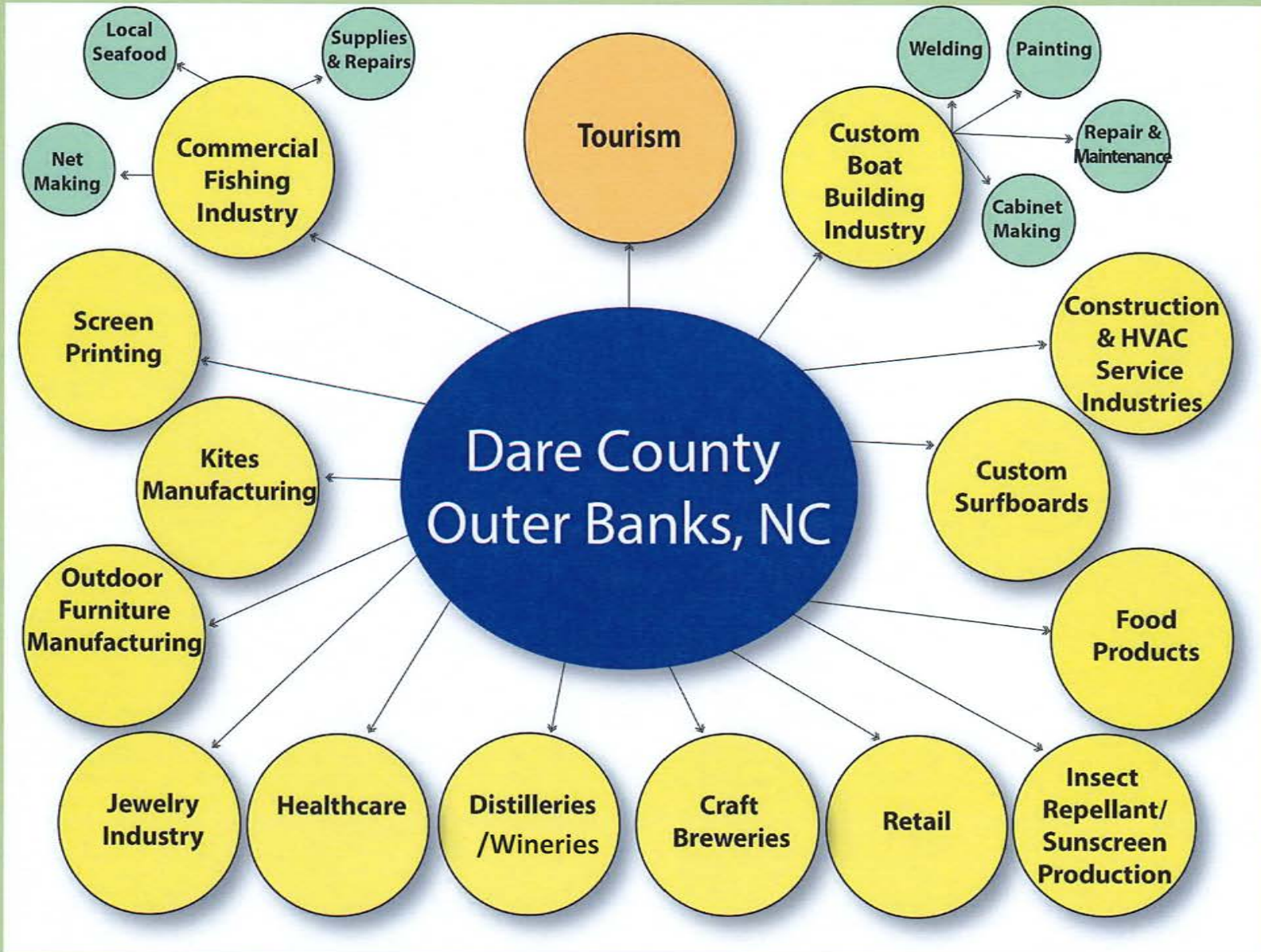
Karen S. Brown, President & CEO, Outer Banks Chamber of Commerce



Dare County Economic Development Update



Dare County Industries



Economic Development Activities

- Business Retention & Expansion Program
- Website
 - Dedicated portal for Dare County Economic Development
 - DareNCED.com
 - DareNCEconDev.com
- Responding to Request for Proposals (RFPs)
- New and Prospective Businesses
- Develop recruitment package

Economic Development Activities

- OBXMADE creative branding initiative
 - OBX has received its federal and NC state registered trademark
- Communicate with stakeholders
- Marketing of the OBX region as a place for business
- Business Accelerator
- Collaboration with Resource Partners

Accomplishments

- Met with all Towns and the County regarding zoning ordinances for housing
- Supporting the OBHB Association work on Septic legislation
- Site Plan for county owned property in Manteo including updated wetland delineation.
- Worked with Dare County to create a video highlighting economic development partnership
- Co-hosted “State of the County” event

Accomplishments

- 34 Ribbon Cuttings
 - 18 new businesses/ 55 new jobs created
 - 13 new location/relocation/remodel
 - 1 Grand Reopening
 - 2 New owner
- Meetings and calls with prospective business looking to locate to Dare County
- Responded to Requests for Proposals from the EDPNC and East Alliance
- Business Accelerator
- OBXMADE progress

Looking ahead

Business Retention & Expansion Program

- Survey will be sent out in the Fall of 2019
- Expected Outcomes
 - Identify Skills Gaps
 - Identify challenges for local businesses
 - Identify businesses interested in expansion
- One-on-one meetings with businesses looking to create jobs or invest in community
- Create demographics about local business community

Looking ahead

Housing Crisis

- Creation of a non-profit Chamber Foundation whose purpose includes community housing initiative
 - Look for grant money to help with this issue
 - Determine how to “move the needle” on this issue
- Work with county on the Manteo property site and how make it a reality
- Continue to encourage municipalities to change zoning to allow for more density and year-round housing options

Looking ahead

OBXMADE

- Continue to recruit businesses to be part of this branding initiative.
- Launch OBXMADE Website
- Plan an OBXMADE event to showcase this initiative

Looking ahead

Marketing of Dare County

- Continue to update website with economic data and resources
- Develop a Dare County specific business marketing piece
- As the Outer Banks Chamber, continue to promote the county and region as a great place to do business
 - Create opportunities for business success



QUESTIONS?





The Outer Banks Chamber of Commerce

Serving Currituck and Dare Counties, Ocracoke Island

P.O. Box 1757 • 101 Town Hall Drive • Kill Devil Hills, NC 27948

252.441.8144 *Voice* • 252.441.0338 *Fax*

info@outerbankschamber.com

July 23, 2019

RE: Extension of Economic Development Contract with Dare County

Per item 3 TERM of the Economic Development Contract between Dare County and the Outer Banks Chamber of Commerce this agreement is being extended for one year from August 1, 2019 – July 31, 2020 at the same rate, \$35,000, to be paid in four (4) quarterly installments beginning on August 1, 2019 and quarterly thereafter during the term of this extension/agreement.

Monies will be used for continued economic development support for Dare County including a Business Retention & Expansion program, the OBXMADE Branding Initiative, representing Dare County when responding to economic development requests and RFPs, marketing of the Outer Banks as a place to do business and continued work on the housing initiative to try and find solutions to this economic issue.

County of Dare:

By: _____
Chairman, Board of Commissioners

Outer Banks Chamber of Commerce:

By: 

President & CEO

Simply Connecting
Since 1974 the **Outer Banks**

www.outerbankschamber.com



*Dare County Department of Health and Human Services
Public Health Division
Child Telepsychiatry Program Update*

Description

Dr. Sheila Davies will provide the Board of Commissioners with an update on the progress of the child telepsychiatry program.

Board Action Requested

N/A

Item Presenter

Sheila F. Davies, PhD

**Dare County/Surf Pediatrics/ECU Telepsychiatry
Project Report**

November 30, 2017 to December 1, 2018

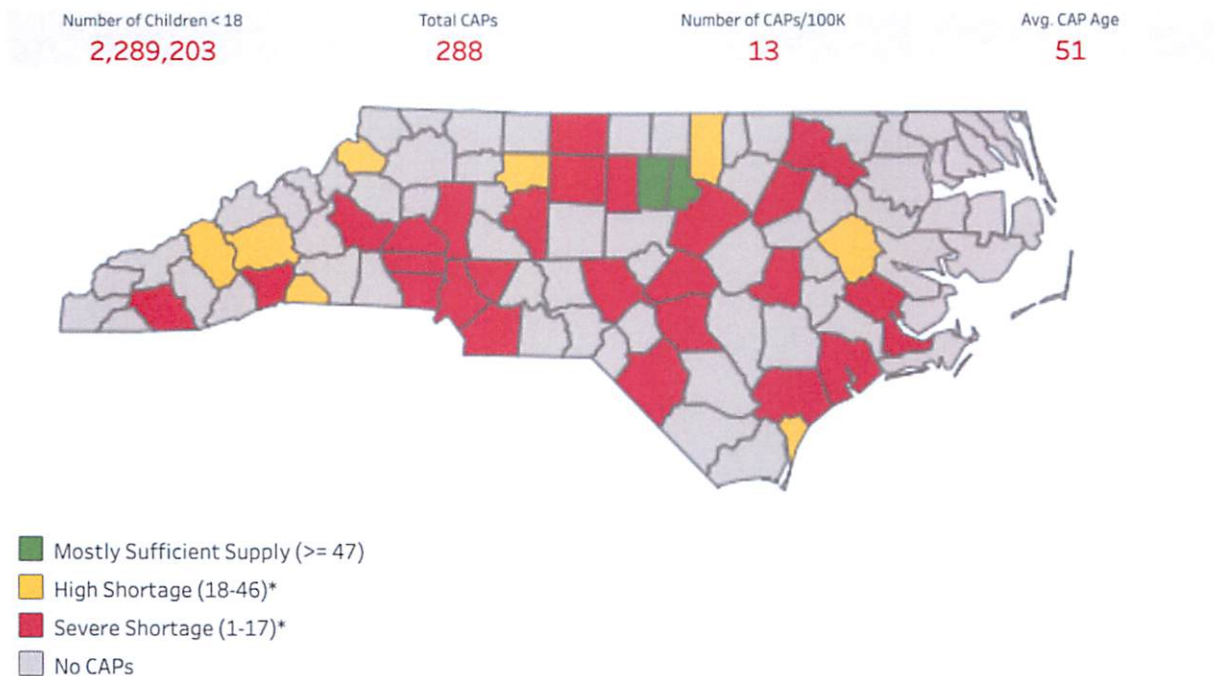
Mental disorders in children and adolescents are common and associated with high levels of distress, functional impairment, and morbidity. About 20 percent of U.S. children and adolescents (15 million), ages 9 to 17, have diagnosable psychiatric disorders (the Surgeon General, 1999, CDC 2013). The prevalence of certain severe disorders such as bipolar disorder, major depressive disorder (8%, 12-17 yrs, SAMHSA, 2012), attention deficit hyperactivity disorder (6.8%, CDC, 2013), autism spectrum disorders (one in 100, 88, 68 children, CDC, 2012, 2013, 2014) have markedly increased in recent years. Only about 20 percent of emotionally disturbed children and adolescents receive some kind of mental health services (the Surgeon General, 1999, CDC 2013), and only a small fraction of them receive evaluation and treatment by child and adolescent psychiatrists. The distress affects not only the child and their performance in school and with peers, but also has effects on their family. In North Carolina, the shortage of child and adolescent psychiatrists along with their maldistribution, the lack of inpatient beds, and the rural geography results in many unidentified and untreated disorders amongst children and adolescents. When children are identified by family, school, or agencies such as DSS and NC Division of Juvenile Justice, they are typically evaluated and treated in primary care offices.

In 2017 Dare County expressed interest in partnering with the Department of Psychiatry at East Carolina University to provide child adolescent psychiatry services to residents of Dare County and surrounding areas. At the time, there were 10, 537 children ages 5-17 living in Currituck, Dare and Hyde Counties. Of the total current population ages 5-17, 6,264 (60%) were documented patients with one of the following providers: Surf Pediatrics provided care to 5,000 of those children (80%), Avon Family Medicine 639, Dare County Health Department 418.

While the ratio of need for adult psychiatry is 1 psychiatrist per 10,000 adult population, we estimated that the need for child/adolescent (C/A) psychiatry to be 1 physician per 15,000-20,000 population. There is a dearth of child psychiatrists. Furthermore, many barriers remain that prevent children, teenagers, and their parents from seeking help from the small number of specially trained professionals. This places a burden on pediatricians, family physicians, and other gatekeepers to identify children for referral and treatment

decisions.” (Mental Health: A Report of the Surgeon General, 1999). There are currently about 8,000 child and adolescent psychiatrists practicing in the U.S. (AMA, 2013). The closest available child psychiatrists for Dare county are located in Virginia at the Children’s Hospital of the Kings Daughters (CHKD) that now has a 20 week wait for C/A appointments. To complicate matters, these Virginia physicians are not participating in NC Medicaid. The next available option is to travel to Greenville for C/A psychiatrist appointments that would be 30 minutes longer than travel to CHKD.

This map below shows the distribution of child and adolescent psychiatrists (CAP) by the county in North Carolina (American Academy of Child and Adolescent Psychiatry, revised 2018)



At the time, Port Human Services was providing Child/adolescent psychiatry services to 207 children. Based on the population need, we estimated Dare County needing a half time (0.5) child psychiatrist to meet all of the needs. Our recommendation was is to start with 4 hours per week and expand hours based on actual demand. The Commissioners at Dare County asked to partner with the Brody School of Medicine and Surf Pediatrics and Medicine to provide psychiatric evaluations for their citizens. We proposed a consulting model using telepsychiatry.

Telepsychiatry provides access to specialty care for children who might otherwise go without treatment. Children and adolescents adapt well to the technology since much of their world is viewed through screens and electronics. Using primary care and pediatric

practices as the host site for this model removes the stigma, enhances compliance with appointments and allows expert consultation support for busy primary care practitioners. ECU has successfully implemented C/A telepsychiatry in Ahoskie, New Bern, and to some school sites and Youth Development Centers, while the consulting model has been successfully implemented in Goldsboro and Tarboro. The logistics and workflow for our consulting model are as follows:

- Children remain patients of the pediatric/primary care practice.
- Host site schedules appointments for the C/A appointment block.
- Host site has a dedicated staff person on C/A clinic days to place the child in an exam room, set up equipment and assure connectivity, and run technical interference.
- The C/A psychiatrist calls referring pediatrician with results of telpsycho visit, followed by faxed or electronic report.
- Pediatrician writes medication orders based on recommendations of psychiatrist. The psychiatrist is available to answer questions via phone.
- Children needing therapy/counseling will need to be referred to a local mental health provider. New Horizon sees Medicaid kids.

Financial model agreed upon was as follows:

- Dare County would contract for the services of the ECU consulting psychiatrist, and pay an agreed upon fee, based on national benchmark, on a monthly basis to cover the cost of the physician as well as professional billing service fees.
- ECU would assume responsibility for professional fee billing and collections. Collections will generate some offset to professional expenses. Dare County would be responsible for covering the gap between collections and expenses. Adjustments to future monthly payment by the county would be made to offset collections.

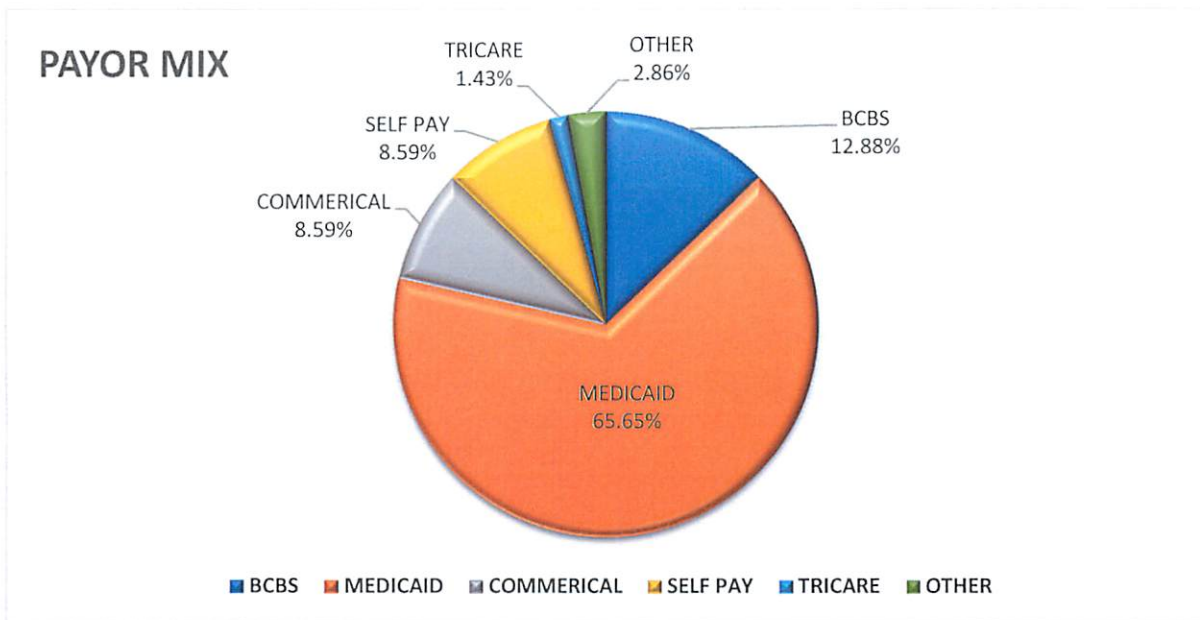
Results:

There were evaluation slots available for two children each week. The project began on November 30, 2017 and is ongoing.

- 83 children and adolescents were seen and evaluated from November 2017 through December 2018, with a 92% show rate.

- There were 7 that failed to show, and 6 that cancelled the appointment
- Total Patient Charges for the project \$23,407
- Total Collections \$8,511
- Contract Payments from Dare County to ECU \$22,950
- Collections returned to Dare County from ECU (\$8,511)

Net cost to Dare County (\$22,950 minus \$8,511) \$14,139
 (Contract payment to ECU minus collections)



Conclusions and Recommendations:

- Telepsychiatry is a viable and reasonable option for providing psychiatric care to those who are currently underserved or who lack access to services.
- The impressive show rate of 92% speaks to favorable acceptance of this model by the patients and their families.
- Collaboration between a primary care provider and child psychiatrist using a consultation model is an efficient way of caring for children in need psychiatric care.
- Given the payor mix, it is unlikely that the consultation provided by the child psychiatrist can be sustained by the revenue generated by collections alone.
- While the data suggest that only 37% of the cost of consultation was recovered through receipts, there were other tangible benefits to the pediatric practice and savings to the system at large (transportation costs, costs associated with untreated

illnesses, time associated with lost productivity associated with parents spending a day transporting patient to a remote location, etc.)

- The primary care-psychiatry relationship allows for as needed telephone consults on patient's seen as well as other patients; this was not available before the project began.

Limitations

- Patients in remote areas of Dare County are traveling far to Surf Pediatrics for telepsychiatry service
- Preschool children are often difficult to evaluate with this method, including children with possible autism spectrum disorder

References:

1. Mental Health: A Report of the Surgeon General (1999). <https://www.loc.gov/item/2002495357/>. Accessed June 25, 2019
2. Behavioral Health, United States, 2012, SAMHSA.
3. Data and Statistics about ADHD, CDC. <https://www.cdc.gov/ncbddd/adhd/data.html>. Accessed June 25, 2019.
4. Data & Statistics on Autism Spectrum Disorder, CDC, 2012, 2013, 2014. <https://www.cdc.gov/ncbddd/autism/data.html>. Accessed June 25, 2019.
5. Proceedings of the 2013 Annual Meeting of the American Medical Association (AMA). https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/hod/a13-csaph-reports_0.pdf. Accessed June 25, 2019
6. Practising Child and Adolescent Psychiatrists- Workforce Maps by State: North Carolina. American Academy of Child and Adolescent Psychiatry, revised 2018. https://www.aacap.org/aacap/Advocacy/Federal_and_State_Initiatives/Workforce_Maps/Home.aspx. Accessed June 25, 2019.

Sy Atezaz Saeed, M.D., M.S., FACPsych

Professor and Chairman

Department of Psychiatry and Behavioral Medicine
Brody School of Medicine at East Carolina University

Director

ECU Center for Telepsychiatry and e-Behavioral Health

John M. Diamond, MD

Professor and Director

Division of Child and Adolescent Psychiatry
Department of Psychiatry and Behavioral Medicine



Annual Settlement and Charges to the Tax Collector

Description

The Tax Collector reports to the Governing Board the Settlement for the 2018 taxes, both paid and unpaid. The Tax Collector also reports on the collection processing for the 2018 tax year.

Board Action Requested

Charge the Tax Collector to collect the 2019 taxes

Item Presenter

Becky Huff, Tax Collector

SETTLEMENT FOR 2018 TAX YEAR

To: Dare County Board of Commissioners
 From: Becky Huff, Tax Collector
 Date: August 5, 2019

July 1, 2018 - June 30, 2019					
Dare County 2018 Tax Bills	Levy	Collected	Uncollected	%Coll	
County (C99,ADV,FTL'S)	\$61,248,735.46	\$60,932,087.78	\$316,647.68	99.48%	
Motor Vehicles	\$0.00	\$0.00	\$0.00	0.00%	
Towns	Levy	Collected	Uncollected	%Coll	
Kill Devil Hills	\$ 8,028,955.44	\$ 7,995,098.78	\$ 33,856.66	99.58%	
Beach Nourishment	\$ 509,426.32	\$ 508,598.15	\$ 828.17	99.84%	
Kitty Hawk	\$ 3,873,932.28	\$ 3,847,472.13	\$ 26,460.15	99.32%	
Beach Nourishment	\$ 505,173.09	\$ 504,257.31	\$ 915.78	99.82%	
Manteo	\$ 2,058,886.84	\$ 2,047,303.45	\$ 11,583.39	99.44%	
Southern Shores	\$ 2,923,352.04	\$ 2,920,082.97	\$ 3,269.07	99.89%	
Special Assessment	\$ 30,000.00	\$ 30,000.00	\$ -	100.00%	
Duck	\$ 3,614,745.21	\$ 3,612,079.17	\$ 2,666.04	99.93%	
Beach Nourishment	\$ 991,286.93	\$ 991,134.79	\$ 152.14	99.98%	
Nags Head	\$ -	\$ -	\$ -	0.00%	

The total county real estate and personal property **levy** for **2018** was **\$ 61,248,735.46**. This total includes all real estate, mobile homes, boats, rental personal property, and business personal property. It also includes properties in bankruptcy, properties with unknown owners, and properties in conflict regarding ownership.

The total **collected** by June 30, 2019 was **\$ 60,932,087.78** for a collection rate of **99.48 %** on real estate and personal property taxes. All unpaid real estate and personal property taxes for the years 2009 through 2018 that are eligible are being processed for upload to the NC Debt Setoff program.

The total county **motor vehicle levy** was **\$ 0.00**. NC Motor Vehicle taxes are now being levied along with registration fees through the Tax & Tag Program of the NC Dept of Revenue. All 2008 thru 2012 Motor Vehicle delinquent taxes have been uploaded to Debt Setoff for Collection.

It is required each year that the Board, by motion, charge the Tax Collector to begin tax collections on current taxes based on the budgeted valuation of **\$ 12,994,285,658** and the gross county and municipal levies of **\$ 91,873,024.56**. This order will cover the **2019** taxes for Dare County and the towns of Kill Devil Hills, Kitty Hawk, Manteo, Southern Shores, and Duck.

SETTLEMENT OF CURRENT AND PRIOR YEAR TAXES 2009 - 2018

Includes Real Estate and Personal Property for **Dare County and all Towns**.

Totals **include** fire, rescue, sanitation, and community center taxes.

Totals **do not include** motor vehicles. MV taxes now collected by NCDOR.

COLLECTION TOTALS FOR THE YEARS 2009 - 2018 as of June 30, 2019

YEAR	LEVIES / ADJUSTMENTS	COLLECTED	UNCOLLECTED	% COLL
2018	91,705,588.19	91,221,787.04	483,801.15	99.47%
2017	90,134,738.39	89,959,330.04	175,408.35	99.81%
2016	84,059,888.90	83,955,775.10	104,113.80	99.88%
2015	83,092,229.07	82,991,222.34	101,006.73	99.88%
2014	79,479,521.61	79,406,936.09	72,585.52	99.91%
2013	77,857,272.37	77,800,761.56	56,510.81	99.93%
2012	71,827,330.18	71,771,187.91	56,142.27	99.92%
2011	70,415,708.94	70,356,255.18	59,453.76	99.92%
2010	69,810,582.99	69,766,961.27	43,621.72	99.94%
2009	65,216,935.55	65,182,804.68	34,130.87	99.95%
TOTAL	783,599,796.19	782,413,021.21	1,186,774.98	99.86%

SPECIAL ASSESSMENT COLLECTIONS

Collected 7/1/2018 - 06/30/2019

	<u>Collected 2018 Tax Year</u>	<u>Total Levies/Adjustments</u>	<u>Total Collected</u>	<u>Total % Coll</u>
Kitty Hawk Woods				
Water Assessment:	\$ -	\$ (793.20)	\$ -	100.00%
Roanoke Island Water				
Assessment:	\$ 343,943.68	\$ 4,853,585.00	\$ 3,816,586.98	78.63%
Southern Shores				
Special Assessment:	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100.00%

Zacchaeus Legal Services (Foreclosures)

Collected 7/1/2018 - 06/30/2019

2002-2018 Tax Years Collected in FY 2018-2019	\$ 377,126.95
Total Taxes Collected through foreclosure process	\$ 1,909,726.33
Total cost to Dare County	\$ -

YEAR	UNCOLLECTED	UNKNOWN	BANKRUPTCY	COLLECTIBLE
2018	483,801.15	9,927.94	13,795.90	460,077.31
2017	175,408.35	16,923.48	10,705.13	147,779.74
2016	104,113.80	7,984.96	13,421.11	82,707.73
2015	101,006.73	7,728.19	8,949.71	84,328.83
2014	72,585.52	8,370.34	4,310.72	59,904.46
2013	56,510.81	8,238.93	1,361.37	46,910.51
2012	56,142.27	13,395.16	708.68	42,038.43
2011	59,453.76	13,179.31	0.00	46,274.45
2010	43,621.72	12,805.60	0.00	30,816.12
2009	34,130.87	12,250.01	0.00	21,880.86
TOTAL	1,186,774.98	110,803.92	53,252.62	1,022,718.44

2018 TAX YEAR COLLECTION PROCESSING	
Second and Final Notice mailed to taxpayers	4,074
Pre-foreclosure letters mailed to taxpayers & lienholders	192
Payment Plans for delinquent taxes	68
Attachments & Garnishments	104
Phone Calls	485
New Owner Delinquent Tax Notices	14
NSF Legal Letters & Notifications	29
Parcels in Bankruptcy	13
2018 Delinquent Taxes in Bankruptcy	\$ 13,795.90
Taxes collected through Debt Setoff	\$ 1,389.62



Hurricane Season Update

Description

An update on hurricane preparedness will be presented by Drew Pearson.

Board Action Requested

Informational Presentation

Item Presenter

Drew Pearson, Director Emergency Management



*Construction Management At Risk Contract for New Animal Shelter with
The Whiting Turner Contracting Company*

Description

Please see the attached item summary.

Board Action Requested

Please see the attached item summary.

Item Presenter

David Clawson, Finance Director

Item Summary: Construction Management At Risk Contract for New Animal Shelter with The Whiting Turner Contracting Company

The Board has previously selected, through a qualifications based procurement method, The Whiting Turner Contracting Company to construct the new Animal Shelter facility.

Following this summary are draft documents with Whiting Turner. These documents set the contract, the supplemental conditions, and the general conditions for preconstruction and construction services. Once design is complete and bids are taken, the Board will be asked to approve Change Order #1 that will set the guaranteed maximum price (GMP).

The first document is the Agreement Between Owner and Construction Manager as Constructor (AIA A133-2009). Except for facility name, address, dates, architect, etc., this document is identical to that approved for the Regional Emergency Communications Center & EOC in 2015.

The second document is the Supplemental General Conditions setting the contractor's fee at 7.0%, general conditions contract amount at \$377,220, and the net preconstruction service fee at \$27,650. *See below for a discussion of these amounts.*

The third document is the General Conditions of the Contract for Construction (AIA A201-2017). Except for being a 2017 version instead of a 2007 version, this document is identical to that approved for the Regional Emergency Communications Center & EOC in 2015.

Supplemental General Conditions:

Amounts for the Animal Shelter when compared to prior CM at Risk projects are higher as a percentage of construction costs due to smaller project size and higher project complexity.

General Conditions: Whiting Turner has included more preconstruction services due to contracting earlier in the process at 35% complete drawings. The Dare Center contract was at 100% complete drawings and the Administration Building and EOC were at approximately 50% to 60% drawings. Whiting Turner has included 9 months of construction on-site services at an average monthly amount of \$39,635 versus \$41,282 for the RECC/EOC. General Conditions are a reimbursement of actual costs. Staff feels that the amount is reasonable given that if they are overestimated, the savings comes back to the County per the savings incentive agreement in the contract.

Fee: The fee is 7.0% (\$131,425 estimate) versus 5.0% (\$350,303) for RECC/EOC. The higher fee % is again due to small project size with Whiting Turner stating that it is needed to "make a fair fee for the staff hours that we will commit to the project". Staff considers the fee amount to be reasonable.

Preconstruction Fee: As shown on Exhibit A to the Supplemental Conditions, the preconstruction fee is \$110,400 with 75% of that fee credited toward the GMP when it is contracted. If the County were to not set a GMP and to not proceed with the project, Whiting Turner will receive the entire preconstruction fee.

Requested Action:

The Board is requested to approve the Agreement, the Supplemental Conditions, and the General Conditions with any review changes the County Manager deems necessary, to authorize the County Manager to execute the documents, and to approve the amendment to the capital project ordinance for the Animal Shelter project and the 2020 limited obligation bonds.

**County of Dare, North Carolina
Capital Project Ordinance
For Series 2020 LOBs**

BE IT ORDAINED as authorized by the Board of Commissioners of the County of Dare, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted for the planned Series 2020 Limited Obligation Bonds.

Section 1 This ordinance is to establish a preconstruction services budget for the Animal Shelter per the Construction Manager At Risk contract. This ordinance amends the capital project ordinances adopted September 18, 2017, August 6, 2018, January 22, 2019, February 4, 2019, June 3, 2019, June 17, 2019, July 15, 2019, and July 16, 2019.

Section 2 The following budget shall be conducted within the Capital Projects Fund (fund #61).

Section 3 The following amounts are additionally appropriated as indicated:

Animal Shelter preconstruction services	615550-737500-60339	\$110,400
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Section 4 The following revenues are additionally anticipated to be available to complete the project as changed below:

Debt proceeds S2020 LOBs	613090-470318-98726	\$110,400
--------------------------	---------------------	-----------

Section 5 After this amendment, the following amounts are budgeted for the S2020 LOBs to date:

COA	\$1,219,760	
Animal Shelter	\$390,940	
DHHS buildings	\$485,895	
Manteo property & renovations	\$1,000,000	
Buxton property	\$325,000	
EMS equipment 2020 CIP	\$1,498,316	
Total		\$4,919,911

Section 6 The Finance Officer is directed to report the financial status of the project as a part of the normal ongoing financial reporting process.

Section 7 Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Board of Commissioners.

Adopted this 5th day of August, 2019.

County Manager

[SEAL]

Cheryl Anby, Clerk to the Board of Commissioners

DRAFT AIA® Document A133™ - 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 29th day of July in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Dare County
954 Marshall C. Collins Drive
Manteo, NC 27954

and the Construction Manager:
(Name, legal status and address)

The Whiting-Turner Contracting Company
Engineers and Contractors
1317 Executive Boulevard
Suite 120
Chesapeake, VA 23320

for the following Project:
(Name and address or location)

Dare County and Tyrrell County Emergency Operations Center (EOC) and Regional Communications Center (RECC) Animal Shelter
364 Airport Road 402 Airport Road
Manteo, NC 27954

The Architect:
(Name, legal status and address)

Waller Todd & Sadler Architects, a Woolpert Company
Schrader Group Architecture, LLC with Lyall Design Architects (SGA/LDA)
1909 Cypress Avenue
Virginia Beach, VA 23451
Schrader Group Architecture, LLC
161 Leverington Avenue, Suite 105
Philadelphia, PA 19127
Telephone: 215 482-7440
Fax: 215 482-7441

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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[Lyll Design Architects](#)
[420 World Trade Center](#)
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The Owner's Designated Representative:
(Name, address and other information)

←→
←→
←→
←→
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←→[Mr. David Clawson](#)
[Finance Director](#)
[Dare County Finance Office](#)
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[Manteo, NC 27954-1000](#)
[Telephone: 252 475 5731](#)
[Email: davecc@darenc.com](#)

[Mr. Robert Outten](#)
[Dare County Manager](#)
[954 Marshall C. Collins Drive](#)
[P.O. Box 1000](#)
[Manteo, NC 27954](#)
[Telephone: 252 475 5811](#)
[Email: otten@darenc.com](#)

The Construction Manager's Designated Representative:
(Name, address and other information)

←→
←→
←→
←→
←→
←→[Mr. John Berotti](#)
[Project Executive](#)
[The Whiting-Turner Contracting Company](#)
[Engineers and Contractors](#)
[1317 Executive Boulevard, Suite 120](#)
[Chesapeake, VA 23320](#)

[Mr. Chad BrochardJP Henry](#)
[Preconstruction Manager/Lead Project Manager](#)
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[Ms. Jennel Baltazar](#)
[Scheduler and Estimator/Project Manager](#)
[The Whiting-Turner Company](#)
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Chesapeake, VA 23320

The Architect's Designated Representative:
(Name, address and other information)

←→
←→
←→
←→
←→

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Project Manager
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The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1

~~The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. Construction Manager as Constructor will be responsible for the following Preconstruction services:~~

- ~~1. Confirm and/or modify with SGA/LDA the design and construction schedule illustrating the procurement, phasing, construction, commissioning and owner occupation and start-up. Based on the stage of document development at the time of Construction Manager at Risk selection, participate with the design team to review documents and advise to qualify system, material selections, constructability, assemblies, etc. associated with the project and the schedule in support of their preparation of a Guaranteed Maximum Price. (4-6 meetings)~~
- ~~2. Identify and quantify materials and subcontractors for support of the established schedule of construction.~~
- ~~3. Preparation of Bid packages including Request for Proposal and administration of the Bidding process through solicitation and receipt of at least three (3) bids per requirements of NC GA 443-128.1.~~
- ~~4. Verify vendor proposal compliance with Company/Firm, and project terms and conditions, and negotiate as required for procurement.~~
- ~~5. Preparation of a Construction Cost Estimate with pricing separated by CSI Division and Section, and with allocation between the various project elements in a format acceptable to Dare County and SGA/LDA that will qualify and validate the Guaranteed Maximum Price established by this Contract for the project.~~
- ~~6. Negotiate, compile and issue subcontracts and purchase orders.~~

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area,

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volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

~~§ 2.15.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.~~
the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect.

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The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

[§ 2.3.2.9 The Construction Manager is responsible for complying with all NC State laws specifically NCGS 143-128.1](#)

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

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§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

←→See Attachment #1 “Supplemental General Conditions” dated 7/29/19/30/15 for details

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within (←→) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted. If the Preconstruction Phase services covered by this Agreement have not been completed within (See Attached #1 “Supplemental General Conditions” dated 7/29/19/30/15 for details) months of the date of this Agreement, through no fault of the Construction Manager, The Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. (Paragraph deleted)

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§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid (←→) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

←→12% ←→twelve percent per annum

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee: (State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

←→The Basis of Payment is the Cost of the Work plus fixed General Conditions, mark-ups, and Fee with a Guaranteed Maximum Price. Fixed General Conditions, mark-ups and Fee are based on Attachment #1 “Supplemental General Conditions” dated 7/19/1930/15. The guidelines for cost, procurement and project delivery shall be compliant with NC GS 143-128. The project will have a payment retainage of Five Percent (5%) and the contract will include a 75%/25% Owner/Construction Manager savings split (CM Cap at \$100,000). The Guaranteed Maximum price will be established during the Pre-Construction Phase by the end of the Construction Document Development phase.

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§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

~~Cost of the Work (to include applicable general conditions costs) plus five percent (5%) of Cost of the Work~~

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~Subcontractor and Sub-Subcontractor's shall be allowed to mark up their applicable change orders 10% for overhead and 5% for profit.~~

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~ten~~ percent (~~ten~~ %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

~~§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment~~

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provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. (Paragraph deleted)

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 ~~Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~ Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of

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Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

←→

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ←→15th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the →30th day of the ←→ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ←fifteen→ (←→15) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager’s Fee, less retainage of ~~five~~ percent (~~5~~ %). The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; Upon 50% completion of the Project no retainage will be withheld per NC 143-134.1(b1) Article 6.6. See Article 3.a.b.c.d. The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion:
 - a. Until the project is 50 percent complete, the local government cannot retain more than 5 percent of any periodic payment owed to the prime contractor
 - b. When the project is 50 percent complete, no further retainage is allowed as long as the contractor’s performance is satisfactory. To stop retainage under these circumstances, the local government must have the written consent of the surety.
 - c. When a certificate of substantial completion is issued or upon beneficial occupancy, all remaining retainage must be release, though the local government may retain up to two-and-a-half times the value of any remaining work to secure completion or correction of that work (the “punch list” work).
 - d. “Line-item” release of retained funds is required for “early finishing trades” (subcontractors who complete 100 percent of their work before the project is 50 percent complete, including structural steel, piling, caisson, and demolition).
- .4 Subtract retainage of ~~five~~ percent (~~5~~ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner’s prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 7.1.11 NC Department of Revenue rules for substantiation of sales tax are attached to this contract. Forms maintained and by the CM and the CM’s subcontractors will substantially comply with the attached NC DOR

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[example form and will be submitted with each pay application. Attachments are “NCDOR Substantiation Rules for Refund” and “Contractor’s Sales Tax Report, NC State & Local Sales Tax Paid”.](#)

[§ 7.1.11 E-Verify: As a condition of payment under this agreement, CM shall comply with the requirements of NCGS 153A-499\(b\). Further, if CM utilizes subcontractors, CM shall require the subcontractor to comply with NCGS 153A-499\(b\). CM shall verify, by affidavit, compliance of the terms of this section upon required by Owner.](#)

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.
- .4 [Final payment will exclude amounts withheld for the completion of punch list items which will be paid within 30 days of Architects certification that all such items have been re-mediated or completed.](#)

The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, ~~or as follows:~~

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§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

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Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
<u>Commercial General Liability - Occurrence Form:</u>	
a. Bodily Injury and Property Damage (each occurrence)	\$1,000,000
b. Personal & Advertising Injury	\$1,000,000
c. General Aggregate	\$2,000,000
d. Contractual Liability	\$1,000,000
e. Products Completed Operations Aggregate	\$2,000,000
f. Excess/Umbrella Liability	\$4,000,000
<u>Workmen's Compensation and Employer's Liability Insurance: Bodily Injury by:</u>	
Accident	\$500,000 – each accident
Disease	\$500,000 – policy limit
Disease	\$500,000 – each employee

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For all subcontractors, the Construction Manager must obtain current insurance certificates and maintain certificates from each subcontractor for the duration of the agreement, if not longer. The limits of coverage for each subcontractor shall be as follows:

Commercial General Liability Occurrence Form:

a. Bodily Injury and Property Damage (each occurrence)	\$1,000,000
b. Personal & Advertising Injury	\$1,000,000
c. General Aggregate	\$2,000,000
d. Contractual Liability	\$1,000,000
e. Products Completed Operations Aggregate	\$2,000,000
f. Excess/Umbrella Liability	\$4,000,000

Workmen's Compensation and Employers Liability Insurance: Bodily Injury by:

a. Accident	\$500,000 each accident
b. Disease	\$500,000 policy limit
c. Disease	\$500,000 each employee

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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in ~~a court of competent jurisdiction~~ the North Carolina General Court of Justice
- Other: *(Specify)*

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§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

« »

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- ~~.3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~



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~~.4~~ AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:



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

←→NCDOR Substantiation Rules for Refund
Contractor's Sales Tax Report, NC State & Local Sales Tax Paid
Attachment #1 – "Supplemental General Conditions" (8 pages) dated 7/29/1930/15

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

OWNER (Signature)

« »
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

John Berotti ←→ Vice President
(Printed name and title)



1. To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth all of the following information:
 - a. the date the property was purchased;
 - b. the type of property purchased;
 - c. the project for which the property was used;
 - d. if the property was purchased in this State, the county to which it was delivered;
 - e. if the property was not purchased in this State, the county in which the property was used; and
 - f. the amount of sales and use taxes paid.

In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the State and local sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of State and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statements must be shown separately from the State sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure that is owned or leased by a governmental agency and is being erected, altered or repaired for use by a governmental entity as defined by G.S. 105-164.14(c). Examples of property on which sales or use tax has been paid by the contractor and which shall not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment, equipment repair parts and equipment rentals.

CONTRACTOR'S SALES TAX REPORT N.C. STATE & LOCAL SALES TAX PAID

OWNER: _____ COUNTY OF DARE _____
 CONTRACTOR: _____
 ADDRESS: _____
 SUBCONTRACTOR: _____

PROJECT: ADMINISTRATION BUILDING
 FOR PERIOD: _____
 TO: _____

VENDOR	MATERIAL PURCHASED	ADDRESS	INVOICE NUMBER	DATE	INVOICE AMOUNT	N.C. TAX	COUNTY TAX	NAME OF COUNTY
TOTAL								

I hereby certify that, during the period stated above, North Carolina sales and use taxes were paid as listed above, with respect to building materials, supplies, fixtures, and equipment which have become a part of, or annexed to, a building or structure erected, altered or repaired for the County of Dare, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth above.

By: _____
 Title: _____

Sworn to and Subscribed before me, this _____ day of _____, 20____.
 _____ Notary
 My Commission expires _____

**Dare County Animal Shelter
Supplemental General Conditions
July 29, 2019**

Whiting-Turner Fee:	<u>7.0% of Total GMP</u>
Whiting-Turner Fixed General Conditions – see details in Exhibit A:	<u>\$377,220</u>
Preconstruction Fee – see details in Exhibit A:	<u>\$27,650</u>

Clarifications and Assumptions to Whiting-Turner’s proposal:

1. Our fees are based on an approximate preconstruction duration of 2 months (August 1, 2019 – September 30, 2019) and approximate construction duration of 10 months starting on October 1, 2019 and Substantial Completion on July 31, 2020.
2. We have included normal working hours. If off hours work or schedule acceleration is required for the project, any additional staff that may need to be added to facilitate will be included as Cost of Work based on the fixed labor rates shown in the General Conditions Estimate (Exhibit A, dated 7/29/19).
3. Our schedule is based on the ability to procure materials in sufficient lead time to ensure an effective project start onsite October 1, 2020.
4. Our General Conditions Estimate only include those items listed in the attached General Conditions Estimate (Exhibit A, dated 7/29/19) and General Conditions / FEE Responsibility Worksheet (Exhibit B, dated 7/29/19). Any other items will be captured in the Cost of Work section of the GMP giving the Owner the benefit of cost savings realized through more defined scope and competitive bid pricing.
5. Our proposal is based upon fixed rates for cost of work derived mark-ups as follows:
 - a. Building Permit Fee – \$0.75 per conditioned building SF to be calculated on final building SF.
 - b. Gross Receipts Tax – 0.08% X the GMP amount.
 - c. Builder’s Risk Insurance – 0.16% X the amount of the GMP (.01% per month). This policy carries a deductible of \$25,000 (to be paid as cost of the work, if incurred).
 - d. Liability Insurance – 0.75% X the GMP amount.
 - e. P&P Bond -0.80% X the GMP amount based on the schedule listed above. For duration greater than 24 months, this amount will increase.
 - f. Labor rates are fixed based on the values shown in Exhibit A.

EXHIBIT A

Dare County Animal Shelter Manteo, NC General Conditions Estimate July 29, 2019						
ITEM	Quantity	Unit	Unit Cost	Line Total	Total	Notes
Preconstruction Services :						
Project Exec / Vice President - Berotti	87	Hours	210	In Fee		
Senior Project Manager - Brochard	173	Hours	130	22,533		
Precon Manager / Project Manager - Payagi	347	Hours	90	31,200		
BIM Project Manager / Project Engineer Support	173	Hours	70	12,133		
Constructability Reviewer / Superintendent - Bocchicchio	347	Hours	90	31,200		
Senior Field Engineer / Carpentry Support	0	Hours	80	0		
Local Market Coordinator - O'Brien	87	Hours	110	9,533		
Senior Superintendent - Oliva	As Needed	Hours	190	In Fee		
MEP Support - Warner	As Needed	Hours	130	In Fee		
Clerical / Accounting Support	As Needed	Hours	57	In Fee		
Bid Solicitation / Meeting Room Expenses	1	LS	1,500	1,500		
Miscellaneous Expenses	1	LS	2,500	2,500		
Subtotal Preconstruction Services					110,600	
Whiting-Turner discount upon GMP execution (discount at 75%)					-82,950	
Preconstruction Services Fee					27,650	

EXHIBIT A

Dare County Animal Shelter Manteo, NC General Conditions Estimate July 29, 2019						
ITEM	Quantity	Unit	Unit Cost	Line Total	Total	Notes
Construction Services:						
Staff Description 2019:						
Project Exec / Vice President - Berotti	87	Hours	210	In Fee		
Senior Project Manager - Brochard	260	Hours	130	33,800		
Precon Manager / Project Manager - Payagi	520	Hours	90	46,800		
BIM Project Manager / Project Engineer Support	TBD	Hours	70	COW		See Note 3
Constructability Reviewer / Superintendent - Bocchicchio	520	Hours	90	46,800		
Senior Field Engineer / Carpentry Support	TBD	Hours	80	COW		See Note 2
Local Market Coordinator - O'Brien	40	Hours	110	In Fee		
Senior Superintendent - Oliva	40	Hours	190	In Fee		
MEP Support - Warner	As Needed	Hours	130	COW		See Note 2
Clerical / Accounting Support	0	Hours	57	0		
Staff Description 2020:						
Project Exec / Vice President - Berotti	347	Hours	221	In Fee		
Senior Project Manager - Brochard	607	Hours	137	In Fee		
Precon Manager / Project Manager - Payagi	1,213	Hours	95	114,660		
BIM Project Manager / Project Engineer Support	TBD	Hours	74	COW		See Note 3
Constructability Reviewer / Superintendent - Bocchicchio	1,213	Hours	95	114,660		
Senior Field Engineer / Carpentry Support	TBD	Hours	84	COW		See Note 2
Local Market Coordinator - O'Brien	80	Hours	116	In Fee		
Senior Superintendent - Oliva	80	Hours	200	In Fee		
MEP Support - Warner	As Needed	Hours	137	COW		See Note 2
Clerical / Accounting Support	0	Hours	60	0		
Subsistence - for onsite team	TBD	Hours	0			See Note 5
Vehicles	Included in Rates	Hours	0			See Note 1
Schedule Support	1	LS	5,000	5,000		
Subtotal Staff Estimate					361,720	

EXHIBIT A

Dare County Animal Shelter
Manteo, NC
General Conditions Estimate
July 29, 2019

ITEM	Quantity	Unit	Unit Cost	Line Total	Total	Notes
Temporary Facilities:						
Move in/Move out	Cost of Work	Months	0	0		See Note 2
Temporary Field Office	Cost of Work	Months	925	0		
Field Office Supplies	10	Months	200	2,000		
Owner Field Office	Cost of Work					
Postage	10	Months	175	1,750		
Bottled Water	10	Months	50	500		
Drawing Reproduction	Cost of Work	LS	2,250	0		See Note 2
Copy Machine/Scanner	10	Months	275	2,750		
Job Phone System and Line Install	1	Each	3,500	3,500		
Jobsite Computers/Computer Support	Included in Rates	Months	250	0		See Note 1
Job Telephone Incl. Internet & Long Dist.	Cost of Work	Months	0	0		See Note 2
Cell Phones	Included in Rates	Months	75	0		See Note 1
Miscellaneous Travel	1	LS	5,000	5,000		
Miscellaneous Parking Expenses	See above	LS	250	0		
Temporary Sanitation	Cost of Work	Months	0	0		See Note 2
Temporary Protection	Cost of Work	Months	0	0		See Note 2
Site Signage	Cost of Work	LS	0	0		See Note 2
Temporary Storage	Cost of Work	Months	0	0		See Note 2
Temporary Power to Offices	Cost of Work	Months	0	0		See Note 2
Temporary Electric Power	Cost of Work	Months	0	0		See Note 2
Trailer Power	Cost of Work	LS	0	0		See Note 2
Temporary Electric Power Usage	Cost of Work	Months	0	0		See Note 2
Temporary Gas	Cost of Work	Months	0	0		See Note 2
Temporary Water	Cost of Work	Months	0	0		See Note 2
Temporary Roads	Cost of Work	Months	0	0		See Note 2
Site Dewatering	Cost of Work	Months	0	0		See Note 2
Permanent Power	Cost of Work	LS	0	0		See Note 2
Subtotal					15,500	
Safety, Security and Description						
Safety Materials (General Signage, etc.)	Cost of Work	Months	0	0		See Note 2
First Aid Supplies	Cost of Work	Months	0	0		See Note 2
Safety Railings	Subcontractors	LF	0	0		See Note 2
Opening Protection	Subcontractors	LF	0	0		See Note 2
Fire Extinguishers	Cost of Work	Each	0	0		See Note 2
Security Guard / Watchman	Subcontractors	LS	0	0		See Note 2
General Weekly Clean-up	Subcontractors	Months	0	0		See Note 2
Final Clean - Exterior Glazing	Cost of Work	SF	0	0		See Note 2
Final Clean - Interior	Cost of Work	SF	0	0		See Note 2
Final Clean - Site	Cost of Work	SF	0	0		See Note 2
Covered Walkways	Cost of Work	LF	0	0		See Note 2
Barricades	Subcontractors	LF	0	0		See Note 2
Safety Nets	Subcontractors	Each	0	0		See Note 2
Debris Hauling / Removal	Subcontractors	LS	0	0		See Note 2
Traffic Control	Subcontractors	LS	0	0		See Note 2
Trash Chutes and Hoppers	Subcontractors	LS	0	0		See Note 2
Snow and Ice Removal	Subcontractors	LS	0	0		See Note 2
Dumpsters	Cost of Work	SF	0	0		See Note 2
Sub-Total:					0	

EXHIBIT A

Dare County Animal Shelter Manteo, NC General Conditions Estimate July 29, 2019						
ITEM	Quantity	Unit	Unit Cost	Line Total	Total	Notes
Vertical Hoisting Description						
Man Lift / Material Hoist	Cost of Work	Months	0	0		See Note 2
Crane	Subcontractors	Months	0	0		See Note 2
Forklifts	Subcontractors	Months	0	0		See Note 2
Sub-Total:					0	
Permits and Special Fees Description						
Project Photographs	Cost of Work	Months	0	0		See Note 2
Surveys (layout by Subcontractors)	Cost of Work	Months	0	0		See Note 2
Storage Facilities	Cost of Work	Days	0	0		See Note 2
Parking Lot Rentals / Parking Fee's	Subcontractors	Months	0	0		See Note 2
Building Permit, Connection Fee's and Service Charges	Subcontractors	Months	0	0		See Note 2
Sub-Total:					0	
Insurance and Bond Description						
Building Permit Fee	Calculated on building SF		\$ 6,545			
Gross Receipts Tax	Calculated on Total GMP		0.08%			See Note 4
Builder's Risk Insurance	Calculated on Total GMP		0.16%			See Note 4
General Liability Insurance (0.75% X GMP)	Calculated on Total GMP		0.75%			See Note 4
P&P Bond rate (.80% X GMP)	Calculated on Total GMP		0.80%			See Note 4
Sub-Total			1.79%			
General Conditions Estimate (does not include pre-con)					377,220	
General Note: Any items not listed above are Cost of the Work if required.						
General Note: Please see attached "Clarifications and Assumptions to Whiting-Turner's proposal"						
Note 1: The staff rates above INCLUDE the cost associated with this item.						
Note 2: These pertain to field related items and are either Cost of Work or buyout through subcontractors. All of these costs as required will be included with the Cost of the Work component of the GMP.						
Note 3: No time for this item has been included in the GC amount. For BIM coordination requirements, we anticipate time devoted to this task will be charged as Cost of the Work at the rate listed if required.						
Note 4 : Builder's Risk Insurance, General Liability Insurance, Gross Receipts Tax and Payment and Performance bonds are not included in the General Conditions Estimate. Rate for the aforementioned items are based on the GMP amount as the suppliers of these items base them on the full contract value. These items will be in addition to the Cost of Work.						
Note 5 : Subsistence costs will be charged based on the GSA per diem rates for Manteo/Kill Devil Hills, NC. The 2019 rate is \$227/day in addition to the rates listed above. This rate will be adjusted for 2020 as the GSA per diem rates are adjusted. Travel for personnel not onsite full time in Manteo will be billed at a rate of \$15/hour.						

EXHIBIT B

Dare County Animal Shelter General Conditions / FEE Responsibility Worksheet Dated: 7/29/2019

Section and Cost Item Description	OWNER	CONSTRUCTION MANAGER COSTS			
	Costs	Fee	Preconstruction	General Conditions	Cost of the work

CONSTRUCTION MANAGEMENT

Owner / Principal (s)		X			
Project Executive(s)		X			
Project Manager(s)				X	
Assistant Project Manager(s)				X	
Project Superintendent(s)				X	
Secretarial – On Site				X	
Project Coordinator – On site				X	
Project Expeditor – On site				X	
Project Field Engineer(s)					X
Cost and Compliance Agent(s)				X	
BIM / VDC Coordinator (if required)					X
Mechanical Coordinator					X
Electrical Coordinator					X
Quality Control Agent(s)					X
Legal		X			
Accounting / Accounting System(s)		X			
Project Management System(s)		X			
General Liability Insurance					X
Professional Liability Insurance					X
Project Builders Risk Insurance					X
CM Builders Risk Insurance					X
Scheduling				X	
Estimating			X		
Cost Engineers				X	
Shop Drawing Checker				X	
Purchasing			X		
Value Engineering			X		
System Development			X		
Safety Officer – Corporate		X			
Safety Officer – Project - If Required					X
E.E.O. Officer		X			
Project Engineer				X	
Scheduling Engineer				X	
Time Keeper/Checker				X	
Project Staff Travel and Transportation (<i>including to/from home office</i>)					X
Off-Site Staff Travel and Transportation					X
Project Staff Moving Expenses					X
Project Staff Subsistence Costs					X
Project Budget Estimating			X		

SAFETY, SECURITY, AND SERVICES

First Aid Supplies				X	
Safety Equipment – Site and Special					X
Scaffolding, Handrails, and Toe Boards					X

EXHIBIT B

Dare County Animal Shelter General Conditions / FEE Responsibility Worksheet Dated: 7/29/2019

Section and Cost Item Description	OWNER	CONSTRUCTION MANAGER COSTS			
	Costs	Fee	Preconstruction	General Conditions	Cost of the work
Opening Protection					X
Fire Extinguishers and Fire Watch					X
Security Guard and Watchman Services					X
Periodic and Final Cleanup					X
Covered Walkways					X
Temporary Fencing					X
Barricades					X
Safety Nets					X
Debris Hauling and Removal					X
Roadway Maintenance					X
Dust and Traffic Control					X
2-Way Radio Equipment				X	
Trash Chute and Hoppers					X
Snow and Ice Removal					X
FACILITIES, EQUIPMENT, AND SERVICES					
Field Office / Conference Trailer(s)					X
Onsite Storage boxes					X
Water, Ice, and Coffee Etc.				X	
Temp. Power/Lighting System - Trailers					X
Temp. Power/Lighting System - Building					X
Power Expenses	X				
Utility Expenses (power, water, etc.)	X				
Temp. Water Services	X				
Temp. Heat and Building Conditioning	X				
Temp. Toilets and Sewer Services					X
Change/Shower/Lunch Rooms					X
Temporary Stairs					X
Temporary Enclosures and Partitions					X
Owner/Architect Project Sign					X
Other Project Signs and Bulletin Boards					X
Telephone / Internet Expenses	X				
Computers and Peripherals				X	
Temporary Roads					X
Air Compressors and Generators					X
Dewatering					X
Misc. Equipment and Small Tools				X	
Fuel, Repairs, and Maintenance				X	
Field Office Supplies, Material, and Equip.				X	
Project Photographs					X
HOISTING					
Hoist and Crane Rental and Operation					X
Elevator Operations and Service					X
Forklift Rental and Operation					X
REPRODUCTION AND PRINTING					
Estimating Forms			X		
Cost Reporting Forms			X		

EXHIBIT B

Dare County Animal Shelter General Conditions / FEE Responsibility Worksheet Dated: 7/29/2019

Section and Cost Item Description	OWNER	CONSTRUCTION MANAGER COSTS			
	Costs	Fee	Preconstruction	General Conditions	Cost of the work
Presentation Charts and Graphics			X		
Value Analysis Studies			X		
Data Processing (In-House)		X			
Reference Materials		X			
Duplication Expense – All Project Docs					X
Shop Drawing Printing					X
Maintenance and Operations Manuals					X
Special Forms		X			
Postage and Delivery Expense					X

QUALITY CONTROL

Geotechnical Investigations	X				
Hazardous Materials Investigations	X				
Testing and Inspections (Inc. Special)	X				
Warranty Inspection Coordination				X	
Air, System, and Water Balancing					X
Electrical Testing					X
Operator On-Site Training					X
Prepare Maint. and Operation Manuals					X

PERMITS, FEES, AND OTHER

Contractor's Construction Contingency					X
Designer's Contingency					X
Owner Contingency	X				
Storage Yard/Parking Lot Rental					X
Parking Fees					X
Sign Permits - Permanent					X
Sign and Trailer Permits - Temporary				X	
Staking and Layout Fees and Costs					X
Plan Check Fees					X
Building Permit Fees					X
Water, Sanitary, and Storm Fees	X				
Gas and Power Service Fees	X				
Special Tap Fees	X				
All Other Permits and Fees					X
Contractor's Licenses and Other Fees					X
Zoning Fees and Consultants					X
Use Fees and Project Bonds	X				
Construction Equip. Licenses, and Permits					X
Construction Association Fees		X			
Union Fringes					X

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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Dare County Animal Shelter
364 Airport Road
Manteo, NC 27954
←~~xxx~~→
←→

THE OWNER:
(Name, legal status and address)

Dare County
954 Marshall C. Collins Drive
Manteo, NC 27954
←→←→
←→

THE ARCHITECT:
(Name, legal status and address)

Waller Todd & Sadler Architects, a Woolpert Company
1909 Cypress Avenue
Virginia Beach, VA 23451←→←→
←→

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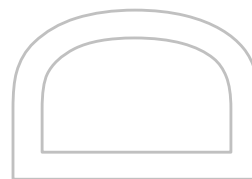
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- 13 MISCELLANEOUS PROVISIONS
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- 15 CLAIMS AND DISPUTES



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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

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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.

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§ 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

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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.

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§ 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

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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

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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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to notify the Owner through the Architect the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Architect may reply wWithin 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to replay within the 14-day period shall constitute notice of no reasonable objection. Contractor to comply with NCGS 143-128.1 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.

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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.

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§ 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.

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§ 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 fiftcseven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirtyseven 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' written 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.

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§ 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

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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

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(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 ~~pre-existing on the construction site~~, solely by reason of performing Work as required by the Contract Documents, the Owner shall ~~indemnify~~ ~~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 from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of result from the Contractor's operations and completed operations under the Contractor and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable;~~

- ~~1. Claims under worker's compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed; including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project.~~
- ~~2. Claims of damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~4. Claims for damages insured by usual comprehensive general liability coverage;~~
- ~~5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~7. Claims for bodily injury or property damage arising out of completed operations;~~
- ~~8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.; and~~
- ~~9. Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

 - ~~1. Premises – Operations (including X-C-U and Blasting coverages as applicable)~~
 - ~~2. Independent Contractor's Protection.~~
 - ~~3. Products and Completed Operations.~~~~

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4. Personal injury liability with Employment Exclusion deleted.
5. Contractual – including Hold Harmless and specified provisions for Contractor’s obligation under Article 3.18 of the General Conditions and other indemnification provisions of the Contract and deleting and third-party beneficiary exclusion.
6. Owned, non-owned, and hired motor vehicles.
7. Broad form property damage including completed operations.
8. Elevators
9. Pollution clean-up, contingent liability to protect Contractor from claims arising from the operations of subcontractors
10. All coverage shall be written on an occurrence basis.

From signing of the Agreement until thirty (30) days after Final Payment, the Contractor shall at its own expense, purchase and maintain insurance in companies properly licensed to do business in the State of North Carolina and have an A or better, or financial rating of IX or better with the A.M. Best’s Company Key Rating, Guide Latest Edition and being, satisfactory to Owner and Architect, and which are licensed to practice business in the State of North Carolina.

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§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination or any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for Correction of Work or for such other period for maintenance or completed operations coverage as specified in the Contract documents. 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.

If any such insurance is due to expire during the construction period, the Contractor shall not permit the coverage to lapse and shall furnish evidence of continued coverage to the Owner and the Architect for record. The minimum coverage limits set forth herein shall be subject to periodic review.

§ 11.1.2.1 Worker’s compensation including, without limitation, Occupational Disease and Employer’s Liability Insurance:

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1. For the Duration of the Contract, the Contractor shall, at its own expense, purchase and maintain in a company or companies licensed and authorized to do business in the State of North Carolina Statutory Workers’ Compensation.

§ 11.1.2.2 Commercial General Liability including, without limitation, coverage for direct operations, sublet work, personal and advertising injury, bodily injury property damage with explosion, collapse, and underground hazard coverage (X, C, U) contractual liability, products and completed operations with limits not less than those stated below.

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a. Bodily Injury and Property Damage (each occurrence)	\$1,000,000
b. Personal & Advertising Injury	\$1,000,000
c. General Aggregate	\$2,000,000
(Other than Products and Completed Operations)	
d. Contractual Liability	\$1,000,000
e. Products and Completed Operations Aggregate	\$2,000,000
f. <u>Products and Completed Operations Insurance shall be maintained for a period of two (2) years after final payment and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period.</u>	

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§ 11.1.2.3 Umbrella Excess Liability Policies written on an excess basis with minimum coverage limits not less than \$4,000,000 for each occurrence and \$4,000,000 in the aggregate which provides excess coverage over all underlying insurance policies. The Umbrella Excess Liability Policies shall include, without limitation, a follow form aggregate provision.

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§ 11.1.2.4 The Contractor shall include the Owner and The Architects as an additional insured on all of the Contractor's insurance policies, expect for workers' compensation. Contractor's property insurance shall include a waiver of subrogation in favor of the Owner.

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§ 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,

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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

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.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.

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§ 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.





Proposed Zoning Amendments to Section 22-58.1 Sand Dune Provisions

Description

Several amendments to Section 22-58.1 of the Zoning Ordinance are proposed by staff to address recent issues we have encountered. A staff report and draft revisions are attached to this cover sheet.

Board Action Requested

Motion to schedule a public hearing on proposed amendments to Section 22-58.1 on August 19, 2019 at 5:30 p.m.

Item Presenter

Donna Creef

STAFF REPORT

TO: Dare County Board of Commissioners
FROM: Donna Creef, Planning Director
RE: Requested Amendments to Section 22-58.1 Sand Dune Regulations

In 2001, Dare County adopted regulations to address the development of properties that feature inland sand dunes and/or significant topography requiring modification during development. These regulations were adopted in response to sand mining of properties in residential neighborhoods. Large amounts of sand were being hauled offsite and the remnant slopes were left unaddressed. There was a concern about the collapse of the steep remnant slopes.

Recent development activities have resulted in the need to amend these regulations. Many of the lots being developed involve topography, which requires modification of the natural elevations to accommodate the construction of dwellings. These amendments are based on issues we have encountered in working with the developers and in response to complaints from adjoining property owners to the sites under development. For example, a retaining wall is being constructed to stabilize a remnant slope on a property in Colington. Instead of the traditional tiebacks, the wall features large helical anchors installed subsurface that encroach onto the adjoining property for several feet. On other properties, silt fencing is not being installed and sand is migrating to adjoining properties.

The current regulations do not provide for an on-site meeting before land disturbance occurs, do not address encroachment of retaining wall components on adjoining properties, and allow for stabilization of remnant slopes 30 days after completion of construction activities. The proposed staff amendments are designed to correct these issues. The Planning Board discussed the proposed amendments at their July meeting and voted unanimously to recommend approval of the revisions proposed by staff. Should it be the consensus of the Board to proceed with these amendments, a public hearing is needed. The first available date for such a hearing is August 19, 2019.

SECTION 22-58.1 - SAND DUNE PROVISIONS (new text is underlined)

These regulations shall apply to any property featuring natural topography that requires grading and/or modification in order to utilize the property. Before any grading, shaping, or modification of existing natural topography occurs, an on-site meeting with the Dare County Planning Department and/or Building Inspector is required to assess the topography, discuss proposed activities, and proposed stabilization methods that will be required to address remnant slopes on the property.

1. Sand dunes and their existing contours shall not be damaged, destroyed, removed, or changed ~~except as specifically exempted below~~: unless in conjunction with the following activities:

a. The area required for the construction and installation of septic or wastewater improvements as authorized by the Dare County Health Department or North Carolina Department of Environmental Health.

b. Activities in conjunction with a Dare County building permit as authorized by the Dare County Building Inspector

c. Other land disturbing activities in conjunction with subdivision development or other ~~residential or commercial~~ development as authorized by the Dare County Planning Department, the Dare County Planning Board or the Dare County Board of Commissioners.

For activities ~~exempted under~~ outlined in Section 1 a, b and/or c, the following standards shall apply:

1. A site plan prepared by a NC licensed engineer or NC licensed surveyor shall be submitted depicting the existing grades and proposed grades ~~after the proposed land clearing activity~~ and areas where retaining walls are needed to stabilize remnant slopes.
2. A horizontal – vertical slope not to exceed 4' to 1' shall be maintained unless the dune-disturbing activity is intended to provide elevations that are consistent with abutting properties. Before any disturbing activities commence, silt fencing shall be placed at the bottom of slopes to prevent erosion of sediment onto adjoining properties and right of ways. Silt fencing shall remain in place until the final inspection of the property by the Dare County Planning Department. Depending on the vertical slope, temporary vegetative matting may be required to stabilize slopes until permanent stabilization measures are completed. Graded slopes must be vegetated or otherwise stabilized within 30 working days of completion of the work. Graded slopes shall be stabilized with retaining walls or other permanent stabilization improvements prior to issuance of the Certificate of Occupancy/Certificate of Completion by the Planning Department.

3. All components of retaining walls shall be located on the subject property and shall not encroach onto adjoining lots or right-of-ways, either aboveground or subsurface.
4. Sand shall not be removed from the site unless authorized by the Dare County Planning Department as part of the development activities.
5. Other proposals for sand dune disturbing activities not specifically exempted in Section 1 may be submitted for review as conditional uses subject to Planning Board review and Board of Commissioners approval.
6. Unauthorized dune-disturbing activities shall be considered a violation of this chapter and shall be subject to a fine of \$200 for each and every day the violation continues. Mitigation plans prepared by a NC licensed engineer or NC licensed surveyor shall be required for any unauthorized dune-disturbing activity.

These standards do not apply to those sand dunes that are protected by the NC Coastal Area Management Act and subject to those State regulations.



Proposal for Development of Dredge Material Management Plan

Description

The Board of Commissioners will review the APTIM Proposal for Development of Dredge Material Management Plan

Board Action Requested

Discuss and Take Appropriate Action

Item Presenter

Robert Outten, County Manager



Kenneth Willson
President
Aptim Coastal Planning & Engineering of North Carolina, Inc.

4038 Masonboro Loop Road
Wilmington, North Carolina
Tel: +1 910-791-9494
Kenneth.Willson@aptim.com

July 22, 2019

Robert L. Outten
Dare County
954 Marshall C Collins Dr. Room 286
Manteo, NC 27954

Subject: Proposal for Development of Dredge Material Management Plan

Dear Mr. Outten:

Aptim Coastal Planning & Engineering of North Carolina, Inc. (APTIM) is pleased to provide this proposal to Dare County (OWNER) associated with the development of a dredge material management plan. The development of the dredge material management plan will include a needs assessment, the development and feasibility analysis of conceptual alternatives, and recommendations for the development of dredge material management facilities. APTIM will focus on identifying and assessing the feasibility of utilizing dredge material facilities that not only provide long-term sustainable dredge material disposal capacity, but also provide additional benefits to the county such as supplemental sources of usable sediments, and the creation or augmentation of recreation and educational outreach areas.

APTIM has a special preferred relationship with Aptim Environmental & Infrastructure, LLC, and through that relationship APTIM will utilize their personnel, resources and assets to perform the proposed Services.

The Scope of Professional Services (the Services) is attached to this proposal as Exhibit A and is broken into two (2) Tasks, which include: 1) Needs Assessment and 2) Concept Alternative Development and Feasibility Assessment. The Services will be performed for a lump sum fee of \$68,975.75. Exhibit B includes a breakdown of cost by Task.

Barring any unforeseen circumstances, APTIM anticipates the draft Dredge Material Management Plan to be provided within six (6) months following receipt of your written notice to proceed. Please see Exhibit C – List of Deliverables, for a description of each of the following deliverables identified as part of this proposal:

- Monthly Progress Reports;
- Scoping Meeting Minutes;
- Draft Dredge Material Management Plan; and
- Final Dredge Material Management Plan

APTIM's performance of the proposed Services is conditioned upon mutually acceptable contract terms and conditions. In that regard, attached to this proposal is our Services Agreement for your consideration as the terms and conditions that will govern our performance of the proposed Services.

If this proposal is acceptable to you, please have the attached Services Agreement signed, and return it to me. APTIM will then sign the Services Agreement and return a fully signed copy to you for your records.

Sincerely,

APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

A handwritten signature in black ink, appearing to read 'K Willson', written over a horizontal line.

Kenneth Willson
President

**APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.
SERVICES AGREEMENT
FIXED PRICE BASIS**

All in accordance with the following terms and conditions.

- 1. SCOPE OF SERVICES:** APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC. ("APTIM") agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in the attached Proposal and/or as follows:

Development of Dredge Material Management Plan.

- 2. FEES, INVOICES AND PAYMENTS:** The Services will be performed on a fixed price basis for **Sixty Eight Thousand, Nine Hundred Seventy Five Dollars and 75/100 (\$68,975.75)**. Invoices will be submitted by APTIM no more frequently than every two weeks, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. CLIENT shall be responsible for payments (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, tariffs and duties levied against APTIM or its employees by any government or taxing authority. A service charge equal to one-half percent (1/2 %) per month, or the maximum rate permitted by law, whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.
- 3. CLIENTS COOPERATION:** To assist APTIM in performing the Services, CLIENT shall (i) provide APTIM with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with APTIM when requested, (iii) permit APTIM reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in APTIM's activities, and (v) notify and report to all regulatory agencies as required by such agencies.
- 4. CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to APTIM, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, APTIM will exercise reasonable efforts to avoid the disclosure of such information to others. Nonetheless, CLIENT shall treat as confidential all information and data furnished to it by APTIM in connection with this Agreement including, but not limited to, APTIM's technology, formulae, procedures, processes, methods, trade secrets, ideas, inventions, and/or computer programs; and CLIENT shall not disclose such information to any third party.

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of law; or by North Carolina Public Records Law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

- 5. DELAYS AND CHANGES IN CONDITIONS:** If APTIM is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by APTIM; or (vi) any other cause beyond the reasonable control of APTIM, **then** 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) APTIM shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on APTIM's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.
- 6. INSURANCE:** APTIM is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to CLIENT on request. If the CLIENT requires further insurance coverage, APTIM will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.
- 7. INDEMNITIES:** APTIM shall defend, indemnify and hold harmless CLIENT and its officers and employees from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent

acts or omissions or willful misconduct of APTIM, its borrowed servants and their employer and its subcontractors, and their respective employees and agents acting in the course and scope of their employment. CLIENT shall defend, indemnify and save harmless APTIM (including its borrowed servants and their employers and its officers, and employees) from and against, any loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees

8. LIMITATIONS OF LIABILITY:

- a. GENERAL LIMITATION - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY APTIM SHALL BE TO REQUIRE APTIM TO RE-PERFORM ANY DEFECTIVE SERVICES. APTIM'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, , OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED EXCEPT FOR THE MUTUAL INDEMNIFICATIONS SET FORTH IN SECTION 7 ABOVE. IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE AMOUNT OF COMPENSATION FOR SUCH SERVICES,
 - b. CONSEQUENTIAL DAMAGES: FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, APTIM SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.
- 9. GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.
- 10. TERMINATION:** Either party may terminate this Agreement with or without cause upon forty five (45) days' written notice to the other party. Upon such termination, CLIENT shall pay APTIM for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay APTIM all reasonable costs and expenses incurred by APTIM in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

11. ASSIGNMENT: Neither APTIM nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, APTIM may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.

12. MISCELLANEOUS:

- a. **ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by APTIM to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by APTIM, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein. In the event of conflict, the three pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing APTIM to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by APTIM and shall not operate to modify the Agreement.
- b. **DISPUTES, ATTORNEY FEES** – Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 9 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.
- c. **WAIVER OF TERMS AND CONDITIONS** - The failure of APTIM or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by APTIM or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.
- d. **NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally

confirmed email (further confirmed by US Mail) to the addresses set forth below.

- e. **SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement.

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

CLIENT and APTIM agree to the foregoing **(INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS herein)** and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on _____, 2019.

APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

DARE COUNTY

By (Sign): _____

By (Sign): _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANAGEMENT PLAN**

Aptim Coastal Planning & Engineering of North Carolina, Inc. (APTIM) will provide professional services to the County of Dare (OWNER) associated with the development of a dredge material management plan. The development of the dredge material management plan will include 1) a needs assessment, 2) the development of conceptual alternatives and feasibility analysis of each alternative, and 3) recommendations for the development of dredge material management facilities. APTIM will focus on identifying and assessing the feasibility of utilizing dredge material facilities that not only provide long-term sustainable dredge material disposal capacity, but also provide additional benefits to the county such as supplemental sources of usable sediments, and the creation or augmentation of recreation and educational outreach areas.

A detailed description of the services to be provided follows.

TASK 1 – NEEDS ASSESSMENT

Aptim will develop a geographic information system (GIS) that contains all federal and non-federal maintained navigation channels within the County. Using dredge records from the USACE and other entities engaged in actively maintaining navigation channels in the County, APTIM will 1) quantify the volume of material anticipated to be placed in dredge disposal sites over a pre-determined timeframe; and 2) determine the quality of material to be removed from the channels (i.e. sand, sand silt mix, mud, etc.).

APTIM will submit Freedom of Information Act (FOIA) requests to the USACE for available sediment data to assess sediment quality. Typically, the USACE does not require fees to process such requests; however, depending on the level of effort required by the USACE staff to compile the records, they may charge the County a fee of \$48/hour plus duplication costs (\$.15/page and \$5.00/DVD). This contract does not include additional fees to be paid to the USACE for this information. Should fees be required, the County will be provided a cost estimate and instructions on how to remit payment directly to the USACE.

APTIM will use data provided by the USACE through the FOIA request and other sources to assess the quality and sediment characteristics of material dredged from channels. The assessment of sediment quality does not include field collection of any additional geotechnical data. APTIM will also use data provided by the USACE to identify the type and size of dredge equipment likely to be used to maintain each dredge project and to determine if existing spoil sites could be modified to increase capacity.

As part of the needs assessment, APTIM will also conduct interviews with representatives from the North Carolina Department of Transportation (NCDOT), County and local government public works departments, National Parks Services (NPS), and representatives from private industry to determine the needs for different types of sediments dredged from navigation channels. This information will be used in the subsequent phase of the

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANAGEMENT PLAN**

development of the dredge material management plan to determine how sediment can be beneficially used.

TASK 2 – CONCEPT ALTERNATIVE DEVELOPMENT AND FEASIBILITY ASSESSMENT

Upon completion of the needs assessment (Task 1), APTIM will work with the County and other stakeholders to identify the locations of dredge material management facilities. The siting of these locations will consider:

- Proximity of the facility to the channel(s) requiring maintenance;
- Cost to acquire land;
- Permitability (potential for environmental impacts);
- Ease of access for interested parties to transport spoil material from the sites for beneficial uses;
- Potential opportunities for dual purpose of dredge disposal sites for public use (i.e. camp grounds, water access, educational outreach, etc.)

Through the process of identifying potential sites, APTIM will coordinate with land owners and user groups (i.e. Dare County Waterways Commission, Coastal Federation, local recreational and commercial fishing interests, etc.) to assess the feasibility of these sites based on the criteria listed above. Once initial site alternatives have been identified by APTIM and these user groups, APTIM will then develop a conceptual plan for each site with appropriate detail to allow for discussions with resource and permitting agencies to determine the feasibility from their perspectives.

APTIM will then arrange an interagency scoping meeting with representatives from state and federal environmental resources agencies, state regulatory agencies, the USACE, and local governmental representatives. The purpose of the meeting will be to identify any concerns these entities may have regarding each site identified through the process described above. In addition, the meeting will serve to determine the most appropriate permitting approach and National Environmental Policy Act (NEPA) documentation requirements. A project narrative and concept plan will be provided to meeting attendees by APTIM prior to the interagency meeting. Meeting minutes of the meeting will be drafted and disseminated to all meeting participants within 1 week following the meeting date.

APTIM will utilize information gained through the needs assessment, interviews with stakeholders, and resource/regulatory agency feedback from the interagency scoping meeting to develop a dredge material management plan that will include the following information:

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANAGEMENT PLAN**

- Estimate of volumetric needs for dredge material disposal over the next 20 years
- Location and description of the recommended dredge material placement facilities
- Cost associated with the design, permitting and land acquisition for the recommended dredge material placement facilities
- Recommendations for cost-sharing partners
- A schedule for the design, permitting, and land acquisition required to develop the recommended dredge material placement facilities.

A draft of the dredge material management plan will be provided to the County within six (6) months following receipt of written authorization to proceed. Once comments have been received from the County regarding the draft plan, APTIM will address comments and provide both digital and hard copies of the document to the County as a final deliverable.

The information contained in this proposal is confidential commercial information and shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to APTIM as a result of or in connection with the submission of this proposal, the requester shall have the right to use or disclose the data to the extent provided in the contract. This restriction does not limit the requester's right to use or disclose any technical data obtained from another source without restriction.

**EXHIBIT B:
BREAKDOWN OF COSTS
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANGEMENT PLAN**

Table 1. Breakdown of the cost for each Task described in Exhibit A – Scope of Professional Services, to develop the dredge material management plan.

TASK	DESCRIPTION	Cost
1	Needs Assessment	\$23,140.80
2	Concept Alternative Development and Feasibility Analysis	\$45,834.95
TOTAL:		\$68,975.75

**EXHIBIT C:
LIST OF DELIVERABLES
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANAGEMENT PLAN**

The following items have been identified as deliverables for the completion of this scope of work.

- Monthly Progress Reports;
- Scoping Meeting Minutes;
- Draft Dredge Material Management Plan; and
- Final Dredge Material Management Plan

A detailed description and an individual schedule for each deliverable are provided below.

Monthly Progress Reports: APTIM will provide a 1-page summary of the project status via e-mail approximately every 30 days during the course of the anticipated 6-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

Scoping Meeting Minutes: As part of Task 2, APTIM will convene a scoping meeting. The purpose of the meeting will be to identify concerns that state and federal resource and regulatory agencies may have regarding potential dredge material placement facilities and to determine the most appropriate permitting approach and National Environmental Policy Act (NEPA) documentation requirements. APTIM will prepare and distribute meeting minutes to all participants including Dare County. Barring any unforeseen circumstances, the meeting minutes will be provided to participants within two (2) weeks following the meeting. These meeting minutes will also be archived as an appendix to the Dredge Material Management Plan.

Draft Dredge Material Management Plan: As described in the Scope of Professional Services under Task 2, APTIM will develop a Dredge Material Management Plan, which will include:

- Estimated volume anticipated to be removed from the identified navigation channels over the next 20 years
- Location and description of the recommended dredge material placement facilities
- Cost associated with the design, permitting and land acquisition for the recommended dredge material placement facilities
- Recommendations for cost-sharing partners
- A schedule for the design, permitting, and land acquisition required to develop the recommended dredge material placement facilities

Barring any unforeseen circumstances, APTIM will provide a digital copy of the draft Dredge Material Management Plan to the County within six (6) months following receipt of written authorization to proceed.

**EXHIBIT C:
LIST OF DELIVERABLES
DARE COUNTY, NORTH CAROLINA
DEVELOPMENT OF DREDGE MATERIAL MANAGEMENT PLAN**

Final Dredge Material Management Plan: Upon submittal of the draft Dredge Material Management Plan to the County for review, APTIM will await comments. Once comments have been received from the County, APTIM will address comments and finalize the document. Barring any unforeseen circumstances, the final Dredge Material Management Plan will be provided within two (2) weeks of receipt of all comments from the County. APTIM will provide three (3) hard copies of the final plan to include all appendices. Digital copies of the report will also be included with each hard copy.



GIS Community Map Introduction and Demo

Description

An Introduction to the GIS Community Map and a Demo of how it works.

Board Action Requested

None

Item Presenter

Matthew Hester & Kristin Stilson



Designation of Voting Delegate to NCACC Annual Conference

Description

The 112th Annual Conference of the North Carolina Association of County Commissioners will be held in Guilford County, NC, on August 22-24, 2019. The Board to designate a voting delegate for Dare County.

Board Action Requested

Take Appropriate Action

Item Presenter

County Manager, Robert Outten



Designation of Voting Delegate to NCACC Annual Conference

I, _____, hereby certify that I am the duly designated voting delegate for _____ County at the 112th Annual Conference of the North Carolina Association of County Commissioners to be held in Guilford County, N.C., on August 22-24, 2019.

Signed: _____

Title: _____

Article VI, Section 2 of our Constitution provides:

“On all questions, including the election of officers, each county represented shall be entitled to one vote, which shall be the majority expression of the delegates of that county. The vote of any county in good standing may be cast by any one of its county commissioners who is present at the time the vote is taken; provided, if no commissioner be present, such vote may be cast by another county official, elected or appointed, who holds elective office or an appointed position in the county whose vote is being cast and who is formally designated by the board of county commissioners. These provisions shall likewise govern district meetings of the Association. A county in good standing is defined as one which has paid the current year's dues.”

Please return this form to Alisa Cobb by: **12 Noon on Friday, August 16, 2019:**

NCACC
323 W. Jones Street, Suite 500
Raleigh, NC 27603
Fax: (919) 733-1065
Email: alisa.cobb@ncacc.org
Phone: (919) 715-2685



Consent Agenda

Description

1. Approval of Minutes (07.15.19)
2. Town of Kitty Hawk Sanitation Contract
3. Report to Board on County Manager Budget Actions for Approved 2020 CIP
4. Southern Albemarle Association, Annual Meeting Invitation List
5. Memorandum of Understanding for the Dare Soil & Water Conservation District Partnership
6. Right of Access Agreement Charter Communications
7. North Carolina Governor's Highway Safety Program (GHSP) Local Government Grant Award

Board Action Requested

Approval

Item Presenter

Robert Outten, County Manager



Approval of Minutes

Description

The Board of Commissioners will review and approve their previous Minutes, which follow this page.

Board Action Requested

Approve Previous Minutes

Item Presenter

County Manager, Robert Outten



County of Dare

P.O. Box 1000 | Manteo, NC 27954

MINUTES

DARE COUNTY BOARD OF COMMISSIONERS MEETING

Dare County Administration Building, Manteo, NC

5:00 p.m., July 15, 2019

Commissioners present: Chairman Robert Woodard, Vice Chairman Wally Overman
Rob Ross, Steve House, Jim Tobin, Danny Couch, Ervin Bateman

Commissioners absent: None

Others present: County Manager/Attorney, Robert Outten
Deputy County Manager/Finance Director, David Clawson
Public Information Officer, Dorothy Hester
Clerk to the Board, Cheryl C. Anby

A full and complete account of the entire Board of Commissioners meeting is archived on a video that is available for viewing on the Dare County website www.darenc.com.

At 5:05 p.m. Chairman Woodard called to order the regularly scheduled meeting with appropriate prior public notice having been given. He invited retired Rev. Craig Peel to share a prayer, and then he led the Pledge of Allegiance to the flag.

ITEM 1 – OPENING REMARKS – CHAIRMAN’S UPDATE

Following is a brief outline of the items mentioned by Chairman Woodard during his opening remarks, which can be viewed in their entirety in a video on the Dare County website –

- Omie Tillett, a native of Dare County born in 1929 died July 5. He was renowned for his boat building and fishing skills and had been awarded the Order of the Long Leaf Pine in 2009. He began every morning with blessing the fleet.
- Clarified that the speed limit on NC 12 had not been altered by the Board, but rather the temporary reduction from 55 mph to 45 mph change had been changed by NCDOT as a summer safety precaution and will return to 55 in September.
- CIPC met on July 8 and tonight David Clawson will present a report on the proposed changes to the 2020 CIP.
- Attended the 20 year anniversary commemorating the moving of Hatteras lighthouse
- Provided an update on the COA scholarship fund, construction project and interim president’s assistance with the project.
- Acknowledged that Katherine Schuster, who attends First Flight High School, has won the 23rd North Carolina Junior Girls’ Golf Championship and that other Dare County students like her are raising the bar and setting examples for the younger Dare students.
- Roanoke Island flooding study is coming to a close.

ITEM 2 – PRESENTATION OF COUNTY SERVICE PINS

- 1) ~~Amy Elkins, Communications, received a 10-year pin.~~ (Was not present)
- 2) Sarah Bradshaw, Social Service Worker IV with the DHHS, received her 10-year pin presented by Sally Helms.

ITEM 3 – EMPLOYEE OF THE MONTH – JULY, 2019

Randy Grantham received the Employee of the Month award from Pat Irwin, Public Utility Director, who described the many ways that Randy is an asset to the Stumpy Point Reverse Osmosis Water Plant. His dedication takes him above and beyond the call of duty, as he works outside his job description and always has a kind word for area customers.

ITEM 4 – PUBLIC COMMENTS

At 5:35 p.m. the Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton. Following is a summary of all citizen remarks, which can be viewed in their entirety in a video on the County website –

The following comments were made in Manteo –

1. Colleen Shriver spoke with reference to the property owners of Carolina Pines West, a non-state maintained road, and their concerns arising from a new subdivision whereby the developer will access by way of Carolina Pines West.

The following comments were made in Buxton –

1. Wes Lassiter, owner of Red Drum Pottery, expressed concerns that his art business and other business owners near him were experiencing declines believed to be due to the various farmers' markets, shows and others that sold roadside crafts. He suggested limiting the number of shows and/or regulating them.

The County Manager closed Public Comments at 5:42 p.m.

ITEM 5 – AIRPORT MODERNIZATION REPORT

Brent Lane from Aerogency Strategies provided an encore presentation of his Economic Impact Assessment report regarding the Dare County Regional Airport, which had been provided at the June 3, 2019 Board meeting. In comparing DC Regional with other like kind airports, Mr. Lane stressed that an expansion of the airport from 4,300 feet to approximately 5,800 feet would affect the long term benefits to encourage a 50% projected growth of employment and business interests, who take advantage of the flight opportunities.

He reiterated that it is not the number of flights that come in and out of an airport, but rather the types of flights that contribute to a high-end tourism interest along with the benefits of connectivity to global and national customers. The jobs created from a larger airport would be approximately nine, but the larger impact would be the contribution to job growth from increased spending and buying of supplies and airport affiliated businesses.

Mr. Lane offered that the airport had a 1970's infrastructure and was ill-suited for newer types of aircraft and innovations in the industry. He provided a graph to review Dare's "Prime Working Age" population, which reflected a continuing decline. He offered that one of the issues considered when relocating to any new area was the accessibility to commercial air service. David Daniels, Director of the Dare County Airport, addressed the questions of the Commissioners concerning airport closure during expansion and explained there would be times it would be closed, thus impacting the UPS and Fed X customer base, and the possibility of a combination of both land and floating extension in order to accomplish the proposed expansion.

ITEM 6 – RECOMMENDED CAPITAL IMPROVEMENTS PLAN FOR 2020 - 2024

David Clawson, Finance Director, provided a power point presentation on the Capital Improvements Plan for 2020 through 2024. His summary included an explanation that the Capital Investment Fund ("CIF") Model was complete except for the debt and ratings metrics section. He offered explanation of the model which included roof replacement plans for 24 County buildings, replacement of HVAC systems for 23 buildings with EMS stations to have those same areas of concerns addressed with the 2022 up-coming projects. Additionally, the model allowed for major equipment replacements to include law enforcement and EMS communication systems, cardiac monitors and mobile data computers along with the Dare Medflight maintenance, overhaul and replacement schedules. Mr. Clawson explained each enumerated item on the Existing Requests totaling \$11,914,818 and the New Requests totaling \$1,455,583.

MOTION

Commissioners Bateman, Ross and Vice Chairman Overman motioned to approve the recommended CIP Plan for 2020-2024 and to authorize the County Manager to sign the necessary budget amendments with a follow-up report to the Board of those budget actions. Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

County Manager Outten added the funding would also allow the demolition of the old administrative building site projected to move forward in mid-August.

ITEM 7 – COLLEGE OF THE ALBEMARLE ARCHITECT (Att. # 1)

David Clawson, Finance Director, provided a summary and update of the College of the Albemarle Project. On June 17, 2019 the Board had approved Boomerang Design as the architect and now Boomerang had provided their proposed construction estimates with two options. CIPC met on July 8 and voted to recommend a modified option which would provide for a 26,000 ft² new building (including campus administration, library, at an estimated cost of \$9,126,260).

MOTION

Vice Chairman Overman motioned to approve the Boomerang Design contract for a 26,000 ft new building with any review changes the County Manager deems necessary, and to authorize the County Manager to execute the contract, and to approve the amendment to the Capital Project Ordinance for the COA project and the 2020 limited obligation bonds. Commissioner Couch seconded the motion.

Commissioner Couch seconded the motion.

VOTE: AYES unanimous

ITEM 8 – SELECTION OF CONSTRUCTION MANAGER AT RISK FOR ANIMAL SHELTER PROJECT

David Clawson presented to the Board that the CIPC had met on July 8 and reviewed the statements of qualifications for a construction manager at risk for the Animal Shelter Project. The two responses received were from A. R. Chesson Construction Co., based in Williamston, and The Whiting-Turner Contracting Company from Chesapeake, and indicated the Committee felt both companies would be good choices for CMR. The CIPC recommends The Whiting-Turner Contracting Company as CMR for this project.

MOTION

Vice Chairman Overman motioned to award the Construction Manager at Risk for the Animal Shelter project per the CIPC recommendation to The Whiting-Turner Contracting Company and to authorize the County Manager to negotiate a contract for Board approval.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

ITEM 9 – RODANTHE CHANNEL – TRANSFER OF FUNDS

County Manager, Robert Outten, presented information about the Rodanthe Channel and the emergency ferry system that runs from Stumpy Point across the Sound into Rodanthe. Land owned by Dare County had been staked to build a ferry terminal with a federal channel that allows the ferries to come through when storms cause the road to become impassable. He further explained that every hurricane season this channel was tested and it had been determined there is some dredging to be done in order to bring the channel to proper depths for the emergency ferry to operate through the channel. The Corps can procure a dredge from Norfolk in early August to do some dredge work and Dare County has a spoil site near the Recycle Center in proximity to the area. As locating funding for the project had been difficult, the County Manager outlined there was \$1.9 million not spent from last year's funds, \$600,000 of which is Dare County's and the balance was State MOA money. Mr. Outten requested to be authorized to take the cost of the dredging, \$324,000, out of the Oregon Inlet Dredging Account and move it to the Rodanthe Dredging Account. The Corps currently has these funds but would need to have them authorized to be used for Rodanthe Channel dredging with the spoil properly disposed of in order to protect Hwy. 12. Commissioner House continues in his efforts to have the State pay for this work through his contacts in the Senate. Commissioner House added the emergency ferry channel is an issue we cannot wait to act upon and we should take every proactive effort to have the channel ready for an emergency in order to protect our citizens on Hatteras Island.

MOTION

Commissioner House motioned to authorize the transfer of excess funds from the Oregon Inlet Dredging Account to the Rodanthe Channel Account for the purpose of dredging the Rodanthe Channel for the emergency ferry service.

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

ITEM 10 – CONSENT AGENDA

The Manager announced the items as they were visually displayed in the meeting room.

MOTION

Vice Chairman Wally Overman motioned to approve the Consent Agenda:

- 1) Approval of Minutes (06.17.19) **(Att. # 2)**
- 2) Annual Community Rating Reports (CRS)
- 3) Reimbursement Resolution – Fiscal year 2019-2020 Vehicle & Equipment Financing **(Att. # 3)**
- 4) Tax Collector's Report
- 5) DC DHHS Public Health Division, Agreement with United Healthcare of North Carolina, Inc.
- 6) DC DHHS Public Health Division, Agreement with AmeriHealth Caritas North Carolina, Inc.
- 7) DC DHHS Public Health Division, Agreement with Blue Cross Blue Shield of North Carolina, Inc.
- 8) DC DHHS Public Health Division, Agreement with WellCare Health Plans, Inc.
- 9) Health and Human Services – Public Health Division Breaking Through Task Force Grant
- 10) Dept. of Health and Human Services – Public Health Division Increase Fees for Grant Position
- 11) Health and Human Services – Public Health Division Diabetes Prevention Program Grant

Commissioner House seconded the motion.

VOTE: AYES unanimous

ITEM 11 – BOARD APPOINTMENTS

1) Airport Authority

Vice Chairman Wally Overman motioned to reappoint George Henderson, Joseph Blakaitis and to appoint Walton "Pete" Burkheimer, Jr. and Jonathan Chad Jones.

Commissioner House seconded the motion.

VOTE: AYES unanimous

2) Dare County Waterways Commission

Commissioner Couch motioned to appoint Kermit Skinner, Jr. to replace Fletcher Willey.

Commissioner House seconded the motion.

VOTE: AYES unanimous

3) East Lake Community Center Board

Vice Chairman Wally Overman motioned to reappoint Crystal Basnigh and Shelly Perrot.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

4) Game and Wildlife Commission

Commissioner Bateman motioned to reappoint Timmy Midgett, Mike Johnson and Edward "Bow" Meekins.

Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

5) Parks and Recreation Advisory Council

Vice Chairman Overman motioned to reappoint Deon Simmons.

Commissioner House seconded the motion.

VOTE: AYES unanimous

6) Wanchese Community Center Board

Vice Chairman Wally Overman motioned to reappoint Tina Sherrod, Bill Wilson, Sally DeFosse, Becky Beacham and Joseph Lee Willis.

Commissioner House seconded the motion.

VOTE: AYES unanimous

7) Upcoming Board Appointments

The upcoming Board appointments for August, September and October, 2019 were announced.

ITEM 12 – COMMISSIONERS’ BUSINESS & MANAGER’S/ATTORNEY’S BUSINESS

Commissioners and the County Manager frequently make extensive remarks, which can be viewed in their entirety in a video on the Dare County website. Following is a brief summary outline of the items mentioned by Commissioners during this segment:

Chairman Woodard recommended Colleen Shriver, who spoke earlier at public comments, be provided some additional assistance. County Manager recommended Clerk to provide her with the documentation necessary to begin the NCDOT Request for Addition to State Maintained Secondary Road System, adding that he would gladly discuss her other concerns with her and the Planning Department.

MOTION

Commissioner Ross, Commissioner House and Vice-Chairman Overman motioned to authorize the Resolution that the Division of Highways be requested to review the paperwork for Carolina Pines West to be added to the State Road Maintenance System.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

Commissioner House

- Updated the Board on the status of HB 483 “Let Them Spawn Bill”, which had now been passed by the House and was moving on to the Senate for approval
- Acknowledged the 20th of July would be the anniversary of when Apollo made the first moon landing
- Presented the video for Pet of the Week, “Sasha”, a mixed breed 10 years old

Commissioner Wally Overman

- Congratulated the Dare County student athletes who recently received awards
- Thanked the Community Foundation for their continued scholarships and the money their raise for our students
- Congratulated those awarded service pins this month and the employee of the month, Randy Grantham
- Commented he had been told HB 483 was believed stuck in the Senate Committee and would not likely come up again until the short session in 2020

Commissioner Bateman

- Applauded the new passenger ferry in Ocracoke. The operation was very impressive
- Updated the Board on the progress with the Recovery Board meetings with 10 applicants now in the system and a couple had been sent to recovery treatment centers as the system follows their progress
- Expressed concern with the two bike lanes on the new bridge and discussed the need for rumble strips or other measures to ensure citizen safety. County Manager added that he would contact NCDOT to explore remedies to the bike lane concerns.

Commissioner Couch

- Remembered the accomplishments and memories of both Capt. Omie Tillett and Bertha Kaye O'Neal who had recently died
- Attended the christening in Norfolk of the Cutter Midgett
- Thanked Fletcher Willey for his service to the Waterways Commission
- Acknowledged the firm but fair handling and enforcement of the issues arising from inspections of restaurants and food trucks by the Environmental Health Specialists.
- Thanked the Dare County Planning staff for their continued dealings with assorted Airbnb issues
- Attended the Community Rating System and was pleased with the turnout

Commissioner Tobin

- Attended the Friends of Youth fishing trip. He thanked and commended Bonnie Bennett, soon retiring, for her long-time efforts to benefit Dare County youth.
- Attended Community Advisory Council for Peak Resources and Spring Arbor and noted that amount the issues discussed staffing was still a challenge. The Council also had a member resign for health issues and were looking for a replacement.
- He also had attended the Oregon Inlet Task Force meeting and announced all of the contracts were signed and completed with the state and the first payment of \$5 million was deposited. The contract was signed with the private partner and they were working on the preliminary design and expected a final design in approximately four and half months.
- Fondly remembered the passing of Capt. Omie Tillett

Commissioner Ross

- Reported that on August 8 he would be attending the DC IGA Conference with the County Manager, Vice Chairman Overman and Commissioner Couch and was looking forward to having some discussions on several topics that were critical to our area
- Advised the Albemarle Commission would meet July 18 with Senator Hanig attending
- Audit Committee met earlier today and he was very satisfied with the progress made by the newly hired Internal Auditor, Ernie Dabiero
- The Albemarle Commission had a "revolving loan program" which had become problematic and they would be exiting that plan.
- He would be reaching out to Suma Gupta regarding housing issues.
- Mentioned the Harbor Town Project, which proposes to encourage tourist exploration of towns with ferries. He would share more information with the Board at a later date.

MANAGER'S/ATTORNEY'S BUSINESS

Mr. Outten stated he had received several inquiries from various officials in the region asking about Dare County's position on the Inner Ferry concluding the County had not yet received any additional information to yet form a position.

Mr. Outten further discussed that there were other inlets and channels that from time to time needed intermittent dredging. There were several spoil sites used for those projects that were now either full or about to be full. Some planning would be needed to insure those sites remain open. Ken Wilson, of Coastal Planning, would be asked to give some additional information and afterward the County Manager would provide the Board with more data and recommendations for funding.

He noted several contracts were approved by the Board under the Consent Agenda for health care services. EMS would also have some like-kind contracts for approval and signature. He recommended the Board could authorize the County Manager to approve and sign those Emergency Medical Services state-negotiated contracts.

MOTION

Commissioner Ross motioned to authorize the County Manager to review, approve and sign the upcoming Emergency Medical Services state-negotiated contracts.

Commissioner Couch seconded the motion.

VOTE: AYES unanimous

Mr. Outten updated that Drew Pearson, at the Emergency Operations Center, had the new re-entry pass on-line program available and residents could now go online to download and print their passes without delay. Chairman Woodard added there would also be a Control Group Meeting on July 29 to bring the mayors in to begin pre-planning for weather issues.

Dorothy Hester, Public Information Officer, noted the Emergency Notifications subscribers had also received an email today advising them of the availability of the re-entry program. She also mentioned a new segment called "On the Job with Rich Coleman" was being developed to highlight various services offered in the County by interviewing them while riding in a vehicle with Mr. Coleman. (Due to technical difficulties, the sample video would be shared at another meeting.)

David Clawson, Finance Director, advised that they had had the kick-off meeting with the architect for the Health and Human Services last week.

County Manager instructed the Board that pursuant to the provisions of NCGS 143-318.11(a)(5) he needed a motion to go into Closed Session to instruct the County staff, or negotiating agents, concerning the position to be taken by or on behalf of the County in negotiating the price and other material terms of a contract, or proposed contract, for the acquisition of real property by purchase, option, exchange or lease for the matter of property located at 1042 Wescott Park Road and 1036 George Daniels Road, both owned by the Drake heirs.

MOTION

Commissioner House motioned to go into Closed Session pursuant to the provisions of NCGS 143-318.11 (a)(5).

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

At 7:49 p.m. the Commissioners exited the room to meet in Closed Session. They reconvened at 7:53 p.m. and Mr. Outten reported that during the Closed Session the Board approved previous Closed Session Minutes and gave the County Attorney guidance with regard to a real estate matter and took no other action.

MOTION

Commissioner House motioned to adjourn the meeting.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

At 8:03 p.m., the Board of Commissioners adjourned until 9:00 a.m., August 5, 2019.

Respectfully submitted,

[SEAL]

By: _____
Cheryl C. Anby, Clerk to the Board

APPROVED: By: _____
Robert Woodard, Chairman
Dare County Board of Commissioners

Note: copies of attachments (Att.), ordinances, resolutions, contracts, presentations, and supporting material considered by the Board of Commissioners at this meeting are on file in the office of the Clerk to the Board.



Town of Kitty Hawk Sanitation Contract

Description

Attached is the contract between Dare County and the Town of Kitty Hawk which sets forth terms for Dare County to collect solid waste in Kitty Hawk. The contract states that if termination does not occur, this agreement shall automatically renew for the next fiscal year, therefore, Board approval is necessary.

Board Action Requested

Approve contract

Item Presenter

Shanna Fullmer / Public Works Director



County of Dare

P.O. Box 1000 | Manteo, North Carolina 27954 | 252.475.5000

NORTH CAROLINA
DARE COUNTY

INTER-LOCAL AGREEMENT FOR SOLID WASTE COLLECTION SERVICES

THIS AGREEMENT made and entered into this _____ day of _____, 2019 by and between the County of Dare, a North Carolina body politic (hereinafter County) and the Town of Kitty Hawk, a North Carolina body politic (hereinafter Town);

WITNESSETH:

WHEREAS, County is empowered with the authority to collect solid waste pursuant to the laws of the State of North Carolina and under the direction of its County Manager and Board of Commissioners; and

WHEREAS, the Town is also empowered with the authority to collect solid waste within its municipal limits, pursuant to the laws of the State of North Carolina and under the direction of the Town Council of the Town of Kitty Hawk; and

WHEREAS, pursuant to the provisions of North Carolina General Statute Section 160A-11, North Carolina General Statute Section 160A-17, North Carolina General Statute Section 153A-12 and Article 20 of Chapter 160A of the General State of North Carolina, the County and Town are each authorized to enter into inter-local agreements for the purposes contained herein; and

WHEREAS, Town has requested County to provide for the collection of solid waste within the corporate limits of the Town and County has agreed to perform such services pursuant to the terms of this agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

1. RESIDENTIAL RECEPTACLES. All residential garbage receptacles shall be 90 gallon rolling carts or such other receptacles as may from time to time be determined by County. Property owners shall obtain their garbage receptacles by paying unto Town, at the time of their building permit application, a fee set by County to purchase such receptacle. Town shall provide owner with a paid receipt and upon delivery of such paid receipt to County, County shall provide owner with the garbage receptacle. Property

Land of Beginnings

owners may purchase replacement garbage receptacles directly from County or from other sources, but all receptacles purchased from sources other than County shall be purchased from a list of approved receptacles provided by County.

2. COMMERCIAL RECEPTACLES. The property owner shall purchase any needed commercial receptacles from a list of approved receptacles provided by County.

3. TOWN DUTIES. The Town shall adopt and enforce such ordinances and regulations as may be necessary to assure that users:

A. Utilize only County approved receptacles.

B. Position the residential receptacles on scheduled pick-up days at the places designated by County within two feet of the abutting pavement or usually traveled tire tracks on unpaved streets.

C. Place all receptacles such that they face in the direction of the abutting street.

D. Keep and maintain a clean and sightly area for the placement of the receptacle.

E. Provide that customers allowed to paint such identifying marks or names on such portions of the receptacles as the Town may deem appropriate.

F. Provide that commercial containers shall be placed in locations approved by the County, and that the placement of receptacles on such approved sights shall be in a direction approved by the County.

G. Remain as a member of Albemarle Regional Solid Waste Management Authority and enter such agreements as may be necessary to obligate Town to commit its solid waste to County.

4. TOWN ORDINANCES. The County shall be bound by ordinances passed by the Town in connection with solid waste so long as such ordinances are in compliance with this agreement. The rate for services as set forth in this agreement shall be based on current conditions. Should Town adopt ordinances or amend ordinances which create additional costs to the County, the County may unilaterally amend its per hour fee for services set forth herein and such amendment to the hourly fee shall take effect at the time such ordinance or amendment becomes applicable.

5. SOLID WASTE MANAGEMENT ACT. The State of North Carolina has enacted the Solid Waste Management Act of 1989 that mandates waste reduction and bans several materials from landfills. In accordance with the aforesaid Act, County does not accept waste oil, lead acid batteries or yard waste with municipal solid waste. Additionally, County does not accept liquid paints, pesticides or other toxic, corrosive or flammable liquids with municipal solid waste. Any of the foregoing items or other items which are

subsequently added to the Solid Waste Management Act as prohibited items, found in the Town's waste, will be separated and properly disposed of, the hours and cost documented and the Town billed for those services. Education of Town residents concerning these bans shall be the responsibility of the Town.

6. PAYMENT TERMS. County shall charge Town for its solid waste collection services based upon its cost for fuel, labor, parts, insurance and other variable costs associated with collection of such solid waste as budgeted for the current year. Work sheets and documentation used in calculating such fees shall be shared promptly with the Town upon request. Methodology for costs and calculations will be based upon the hourly cost to the County of services instead of a unit or per cart cost. Following are the fees for collection to be paid to County by Town:

A. Residential collection services will be billed at the rate of \$120.88 per hour. County will provide residential solid waste collection twice per week Labor Day through Memorial Day. On the beach side of the by-pass only, there will be a third pick up per week from Memorial Day through Labor Day and the rest of Kitty Hawk will remain on the twice per week pick up only.

B. Commercial collection services will be billed at the rate of \$104.40 per hour. County will provide commercial solid waste collection three times per week January 1, through Memorial Day, four times per week Memorial Day through Labor Day, and three times per week Labor Day through December 31.

C. Large item collection will be conducted twice annually. "White Goods" which are household appliances are banned from landfills by the Solid Waste Management Act of 1989. These items are picked up during the large item collection and are credited to the Town's recycling numbers. Spring collection will be made after Easter and fall collection will be made following Columbus Day. The Town will be billed at the rate of \$250 per hour for such collections.

D. The aforesaid sums shall be the initial rates and shall remain in effect until June 30, 2020. Unless terminated as provided herein, the rates shall be recalculated based upon the subsequent fiscal year costs as provided above and the new rates resulting from the recalculation shall be the rates for the subsequent fiscal year. At the end of each fiscal year thereafter, the rates will be recalculated in a similar manner.

E. The Town shall be responsible for and pay as the same may become due all tipping fees incurred for the disposal of Town's solid waste. County shall not be required to pay any tipping fees on behalf of Town or for solid waste generated by Town and such sums are not a part of the schedule of fees set forth above.

7. TERM. The term of this Contract shall be for a period beginning on July 1, 2019, and end upon termination as provided herein. If this Agreement is not terminated in the manner set forth herein, this Agreement shall automatically renew for the next fiscal year.

It is the intent of the parties, that if neither party elects to terminate this Agreement, it shall automatically renew for each subsequent fiscal year, with each party having the right to terminate the Agreement as set forth herein.

8. BILLING. Payment for the collection of solid waste shall be billed as follows:

A. County will be the Town quarterly in, April, July, October, and January for all residential and commercial collections.

B. County will bill the Town for large item collection during the month following such collection.

C. Invoices will summarize the hours expended in the various categories of collection. The Town has the right to examine the daily records/logs of the drivers. Daily logs and invoices based upon them will indicate the tonnage collected of municipal solid waste sent to the landfill.

D. All sums billed shall be due and payable in full within 30 days.

9. TERMINATION. Either party may terminate this agreement upon six months written notice to the other. Such termination shall be effective at the end of the fiscal year during which such termination notice is given provided notice is given six months to the expiration of the fiscal year. It is the intention of the parties that in the event of termination, each party shall have a minimum of six months prior to the expiration of its fiscal year to plan its budget based upon the termination of this agreement.

IN WITNESS WHEREOF the parties hereto have duly authorized the signing of this agreement by their respective appropriate officers.

COUNTY OF DARE

BY: _____
Manager

ATTEST:

Clerk

TOWN OF KITTY HAWK

BY: _____
Mayor

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

Town Finance Officer



Report to Board on County Manager Budget Actions for Approved FY 2020 Capital Improvements Plan

Description

the Board adopted the fiscal year 2020 Capital Improvements Plan on July 15, 2019 and authorized the County manager to execute the necessary budget amendments and required a report to the Board on those budget actions. The budget amendments are included and serve as that report back to the Board.

Board Action Requested

None, report only.

Item Presenter

David Clawson, Finance Director

Projection 20201 - SO entered 7/19/19

**County of Dare, North Carolina
Capital Project Ordinance
for
Approved FY 2020 CIP Projects**

BE IT ORDAINED as authorized by the Board of Commissioners of the County of Dare, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is adopted:

Section 1 This ordinance is to establish a budget for the approved FY 2020 CIP projects.

Section 2 The following budget shall be conducted within the Capital Projects Fund (fund #61).

Section 3 The following amounts are appropriated for the projects:

Downtown Manteo Project	615470-737437-60338	\$163,004
EMS Facilities Improvements	615531-737437-60331	\$100,000
Detention Center Sewer	615520-737437-60343	\$276,000
Detention Center Camera System	615520-737437-60345	\$250,000
I.T. Remote Support	615445-737437-60346	\$55,000
Building Security	615470-737437-60347	\$150,000
Roof Replacements	615470-737437-60348	\$32,000
HVAC Replacements	615470-737437-60349	\$140,500

Section 4 The following revenues are anticipated to be available to complete the projects:

Transfer from Capital Investment Fund 2020		
	613090-491100	\$1,166,504

Section 5 The Finance Officer is directed to report the financial status of the project as a part of the normal monthly reporting process.

Section 6 Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Board of Commissioners.

Adopted this 16th day of July, 2019



County Manager, as authorized by the Board of
Commissioners on 7/15/2019



Cheryl Anby, Clerk to the Board of Commissioners

[SEAL]

Projection 20203 - SO entered 7/19/19

**County of Dare, North Carolina
Capital Project Ordinance - Schools
for
Fiscal Year 2020 Projects in the Adopted Capital Improvements Plan**

BE IT ORDAINED as authorized by the Board of Commissioners of the County of Dare, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is adopted:

Section 1 This ordinance is to establish a budget for the approved projects for fiscal year 2020 in the adopted Capital Improvements Plan.

Section 2 The following budget shall be conducted within the School Capital Projects Fund (fund #63).

Section 3 The following amounts are appropriated for the projects:

Local capital outlay	635675-737437-98420	\$715,000
DCS Capital improvements plan	635675-737437-98430	\$1,275,000

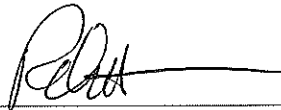
Section 4 The following revenues are anticipated to be available to complete the projects:

Transfers from Capital Investment Fund FY 2020		
	633090-491100-98420	\$715,000
	633090-491100-98430	\$1,275,000

Section 5 The Finance Officer is directed to report the financial status of the project as a part of the normal monthly reporting process.

Section 6 Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer, the Superintendent of the Dare County Schools and the Clerk to the Board of Commissioners.

Adopted this 16th day of July, 2019.



County Manager, as authorized by the Board of Commissioners on 7/15/2019



Cheryl Anby, Clerk to the Board of Commissioners

[SEAL]

**County of Dare, North Carolina
Capital Project Ordinance
For Series 2020 LOBs**



BE IT ORDAINED as authorized by the Board of Commissioners of the County of Dare, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted for the planned Series 2020 Limited Obligation Bonds.

Section 1 This ordinance is to establish a budget for projects # 6 and #17 in the approved 2020 Capital Improvements Plan. This ordinance, which the County Manager was authorized to execute, amends the capital project ordinances adopted September 18, 2017, August 6, 2018, January 22, 2019, February 4, 2019, June 3, 2019, June 17, 2019, and July 15, 2019.

Section 2 The following budget shall be conducted within the Capital Projects Fund (fund #61).

Section 3 The following amounts are additionally appropriated as indicated:

2020 CIP #6 EMS Mobile Data Computers	615531-737437-60342	\$365,200
2020 CIP #17 EMS Cardiac Monitors & Equipment	615531-737437-60344	\$1,133,116

Section 4 The following revenues are additionally anticipated to be available to complete the project as changed below:

Debt proceeds S2020 LOBs	613090-470318-98726	\$1,498,316
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Section 5 After this amendment, the following amounts are budgeted for the S2020 LOBs to date:

COA	\$1,219,760	
Animal Shelter	\$280,540	
DHHS buildings	\$485,895	
Manteo property & renovations	\$1,000,000	
Buxton property	\$325,000	
EMS equipment 2020 CIP	\$1,498,316	
Total		\$4,809,511

Section 6 The Finance Officer is directed to report the financial status of the project as a part of the normal ongoing financial reporting process.

Section 7 Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Board of Commissioners.

Adopted this 16th day of July, 2019.

County Manager

[SEAL]

Cheryl Anby, Clerk to the Board of Commissioners

entered 7/19/19, SO, 2020/1/643

DARE COUNTY

BUDGET AMENDMENT

F/Y 2019-2020

	G/L Account Number			INCREASE	DECREASE
	Org	Object	Project		
Department: Capital Investment Fund					
Revenues:					
Realty Transfer tax	113015	407000			\$272,830
Appropriated fund balance	113090	499900		\$43,077	
Expenditures:					
LTT distribution to towns	113015	407100		← (\$95,491) inc.	
Reserved for DMF major maintenance	114531	550014		\$150,000	
Transfer to capital projects fund 2020 CIP	114925	596100		\$1,166,504	
Transfer to school capital projects fund 2020 CIP	114925	596300	98420	\$715,000	
Transfer to school capital projects fund 2020 CIP	114925	596300	98430	\$1,275,000	
Debt service undistributed	114495	548100		\$1,670	
Reserved for CIF Plan	114490	550009 555009			\$3,142,436
DC Schools local capital outlay	114675	570101			\$300,000

Explanation:

For 2020 CIP & Capital Investment Fund model as approved & authorized by the BOC on 7/15/2019.

Amendment ordinance language:

The line item "Reserved for DMF major maintenance" is a reserve account and may not be used for expenditures. The County Manager is authorized to execute budget amendments to move that reserve into expenditure line items as determined necessary only for DMF major maintenance expenditures.

Prepared by:

David Clawson, Finance Director

Approved by:

County Manager:



(sign in red)

Date: 7/16/19

Finance only:

Date entered: 7/19/19 Entered by: SO Reference number: 2020/1/656



Southern Albemarle Association, Annual Meeting Invitation List

Description

The Southern Albemarle Association (SAA) is dedicated to the maintenance, enhancement, and advancement of roads, bridges, waterways, and airports in Beaufort, Dare, Hyde, Martin, Tyrrell, and Washington Counties.

The SAA has asked the Board of Commissioners to submit a list of 50 people from Dare County for the SAA to invite to their upcoming annual meeting.

The SAA recommends that the list include elected officials and others that have an interest in our airports, waterways, bridges, ferries, and roadways. The attached invitation list will be submitted to the SAA.

Board Action Requested

Approve Submitting the Invitation List to the Southern Albemarle Association

Item Presenter

Robert Outten, County Manager

Southern Albemarle Association (SAA)

Dare County Invitation List - 2019

50 Dare County names to be invited to the upcoming annual SAA meeting.

The SAA is dedicated to the maintenance, enhancement, and advancement of the roads, bridges, waterways, and airports in Beaufort, Dare, Hyde, Martin, Tyrrell, and Washington Counties.

Board of Commissioners, Elected Officials, and County Staff

1. Robert Woodard, Chairman
2. Wally Overman, Vice-Chairman
3. Ervin Bateman, Commissioner
4. Steve House, Commissioner
5. Rob Ross, Commissioner
6. Jim Tobin, Commissioner
7. Danny Couch, Commissioner

8. Doug Doughtie, Sheriff
9. Cheryl House, Register of Deeds
10. Dean Tolson, Clerk of Court

11. Robert Outten, County Manager
12. Donna Creef, Planning Director

Dare County Airport Authority

13. Chairman
14. David Daniels, Director

Dare County Boatbuilders Foundation

15. John Bayliss, President

Dare County Municipalities – Mayors & Managers

16. Town of Duck – Mayor Don Kingston & Manager Chris Layton
17. Town of Kill Devil Hills – Mayor Sheila Davies & Manager Debbie Diaz
18. Town of Kitty Hawk – Mayor Gary Perry & Manager Andy Stewart
19. Town of Nags Head – Mayor Ben Cahoon & Manager Cliff Ogburn
20. Town of Manteo – Mayor Bobby Owens & Manager James Ayers
21. Town of Southern Shores – Mayor Tom Bennett & Manager Peter Rascoe

Dare County Restaurant Association

22. Dan Lewis, President

Dare County Tourism Board

- 23. Chair
- 24. Lee Nettles, Executive Director

National Park Service

- 25. David Hallac, Superintendent, Outer Banks Group

NCDOT Board Member

- 26. Allen Moran

Dare County Waterways Commission

- 27. Michael Flynn
- 28. Ernie Foster
- 29. Dan Oden
- 30. Natalie Perry Kavanagh
- 31. Kermit W. Skinner, Jr.
- 32. Steve Coulter

Oregon Inlet Task Force Advisory Committee

- 33. Mikey Daniels
- 34. Harry Schiffman
- 35. Bob Peele
- 36. Jamie Reibel
- 37. Russ King

Outer Banks Association of REALTORS

- 38. President, Outer Banks Association of REALTORS
- 39. CEO, Willo Kelly

Outer Banks Chamber of Commerce

- 40. Karen Brown, President & CEO
- 41. Chair, Outer Banks Chamber of Commerce

Outer Banks Homebuilders Association

- 42. President, Outer Banks Homebuilders Association

Outer Banks Hotel/Motel Association

- 43. President, Outer Banks Hotel/Motel Association
- 44. Tonia Cohen, Secretary

Outer Banks Scenic Byways

- 45. Mary Helen Goodloe-Murphy

Additional names of Dare County residents participating in the SAA

46. Moon Tillett
47. Jean Tillett
48. Elaine Vann
49. Merlee Austin
50. Fletcher Willey



Memorandum of Understanding for the Dare Soil & Water Conservation District Partnership

Description

Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service and the North Carolina Department of Agriculture and Consumer Services - Division of Soil and Water Conservation and the Dare County Soil and Water Conservation District and the the County of Dare, North Carolina

Board Action Requested

approval and signature

Item Presenter

Ann Daisey

MEMORANDUM OF UNDERSTANDING
Between the
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
And the
NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES – DIVISION OF SOIL AND WATER
CONSERVATION
And the
DARE COUNTY SOIL AND WATER CONSERVATION DISTRICT
And
DARE COUNTY, NORTH CAROLINA

For their Cooperation In the
Conservation of Natural Resources

BACKGROUND STATEMENT AND PURPOSE

THIS AGREEMENT is between the Natural Resources Conservation Service (NRCS), an agency of the United States Department of Agriculture (USDA), the North Carolina Department of Agriculture and Consumer Services – Division of Soil and Water Conservation (DSWC) an agency of the State of North Carolina, the Dare County Soil and Water Conservation District (SWCD), and Dare County collectively referred to as the parties, to clearly define the roles and responsibilities of the parties.

The purpose of this agreement is to supplement the Cooperative Working Agreement between the USDA – Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Soil and Water Conservation Commission, and Dare Soil and Water Conservation District. This operational agreement documents those areas of common interest of the federal, state, and local partnership in natural resources conservation.

The parties mutually agree to provide leadership in natural resources conservation. The parties pledge to work together by advancing and practicing teamwork, including input in the decision-making process; communicating, coordinating, and cooperating; promoting mutual respect, and sharing leadership, ownership, credit, and responsibility.

AUTHORITIES, STATUTES, LAWS

NRCS is authorized to cooperate and furnish assistance to the parties in the conservation of natural resources as referenced in the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590; The Department of Agriculture Reorganization Act of 1994, Public Law 103-354; and Secretary's Memorandum No. 1010-1, Reorganization of the Department of Agriculture, dated October 20, 1994.

DSWC is authorized to enter into this agreement by the North Carolina General Statutes §139-4 and §143B-294 - §143B-297.

The District authority is defined in Soil Conservation Districts Law, General Statutes of North Carolina §139-1 - §139-47.

The County is authorized to enter into this agreement by North Carolina General Statute §153A-11 and §160A-461 - §160A-464.

ROLES AND RESPONSIBILITIES:

CONSERVATION PROGRAM IMPLEMENTATION

The parties recognize the natural resources conservation program as a unique blend of voluntary conservation initiatives and federal, state, and local mandates. Together these address a variety of natural resource, environmental, and educational issues. The parties agree to jointly commit their program authorities and financial and human resources to cooperatively implement a unified natural resource conservation program in areas of mutual concern. The implementation of all programs will be done in accordance with program policy and procedures developed for that specific program – whether federal, state, or local.

Inventories and Data Sharing: The parties agree to identify, define, and coordinate the collection and use of natural resource and other data needed to support the delivery of federal, state, and local conservation program benefits. The parties will cooperate in maintaining data to assure that it supports the mutual needs of the parties for conservation planning, implementation and evaluation. The parties further agree that gathered data will be mutually shared and used in support of conservation delivery framework as needed to facilitate implementation of the programs shown in *Attachment A*. The use and disclosure of information will be consistent with the guidelines provided in the Records, Facilities, and Equipment section of this agreement. Both NRCS and SWCD employees in the office will maintain adequate knowledge of available conservation programs to provide basic customer service including, but not limited to:

1. Interviewing the customer to determine goals and objectives
2. Gathering on farm data to support development of a conservation plan
3. Develop a conservation plan following the NRCS 9-steps of conservation planning process.
4. Districts that are co-located with NRCS shall utilize the latest USDA-NRCS tools for completing conservation planning processes and reporting (i.e., CDSI)
5. Providing basic information about program requirements and signup periods
6. Helping a customer complete a program application

Setting Conservation Program Priorities: The parties agree to implement the conservation program based on mutually developed priorities while recognizing individual responsibilities for federal, state, or local mandates. The parties further to agree to annually re-evaluate established priorities and adjust as warranted. SWCD Board has the responsibility to organize local working groups (LWG) to assess resource conditions and establish local priorities. As well, LWG will develop a single SWCD/NRCS partnership plan of work each fiscal year (July 01 – June 30). Each party will prioritize workload as follows, NRCS employees will first address workload associated with federal conservation programs, NRCS priorities, and required NRCS administrative procedures. As time is available, NRCS employees will assist with the North

Carolina State and local programs listed in Attachment A and other District priorities. Likewise, State and District staff will first address workload associated with the State and local programs listed in Attachment A, District priorities, and required District administrative procedures. As time is available, District staff will assist with federal conservation programs and other NRCS priorities.

Local Working Groups: Local working groups (LWGs) are subcommittees of the State Technical Committee and provide recommendations to USDA on local and state natural resource priorities and criteria for conservation activities and programs.

LWGs are responsible for:

- (1) Ensure that a conservation needs assessment is developed using community stakeholder input.
- (2) Utilize the conservation needs assessment to help identify program funding needs and conservation practices.
- (3) Identify priority resource concerns and identify, as appropriate, high-priority areas needing assistance.
- (4) Recommend USDA conservation program application and funding criteria, eligible practices (including limits on practice payments or units), and payment rates.
- (5) Participate in multicounty coordination where program funding and priority area proposals cross county boundaries.
- (6) Assist NRCS and the NRCS conservationist with public outreach and information efforts and identify educational and producers' training needs.
- (7) Recommend State and national program policy to the State Technical Committee based on resource data.
- (8) Utilize the conservation needs assessment to identify priority resource concerns that can be addressed by USDA programs.
- (9) Forward recommendations to the NRCS designated conservationist or Farm Service Agency (FSA) County Executive Director, as appropriate.
- (10) Adhere to standard operating procedures identified in Title 440, Conservation Programs Manual (CPM), Part 501, Subpart B, Section 501.14.

LWG membership should be diverse and focus on agricultural interests and natural resource issues existing in the local community. Membership should include agricultural producers representing the variety of crops, livestock, and poultry raised within the local area; owners of nonindustrial private forest land, as appropriate; representatives of agricultural and environmental organizations; and representatives of governmental agencies carrying out agricultural and natural resource conservation programs and activities. Membership of the local working group may include but is not limited to Federal, State, county, Tribal, or local government representatives.

For the LWGs, Conservation Districts shall:

- (i) Develop the conservation needs assessment as outlined in 440-CPM, Part 500, Subpart A.
- (ii) Assemble the local working group.
- (iii) Set the agenda.
- (iv) Conduct the local working group meetings.
- (v) Transmit the local working group's priority area and funding requests to the NRCS designated conservationist or the State Technical Committee, as appropriate.

It is the NRCS designated conservationist's responsibility to participate in the local working group and to—

- (i) Encourage and assist other USDA agencies to participate in the locally led conservation and working group efforts, as feasible.
- (ii) Assist with identifying members for the local working group.
- (iii) Help identify program priorities and resources available.
- (iv) Assist in the development of program priority area proposals.
- (v) Comply with the National Environmental Policy Act, nondiscrimination statement, and other environmental, civil rights, and cultural resource requirements.
- (vi) Support and advise the local working group concerning technical issues, program policies and procedures, and other matters relating to conservation program delivery.
- (vii) Ensure that populations are—
 - Provided the opportunity to comment before decisions are rendered.
 - Allowed to share the benefits of, not excluded from, and not affected in a disproportionately high and adverse manner by Government programs and activities affecting human health or the environment.
- (viii) Analyze performance indicators and reports.
- (ix) Report the conservation programs' impacts on resources.
- (x) Perform the responsibilities of the conservation district where a conservation district is not present or chooses not to fulfill the responsibilities outlined in 440-CPM, Part 501, Subpart A, Section 501.6A.
- (xi) Give strong consideration to the local working group's recommendations on NRCS programs, initiatives, and activities.
- (xii) Ensure that recommendations, when adopted, address natural resource concerns.

Programs to be implemented: The parties agree to use federal, state, and local programs in a complimentary fashion to address local priorities and concerns. *Attachment A* includes an example of programs that will be utilized to address priorities and concerns. Employees from agencies will work across program lines to assure efficient and effective customer service.

Marketing: The parties agree to conduct a common effort to inform public of program opportunities and benefits. This information will be disseminated to the appropriate media, to promote district activities and programs. See *Attachment A* for a marketing profile and a summary of media outlets.

TECHNICAL ADEQUACY

The parties agree to utilize the NRCS Field Office Technical Guide or Soil and Water Conservation Commission adopted standards as the minimum technical standards for conservation program implementation in areas of mutual concern. The parties may utilize more stringent standards when necessary to comply with locally enacted laws or ordinances. The NRCS will be the lead agency in the development, and maintenance of the Field Office Technical Guide. As well, the NRCS will be the lead agency for all processes associated with Job Approval Authority (JAA) for NRCS conservation practice standards and Conservation Planner Designation (CPD). When program contracts are developed, the District and NRCS employees in the office will provide conservation planning assistance that meets the 9-steps of conservation planning process and applicable policies as described in the 180-GM-Part 409, its supplements and the National Planning Procedures Handbook. At a minimum, the conservation plan will address resource concerns within the client area of interest and objectives. The NRCS recognizes

JAA and the conservation planning process are a dependent, integral part of the conservation delivery in North Carolina. Both parties agree that no practices will be planned, designed or "checked out" based only on JAA parameters. The installation of the practices must be supported by a conservation plan signed by at a minimum a certified conservation planner.

The parties agree that their respective employees will provide technical assistance based on assigned conservation practice JAA which is based on acquired experience, knowledge, skills, and demonstrated ability and within applicable laws, regulations, and guidelines. Conservation practice JAA will be determined and documented according to NRCS National Engineering Manual, Part 501, NRCS Ecological Sciences JAA (190-GM, Part 417) and in accordance with the NC NRCS policy and procedures regarding JAA as described in the NC JAA Handbook (180-GM Part 681). JAA for DSWC conservation practices will be supervised, determined and documented by the N.C. Soil and Water Conservation Commission pursuant to NCAC 15A 06F.0105(c)(3). Each technical employee in the office will acquire the necessary skills to qualify for JAA for the routinely used engineering and non-engineering conservation practices prevalent in the county. Both District and NRCS employees will attend available training sessions to maintain their knowledge, skills, and abilities related to conservation planning and practice Inventory & Evaluation, design, layout, checkout, and certification.

PERSONNEL AND FISCAL MANAGEMENT

The parties recognize that natural resources conservation programs are delivered through an intergovernmental system, in which federal, state, and local governments work together.

The parties will provide their own staffing and fiscal resources commensurate with workload, priorities, allocated funding, and expertise necessary to deliver a balanced and diversified conservation delivery framework. There are certain authorities delegated to specific staff as follows:

Department Head

The parties jointly agree that Ann Daisey, Lead District Technician, Dare County Soil and Water Conservation District, will serve as the Department Head. The Department Head will represent the District and its employees at county meetings, conferences, and appropriate functions.

Personnel Management

The management of personnel will be as follows:

- a) Hiring and dismissal of district employees will be in accordance with county personnel policies or district policy.
- b) The management of NRCS personnel is the responsibility of NRCS.
- c) Hiring, supervision, development, evaluation, and dismissal of county employees will be done in accordance with applicable law and county personnel policies.
- d) The management of county employees is the responsibility of the Dare District Board of Supervisors. In the interest of facilitating these responsibilities, the Supervisory Soil Conservationist (SSC) is delegated the authority for:

- 1) Technical supervision
 - a. As a condition of assigning CPD or JAA for ecological sciences and engineering practices to District employees, NRCS must periodically review the technical work of these employees to assure adherence to planning and design standards and policy. The SSC is assigned the role of Technical Supervisor. NRCS Area Office personnel will also periodically review the technical work of both NRCS and District employees in the office.
 - 2) Delivery of employee technical training and development.
- e) The Department Head will make recommendations to the Dare County District Board of Supervisors regarding the following in accordance with county government policy:
- 1) Recruitment and hiring of district employees.
 - 2) Employee performance evaluation, including awards, disciplinary actions, and separation.
 - 3) Leave coordination and approval.
 - 4) Certification of Time and Attendance Reports.
 - 5) Determination and approval of training requiring expenditure of district funds.
 - 6) For counties with technicians cost shared through the state's cost share programs, responsibility for documenting 2080 hours for each funded position spent per year on non-point source pollution control issues by office staff.

In the event that a county employee feels aggrieved, their recourse is according to county government personnel policy.

Fiscal Management

The parties will work together to maximize available resources and actively seek funding to accomplish natural resource priorities and programs.

Each party is responsible for its own fiscal resources to include equipment, supplies, and accounts.

The Department Head and District Administrative Assistant will actively assist the district with the following:

- 1) Development of operating budgets.
- 2) Tracking of expenditures for maintaining funding accountability.
- 3) Making recommendations regarding expenditure of funds and purchases.

TECHNICAL AND ADMINISTRATIVE CONTACTS

NRCS	Technical
Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Phone No.	Click here to enter text.
Fax No.	Click here to enter text.
E-Mail:	Click here to enter text.

NRCS	Administrative
Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Phone No.	Click here to enter text.
Fax No.	Click here to enter text.
E-Mail:	Click here to enter text.

SWCD	Technical
Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Phone No.	Click here to enter text.
Fax No.	Click here to enter text.
E-Mail:	Click here to enter text.

SWCD	Technical
Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Phone No.	Click here to enter text.
Fax No.	Click here to enter text.
E-Mail:	Click here to enter text.

SWCD	Administrative
Name:	Click here to enter text.
Title:	Click here to enter text.
Address:	Click here to enter text.
Phone No.	Click here to enter text.
Fax No.	Click here to enter text.
E-Mail:	Click here to enter text.

RECORDS

The parties will agree on the maintenance, update, and disposition of relevant records. Access to records will be governed by the Section 1619 of the Food, Conservation, and Energy Act of 2008, the Federal Freedom of Information Act (FOIA) and/or the North Carolina Public Records Law depending on whether the record is a federal record or a state/local record. Each party accepts responsibility for any security breach caused by their employee(s). District personnel with access to federal records, either electronic or hard copies, will complete the required annual security training, conducted through NRCS.

All parties agree to protect personally identifiable and/or confidential information from customers and employees by securing this information in locked file cabinets. When the information is being used and not in a locked cabinet, the employees will keep it with them personally (folder, memory storage device) to avoid improper disclosure of information or loss of data. Personally identifiable and/or confidential information will only be used for authorized purposes.

FEE FOR SERVICES

From time to time, the Dare County Soil and Water Conservation District may:

- Sell material (i.e. native species plants)
- Solicit sponsorship for special events, or community/educational workshops
- Perform general fundraising

ACCOUNTABILITY

The parties agree to cooperatively develop and utilize natural resource databases to measure effectiveness in program delivery and customer satisfaction. The District will provide a copy of its Annual Report by September 1 and Plan of Operations by July 31 to other signatories of this agreement. The District will also provide a copy of their Long Range Plan which, at no time, will be in excess of five years old.

SCOPE OF AGREEMENT

This agreement covers the basic operating understanding between all parties. Authority to carry out specific projects or activities, transfer of funds, or acquisition of services or property, will be established under separate agreement. The parties agree that contracts, memorandums of understanding, and/or additional agreements may be entered into, as needed, to facilitate the implementation of natural resources conservation programs within the conservation districts.

TORT LIABILITY

The parties will each assume responsibility for the actions of their officials or employees acting within the scope of their employment to the extent provided by federal and state laws and local ordinances.

CIVIL RIGHTS

The parties recognize the benefit and importance of delivering conservation programs equitably to all customers, having a diverse staff to assist this customer base, and having diversity within the district board. The parties agree to work cooperatively to achieve diversity in all aspects of the conservation program through effective outreach and marketing.

The parties will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987 (Public Law 100-259) and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Americans With Disabilities Act of 1990, and in accordance with the regulations of the USDA Secretary of Agriculture (7CFR-15, Subparts A & B) which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

REVIEW/ MODIFICATION/TERMINATION

This agreement will be reviewed annually and, unless amended, shall be in effect for a period not to exceed five (5) years from the date of final signature. The agreement can be modified or terminated at any time by mutual consent of all parties or can be terminated by any party giving 60 days written notice to the other parties.

UNITED STATES DEPARTMENT OF
AGRICULTURE
NATURAL RESOURCES
CONSERVATION SERVICE

NCDA&CS -- DIVISION OF SOIL AND
WATER CONSERVATION

By: _____
State Conservationist

By: _____
Director

Date: _____

Date: _____

DARE COUNTY SOIL AND WATER
CONSERVATION DISTRICT

DARE COUNTY

By: Ricki Shephard
Chairperson

By: _____
County Manager

Date: 3-5-19

Date: _____

Attachment A

The following is a detailed list of Resource Inventories, Programs, and Marketing Media used to address local conservation priorities and concerns. The parties agree to utilize these in a complimentary manner, thus maximizing the delivery of conservation benefits to the customers and clients. This list is subject to informal changes or updates.

RESOURCE INVENTORY & DATA SHARING

Natural Resource Inventory (FSA, NCACSP, 0.200)
River Basin Study Reports
Natural Heritage Inventory of Onslow County
Dare County GIS
NRCS Toolkit
Dare County SWCD Long Range Plan
Soil Survey of Dare County
County Inventory and Flood Insurance Rate
Historical Aerial Photos

NC Agriculture Cost Share Program (NCACSP)
Environmental Quality Incentives Program (EQIP)
Forest Land Enhancement Program (FLEP)
Wildlife Habitat Incentives Program (WHIP)

Maps (USGS Topographical, National Wetland Maps)
Grassland Reserve Program (GRP)

PROGRAMS

Federally Initiated Programs

Conservation Technical Assistance (CTA)
National Cooperative Soil Survey (NCSS)
Small Watershed Program (PL-566)
River basin Surveys & Investigations (RB-09)
Resource Conservation & Development (RC&D)
Emergency Watershed Program (EWP)
Environmental Quality Incentives Program (EQIP)
Agricultural Conservation Easement Program
Conservation Stewardship Program (CSP)
Agricultural Conservation Easement Program (ACEP)
Other Farm Bill authorized conservation programs

Forest Land Enhancement Program (FLEP)
Wetland Reserve Program (WRP)
Wildlife Habitat Incentives Program (WHIP)
Conservation Reserve Program (CRP/CREP)
Emergency Conservation Program (ECP)
NC Partners for Wildlife
Farmland Protection
319 Funds
Grassland Reserve Program (GRP)

North Carolina Initiated State Programs

NC Agriculture Cost Share Program (NCACSP) -
DSWC
Erosion and Sedimentation Control – Urban Areas
Site Plan Reviews – Non-Ag. Developments
Confined Animal Permits – NCDENR
Farmland Protection
NC – Wetland Restoration Program (NC-WRP)
NC Agriculture Water Resource Assistance Program
(AgWRAP) – DSWC

Comm. Conservation Assistance Program (CCAP)
Clean Water Management Trust Fund (CWMTF)
Wildlife Biology Technical Assistance – NCWRC
Wildlife Restoration Committee
State non-discharge rules (0.100, 0.2H200 & 0.2T)
Forest Development Plan – (FDP) – NCFS
North Carolina Environmental Education Plan
North Carolina Big Sweep

Locally Initiated Programs

Farmland Preservation
Site Plan Reviews – Non-Ag. Developments
Awards and Recognition Program

Open Spaces Institute Advisory Board
Erosion & Sedimentation Control – Urban Areas
Environmental Education

MARKETING MEDIA

- Newsletters (SWCD, FSA, CES, County Web.)
- Private & Public Schools
- Church Newsletters
- Local Broadcasting (TV, Radio, Cable)

- Regional Chamber of Commerce
- Community College
- 4-H Groups
- Social Media (Facebook)



Right of Access Agreement Charter Communications

Description

Right of Access Agreement with Charter Communications to access the COA Dare County Campus to install and maintain communications equipment.

Board Action Requested

Approve the Agreement

Item Presenter

Matthew Hester, Information Technology Director

COMMERCIAL ACCOUNT RIGHT OF ENTRY AGREEMENT

This Commercial Account Right of Entry Agreement (hereinafter the "Agreement") is by and between **County of Dare**, a North Carolina body politic, (hereinafter the "Owner"), with a mailing address of PO Box 1000, Manteo, NC 27954 and owning real estate located at 205 S. Hwy 64/264, Manteo, NC 27954, Dare County PIN 9880-19-50-4664, (hereinafter the "Premises") and **Spectrum Southeast, LLC**, on behalf of itself and its affiliates, (hereinafter collectively "Charter"), with a mailing address of 12405 Powerscourt Drive, St. Louis, MO 63131 Attn: Commercial Contracts Management. This Agreement commences on the later of the execution dates set forth below the signatures (hereinafter the "Effective Date"). Charter and Owner may individually be referred to as a "Party" or collectively as the "Parties."

THE PARTIES AGREE AS FOLLOWS:

1. RIGHT OF ENTRY AND EQUIPMENT.

- a. In consideration of the mutual benefits and obligations set forth herein, Owner hereby grants to Charter a non-exclusive right of entry to the Premises and those buildings of Owner located on the Premises (including building roof top(s)) ("Buildings") for the installation, attachment, maintenance, modification, inspection, relocation, repair, upgrade, replacement, or removal of any equipment and facilities and other communications accessories, equipment, apparatus, fixtures, hardware, appliances, and appurtenances and any other associated equipment (collectively, "Equipment") to provide any of Charter's services (hereinafter the "Services") to any customers who can receive Services by such Equipment. Owner also hereby authorizes Charter to utilize those conduits and ducts of Owner that Owner may designate as available for Charter's use (collectively "Conduit").
- b. The rights herein granted to Charter shall include use of available power at the Premises, together with the right to access and use all i) risers in the Buildings, ii) Building entrance facilities, iii) Building utility entrance facilities, iv) utility closets in the Buildings, v) private rights-of-way, and vi) other areas on the Premises and Buildings as is reasonably required for the purpose set forth herein.
- c. All of the above grants and authorizations given by Owner are to the extent necessary or desirable for Charter to provide its Services to the Premises and shall extend to Charter's authorized agents.
- d. The Equipment is not, and shall not be deemed to be, affixed to or a fixture of the Premises. If requested by Owner, Charter shall provide to Owner the proposed route for installation of Equipment on the Premises. Charter shall install, operate, and maintain the Equipment on the Premises at its own expense and in accordance with all applicable laws.

2. **OWNER REPRESENTATIONS.** Owner represents and warrants to Charter that Owner is the legal owner of the Premises, the Building(s) and Conduit (if applicable), and that no other person has any rights in the foregoing that conflict with Charter's rights under this Agreement. Owner recognizes Charter's right to have exclusive control over any Charter installed Equipment, and Owner will not attach to or use, and will not knowingly allow a third party to attach to or use, Charter's Equipment for any purpose without Charter's prior written consent. In the event the Owner is not executing this Agreement, the undersigned person executing on behalf of Owner represents that the undersigned is Owner's authorized agent and has full authority to bind Owner to the terms and conditions of this Agreement.

3. **RESPONSIBILITY TO CONTACT PUBLIC UTILITIES.** As may be required by law, Charter or its contractors will contact and coordinate with local agencies to physically mark the location of all public utility lines (including, but not limited to, water, electric, phone, and sewer lines) that are located in areas in which Charter intends to install the Equipment. Owner shall not interfere with the markings designating such locations until installation is complete. Charter shall be responsible for any damage to public utility lines that are located along the routes or in the location in which Charter installs any Equipment, to the extent such damage arises from Charter's installation activities.

4. **RESPONSIBILITY TO MARK PRIVATE UNDERGROUND LINES.** If Owner has private underground lines at the Premises that could impact Charter's installation of Equipment, including, but not limited to, sprinklers, sprinkler heads, drains, cables, pipes and wires (collectively "Impacted Private Lines") then both Parties shall, in advance of any underground construction performed by Charter, work together, to the best of their abilities, to research the existence of all Impacted Private Lines (hereinafter "Joint Effort"). In order to facilitate the Joint Effort, Owner provides below its authorized representative (with contact information) regarding the Joint Effort.

Name: _____ (Please print clearly)

Address &/or email: _____

Phone: _____

After the Joint Effort, the following shall take place: (i) Charter will make a determination on the need to locate and mark Impacted Private Lines including, but not limited to, the methods and arrangements for same, and (ii) If deemed by Charter necessary to do so, a qualified Charter contractor shall locate (including verification of) and clearly mark all Impacted Private Lines to the extent required by Charter. In the event that Charter damages any clearly marked Impacted Private Lines along the routes or in the location in which Charter installs any Equipment, and only to the extent such damage(s) arise from Charter's Equipment installation activities on the Premises, then Charter shall promptly, within a reasonable period of time, repair said damage(s) to Owner's reasonable satisfaction, after receipt of written notice from Owner describing the scope and extent of such damage(s), which written notice, if needed, shall be provided to Charter no later than thirty (30) days after Charter's initial installation of Equipment.

5. **INSURANCE.** Charter shall maintain, at Charter's sole cost and expense, (i) commercial general liability insurance including Property Damage, Bodily Injury and contractual liability insurance subject to standard insurance carrier exclusions, in the amount of \$2,000,000 each occurrence covering (a) to the extent caused by acts of Charter, damages to the Premises and (b) the operations of Charter at the Premises, (ii) Auto Liability, including Bodily Injury and property damage in the amount of \$1,000,000 each accident, and (iii) worker's compensation insurance to comply with the applicable laws of the State the Premises is located in.
6. **TERM.** The term of this agreement commences on the effective date and shall remain in force for a term of one year ("Initial Term"). If owner has not given notice of its intent to terminate 90 days prior to the expiration of the Initial Term, this agreement shall remain in effect after the Initial Term on a month-to-month basis until Owner or Charter has given 90 days notice of its intent to terminate..
7. **ASSIGNMENT** This Agreement may be freely assigned by either Party, provided that the assignee agrees to be bound by all of the terms and conditions hereof. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors, legal representatives, and assigns.
8. **LIMITATION OF LIABILITY.** CHARTER MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE EQUIPMENT OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL CHARTER OR OWNER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.
9. **INDEMNIFICATION.** Charter will indemnify, defend, and hold Owner harmless from and against all liability, loss, costs, damages, (together with reasonable attorneys' fees associated therewith) arising out of any third party claims resulting from the negligence, willful misconduct of Charter, or breach of this Agreement (including but not limited to any representation or warranty hereunder).
10. **JURY TRIAL WAIVER.** IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY, OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, THE PARTIES EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
11. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire agreement between the Parties with respect to, and supersedes all prior agreements, promises, and understandings, whether oral or written, with respect to, the subject matter contained herein. This Agreement shall not be modified, amended, supplemented, or revised, except by a written document signed by both Parties.
12. **SEVERABILITY.** If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had not been contained herein.
13. **NO WAIVER.** Neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.
14. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.

This Agreement shall be construed to be in accordance with the laws of the State where the Premises is located.

CHARTER: Spectrum Southeast, LLC

By: Charter Communications, Inc., its Manager

OWNER: County of Dare

(Print Owner/Legal Entity Name above)

By: _____

(Signature)

Printed Name: Jonathan E. Bentley

Title: Director, Market Expansion

Date: _____

By: _____

(Signature)

Printed Name: _____

Title: _____

Phone No: _____

Email: _____

Date: _____



*North Carolina Governor's Highway Safety Program (GHSP)
Local Government Grant Award*

Description

The Dare County Sheriff's Office requests to receive a grant award of \$20,000.00 with no local matching funds.

Board Action Requested

Approval

Item Presenter

Sheriff J. D. "Doug" Doughtie

DARE COUNTY

BUDGET AMENDMENT

F/Y 2019/2020

ACCOUNT	CODE			INCREASE	DECREASE
	Org	Object	Project		
<u>Department: Sheriff</u>					
<u>Revenues:</u>					
Grant Proceeds - GHSP	103510	442130	00030	20,000	
 <u>Expenditures:</u>					
Misc Equipment - GHSP Grant	104510	513325	00030	3,300	
Travel - GHSP Grant	104510			4,700	
Capital Outlay - GHSP Grant	104510			12,000	

Explanation:

To budget grant proceeds and related expenditures for GHSP grant award.

Approved by:

Board of Commissioners: _____

Date: _____

County Manager: _____

Date: _____

(sign in red)

Finance only:

Date entered: _____ Entered by: _____ Reference number: _____



Board Appointments

Description

Following are the Boards and Committees that need appointments or reappointments this month.

Attached are the following:

1. Dare County ABC Board
2. Dare County Center Advisory Board
3. Jury Commission
4. Juvenile Crime Prevention Council
5. Parks and Recreation Advisory Council
6. Stumpy Point Community Center Board
7. Upcoming Board Appointments for September, October and November

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager



Dare County ABC Board

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

August, 2019

BOARD APPOINTMENT

A.B.C. BOARD

(Three Year Term)

The A.B.C. Board retains authority to set policy and adopt rules in conformity with A.B.C. laws and Commission rules and can hire and fire local Board personnel.

The following term expires this month:

Ray White

(Current Term 8/16 –8/19)

(Originally Apptd. 8/89)

He would like to be reappointed

Applications have been received from:

George Berry

Carl Classen

Francis T. D'Ambra, Jr.

Jeffrey Dowdy

Allen Moran

William Simmonds

Other Members:

See attached list

A.B.C. BOARD
(Three Year Term)

**This Board consists of a Chairman and 4 members appointed by county governing authority.
They retain authority to set policy and adopt rules in conformity with ABC laws and Commission rules.**

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Ray White, CH P.O. Box 922 Manteo, NC 27954 441-4464	8-19	Reaptd. 8-89 through 8-07 Apptd. 5-08 Reaptd.8-10,13, 16
Bobby Owens P.O. Box 505 Manteo, NC 27954 252-256-0668	8-21	Apptd. 6-11 Reaptd.8-12,15, 18
Fields Scarborough, Sr. P.O. Box 1691 Manteo, NC 27954 473-5833	8-20	Apptd. 8-14 Reaptd 8-17
Joe Tauber 205 Eagle Dr. Kill Devil Hills, NC 27948 410-491-9735	8-21	Apptd. 9-15 Reaptd. 8-18
James Clark 1508 Small Ct. Kill Devil Hills, NC 27948 252-715-0602 (H) 252-207-2912 (O)	8-21	Apptd. 9-15 Reaptd. 8-18

NOTES:

MEETING INFO: 3rd Tuesday each month, 9:00 a.m., ABC Store in Manteo

CONTACT INFO: Ray White, Chairman
Ted Toler, ABC Supervisor

MEMBERS COMPENSATED: No

Rondall Tillett replaced David Mizelle 8/94.
Aubrey Heath appointed to fill unexpired term of Leon Daniels 8/94.
Carl Hayes replaced Aubrey Heath 8/98.

Guy Midgett replaced Ray White 8/07.

Ray White appointed to fill unexpired term of Guy Midgett 5/08.

Bobby Owens appointed to fill unexpired term of Rondal Tillett 6/11.

Fields Scarborough, Sr. replaced Carl Hayes 8/14.

**At their meeting on 8/3/15, the Dare County Bd. Of Commissioners voted to increase the size of the ABC Board from 3 to 5 members.

Joe Tauber was appointed 9/8/15.

James Clark was appointed 9/8/15.

REVISED 7/19

APPLICATION FOR APPOINTMENT TO DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisor board or committee, please complete the form below and mail to Rhonda Creef, Dare County Deputy Clerk to the Board, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-6312.

Advisory Board or Committee interested in:

1st choice Dare County ABC Board

2nd choice Dare County Veteran Advisory Board

3rd choice Dare County Planning Board - ^{Apptd. 7/16} Parks & Recreation Advisory Board GB

Name: George H. Berry

Address: 239 North Dogwood Trail

City/State/Zip Southern Shores, NC 27949

Telephone Home: (252) 261-1278

Business: (703) 473-0528

Resident of Dare County: yes no

Occupation: CEO Starfish Services, Inc.

Business Address: Same as above

Educational background:

U of Utah 1972, Navy Postgraduate School 1978, Retired Navy Commander

Business and civic experience and skills:

National Security Intelligence support for over 45 years. Manage beach rental business over 20 years. Curenly attending Vet Adv Board meetings. Member of OBX Home brewers Club.

Other Boards/Committees/Commissioners presently serving on:

Board, Committee, or Commission:

None

Have been attending VET advisory board mgs

Expiration Date of Terms: _____

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Wally Overman, Commissioner			
Beverly Boswell, Commissioner			
Jack Shea, Commissioner			

I understand this application will be kept on the active file for five years and I hereby authorize Dare County to verify all information included in this application.

Date: 6/29/16 Signature of applicant: 

FOR OFFICE USE ONLY:

Date received: 6/29/16

Date forwarded to County Commissioners: _____

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Rhonda Creef, Dare County Deputy Clerk to the Board, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-6312, or send it by email to rhonda@darenc.com

Advisory Board or Committee interested in:

1st choice Dare County ABC Board

2nd choice Dare County Tourism Board

3rd choice _____

Name Carl Classen

Address 5204 Winsor Place

City/State/Zip Kitty Hawk, NC 27949

Email Address carl_classen@outlook.com

Telephone Home: 252-261-2515

Business: _____

Resident of Dare County: yes no

Occupation: Retired County Manager

Business Address: _____

Educational background:

M.P.A., Southern Cal.

B.S., Public Affairs, Southern Cal

Business and civic experience and skills:

Retired County and Town Manager - Camden, Hyde, Rutherford counties
- Southern Shores

Member, First Flight Rotary Club

Other Boards/Committees/Commissions on which you presently serve:

Grand Jury - exp 2017

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
<u>Bobby Outten</u>	<u>Dare County Manager</u>	<u>954 Marshall Collins Dr, Manteo</u>	<u>252-475-5800</u>
<u>Peter Rascoe</u>	<u>Southern Shores Town Manager</u>	<u>5375 So. Virginia Dare Trl, So. Shores</u>	<u>252-261-2394</u>
<u>Bill Rich</u>	<u>Hyde County Manager</u>	<u>30 oyster Creek Rd, Swan Quarter</u>	<u>252-926-3701</u>
	<u>or Kris Cahoon Noble, Asst County Manager</u>	<u>252-926-4180</u>	

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: Jan 13, 2017 Signature of applicant: 

FOR OFFICE USE ONLY:

Date received: _____

**APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES**

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Rhonda Creef, Dare County Deputy Clerk to the Board, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-6312.

Advisory Board or Committee interested in:

1st choice Dare County ABC Board

2nd choice _____

3rd choice _____

Name: Francis T. D'Ambra Jr.

Address: 1211 Burnside Rd.

City/State/Zip Manteo NC 27954

Telephone Home: 252-305-8680

Business: 252-469-7793

Resident of Dare County: yes no

Occupation: Retired Police Chief, Volunteer Chaplain Dare County Sheriff Office

Business Address: 962 Marshall L. Collins Drive, P.O. Box 757 Manteo NC 27954

Educational background:

B.S. Criminal Justice, Magna Cum Laude, Mount Olive College

A.A.S. Criminal Justice, Wake Technical Comm. College

Business and civic experience and skills:

Former Chief of Police, Manteo, NC

LCFCU Advisory Board

~~Other~~ Other Boards/Committees/Commissioners presently serving on:

Board, Committee, or Commission:

former, Chair, Dare County Juvenile Crime Prevention Council

Present, North Carolina Victims of Crime Compensation Commission,
Governor, Appointee

Expiration Date of Terms: 7-1-2015 - 6-30-2019

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Hon. Edgar L. Barnes	Chief Dist. Court Judge	159 Fearing Pl. Manteo, NC	252-305-9397
Hon. Dean Tolson	Clerk of Superior Court	Dare County office	252-216-7114
Mr. Jordan Hennessy	Legislative Asst. Sen. Bill Cook		252-614-3606

I understand this application will be kept on the active file for five years and I hereby authorize Dare County to verify all information included in this application.

Date: 9-1-2015 Signature of applicant: [Signature]

FOR OFFICE USE ONLY:

Date received: _____

Date forwarded to County Commissioners: _____

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Janice Williams, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-1817, or send it by email to janicew@darenc.com

Advisory Board or Committee interested in:

1st choice ABC BOARD

2nd choice _____

3rd choice _____

Name JEFFREY DOWDY

Address 61 DUCK WOODS DR

City/State/Zip KITTY HAWK, NC 27949

Email Address DOWDY@DOWDYOSBORNECPA.COM

Telephone Home: 252-715-0970

Business: 252-449-4404

Resident of Dare County: yes no

Occupation: ACCOUNTANT/CPA

Business Address: 103 WOODHILL DR P O BOX 9 NAGS HEAD, NC 27959

Educational background:

BACHELOR OF BUSINESS ADMINISTRATION WITH CONCENTRATION IN ACCOUNTING

Business and civic experience and skills:

SELF EMPLOYED BUSINESS OWNER FOR 25YEARS

SMALL BUSINESS TAX AND BUSINESS CONSULTING

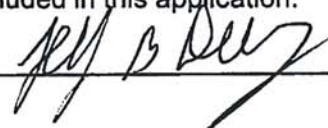
Other Boards/Committees/Commissions on which you presently serve:
OUTER BANKS CHAMBER OF COMMERCE - TREASURER

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
MYRA LADD	ATLANTIC REALTY/REALTOR	KITTY HAWK, NC	252-449-5360
TERESA OSBORNE	DOWDY&OSBORNE/CPA	NAGS HEAD, NC	252-449-4404
JOHN BONE	RETIRED	KITTY HAWK, NC	252-753-9890

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 4/30/18 Signature of applicant: 

FOR OFFICE USE ONLY:

Date received: 5/4/18

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Janice Williams, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-1817, or send it by email to janicew@darenc.com

Advisory Board or Committee interested in:

1st choice Planning Board 4.) Board of Adjustment

2nd choice ABC Board 5.) Equalization & Review

3rd choice Tourism Board 6.) Health & Human Services

Name Allen Moran

Address 381 Mother Vineyard Rd

City/State/Zip Manteo, NC 27954

Email Address allenm@darenc.com

Telephone Home: (252) 423-1309

Business: (252) 475-9222

Resident of Dare County: yes no

Occupation: Police Officer / Real Estate Broker / Restaurateur

Business Address: 7623 S. Virginia Dare Trl Nags Head, NC

Educational background:

NC licensed real estate broker, NC Justice Academy,

College of the Albemarle

Business and civic experience and skills:

Rotary International Community Service Chair (Manteo, 2012),

U.S. Restaurant Association Board Member

Other Boards/Committees/Commissions on which you presently serve:

NCDOT Board, Roanoke Island Community Center,
Albemarle Regional Planning Organization,
Peanut Belt Regional Planning Organization

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
<u>RV Owens</u>	<u>Self-Employed</u>	<u>Manteo, NC</u>	<u>216-8079</u>
<u>Doug Daughtie</u>	<u>Sheriff (Dare)</u>	<u>KDH, NC</u>	<u>216-9898</u>
<u>Marc Basnight</u>	<u>Retired</u>	<u>Manteo, NC</u>	<u>216-6703</u>

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 02/02/2016 Signature of applicant: Alie M

FOR OFFICE USE ONLY:

Date received: _____

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

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Advisory Board or Committee interested in:

1st choice Dare County Waterways Commission

2nd choice Dare County Board of Adjustment

3rd choice ABC Board

Name William Simmonds

Address 147 W. Oak Knoll Dr

City/State/Zip Nags Head, NC 27959

Email Address wsimm1017@gmail.com

Telephone Home: 321-607-4241

Business: _____

Resident of Dare County: yes no

Occupation: Recently retired NASA, Kennedy Space Center, Florida

Business Address: _____

Educational background:

BS Mechanical Engineering, Old Dominion University, Masters Engineering Management, George Washington University

Business and civic experience and skills:

Solid Waste Advisory Board - Hampton, Virginia, 1989-1992, Project Manager, (PM) KSC Railroad Bridge upgrades,

PM, Indian River Dredging Project, KSC, NASA & AF Barge and Wharf Terminal Improvement Project, Brevard County, Florida, Youth Science Fair Judge.

Other Boards/Committees/Commissions on which you presently serve:

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Steve Milton, PM Chief, NASA	Mail Code LX-D1	John F. Kennedy Space Center, FL 32899	(321) 867-5965
Eric Anderson, Launch & Ops Div. Chief,	Mail Code VAE00	John F. Kennedy Space Center, FL 32899	(321) 867-5000
Ross A. Kearney, retired, former Mayor Hampton of City,	328 Darby Ave.	Hampton, Va. 23663	(757)-268-4081

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 08/03/2017 Signature of applicant: *William D. Swartz*

FOR OFFICE USE ONLY:

Date received: 8/9/17



Dare County Center Advisory Board

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

DARE COUNTY CENTER ADVISORY BOARD

Nominating Committee Recommendations

May 20, 2019

The Nominating Committee for the Dare County Center Advisory Board recommends the reappointment of Dan Otte', Lynda Hester and Sara Hester Smith to a three year term on the Dare County Center Advisory Board and the appointment of Reha Otte' to serve a three year term on the Dare County Center Advisory Board.

August 2019

BOARD APPOINTMENTS
DARE COUNTY CENTER ADVISORY BOARD
(Staggered/Three Year Term)

The following terms expire this month:

Lynda Hester
(Current Term 8/16-8/19)
(Originally Apptd. 8/10)
She would like to be reappointed

Sara Hester-Smith
(Current Term 8/16-8/19)
(Originally Apptd. 12/17)
She would like to be reappointed

Daniel Otte
(Current Term 8/15-8/18)
(Originally Apptd. 8/15)
He would like to be reappointed

Rodney Benson
(Current Term 8/16-8/19)
(Originally Apptd. 8/16)
Resigned effective 8/1/19

Applications have been received from:
Stephanie J. Harkness-Moxley
Reha Otte

Other Members: See attached list

DARE COUNTY CENTER ADVISORY BOARD

(Three Year Term)

**This Board advises and promotes goals and policies to enhance
Dare County Center operations and community outreach.**

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Rob Ross 105 East Sand Fiddler Court Nags Head, NC 27959 Rob.ross@darenc.com 2166869	8/20	Apptd. 6/17
Paula Oliver 109 Rial Court Manteo, NC 27954 473-2944 (H) 423-0668 (Cell) CAPS@Charter.Net	8/20	Apptd. 8/17
Flossie Tugwell P.O. Box 896 Nags Head, NC 27959 473-5993	8/21	Apptd.8/10 Reapptd. 8/12, 15, 18
Mary Pendill 129 Dogwood Circle Manteo, NC 27954 473-3589	8/21	Apptd. 8/14 Reapptd. 8/15, 18
John D. Sibunka 132 Gareth Circle Manteo, NC 27954 473-3300	8/20	Apptd. 8/10 Reapptd. 8/14, 8/17
Lynda Hester, CH. P.O. Box 457 Manteo, NC 27954	8/19	Apptd. 8/10 Reapptd. 8/13, 16
Mitchell Bateman P.O. Box 100 Wanchese, NC 27981 473-3350	8/20	Apptd.8/14 Reapptd. 8/17

Rodney Benson 309 Agona St. Manteo, NC 27954 336-906-0593	8/19	Apptd. 3/15 Reapptd. 8/16
Samantha Brown 2621 S. Bridge Lane Nags Head, NC 27959 207-2933(H) 305-1414 (O)	8/20	Apptd. 12/16 Reapptd. 8/17
Sara J. Hester-Smith PO Box 762 Manteo, NC 27954 489-6554 sjoihester@gmail.com	8/19	Apptd. 12/17
Daniel Otte' 185 The Dogwoods Manteo, NC 27954 473-1883(H), 473-8883 (Cell)	8/19	Apptd. 8/16
Tiffany Wescott P.O. Box 2148 Manteo, NC 27954 216-6341	8/21	Apptd. 8/15 Reapptd. 8/18
Anastacia Davis P.O. Box 1097 Manteo, NC 27954 473-5687	8/21	Apptd. 8/15 Reapptd. 8/18

NOTES:

MEETING INFO: 2nd Tuesday -monthly, (except June, July, Aug.) 9 a.m., Dare Center Meeting Room

CONTACT INFO: Lynda Hester, Chairman
Sandy Scarborough, Director of Dare Center

MEMBERS COMPENSATED: No

Flossie Tugwell filled unexpired term of Betty Blanchard 8/10.
John Sibunka filled unexpired term of Doris Young 8/10.
Lynda Hester was appointed as an additional member 8/10.
John Robbins filled unexpired term of Jimmie Williams 6/12.
Suzy Barrett filled unexpired term of Catherine McCabe 2/13.
Ann Groves replaced James Harris 9/13.
Brooke McCord appointed to fill unexpired term of Malcolm Fearing 9/13.
Mitchell Bateman replaced Isabel Cooper 8/14.
Mary Pendill filled unexpired term of Betty Mann 8/14.
Margarette Umphlett replaced Virginia Tillett 12/14.
Tiffany Wescott replaced Suzy Barrett 8/15.
Anastacia Davis replaced Fred Brumbach 8/15.
Jean Council replaced James Brown 8/16.
Daniel Otte' replaced John Robbins 8/16.
Samantha Brown filled unexpired term of Brook McCord 12/16.
Robb Ross replaced Margarette Umphlett 6/17
Paula Oliver replaced Bea Basnight 8/17
Sarah Hester-Smith appointed to fill unexpired term of Jean Farr Council who resigned 12/17

REVISED 8/19

Subject: Board Nominations--BIOS.

From: Dare County Center Advisory Board Nominating Committee.

Date: May 19, 2019.

MESSAGE:

The Dare County Center Advisory Board nominating committee nominates the following persons:

Reha Otte'

Reha Otte' is an active volunteer at the Dare County Center and in the local community: She volunteers in the yearly Toy Drive, wraps gifts, volunteers with the 5K races and is actively involved in any area of the DCC when needed; Reha has served as president, vice president and secretary for the Manteo Lions Club; she is the Meal Coordinator at Mount Olivet United Methodist church--meals requested by individuals with difficult life challenges or who lack a home caregiver while ill or recovering from surgery, and she chairs the Evangelism and Prayer Blanket Ministries at Mount Olivet United Methodist Church.

Lynda Hester

Lynda Hester is chairperson of the Dare County Advisory Board and is excellent at leading the monthly meetings and follows the agenda in an efficient and timely manner. As chairperson, Linda automatically serves on other committees; she chairs the planning committee and chairs the certification committee that deliberates and prepares paperwork and to ensure DCC is recertified, and she works diligently to achieve the excellence award and national certification. Lynda attends other DCC committees to help out.

Dan Otte'

Dan Otte' volunteers at the Dare County Center in various ways--Dare to Scare, 5-k committee, the planning committee, Autism Walk, ALS Walk, Blood Drives, 4-day Christmas Toy Drive and participated in gift wrapping iPads for give away, and he answers the office phone when asked. Dan and his wife, Reha are enrolled in the Healthy Brain Study, The Wake Forest Alzheimer's Disease Research Center (ADRC), Wake Forest Baptist Medical Center, Winston Salem.

Sara Hester Smith

Sarah Hester Smith chairs the Renate Memorial Gardens and has volunteered her time working on the current design and construction of the gardens at the DCC: Sarah organized community volunteers to come out and construct the gardens as a team effort. The gardens have raised beds to make it accessible to all including wheelchair access.

Renate Macchirole was an employee at the DCC and worked as the Nutrition Site Coordinator, and she wished to establish gardens with wheelchair access and for senior citizens to manage. Renate served many from the Beach Club at DCC including the homeless and senior citizens in the local community.

APPLICATION FOR APPOINTMENT TO
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Advisory Board or Committee interested in:

1st choice Parks and Recreation *...appt'd 7/18*

2nd choice Dare County Center Advisory Board

3rd choice Roanoke Island Community Center Board

Name Stephanie J. Harkness-Moxley

Address 152 Brakewood Rd

City/State/Zip Manteo, NC 27954

Email Address smoxley@madrivier.com

Telephone Home: 843-540-2358 (cell)

Business: 252-573-8248

Resident of Dare County: yes no

Occupation: Paralegal

Business Address: 207 Queen Elizabeth Ave., Ste. 101, Manteo, NC 27954

Educational background:

Bachelor of Arts in International Studies from The Ohio State University

Post Graduate work in Paralegal Studies at Technical College of the Lowcountry

Business and civic experience and skills:

Please see attached resume.

Other Boards/Committees/Commissions on which you presently serve:
Manteo MS PTO: Volunteer Cord.; Premier Soccer Manteo, Inc.: Secretary;

Outer Banks Youth Soccer Assoc.: Secretary, Director Concessions;

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Josh Deal	Atlantic Flooring, owner	502 Hwy 64, Manteo	305-4037
Susan Harman-Scott	Attorney	207 QE Ave., Ste. 101, Manteo	573-8248
Diane Bognich	Finance Officer, OBX Inc.,	1 Vist. Ctr. Cir., Manteo	256-0588

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 5/4/2018 Signature of applicant: *Susan Harman-Scott*

FOR OFFICE USE ONLY:

Date received: _____

Stephanie Harkness-Moxley

152 Brakewood Rd
Manteo, NC 27954

(843) 540-2358
smoxley@madriver.com

As I integrate into my new community, I hope to expand my participation in community and civic organizations.

Susan Harman-Scott, Attorney at Law, PLLC **Manteo, NC – June 2016 to Present**

Paralegal for single practitioner office. Research and implement new technologies and case management software. Primary point of contact for clients, associated parties, and general public. Maintain and organize client files. Prepare documents for court and perform supporting research and background.

McDougall Law Firm

Beaufort, SC – July 2015 to June 2016

Litigation Paralegal supporting assigned attorneys with responsibilities for the maintenance and organization of files from opening of case to final disposition. Point of contact for clients, associated parties. Prepare all court documents, correspondence, evidence and supporting documentation, research and background.

Bennett Law Firm, LLC

Ridgeland, SC – July 2014 to July 2015

Litigation Paralegal in boutique law firm, supporting attorney in all stages of case development for civil litigation, family, simple probate and minor criminal matters.

Tupper, Grimsley, & Dean, P.A. Beaufort, SC - July 2011 to July 2014

Insurance Defense Litigation Paralegal supporting assigned attorneys with responsibilities for the timely and accurate preparation of documentation through all stages of a case including the initial response to new actions, discovery, mediation, and settlement or trial.

LowCountry Legal Volunteers

January 2011 to July 2011

Unpaid Student Intern: paralegal for a non-profit legal aid organization focusing mainly on family law issues for the under-serviced of Beaufort County.

Lost Penguin Deli

Bluffton, SC - October 2006-July 2010

Responsible for all aspects of small business ownership including business development and creation of social media and traditional advertising programs, inventory control and human resources.

Certifications: North Carolina Notary Public, Commission expires 7/7/2021

Computer Proficiencies:

Microsoft Office Suite including Entourage and Outlook for both Windows XP and Mac OS X (Mavericks) platforms; Word Perfect, LexisNexis, Westlaw, eCopy, TABS 3, Clio, Office365 and DropBox; iPad and iPhone mobile computing platforms for office connectivity while off site.

Education:

The Ohio State University, Bachelor of Arts: International Relations

Technical College of the Lowcountry, Paralegal Certificate from an ABA credentialed program, Honor graduate

Community Involvement:

Manteo Middle School Parent Teacher Organization: Volunteer Coordinator 2017-present

Premier Soccer Training Manteo, Inc.: Board of Directors, Secretary 2017- present

Outer Banks Youth Soccer Association: Board of Directors, Secretary, Director of Concessions 2017-present

Lower Coastal Soccer Academy: Board of Directors, Secretary 2011-2016; Developmental Coordinator 2014-2016; Team Manager for '04 travel team 2011- 2016

Beaufort Water Festival: Volunteer with Young Lawyers Association during Beaufort's premier festival 2011-2015

1

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

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Advisory Board or Committee interested in:

1st choice Dare County Center Advisory Board

2nd choice _____

3rd choice _____

Name Reha Otte'

Address 185 The Dogwoods

City/State/Zip Manteo, NC 27954

Email Address 320otter@gmail.com

Telephone Home: 252-473-1883

Business: N/A

Resident of Dare County: yes no

Occupation: Retired

Business Address: _____

Educational background:

Parkville High School - 12 yrs. - Parkville, Md., 7 yrs @

Essex Community College - Business - Essex, Md., 3 yrs Project
Management Certification - Georgetown University

AT&T - 30 yrs. 6/17/68 - 7/1/1998 - Project Mgr. IT; Citifinancial - 17 yrs -
Project Manager 8/17/1998 - 6/2015; Casual Worker - 5 yrs. - Sales (PT)
2002 - 2007

Other Boards/Committees/Commissions on which you presently serve: *Volunteered @ Dare Center for Places & wherever needed.*

Trinity Lutheran Church - Joppa, Md. - Women's Ministry Chair for 4 yrs. 2006-2010; Lions Club - Member - 2012 to present - VP, President - 4 yrs. - currently Secretary; Evangelism Chair - 4 yrs. - Mount Olivet UMC; Blanket Ministry Chair - 2 yrs. and Women's Ministry Treasurer @ Mt. Olivet UMC; meal ^{REFERENCES} coordinators for those that are ill, had surgery etc.

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
<i>Deloris Harrell</i>	<i>- Harrell Real Estate</i>	<i>1183 Burnside</i>	<i>252-473-7287</i>
<i>Matt Seals</i>	<i>- Pastor</i>	<i>Mt. Olivet - 300 Anaxias Dare St.</i>	<i>252-473-2089</i>
<i>J.C. Bournight</i>	<i>- Retired</i>	<i>- 903 Anaxias St.</i>	<i>252-473-2809</i>

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 5/13/19 Signature of applicant: *Rene Otte*

FOR OFFICE USE ONLY:

Date received: _____



Jury Commission

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

August 2019

JURY COMMISSION

(Two Year Term)

Term expires for Lou Ellen Quinn

Lou Ellen Quinn desires to be re-appointed.

There are no applications on file.

Other Members:
See attached list

JURY COMMISSION

(Two Year Term)

The Jury Commission consists of three members to certify jurors. One member is appointed by the Senior Regular Resident Superior Court Judge, one by the Clerk of Superior Court, and one by the Board of Commissioners.

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Tammy Jennings (Clerk Appointee) Manteo, NC 27954		
Scheryl Gray (Judge Appointee) 123 W. Oak Knoll Dr. Nags Head, NC 27959		
Lou Ellen Quinn (Commissioner Appointee) 150 Skinners Landing Wanchese, NC 27981 473-6601 (cell) 305-5511 quingirls4@aol.com	8-19	Apptd. 11/17

NOTES:

Meeting Date – Every two years to certify jurors

Joyce Sledge replaced Gwen White.

Janice Midgett replaced Ken Doughty.

Stella Hollingsworth replaced Joyce Sledge 8/95.

Kim Grimes replaced Janice Midgett 8/95.

Mona Meekins replaced Katherine Aguirre 8/95.

Sandra Robinson replaced Stella Hollingsworth 8/97.

Tammy Jennings replaced Kim Doughtie.

Alma Clark filled unexpired term of Sandra Robinson 11/11.

Lou Ellen Quinn filled unexpired term of Alma Clark, who resigned 11/17

REVISED 08/19



Juvenile Crime Prevention Council

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

August 2019

JUVENILE CRIME PREVENTION COUNCIL
(Two Year Term)

As outlined and funded by the Juvenile Justice Reform Act of 1998, the Juvenile Crime Prevention Council assumes responsibility for assessing needs, funding community-based alternatives for troubled youth who enter the courts, and supporting prevention programs.

There is one open seat for Student Representative

The JCPC recommends that Lara Cate Wright be appointed to fill this vacancy.

Other Members:
See attached list

JUVENILE CRIME PREVENTION COUNCIL

(Two Year Term)

**As outlined and funded by the Juvenile Justice Reform Act of 1998,
the Juvenile Crime Prevention Council assumes responsibility for assessing
needs, funding community-based alternatives for troubled youth who enter
the courts, and supporting prevention programs.**

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Robert Trivette P.O. Box 888 Kitty Hawk, NC 27949 261-9727 (H), 305-3739 (O) (District Court Judge/Co. Comm. Appt.)	6/21	Apptd. 1/12 Reapptd. 6/13,15,17, 19
Molly McGinnis 121 Fort Hugar Way Manteo, NC 27954 489-9405 Cell 489-7050 Work Cell mcginnismo@daretolearn.org (School Supt. or designee)	6/21	Apptd. 3/18, 6/19
Vance Haskett P.O. Box 246 Manteo, NC 27954 473-2069 (Police Chief)	6/21	Apptd. 1/08 Reapptd. 7/09,11,13,15, 17, 19
Gail Hutchison 6115 Hwy 64 Manns Harbor, NC 27953 252-216-8337 (Local Sheriff or designee)	6/21	Apptd. 6/13 Reapptd. 6/15, 17, 19
Jennifer Karpowicz P.O. Box 1276 Manteo, NC 27954 919-357-5700 (Asst. Dist. Atty. or designee)	6/21	Apptd. 7/09 Reapptd. 6/11,13,15,17, 6/19
Edward Hall, Jr. Chief Court Counselor, District 1 1305 McPherson Street Elizabeth City, NC 27909 252-331-4759 (O) Edward.hall@ncdps.gov (Chief Court Counselor or designee)	6/21	Apptd. 6/18, 19

Keith Letchworth 1708 E. Arlingto Blvd. Greenville, NC 27834 252-347-6365 (Director AMH/DD /SA or designee)	6/21	Apptd. 1/16, 6/17 6/19
Bonnie Bennett, Treas. P.O. Box 1000 Manteo, NC 27954 475-5753 (County Manager or designee)	6/21	Apptd. 1/99 Reapptd. 1/01 Reapptd. 1/03 Reapptd. 10/04,05,07 09,11,13,15,17, 19
Melinda Mogowski P.O. Box 3707 Kill Devil Hills, NC 27948 441-3536 (Substance Abuse Professional)	6/20	Apptd. 1/99 Reapptd. 1/01 Reapptd. 1/03 Reapptd. 10/04,06,08 6/10,12,14,16, 18
Stephen Wescott P.O. Box 2148 Manteo, NC 27954 216-6358 (Member of Faith Community)	6/20	Apptd. 11/11 Reapptd. 6/12,14,16 6/18
Steve House 288 N. Dogwood Trail PO Box 1093 Southern Shores, NC 27949 216-8985 cell; 305-9258 home Steve.house@darenc.com (County Commissioner)	6/21	Apptd. 6/17, 19
Pat Hudspeth, CH 5200 Pine Hill Lane Kitty Hawk, NC 27949 252-473-3484 (Juvenile Defense Attorney)	6/21	Apptd. 3/08 Reapptd. /09,11,13,15 17, 19
Richard J.Martin P.O. Box 1878 Manteo, NC 27954 473-1957 (At Large)	6/21	Apptd. 1/99 Reapptd. 6/13,15,17, 19
Jennifer Alexander 116 Tall Pines Court Kill Devil Hills, NC 27948 252-202-2777 jnicolealexander@yahoo.com (Member of Business Community)	6/20	Apptd. 1/19

Chelsea Artzt P.O. Box 913 Avon, NC 27915 252-995-9595(B) 865-306-9458 (H) chelseaartzt@gmail.com (Student Representative)	6/21	Apptd. 6/19
Michael Lewis P.O. Box 1490 Manteo, NC 27954 252-216-5257 (H) 252-473-5121 (Rep. United Way/other Non-profit)	6/20	Apptd. 2/16 Rapptd. 6/16, 18
Laura Twichell P.O. Box 2311 Manteo, NC 27954 315-345-6464 (At Large)	6/21	Apptd. 6/15 Reapptd 6/17, 19
Shelia Davies P.O. Box 669 Manteo, NC 27954 475-5500 (Director-Health & Human Services)	6/21	Apptd. 1/03 Reapptd. 10/04,05,07 09,11,13,15, 17, 19
Katherine Irby P.O. Box 1000 Manteo, NC 27954 473-4290 (4-H/SOS-At Larg.)	6/21	Apptd. 1/03 Reapptd. 10/04,05,07 09,11,13,15, 17, 19
Marcus Hester-Smith 935 Hwy 64/264 Manteo, NC 27954 252-489-0838(H) 252-473-4800(B) Hestersmith0bx@gmailcom (At Large)	6/21	Apptd. 6/19
Tim White P.O. Box 1000 Manteo, NC 27954 475-5916 (Director, Parks & Rec.)	6/20	Apptd. 6/08 Reapptd.6/10,12,14,16 6/18
Craig S. Albert 74 Gravey Pond Lane Southern Shores, NC 27949 440-666-2209 (H) graveypond@yahoo.com At Large	6/21	Apptd. 6/19

Nancy Griffin 94 Skyco Rd. Manteo, NC 27954 423-1781 (At Large)	6/21	Apptd. 6/15 Reaptd. 6/17, 19
Marsha Ribner-Cady 103 Weir Point Dr. Manteo, NC 27954 252-473-3094(At Large)	6/20	Apptd. 6/10 Reaptd. 6/12,14,16 6/18
Vacant (Youth Rep. under age 18)	6/21	formerly held by Mollee Sinks
Josh Houston 1274 Burnside Road Manteo, NC 27954 473-7546 (Josh's Cell), 423-0619 (John's Cell) Houstonjo0911@daretolearn.org (Youth Rep. under age 18)	6/20	Apptd. 11/17 Reaptd. 6/18

NOTES:

MEETING INFO. - 2nd Tues. each month at 12:30 p.m., Rm. 238, Admin. Bldg.

CONTACT INFO: Bonnie Bennett, Friends of Youth
Jay Burrus, Dept. of Health & Human Services Director
Pat Hudspeth, Chair

MEMBERS COMPENSATED: No

Doug Oberbeck replaced Dave Cheesman 7/07.
Tom Waite replaced Tim Hill 7/07.
Jane Midgett replaced Betty Selby 7/07.
Renee Welch replaced Amy Wells 7/07.
Richard Martin replaced DuWayne Gibbs 7/07.
Katie Lee and Kasey Rollinson filled vacant youth rep. positions 11/07.
Vance Haskett appointed to fill unexpired term of Francis D'Ambra 1/08.
Winfield Bevins replaced Jim Southern 6/08.
Tim White replaced Cliff Ogburn 6/08.
Sarah Massey filled unexpired term of Tom Waite 10/08.
Tom Williamson filled unexpired term of Jane Midgett 12/08.
Melinda Maher filled unexpired term of Renee Welch 12/08.
Sara Gist filled vacant at large student rep 12/08.
Richard Martin replaced Nancy Griffin 7/09.
Jennifer Karpowicz replaced Kimberly Pellini 7/09.
Kevin Brunk filled unexpired term of Winfield Bevins 7/09.
Lora Vann filled unexpired Sarah Massey 11/09.
Lora Gilreath filled unexpired term of Cole Beasley 6/10.
Marsha Ribner-Cady filled vacant at large seat 6/10.
Ron Bennett appointed to fill unexpired term of Eddie Lynch 1/11.
Tripp Hobbs replaced Richard Martin 6/11.
Jeff Deringer replaced Doug Oberbeck 6/11.

Richard Martin replaced Edgar Barnes 6/11.
Lynette Ford replaced Thomas Williamson 6/11.
Tony Gray replaced Melinda Maher 6/11.
Sheila Davies filled unexpired term of Tony Gray 11/11.
Stephen Wescott filled unexpired term of Kevin Brunk 11/11.
Kara Rap filled unexpired term of Elise Quidley 11/11.
Wes Rawles filled unexpired term of David Spruill 11/11.
Matthew Schofield filled unexpired term of Lynette Ford 6/12.
Natalie Evans filled unexpired term of Matthew Schofield 2/13.
Malinda Lathan filled unexpired term of Shelia Davies 2/13.
Teresa Twyne filled unexpired term of Tripp Hobbs 10/13.
Bobbie Lowe filled unexpired term of Sarah Massey 4/14.
Adam Leggett filled unexpired term of Bobbie Lowe 12/14.
Margaret Umphlett filled unexpired term of Virginia Tillett 12/14.
Appointment for Health Department combined with appointment for Social Services, (Health and Human Services) 2014.
Laura Twichell replaced Natalie Evans 6/15.
Nancy Griffin replaced Lora Gilreath 6/15.
Alejandra Monica-Sanchez appointed to fill unexpired term of Austin Banks 11/15.
Joshua Tolson appointed to fill unexpired term of Abby Haywood 11/15.
John Gardner filled unexpired term of Ron Bennett 1/16.
Keith Letchworth filled unexpired term of Adam Leggett 1/16.
Ryan Henderson filled vacant, at large seat 1/16.
Michael Lewis filled unexpired term of Lynn Bryant 2/16.
LaQreshia Bates-Harley filled unexpired term of Sherri Ellington 6/16.
Lionel Ray Robinson replaced Malinda Lathan 6/17
Steve House replaced Margaret Umphlett 6/17
Mollee Sinks appointed to fill unexpired term of Alejandra Monica-Sanchez 9/17
Josh Houston appointed to fill unexpired term of Joshua Tolson 11/17
Molly McGinnis appointed to fill unexpired term of Teresa Twyne 3/18
John Gardner did not want to be reappointed, his replacement was deferred to later 6/18
Edward Hall, Jr. filled unexpired term of LaQreshia Bates-Harley 6/18
Jennifer Alexander was appointed to fill the vacancy for member of the Business Community 1/19
Melanie Gonzalez appointed to fill the vacant student representative seat 1/19
Marcus Hester-Smith filled the At-Large seat held by Lionel Ray Robinson 6/19
Craig Albert appointed to fill the At-Large seat held by Ryan Henderson 6/19
Chelsea Artzt appointed to replace Melanie Gonzalez as student representative 6/19

REVISED 6/19



COUNTY OF DARE

P.O. Box 1000, Manteo, North Carolina 27954

(252) 475-5000

To: Cheryl Anby

FROM: Bonnie Bennett

Date: July 18, 2019

Please find attached one application of Lara Cate Wright for the one open seat of Student Representative, with the Juvenile Crime Prevention Council, term July 1, 2019 – June 30, 2021.

Thank you for your assistance in this matter.

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Cheryl Anby, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-1817, or send it by email to cheryl.anby@darenc.com

Advisory Board or Committee interested in:

1st choice Youth Representative / JCPC

2nd choice _____

3rd choice _____

Name Lara Cate Wright

Address 3506 Mill Landing Rd. / PO Box 446

City/State/Zip Wanchese, North Carolina 27981

Email Address laracatew02@gmail.com

Telephone Home: 252-216-6571

Business: N/A

Resident of Dare County: yes no

Occupation: High School Student

Business Address: N/A

Educational background:
Manteo High School - 2016 - 2020

Business and civic experience and skills:
Member of Teen Court Advisory Board
high school student - summer job at Darrell's Restaurant

Other Boards/Committees/Commissions on which you presently serve:

Teen Court Advisory Board + Leadership team
MHS Student Government President

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
<u>Sarah Pritchard</u>	<u>MHS/Teacher</u>	<u>Manteo, NC</u>	<u>252-202-0222</u>
<u>Shannon Glaser</u>	<u>Teen Court Director</u>	<u>Manteo, NC</u>	<u>252-489-9137</u>
<u>Cara Daniels</u>	<u>In-Home Therapy</u>	<u>Kill Devil Hills, NC</u>	<u>252-305-6331</u>

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 06-26-2019 Signature of applicant: Lara Cate Wright

FOR OFFICE USE ONLY:

Date received: _____



Parks and Recreation Advisory Council

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

July 2019

BOARD APPOINTMENT
PARKS AND RECREATION ADVISORY COUNCIL
(Three Year Term)

The Parks and Recreation Advisory Council reviews and advises the Parks and Recreation Department in its efforts to promote, organize, plan and coordinate activities and programs for youth and adults in Dare County.

**There are currently two vacancies.
The Council recommends B. Allen Poole fill one of the vacancies.**

Applications have been received from:

B. Allen Poole
Justin Bateman
John Cook
Lynette Ford
Vanzolla McMurrin

Other Members: See attached list

PARKS AND RECREATION ADVISORY COUNCIL
(Three Year Term)

This Advisory Council reviews and advises Parks and Recreation in its efforts to promote, organize, plan, and coordinate activities and programs for youth and adults in Dare County.

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Anita Bills P.O. Box 608 Frisco, NC 27936 995-7892(H), 202-1412(O)	7-21	Apptd. 7/11 Reapptd. 7/14, 18
Willer Spencer P.O. Box 1495 Manteo, NC 27954 256-2880	7-21	Apptd. 7/15 Reapptd. 7/18
Amanda Hooper Walters 1202 9 th Avenue Kill Devil Hills, NC 27948 202-9923 Manda.hooper@icloud.com	7-21	Apptd. 7/18
Missy McPherson 119 Margaret Court Manteo, NC 27954 473-6831 (H) 216-6831 ©	12-20	Apptd. 7/16 Reapptd, 12/17
Kathy Carden, CH. P.O. Box 3492 Kill Devil Hills, NC 27948 449-0840(H), 441-6340(O)	7-21	Apptd. 11/07 Reapptd. 08,11,14,18
George Barr 107 N. Budleigh Street PO Box 564 Manteo, NC 27954 sailcamaraderie@yahoo.com 804-387-4995	7-21	Apptd. 8/18
Deon Simmons 222 Brakewood Dr. Manteo, NC 27954 475-1627 (H), 202-9737 (O)	7-22	Apptd. 7-13 Reapptd. 7-16,19
George Berry 238 N. Dogwood Trail Southern Shores, NC 27949 261-1278 (H) 703-473-0528 (O)	3-22	Apptd. 7-16 Reapptd. 3-19
Robert Parrish 4416 Seascape Drive Kitty Hawk, NC 27949 252-333-9476 Robert@parrishinsure.com	7-21	Apptd. 7/18 Reapptd.

Eddie Twyne P.O. Box 11 Manteo, NC 27954 305-2291	7-21	Apptd. 7/15 Reaptd. 7/18
Stephanie J. Harkness-Moxley 152 Brakewood Road Manteo, NC 27954 843-540-2358(Cell), 573-8248(O) smoxley@madriver.com	7-21	Apptd. 7/18 Reaptd.
Kelli Harmon 723 Pirates Way Manteo, NC 27954 910-286-1660	7-21	Apptd. 7/15 Reaptd. 7/18
Ervin Bateman 4148 Poor Ridge Road PO Box 1127 Kitty Hawk, NC 27949 ervin.bateman@darenc.com 252.216.6717		Apptd. 1/19

NOTES:

MEETING INFO: Every other month beginning in January
Meets at KDH Rec. Park, 8:00 a.m.
Meets once a year at the Dare Center, 11:30 a.m.
Meets once a year at the Fessenden Center, 11:30 a.m.

CONTACT INFO: Tim White, Public Services Director

MEMBERS COMPENSATED: No

Bob Wells replaced Steve Evans 2/90.
Ray Hollowell replaced Andy Meekins 2/90.
Peg Casey replaced Mike Leffler 2/90.
Jake McCleave replaced Peg Casey.

On October 21, 1991, DCBC moved to have 7 member board.

Lisa Wheless replaced Glenn Lucas 3/92.
David Stowe replaced Carol Anderson 6/93.

Advisory Council was enlarged from 7 members to 13 members July 19, 1993.

Bill Walker replaced Jake McCleave 11/94.
Ollie Jarvis filled unexpired term of David Stowe 11/94.
Rex Simpson filled unexpired term of Lisa Wheless 11/94.
Tim White replaced Ollie Jarvis 7/95.
Bobby Outten replaced Karolyn Quidley 7/95.

DCBC increased membership from 13 to 14 8/7/95.
(Ollie Jarvis reaptd. For 1 year.)
Andy Ward filled unexpired term of Ron Bennett 10/95.

Jeff Absher replaced Tim White 7/96.
Kyle O'Neal replaced Belinda Willis 4/98.
Mitchell Bateman replaced Rex Simpson 8/98.
Dan Ottavio filled unexpired term of Debi DesRoches 4/99.
Mike France filled unexpired term of Ray Hollowell 4/99.
Wilhelmina McCleave filled unexpired term of Mary Pendill 4/99.
Bo Taylor and Jeff Absher will be replaced in September 1999.
Susan Boncek replaced Bo Taylor 12/99.
Charlena Davenport replaced Jeff Absher 12/99.
Ray Evans fill unexpired term of Wilhelmina McCleave 12/99.
Timmy Midgett replaced Andy Ward 10/00.
Mel Covey apptd. To fill unexpired term of Kyle O'Neal 12/01.
Samantha DeLucia appointed to fill unexpired term of Bobby Outten 5/02.
Crystal Blackmon replaced Charlena Davenport 11/02.
Ben Whitehurst apptd. to fill unexpired term of Mike France 1/04.
Jimmy P. Brown fill unexpired term of Ray Evans 4/04.
Allen Forman apptd. to fill unexpired term of Bill Walker 11/04.
Bob Sanders replaced Robert Wells 7/05.
Kelletha Govan replaced Kathy Burrus 7/05.
Ralph Horne replaced Ben Whitehurst 7/05.
Ed Futtrell replaced Dan Ottavio 7/05.
Tim Cafferty filled unexpired term of Al Forman 6/06.
Ronnie Roach replaced Samantha DeLucia 6/06.
Kathy Winstead filled unexpired term of Bob Saunders 11/07.
April Oden replaced Ollie Jarvis 10/08.
Mel Covey moved to a northern beach representative and filled unexpired term of Ronnie Roach who resigned.
Susan Gray filled unexpired term of Mel Covey 10/08.
Scott Midgette replaced Pete Hunter 7/09.
Anita Bills replaced April Oden 7/11.
Tod Clissold replaced Ed Futrell 7/11.
Melinda Maher replaced Ralph Horne (deceased) 7/11.
Jack Painter replaced Crystal Blackmon 4/12.
Mel Covey resigned 7/12.
Eddie Twyne replaced Timmy Midgett 7/15.
Willer Spencer filled vacancy (Tod Clissold) 7/15.
Kelli Harmon filled vacancy (Mel Covey) 7/15.
Missy McPherson appointed to fill vacant seat last held by Susan Boncek 7/16.
George Berry appointed to fill vacant seat last held by Susan Gray 7/16.
Melinda Maher resigned 12/16.
Jack Painter resigned 1/17.
Chairman Woodard appointed Danny Couch as Commissioner Appointee 2/20/17
Jimmy Brown passed away 1/18
Kathy Winstead remarried, her name changed to Kathy Carden 6/18
Robert Parrish replaced Scott Midgette, Stephanie J. Harkness-Moxley replaced Keletta Govan, Amanda Hooper Walters filled a vacancy 7/18
George Barr appointed to fill vacant seat 8/18
Tim Cafferty did not wish to be reappointed, the Board will wait to receive a recommendation from staff before filling Mr. Cafferty's seat.
Ervin Bateman replaced Danny Couch 1/19

REVISED 7/19

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Cheryl Anby, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-1817, or send it by email to cheryl.anby@darenc.com

Advisory Board or Committee interested in:

1st choice Parks and Recreation Advisory Council

2nd choice _____

3rd choice _____

Name B. Allen Poole

Address 120 Roanoke Trail

City/State/Zip Manteo, NC 27954

Email Address allenobx@aol.com

Telephone Home: 252 473-5421

cell ~~Business:~~ 252 423-1344

Resident of Dare County: yes no

Occupation: Retired

Business Address: _____

Educational background:

K - 16

Business and civic experience and skills:

Retired from owning a landscaping business.

Previous civic experience - member of -

Roanoke Island Commission; Dare County Clean Water Advisory Board; Manteo Special Events Committee; NC Trails Committee; NC Agriculture Committee; Nags Head Woods Board of Directors; others.

Other Boards/Committees/Commissions on which you presently serve:

Roanoke Island Trails Program Steering Committee;
Mountains to Sea Trail Task Force Leader; also do volunteer
trail work at Cape Hatteras National Sea shore, and Shenandoah
National Park

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Kathy Meekins,	retired	PO Box 284 Manteo, NC	252 473-3872
Tim White	Director, Dare County Parks and Recreation	timw@ darenc.com	475-5910
Kate Dixon	Executive Director Friends of the Mountains to Sea Trail	kdixon@ mountainstosea-trail.org	919 698-9024

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 7/24/19 Signature of applicant: B. Allen Poole

FOR OFFICE USE ONLY:

Date received: _____

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

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Advisory Board or Committee interested in:

1st choice Parks and Recreation Advisory Council

2nd choice Wanchese Community Center Board

3rd choice _____

Name Justin Bateman

Address 72 Cudworth Cemetery Rd. / PO Box 87

City/State/Zip Wanchese, NC 27981

Email Address justin@wcms.com

Telephone Home: 252-256-3252

Business: 252-480-4655

Resident of Dare County: yes no

Occupation: Radio Personality/Sales

Business Address: 103 W. Woodhill Dr. Suite E Nags Head, NC 27959

Educational background:

Manteo High School Class of 2003

Santa Fe College - Gainesville, FL Class of 2010

Business and civic experience and skills:

Honorable Discharge, US ARMY, 26Aug2005

T-Ball Coach, Dare County Parks and Rec, 2019

Other Boards/Committees/Commissions on which you presently serve:

Active Memeber of the Board of Trustees, Bethany United Methodist Church, Wanchese

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Eddie Twyne,	Retired School Teacher/Coach,	Manteo NC,	252-305-2291

Ken Mann,	Bethany UMC/Minister,	Wanchese NC,	252-305-6402
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Bobby Outten,	County Manager,	Southern Shores NC,	252-202-9540
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I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 4/16/2019 Signature of applicant: 

FOR OFFICE USE ONLY:

Date received: 4-24-19

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

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Advisory Board or Committee interested in:

1st choice Parks and Rec Board

2nd choice Planning Board

3rd choice Wildlife Board

Name John Cook

Address 109 Brakewood Rd

City/State/Zip Manteo, NC 27954

Email Address foresterjc@gmail.com

Telephone Home: 305-8122

Business: 252-542-0119

Resident of Dare County: yes no

Occupation: Forest Ranger - State of NC

Business Address: _____

Educational background:

BS Natural Resources, Masters in Forestry, NCSU

Business and civic experience and skills:

6+ years Dare Youth Sports Coaching

experienced in Environmental Education

Other Boards/Committees/Commissions on which you presently serve:

REFERENCES

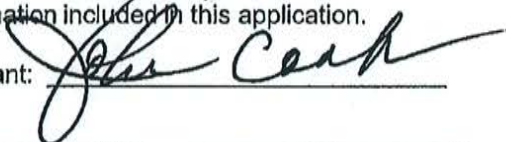
List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Dean Tolson	- clerk court	- 2167114	
Bob Peele	- Wanchese Industrial Park		4735867
Boone Vandzura	- NPS Park Ranger		4758307

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 4/5/2019

Signature of applicant:



FOR OFFICE USE ONLY:

Date received: 4-5-19

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

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Advisory Board or Committee interested in:

1st choice Roanoke Island Community Center Board

2nd choice Parks and Recreation

3rd choice Juvenile Crime Prevention (Depends on work schedule)

Name Lynette Ford

Address 104 Elsie Daniels Lane

City/State/Zip Manteo, NC 27954

Email Address fordly@daretolearn.org / lynetteford5748@gmail.com

Telephone Home: (252) 305-5748

Business: (252) 449-7000 Ext 2466

Resident of Dare County: yes no

Occupation: History Teacher

Business Address: First Flight High School

Educational background:

B.A. History (CSU), Associate Degree (COA DARE); Manteo High School Graduate

Business and civic experience and skills: FFHS TEACHER

Monday Night Alive tutor; Volunteer (10 yrs), OBX Marathon Volunteer
I enjoy being a public servant. Familiar with the community and their needs.

Other Boards/Committees/Commissions on which you presently serve:

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Paul Charon	Lost Colony Brewery	Manteo	(252) 305-3666
Virginia Tillett		Manteo	(252) 473-2753
Jane Midgett	school board receptionist	Manteo	(252) 473-8995

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 3/16/18 Signature of applicant: *Lynette Ford*

FOR OFFICE USE ONLY:

Date received: _____

Lynette Ford

Current Address:
P.O. Box 2563
Manteo, N.C. 27954
252-305-5748

lynetteford2000@yahoo.com
lynetteford5748@gmail.com
fordly@daretolearn.org

Permanent Address:
104 Elsie Daniels Lane
Manteo, N.C. 27954

Summary

Highly dedicated and resourceful Community Service Worker with a stellar record of community involvement and conflict resolution. I am adept at helping community members in finding creative and productive solutions for any issues. I am a strong multitasker and able to handle a number of simultaneous questions and problems with high accuracy and efficiency.

Highlights

- Community service experience
- Strong familiarity with community
- Excellent ability to coordinate community service
- High organization and presentation skills
- Outstanding creative thinking and problem-solving abilities
- Oral and written communication skills

OBJECTIVE: To work in the community I grew up in and to give back to the people who help me grow. I would like to be a humble servant, serving my great community.

ACTIVITIES: I worked with Monday Night Alive for 10 years. MNA is a program which helps students (k-12) with school work.

EDUCATION: **B.A. – History**
Elizabeth City State University
Elizabeth City, N.C. 27909
Graduation Date: May 5, 2007 **GPA: 3.4**
Associate in Art Degree
College of Albemarle Dare campus
Graduation Date May 2004
Effective teacher training 2008

SPECIAL SKILLS: Microsoft Works, PowerPoint
Positive attitude towards work
Adaptability towards environment
Positive attitude towards learning
Work well with people

**WORK
EXPERIENCE:**

- 2017-Present** First Flight High
100 Veterans Dr, Kill Devil Hills, NC 27948
(252) 449-700 ext 2466
History Teacher
American History
Apex Civics
World History
- 2008-Present** Full Moon Café
208 Queen Elizabeth Ave
Manteo, N.C. 27954
(252) 473-6666
Server
- 2008** Coastal Staffing Services
4601 N Croatan Hwy Kitty Hawk, N.C. 27949
(252) 255- 1800
- 2007- 2008:** Sound Feet Shoes Powells Point, NC
Assistant Manager Duck Store #6. Worked also in Kitty Hawk #5
(252)491-2858 (252)261-0490 (252) 441-0715
- 2000-2007:** Weeping Radish Restaurant and Brewery, Manteo, N.C. 27954
Opening and closing manager, Whenever needed
Pub tender, Waitress, Cook, and Customer Service
(252) 473-1157
- 1995-1999:** **Manager of Nine West Shoes**, Tanger Outlet Mall Nags Head, N.C. 27959
Customer Services
Manual Operation of the store
Visual Merchandising
(252) 441-8488
- 1995-1997:** **3rd Key of Colours and Scents**, Tanger Outlet Mall Nags Head, N.C.27959
Customer Services, Visual Merchandising and
Manual Operation of the store

1993-1995: **Wallet Works, Tanger Outlet Mall Nags Head, N.C. 27959**

AWARDS: National Collegiate Minority Leadership Award 2002
SGA Vice President 2002-2003
SGA President 2003-2004
Vice Chancellor List (2004)
Dean List (2004, 2007)
Honor Roll (2005 – 2006)
Phi Alpha Theta 2006
Honor Roll 2007
Substitute Teaching Certification 2008

REFERENCES: Paul Charron
Lost Colony Brewery & Café
Downtown Manteo, N.C. 27954
(252) 305- 3666
(252) 473-6666

Jane Midgett
Dare County School Board and Education
Manteo.N.C.27954
(252) 473-
(252) 480-8888

Virginia Tillett
Former County Commissioner/Educator
Manteo, N.C. 27954
(252) 473-2753

APPLICATION FOR APPOINTMENT TO
DARE COUNTY ADVISORY BOARDS AND COMMITTEES

The Dare County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. One way of participating is by serving as a citizen member on one of the county's advisory boards or committees. If you would like to be considered for appointment to an advisory board or committee, please complete the form below and mail to Janice Williams, P.O. Box 1000, Manteo, N.C. 27954 or fax it to her at 473-1817, or send it by email to janicew@darenc.com

Advisory Board or Committee interested in:

1st choice Land Transfer Tax Appeals Board

2nd choice Parks and Recreation Advisory Council

3rd choice Youth Council

Name Vanzolla McMurrin

Address 1034 George Daniels Road

City/State/Zip Manteo, NC 27954

Email Address vanzollam@darenc.com

Telephone Home: 252-473-5255

Business: 252-475-5969

Resident of Dare County: yes no

Occupation: Dare County Register of Deeds

Business Address: 962 Marshall C. Collins Dr., Manteo, NC 27954

Educational background:

Manteo High School Graduate.

Business and civic experience and skills:

I am the Register of Deeds and we deal with the land transfer tax everyday. I want to be on this committee so I will know of any changes that might affect our office, & I want to assist in any way and learn more about any Board I'm on.

Other Boards/Committees/Commissions on which you presently serve:
Vital Records Committee, Automation Technology Committee,

Strategic Long Range Planning Committee, all for NCARD

REFERENCES

List three persons who are not related to you and who have definite knowledge of your qualifications for the position for which you are applying.

Name	Business/Occupation	Address	Telephone
Marion Midgett	retired	Manteo, NC	473-3057
James Coefield	retired	Duck, NC	261-5623
Carrie Holmes	retired	Manteo, NC	NC 473-5285

I understand this application will be kept on the active file for three years and I hereby authorize Dare County to verify all information included in this application.

Date: 6/26/2018 Signature of applicant: Kanzella McMurran

FOR OFFICE USE ONLY:

Date received: 6/27/18



Stumpy Point Community Center Board

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

August, 2019

BOARD APPOINTMENT
Stumpy Point Community Center Board
(Three Year Term)

The following terms expire this month:

Sheila Golden
(Current Term 8/16 - 8/19)
(Originally Apptd. 10/09)

Jeff Griffith
(Current Term 8/16 – 8/19)
(Originally Apptd. 10/00)

Johnny Midgett
(Current Term 8/16 - 8/19)*
*(Originally Apptd. 3/19 to fill unexpired term of Roger Best)

Naomi Midgett
(Current Term 8/16 – 8/19)
(Originally Apptd. 10/00)

All would like to be reappointed.

No other applications have been received.

Other Members:
See attached list

STUMPY POINT COMMUNITY CENTER

(Three Year Term)

This Board operates and maintains the Stumpy Point Community Center facility and amenities for the use and benefit of all members of the Stumpy Point community.

<u>MEMBER</u>	<u>TERM EXPIRATION</u>	<u>ACTION</u>
Johnny Midgett 136 Bayview Dr. Stumpy Point, NC 27978 473-5601, business 216-6830 midgetttoni@yahoo.com	8-19	Apptd. 3/19
David Midgett 288 Bayview Dr. Stumpy Point, NC 27978 473-5884	11-21	Reapptd. 11-91, 94,97,00,03,06, 09,12,15, 18
Sheila Golden, CH. 259 Bayview Dr. Stumpy Point, NC 27978	8-19	Apptd. 10-09 Reapptd.8-10,13, 16
Naomi Midgett 178 Bayview Dr. Stumpy Point, NC 27978 473-1641	8-19	Apptd. 10-00 Reapptd. 8-01, 04,07,10,13,16
Jeff Griffith 212 Bayview Dr. Stumpy Point, NC 27978 473-3390	8-19	Apptd. 10-00 Reapptd. 8-01, 04,07,10,13,16

NOTES:

MEETING INFO: No set date, meet as needed

CONTACT INFO: Sheila Golden, Chairman

MEMBERS COMPENSATED: NO

County Attorney informed 12-5-86 that this Board has a three year term rather than the two year term listed in the Board file. This is according to the 1965 Session Laws of Dare County.

Dick Best resigned 1988.

Ginger Midgett and H.O. Golden were replaced 8/86.

Douglas Hooper was not reappointed 8/89.

Calvin Gibbs replaced Ben Barbee 4/91.

John Calvin Midgett was reappointed 8/89, but did not wish to serve. He was replaced by John Receveur.

Calvin Gibbs resigned, replaced by Jim Meekins, Sr.

Roger Best did not wish to serve again, replaced by Roy Midgett.

Roger Best filled unexpired term of Roy Midgett 10/00.

Jeff Griffith filled unexpired term of John Receveur 10/00.

Linda Barbee filled unexpired term of Louise Hooper 3/07.

Shelia Golden filled unexpired term of Linda Barbee 10/09.

Johnny Midgett filled unexpired term of Roger Best who passed away 3/19.

REVISED 7/19



Upcoming Board Appointments

Description

The Dare County Board of Commissioners welcomes citizen participation on its many Boards and Committees.

Following is a list of the Boards and Committees that have terms expiring during the next 3 months. The list indicates when the item will be presented to the County Commissioners and any requirements that may pertain to the appointment.

Instructions on how to obtain and submit an application are attached along with additional information about each of the Boards and Committees with upcoming term appointments.

Board Action Requested

None

Item Presenter

Robert Outten, County Manager

Upcoming Board & Committee Appointments

The Dare County Board of Commissioners welcomes citizen participation on Advisory Boards and Committees. This type of grassroots public involvement is the foundation of democracy and a vital part of maintaining Dare County as a quality place to live.

Following is a list of Boards and Committees that have terms expiring during the next 3 months. The list highlights when the item will be presented to the Board of Commissioners along with any special requirements that may pertain to the appointment.

Information about how to obtain and submit applications follows the list –

Upcoming Board Appointments

September 3, 2019

1. Health and Human Services Board

The Consolidated Health & Human Services Board serves as the policy-making, rule-making, and administrative board for Dare County's Department of Health & Human Services. NCGS 153A-77 requires that "After the subsequent establishment of the Human Services Board, its Board shall be appointed by the Board of County Commissioners from nominees presented by the Human Services Board." In accordance with the General Statute, the Consolidated Human Services Board reviews all applications and submits names of nominees to the Board of Commissioners for approval.

- 3 terms expiring September 2019

2. Nursing Home Community Advisory Council

Nursing Home Community Advisory Councils were established to maintain the intent of the Nursing Home and Adult Care Home Resident Bill of Rights within nursing homes and adult care homes across the state. The Committee promotes community involvement and cooperation to ensure quality of care for older adults. The Council is responsible for advising the County Commissioners of the general conditions that exist in Dare County's long term care facilities.

- 3 terms expiring September 2019

October 2019 - None

November 4, 2019

1. Older Adult Services Advisory Council

The Council advises Dare County in its efforts to promote, organize, plan, and coordinate services and programs for residents and visitors to Dare County who are 55 years of age and older.

- 1 term expiring November 2019

-----Instructions for Obtaining and Submitting Applications-----

An application must be submitted in order for your name to be considered for a Board or Committee appointment. The form is available on the Dare County website, or by calling Cheryl C. Anby at 475-5800.



Commissioners' Business & Manager's/Attorney's Business

Description

Remarks and items to be presented by Commissioners and the County Manager.

Board Action Requested

Consider items presented

Item Presenter

Robert Outten, County Manager