



COUNTY OF DARE
PO Box 1000, MANTEO, NC 27954

DARE COUNTY BOARD OF COMMISSIONERS

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

Monday, December 02, 2019

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

AGENDA

- 9:00 AM** **CONVENE, PRAYER, PLEDGE OF ALLEGIANCE**
- ITEM 1** Holiday Music - First Flight High School Choir
- ITEM 2** Election of Chairman
- ITEM 3** Election of Vice Chairman
- ITEM 4** Opening Remarks - Chairman's Update
- ITEM 5** Presentation of County Service Pins - December 2019
- ITEM 6** Employee of the Month
- ITEM 7** Public Comments
- ITEM 8** Dare County Motorcycle Toy Run
- ITEM 9** Certificate of Achievement for Excellence in Financial Reporting
- ITEM 10** Report on the Monitor National Marine Sanctuary
- ITEM 11** DC Depart. of Health and Human Services, Public Health Division
Presentation of the 2019 Community Health Needs Assessment
- ITEM 12** DC Tourism Board Request Consent Expenditure from Short Term Unappropriated Line
Item 4999
- ITEM 13** Text Amendment to the Highway 345 Zoning District
- ITEM 14** Adoption of the 2020 Schedules, Standards, and Rules for Real Property Appraisal
- ITEM 15** Consent Agenda
- 1. Approval of Minutes
 - 2. Budget Amendment for Beach Nourishment Fund
 - 3. Water Department Budget Amendment
 - 4. Worxtime Contract
 - 5. Road Request - Sherwood Drive, Manteo
- ITEM 16** Presentation of FY 2019 Comprehensive Annual Financial Report (Audit Report)
- ITEM 17** Construction Manager at Risk Contract for DHHS Project
- ITEM 18** Board Appointments
- 1. Board of Equalization and Review
 - 2. Special Motor Vehicle Valuation Review Board
 - 3. Upcoming Board Appointments
- ITEM 19** Commissioners' Business & Manager's/Attorney's Business

ADJOURN UNTIL 5:00 P.M. ON DECEMBER 16, 2019



Holiday Music - Manteo High School Choir

Description

As a special treat for the Board's December meeting, the Manteo High School Choir will provide a special offering of holiday music.

Board Action Requested

None - Musical Presentation

Item Presenter

Chairman Robert Woodard, Sr.



Election of Chairman

Description

The Clerk to the Board of Commissioners will conduct the annual election of Chairman.

Board Action Requested

To Elect a Chairman

Item Presenter

Cheryl C. Anby, Clerk to the Board



Election of Vice Chairman

Description

The Chairman will conduct the election of Vice Chairman.

Board Action Requested

To Elect a Vice Chairman

Item Presenter

Chairman of the Board of Commissioners



Opening Remarks - Chairman's Update

Description

Dare County Chairman will make opening remarks.

Board Action Requested

Informational Presentation

Item Presenter

Chairman



Presentation of County Service Pins - December 2019

Description

The following employee will receive a service pin this month:

1. Wilma Parks, Social Worker IV, DSS Admin., 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



Dare County Motorcycle Toy Run

Description

The Dare County Motorcycle Toy Run conducts an annual event to generate funds to benefit underprivileged children in Dare County. A report will be given on the group's latest fund raising efforts.

Board Action Requested

None - Informational Presentation

Item Presenter

Terry Gray
Dare County Motorcycle Toy Run



Certificate of Achievement for Excellence in Financial Reporting

Description

Dare County has received the Certificate of Excellence in Financial Reporting for its comprehensive annual financial report (CAFR) by the Government Finance Officers Association of the United States and Canada. This is the 28th consecutive year that Dare County has received this prestigious award. Finance Director David Clawson will accept the plaque on behalf of the County. Sally DeFosse, Dare County Assistant Finance Director, will accept the Award of Financial Reporting Achievement as the person primarily responsible for preparing the award-winning CAFR.

Board Action Requested

None

Item Presenter

Bob Woodard, Chairman



Report on the Monitor National Marine Sanctuary

Description

Superintendent David Alberg will give the Board of Commissioners an update on activity at the Monitor National Marine Sanctuary.

Board Action Requested

Informational Presentation

Item Presenter

Dave Alberg, Superintendent, Monitor National Marine Sanctuary



*Dare County Department of Health and Human Services
Public Health Division
Presentation of the 2019 Community Health Needs Assessment*

Description

Ms. Kelly Nettnin and Dr. Sheila Davies will present the 2019 Community Health Needs Assessment.

Board Action Requested

N/A

Item Presenter

Ms. Kelly Nettnin and Dr. Sheila Davies

ALL ABOARD
A
Healthy
COMMUNITY!



Community Health Assessment Process

*First Regional Effort
33 counties total*

Methodology

Primary Data
Community Surveys
Focus Groups

Prioritization
Watch List
Service Inventories
Ranking Process
Priority Selection

Health Assessments

Secondary Data
CDC, State Center for Health
Statistics, Health Rankings

*Action &
Evaluation*
Develop Taskforces
Action Plans
Provide Progress Reports

*Primary Data
Summary*

*19 Focus Group
Participants*

*714 Survey
Respondents*



Dare County: A great place to drop your anchor!

52%
AGREED

*Dare County
is a good place
to grow old.*

23%
DISAGREED

82%
AGREED

*Dare County
is a safe place
to live.*

2%
DISAGREED

72%
AGREED

*Dare County
is a good
place to raise
children.*

6%
DISAGREED

57%
AGREED

*Dare County
has plenty of
help for those
during times
of need.*

17%
DISAGREED

50%
AGREED

*Dare County
has good
healthcare.*

26%
DISAGREED

17%
AGREED

*There is
plenty of
economic
opportunity in
Dare County.*

57%
DISAGREED

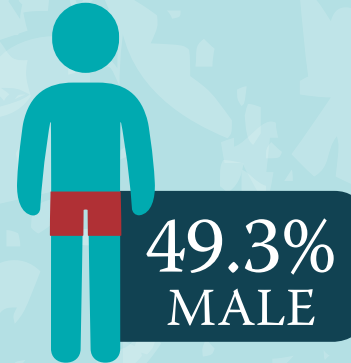
Dare County Demographics

Population By Race



Average Age

| | Dare County | NC |
|---------|-------------|------|
| Males | 45.5 | 37.2 |
| Females | 47.4 | 40.1 |



94.1%

White

2.7%

Black

1.8%

Multi Racial

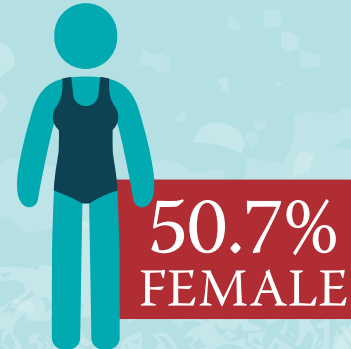
0.8%

Asian

0.5%

American Indian or Alaskan Native

7.1% of residents are of Hispanic or Latino Ethnicity



Birth Rate



10.7% Veteran Population
(compared to ENC 12.4%, NC 9.0%)



Education

92.5% High School Degree or Higher (compared to 86.3% NC, 84.7% ENC)

29.0% Bachelor's Degree or Higher (compared to 29.0% NC, 19.9% ENC)

1.7% High School Dropout Rate (compared 2.3% NC, 2.4% ENC)

2019 Watch List



2019-2021 Dare County Health Priorities

- Mental Health
- Substance Abuse
- Transportation

Causes of Death in Dare County

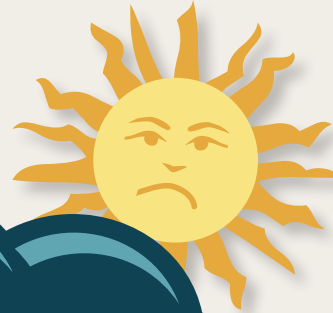
| <i>Causes of Death</i> | Rate 2010-2014 | Rate 2013-2017 |
|--|---------------------------|---------------------------|
| 1. Cancer | 156.7 | 168.1 |
| 2. Heart Diseases | 174.0 | 153.2 |
| 3. Unintentional Injuries | 39.0 | 39.0 |
| 4. COPD/Chronic Lower Respiratory Diseases | 42.0 | 38.3 |
| 5. Stroke | 28.2 | 35.0 |
| 6. Pneumonia/Influenza | 59.8 | 34.1 |
| 7. Alzheimer's Disease | 22.1 | 24.5 |
| 8. Suicide | 16.8 | 19.6 |
| 9. Chronic Liver Diseases | 13.1 | 17.7 |
| 10. Kidney Diseases | 11.4 | 15.7 |

Dare County, Cause of Death Rank by Descending Overall, Age-Adjusted Rate (2010-2014; 2013-2017) Source: North Carolina State Center for Health Statistics (NC SCHS), 2018 County Health Data Book website: <http://www.schs.state.nc.us/data/databook>





Mental Health



1 Mental Health Provider
for every 640 Residents
(compared to 490 NC)

Need for counseling and support groups was ranked #3 for services needing the most improvement amongst community survey participants.

Death by Suicide

85% increase since last health assessment

Dare County rate is 19.6 and 8th leading cause of death

NC rate is 13.3 and 11th leading cause of death

2nd leading cause of death among 20-39 year olds

(NC-3rd)

4th leading cause of death among 40-64 year olds

(NC-8th)

Poor Mental Health Reports

11.3%

reported mental distress

(compared to 12.3% NC, 15.0% US)

3.7

average poor mental health days

(compared to 3.9 NC, 3.8 US)

12.4%

of medicare beneficiaries treated for depression

(compared to 17.5% NC, 16.7% US)

19.2%

of community survey participants reported poor mental health, that kept them from normal activities, within the last 30 days



Substance Abuse

Health Behaviors



18.2% DRINK EXCESSIVELY

(NC 16.7%, US 18%)



16.5% SMOKE (NC 17.9%, US 17%)



Dare County's **LIQUOR STORE DENSITY** is **28** stores per 100,000 population



19.7 death rate due to **DRUG POISONING** (NC 16.2, US 16.9)

Community Survey Respondents

32.4%

engaged in excessive drinking 1 or more times in the past 30 days

8.2%

reported currently using tobacco products; Of those 22.3% reported being unaware of resources available to help with quitting

34.4%

reported exposure to second-hand smoke in the past year

62%

reported being exposed to second-hand smoke in their own home or other familiar places

Transportation

Worker Transportation

1.6%
walk to work (NC 1.8%, US 2.8%)

79.8%
drive alone to work (NC 81.1%, US 76.4%)

18.9%
drive alone and have a long
commute (NC 31.1%, US 34.7%)

19.4
minutes average travel time to
work (NC 24.1, US 26.1)

0%
of workforce commutes by
public transportation (NC 1.1%, US 5.1%)



3.4% of households
have no car (NC 6.3%, US 9%)



2% of households
have no car and low
access to grocery
stores



Access to Health Services

87.1% have health insurance
(compared 87.8% NC) which has increased
over time

RANKED 31 (out of 100)
for Clinical Care in Health
Rankings

SOUTH



Residents to Providers Ratio

| | Dare County | NC- |
|----------------------------|-------------|--------|
| Mental Health | 640:1 | 490:1 |
| Primary Care | 1700:1 | 1420:1 |
| Non-physician Primary Care | 1284:1 | 975:1 |
| Dentists | 1560:1 | 1830:1 |



Older Adults



Rapidly Growing Aging Population

31.8% 45-64 years
 20.2% 65+ years (NC 15.5%, US 15.2%)



Older Adults At-Risk

26.2% 65+ Living Alone (NC 26.8%, US 26.4%)
 4.2% 65+ Living in Poverty
 5.0% 65+ Low Access to Grocery Stores



Leading Causes of Death

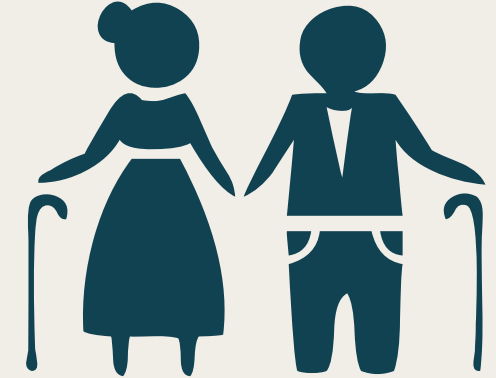
65-84 Years

1. Cancer
2. Heart Disease
3. Chronic Lower Respiratory Disease

85+ Years

1. Heart Disease
2. Cancer
3. Alzheimer's/Dementia

*1.5% of deaths
 in Dare County
 attributed to
 Alzheimer's/
 Disease*



Medicare Beneficiaries Treated, Percent

| | Dare County | NC | US |
|----------------------|-------------|-------|-------|
| Cancer | 8.5% | 7.7% | 7.8% |
| Irregular Heart Rate | 8.5% | 7.7% | 8.1% |
| Mammograms | 67.2% | 67.9% | 63.1% |

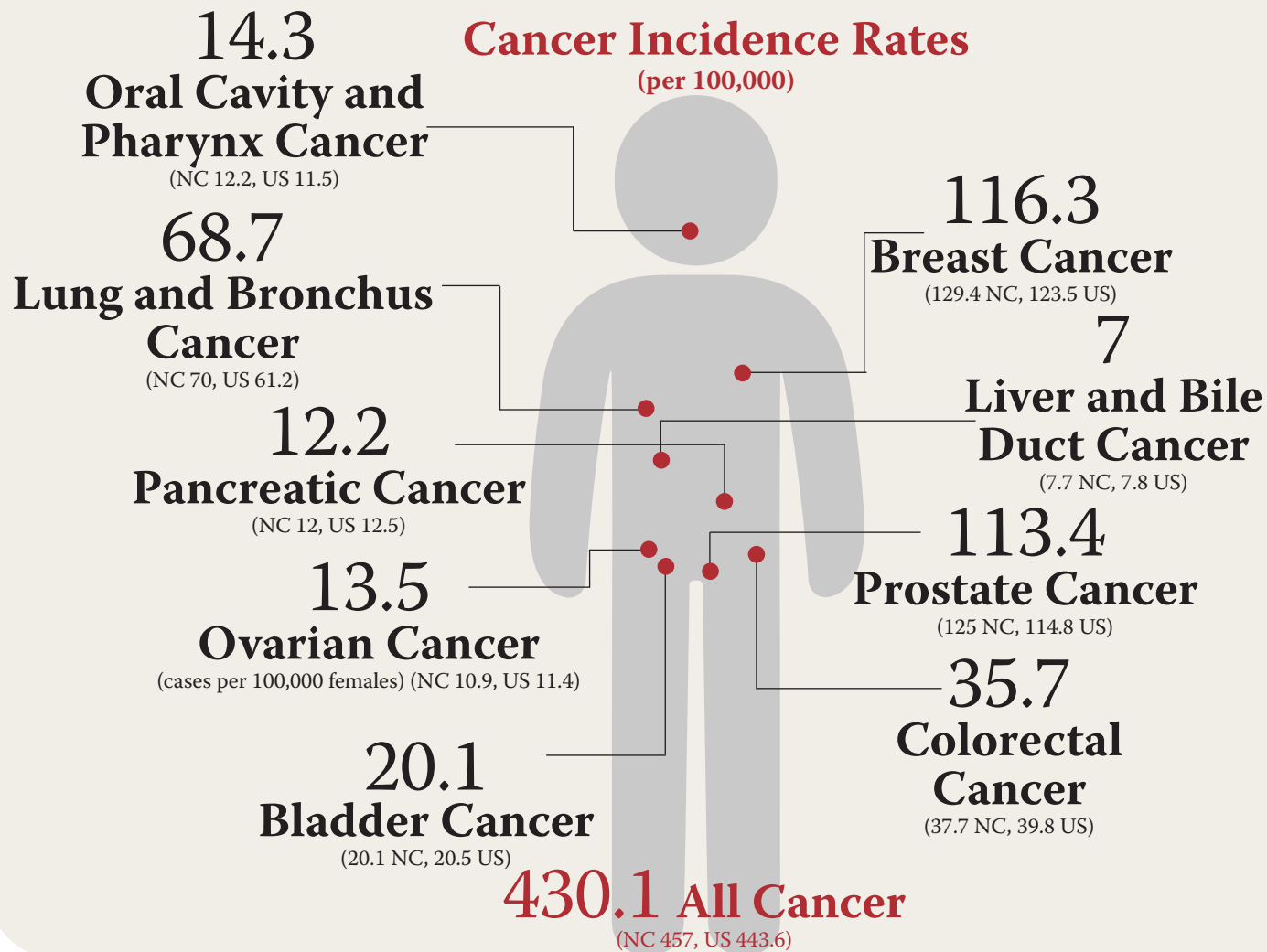
When compared to North Carolina and the US, Dare County has lower incidents of medicare beneficiaries being treated for high blood pressure, osteoporosis, Alzheimer's and dementia, stroke, COPD, depression, rheumatoid arthritis, asthma, kidney disease, heart failure, diabetes, and coronary artery disease.



Cancer

Cancer Incidence Rates

(per 100,000)



Among medicare beneficiaries, 8.5 had been treated for cancer in 2015
(NC 7.7, US 7.8)

Age Adjusted Death Rates

- 159.8 All Cancer (NC 172, US 166.1)
- 45.5 Lung & Bronchus Cancer (NC 50.7, US 44.7)
- 11.1 Pancreatic Cancer (NC 10.8, US 10.9)
- 24.8 Prostate Cancer (21.6 NC, 20.1 US)
- 21.9 Breast Cancer (21.6 NC, 21.2 US)
- 10.6 Colorectal Cancer (14.1 NC, 14.8 US)

 *Cancer incidence rate for men is 14% higher than the rate for the overall population*



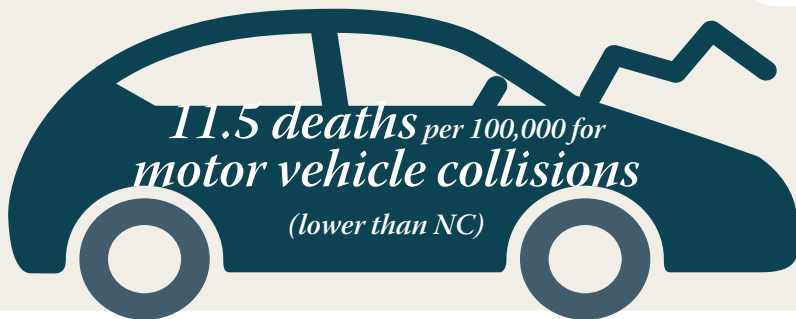
Prevention and Safety

Substance Abuse

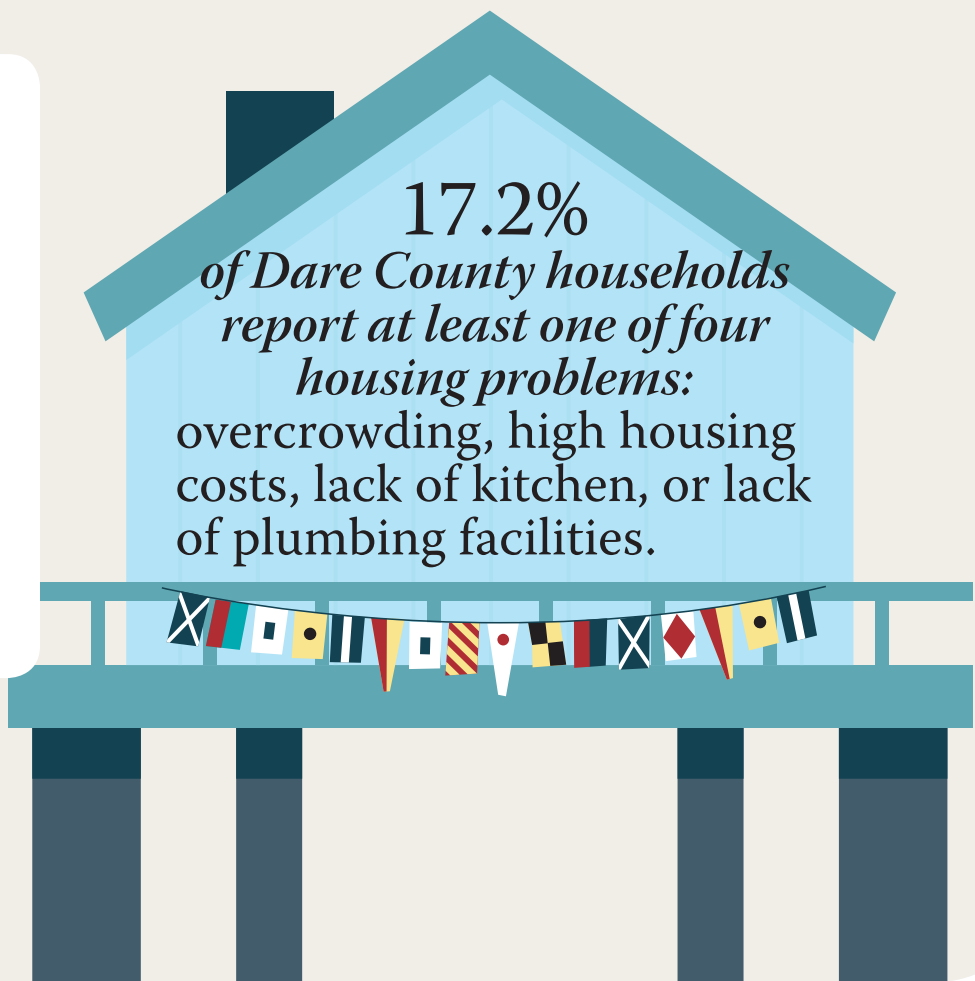
Drug overdose deaths are the leading cause of concern

- Unintentional poisonings is 19.4 deaths per 100,000 and the rate is higher than both the North Carolina and national rates

Lack of knowledge about addiction prevention and preventative services leads to difficulties when needing treatment



35.1 deaths per 100,000 for unintentional injuries
(higher than NC but lower than US rates)





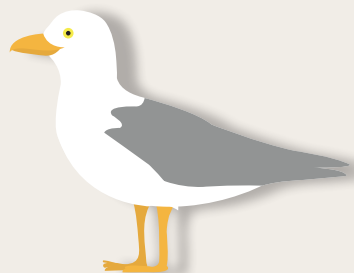
Healthcare Navigation and Health Literacy

How Survey Respondents Receive Health Information

44.9% from a doctor or nurse
32.1% from the internet

Health Education Opportunities

- Holistic options to chronic diseases
- Nutrition
- Weight Loss



Built Environment



Those with low access to grocery stores:

- 5% people 65+
- 6.1% children - poorest performing quartile compared to other NC counties
- 2% households with no car
- 7.4% low income

Density per 1,000 population

- Farmers Markets 0.06
- Grocery Stores 0.5
- Fast Food Restaurants 1.8
- Liquor Stores 1.8
- Recreation and Fitness Facilities 0.1

Built In Physical Activity Opportunities

Dare County boasts a total of 19 county parks and/or recreation facilities, 3 national parks, and 1 state park.



Economy

\$54,787
Median Household
Income



Housing

75% of survey respondents felt Dare County did not have affordable housing options

29.6% Own a home

(compared to more than 55% in NC and US)

\$1,050 Average rent

(NC \$816, US \$949)

\$1,652 Average mortgage

(NC \$1,243, US \$1,491)

17% Report severe housing problems

(overcrowding, high costs, lack of kitchen or plumbing facilities)

29.5 % of residents work in Hospitality or Retail Industries, with a median income of \$30,900 or less per year.



Poverty

Those living in poverty in Dare County:

8.2%
of people

8.4%
of children

4.2%
of adults 65+

28.7%
of disabled individuals

32.4%
of students are eligible for Free Lunch Program

Charting Our Voyage

HCOB Task Forces

Dementia & Alzheimer's Task Force

Dianne Denny
252.480.9508
obxdementiataskforce@gmail.com.

Breaking Through Task Force

Kelly Nettnin
252.475.5036
kelly.nettnin@darenc.com.

Transportation Task Force

Brandi Bohanan
252.475.5636
brandiwhi@darenc.com.

Access to Healthcare Workgroup

Ronnie Sloan
252.449.4515
ronnie.sloan@theobh.com.

Adult Collaborative on Mental Health & Substance Abuse

Gail Hutchison
252.475.9198
gail.hutchison@darenc.com.

Other Opportunities

Saving Lives Task Force

Roxana Ballinger
252.475.5619
roxana.ballinger@darenc.com.



Community Health Improvement Plan

Good Health is a Journey

- **Breaking Through Task Force:** public awareness campaign that will focus on reducing the stigma associated with seeking help for behavioral health issues.
- **Children and Youth Partnership:** mindfulness-based, well-being program at Manteo Middle School and will be developing programs for other Dare County Schools
- **Saving Lives Task Force:** creating a Substance Abuse Action Plan that will include objectives and strategies that align with North Carolina's Opioid Action Plan.
- **Adult Collaborative on Mental Health and Substance Abuse:** is establishing a comprehensive inventory of all services and a gaps and needs assessment



Acknowledgements

This report is the culmination of a tremendous effort by the members of Healthy Carolinians of the Outer Banks Partnership (HCOB), whose dedicated focus on and support for the health and well-being of the residents of Dare County is indeed remarkable:

Healthy Carolinians of the Outer Banks Executive Committee Members

Brandi Rheubottom, HCOB Chair

Dianne Denny, HCOB Vice Chair

Sheila Davies, Dare County Health & Human Services Director

Ronnie Sloan, Outer Banks Hospital President

Amy Montgomery, The Outer Banks Hospital

Community Health Assessment Coordinators

Kelly Nettnin, Dare County Health & Human Services

Jennifer Schwartzberg, The Outer Banks Hospital

HCOB Coordinator

Laura Willingham, Dare County Health & Human Services

Healthy Carolinians of the Outer Banks Members

Jennifer Albanese, Interfaith Community Outreach Inc.

Timothy Baker, Retired from Centers for Disease Control

Roxana Ballinger, Dare County Health & Human Services

Dr. Christina Bowen, The Outer Banks Hospital Center for Healthy Living

Karen Brown, Outer Banks Chamber of Commerce

Jennie Collins, Dare County Emergency Medical Services

Denise de Pedro, The Outer Banks Hospital

John Farrelly, Dare County Schools

Gail Hutchison, Dare County Sherriffs Office

Janet Jarrett, Albemarle Hospital Foundation

Lyn Jenkins, Albemarle Project Access Sentara

Tess Judge, Community Member and OBH Board Member

Chuck Lycett, Dare County Health & Human Services

Patty McKenna, Outer Banks Community Collaborative

Tami Montiel, Community Care Clinic of Dare

Chandler Price, Hotline

Tim Sherarin, Dare County Health & Human Services Board

Gail Sonesso, GEM Adult Day Services

Rebecca Woods, Dare County Health & Human Services



For more information....

Kelly Nettnin

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kelly.nettnin@darenc.com
252.475.5036

Sheila Davies

Dare County Health & Human Services
sheila.davies@darenc.com
252.475.5093



Download the full 2019 CHNA at
darenc.com/hcob





*Dare County Tourism Board Request Consent
Expenditure from Short Term Unappropriated Line Item 4999*

Description

Request consent to award Tourism Impact Grant Awards totaling \$851,002.00 to Chicamacomico Historical Association, Dare County Arts Council, Frisco Native American Museum, and the Towns of Duck, Kill Devil Hills, Manteo and Southern Shores.

Project descriptions attached.

Board Action Requested

Consent for expenditures totaling \$851,002.00 for Tourism Impact Grant Awards from the Short Term Unappropriated Line Item 4999

Item Presenter

Lee Nettles, Executive Director, Outer Banks Visitors Bureau

TIG Grant Worksheet

FY19/20

| Organization | Project | Project Amount | <i>Requested Amount</i> | Recommended Amount: |
|--|--|----------------|-------------------------|----------------------------|
| Chicamacomico Historical Assoc. | 1911 Cistern Improvement Completely replace the deteriorated roofs on three cisterns: two at the 1911 cookhouse and one at the 1874 cookhouse. Project includes removal and disposal of existing roofs, replacement with similar materials and painting of all outside surfaces. | \$48,000.00 | <i>\$48,000.00</i> | \$ 48,000.00 |
| Dare County Arts Council | Courtyard Project Renovation of the unused courtyard space into an area that allows for outdoor exhibits, demonstration, programs, classes, events. The renovation will include new lighting, wheelchair accessibility to the courtyard and building, permanent seating lining the courtyard, linkage to neighboring sidewalks and building entrances and areas for exhibiting outdoor visual and performance art. | \$364,390.00 | <i>\$150,000.00</i> | \$ 90,950.00 |
| Frisco Native American Museum | Increase Handicapped Access This project would increase the ease of access in several areas of the museum and outdoor facilities. The grant would construct a new walkway with side rails, add dirt to fill low areas, seed new areas to stabilize the grounds, replace the walking bridge and repair the museum entrance. | \$25,750.00 | <i>\$25,750.00</i> | \$ 25,750.00 |
| Town of Duck | Pedestrian Improvements, Phase 4 Phase 4 of the pedestrian improvements includes the construction of 5' sidewalk plus landscape buffer strip on west side of NC12 from Resort Realty to Sunset Raw Bar and Grille and accessibility improvements at pedestrian refuge/crosswalk location. Also includes shoreline protection improvements that the Town is assuming all costs for. | \$487,956.70 | <i>\$243,978.35</i> | \$ 147,806.00 |

TIG Grant Worksheet

FY19/20

| Organization | Project | Project Amount | Requested Amount | Recommended Amount: |
|---------------------------------|--|----------------|------------------|---------------------|
| Town of Kill Devil Hills | Baum Street-Centennial Path, Phase II Phase II is to link the existing segments of sidewalks and paths around Centennial Path. The sidewalk will be a 5' wide detached concrete path extending from Sixth Avenue along W. Baum Street to Fox Street and along Fox to Mustian. The project will be about 1,848 linear feet. | \$122,150.00 | \$91,600.00 | \$ 55,618.00 |
| Town of Manteo | Manteo Town Common, Phase I Phase 1 will include construction of parking as well as park area, green space, stormwater reduction and amenities for vehicles, bicycles and pedestrians. The project is located along Budleigh Street at Lord Essex Avenue in Downtown Manteo. | \$732,844.00 | \$366,422.00 | \$ 221,885.00 |
| Town of Southern Shores | S. Dogwood Trail Walking Path Construct a 5' wide path along South Dogwood Trail that will connect two walking trails already in place along East Dogwood Trail and along the southern half of South Dogwood Trail. This segment will complete the walking trails from Kitty Hawk Elementary School to NC Highway 12. | \$862,127.00 | \$431,063.60 | \$ 260,993.00 |



Text Amendment to the Highway 345 zoning district

Description

A request to amend the Highway 345 zoning district to allow for commercial storage yards as an permitted use has been submitted by Dare Pitts LLC. A detailed staff memo and supporting documents are attached.

Board Action Requested

A public hearing be scheduled for 5:30pm on December 16, 2019

Item Presenter

Noah Gillam, Assistant Planning Director

MEMORANDUM

TO: DARE COUNTY BOARD OF COMMISSIONERS

FROM: Noah Gillam

RE: Highway 345 Text Amendment to add Commercial Storage Yards

DATE: November 20, 2019

Dare Pitts LLC, has submitted a zoning amendment request to amend the Highway 345 Business zoning district. Dare Pitts LLC is seeking the addition of Commercial Storage Yards to the list of uses offered in the areas zoned Hwy 345. The Hwy 345 district applies to the southern portion of Roanoke Island, and is intended to provide for a mix of residential and commercial neighborhoods that offer a broad range of services and commodities that will serve seasonal and local residents. Any text amendment to the Hwy 345 zoning district will apply to all lands zoned Hwy 345.

The Hwy 345 district offers a broad range of commercial uses; I have included a copy of the Hwy 345 regulations for the boards review. The Dare County Zoning Ordinance already defines commercial storage yards as follows: An open site that provides space for a fee for the storage of boats and boat trailers; recreational vehicles, travel trailers, and campers; automobiles; utility trailers; contractors' towable storage trailers, and similar types of vehicles and equipment. This does not include the dry-stack storage of boats. The current permitted uses in the Hwy 345 already allow for such uses that are more intensive, such as boat yards, boat and motor displays, and travel trailer parks.

Dare Pitts LLC currently own parcel 016522004 as identified on the Dare County tax record. The parcel abuts NC Hwy 345 and already has some improvements to the site that would accommodate the commercial storage yard. The parcel was previously used as a site for temporary construction offices and storage for the contractors of the Bonner Bridge replacement.

The 2009 Dare County Land Use Plan includes two policies under Commercial Development heading that are pertinent to this proposed text amendment. A copy of this information is attached with the staff memorandum. LUC #5 encourages the

continued existence of locally- owned businesses in unincorporated Dare County. LUC#6 addresses the scope of commercial development and the use of gross floor area limitations to manage the size of commercial development. This proposed text amendment does not seem incompatible with policies listed.

The Dare County Planning Board reviewed the text amendment at their November 12, 2019 meeting. The Planning Board found that the proposed text amendment is consistent with the 2009 Dare County Land Use Plan. The recommend proposed text amendment is attached to the memo for the Boards Review. Staff recommends that a public hearing be scheduled for December 16, 2019 Board meeting.

Draft Motion- *"I move that a public hearing be scheduled for 5:30pm on December 16, 2019."*

SECTION 22-27.16-HIGHWAY 345 BUSINESS DISTRICT (HWY 345)

The Highway 345 Business district shown on the Dare County tax map, tax district 17 originally dated November 20, 1975 depicts tracts of land that lie along Highway NC 345 bounded on the east by the Pamlico Sound and on the west by Croatan Sound and Oyster Creek. Moreover, these tracts of land border NC Highway 345, a heavily traveled thoroughfare to the southern portion of Roanoke Island.

(a) Scope and intent: This district provides for a mix of residential and commercial neighborhoods that offer a broad range of services and commodities that will serve seasonal and local residents. The mixed residential district includes single family homes and duplex homes in a group housing development setting that support private wells or a central water supply with alternative methods of wastewater treatment facilities approved by the Dare County Environmental Health Department (not to include centralized urban-style wastewater collection and treatment systems). A maximum gross building size of 30,000 square feet (10,000 square feet of heated space and 20,000 square feet of non-heated space) for commercial structures is included in the regulations thereby allowing for future compatible land uses such as hotels and motels and similar lodging structures.

Furthermore, the Highway 345 Business District provides for land uses that allow goods and services for people and industry while strengthening the economic base of Dare County and ensures the protection of the fragile and pleasant atmosphere at the south end of Roanoke Island. Highway 345 provides the only vehicular transportation route into the Village of Wanchese. There is concern for the large expanses of wetland areas along NC 345 that contain marginal soils and are not suitable for high-density development. A number of water supply wells, which serve the Dare County water system, are located within this district. Land use adjacent to these wells is also a concern and is reflected in the minimum lot size established in this zoning district. Density in this district shall be limited to 20,000 square feet and duplex lots limited to 25,000 square feet. Another goal is to protect the quality of the communities' surface water and ground water supply particularly with the close proximity of this district to Broad Creek, Croatan Sound, Pamlico Sound and the various creeks and canals that serve as nursery areas for fish and wildlife.

(b) Permitted uses: Any use in existence on June 5, 2006 shall be allowed to continue in operation without seeking approval from Dare County, regardless if that use is listed as a permitted use or is listed as a conditional use in any of the Wanchese zoning districts. Additions or expansion of uses in existence on June 5, 2006 shall be subject to administrative review and approval by the Dare County Planning Department for compliance with the zoning regulations. Construction of additional principal use structures at existing business sites that would require a conditional use permit if not already established prior to June 5, 2006 shall trigger review and approval under the conditional use permit process.

The following uses and no other uses shall be permitted by right. Any use not permitted herein shall be deemed prohibited.

(1) Commercial uses:

- a. Boat yards and repair.
- b. Boat and motor display, sales and service.
- c. Boarding of horses, equestrian related uses and activities, tack shop.
- d. Box making facilities.
- e. Cabinet and woodworking shop.

- f. Contractors' offices, supplies and services.
 - g. Crab shedding operations and associated equipment.
 - h. Commercial fishing nets, sales, service and storage.
 - i. Crab pot storage and other crabbing and commercial fishing gear.
 - j. Docks private, public and commercial.
 - k. Dry cleaning and laundromats.
 - l. Electrical equipment, sales and service.
 - m. Electronic equipment, sales and service.
 - n. General village store without fuel pumps and not associated with a marina.
 - o. Hotels, motels – administrative review for one principal building per site, two or more buildings require conditional use permit for group development –see CUP.
 - p. Fish houses, including packing, processing, seafood sales, storage and loading and unloading trawlers.
 - q. Fishing - party fishing excursions and associated services.
 - r. Food services –carryout (if seating see CUP).
 - s. Hardware supplies.
 - t. Heating and air, sales, service.
 - u. Tourist homes as defined in Section 22-2.
 - v. Mobile home parks according to the Mobile Home Park Ordinance.
 - w. Plumbing supplies, sales and service.
 - x. Retail shops, including, but not limited to gifts and imports.
 - y. Radio, TV broadcasting and film production studio.
 - z. Seafood processing and seafood market sales – wholesale /retail.
 - aa. Schools, commercial limited to sailing/marine oriented outdoor lifestyle.
 - bb. Travel trailer parks and campgrounds according to the Travel Trailer Park Ordinance.
 - cc. Upholstery, fabric dry goods.
 - dd. Village general store without fuel pumps and not associated with a marina.
 - ee. Welding shop and steel fabrication.
- (2) Single-family dwelling in conjunction with a commercial business may be located above or in the rear of a commercial building, or a detached structure, provided that all federal, state and local regulations are met. Additional parking for the residential use shall not be needed.
- (3) Detached single-family dwelling on individual lots or parcels.
- (4) Bed and breakfast homes.
- a. Small bed and breakfast home as defined in Section 22-2.

- b.** Large bed and breakfast home as defined in Section 22-2.
- (5)** Single-family mobile homes on individual lots, provided that:
 - a.** Compliance with the building code for mobile homes in a hurricane area.
 - b.** Compliance with the building inspector requirements regarding skirting material and skirting area.
- (6)** Duplexes.
- (7)** Small childcare homes as defined in Section 22-2.
- (8)** Customary accessory uses associated with commercial or residential principal use, including windmills, not to exceed height limit of this district, garages, sheds, swimming pools and other accessory uses associated with the commercial and or residential use.
- (9)** Accessory dwelling unit associated with residential use referred to as a “guesthouse” is permitted, subject to the following requirements:
 - a.** A dwelling unit may be attached to the principal residence or may be detached from the principal residence. The size of the accessory dwelling unit, whether attached to or detached from principal residence, shall not to exceed 900 square feet of heated space.
 - b.** An accessory dwelling unit, whether attached to or detached from the principal residence, shall be located on the lot in conformance with the building setbacks of this zoning district.
 - c.** Owner and/or family members shall occupy either the primary residence or accessory dwelling unit.
 - d.** One additional off-street parking space shall be required.
 - e.** Accessory dwelling unit shall not be subdivided or otherwise segregated in ownership from the primary residence.
 - f.** An outbuilding on a residential lot that exists at the time of adoption of this ordinance may be converted into an accessory building unit, provided that lot overage is met for the dwelling unit and the primary residence.
 - g.** The accessory dwelling unit shall be constructed according to all applicable federal, state regulations and local building inspection requirements. And, if applicable, compliance with federal flood plain elevation standards.
 - h.** Once permitted, the property owner shall submit annual verification of year round occupancy of the principal structure or the accessory dwelling unit to the Dare County Zoning Administrator, if necessary.
 - i.** Travel trailers, recreational vehicles, and/or mobile homes shall not be used as accessory dwelling units.
 - j.** Accessory dwelling units shall not be used for any commercial or business use.
- (10)** Traditional village business – A commercial accessory use conducted by owner and/or family member residing on the lot or parcel of the principal residence provided the following conditions are met:
 - a.** Property owner and/or family member operates a business and resides on the premises.
 - b.** Merchandise produced on or off of the premises may be sold on premises.

- c. An accessory commercial building shall not exceed 1,200 square feet. In addition, 25% of the total floor area of the principal residence may be used for said business.
- d. One indirectly lighted freestanding sign, not to exceed 36 square feet, may be posted on the property.
- e. On-site parking for up to 4 spaces shall be provided on the site.
- f. Visual buffer: A 6-foot opaque wooden fence or vegetative buffer shall be provided for any business established after June 5, 2006. In some instances, existing dense shrubs, trees, and plants may provide screening.
- g. In the case where a property owner owns land that is contiguous to the principal residential use and accessory business, said land may be used as an extension and a part of the traditional village business use. The setbacks listed in subsection (d) of this district shall not apply.
- h. The traditional village business shall be located a minimum of 15 feet from the front property line and 10 feet from any side or rear property line. The setbacks listed in subsection (d) of this district shall not apply.
- i. An average of 3 non-resident employees may be employed.

The following list of uses may be permitted as a traditional village business including, but not limited to:

1. Offices: business, financial, professional, and medical.
2. Retail/wholesale shops:
 - a. Antiques, furniture, and home decor.
 - b. Apparel.
 - c. Artist and art supplies.
 - d. Bait and tackle supplies.
 - e. Beehives.
 - f. Books.
 - g. Camera and photo supplies.
 - h. Coffee/tea cakes, pies, bakery goods and edibles.
 - i. Florist.
 - j. Fruit and vegetable stand.
 - k. Gifts and imports.
 - l. Hobby goods.
 - m. Hunting and fishing supplies.
 - n. Jewelry.
 - o. Leather goods.
 - p. Millinery shop.
 - q. Music shop.

- r. Photography equipment sales and service.
 - s. Sewing shop/needle works, dry goods and supplies.
 - t. Tack and equestrian associated sales.
 - u. Toys.
 - v. Upholstery.
 - w. Woodcarving, ducks and other wildlife.
3. Service establishments:
- a. Automobile detailing.
 - b. Barber and beauty shops including tanning and exercise facilities.
 - c. Bicycle rentals with buffered storage area.
 - d. Boarding of horses, equestrian associated activities according to state regulations.
 - e. Boat building shop – (not to exceed 1,200 sq. ft. boat size limited to 36 ft.).
 - f. Bricklayer.
 - g. Bake shops – cakes, pastries, edibles and bakery goods.
 - h. Carpenter/cabinet/wood- working.
 - i. Catering business.
 - j. Computer and internet services.
 - k. Concrete finishing business and equipment.
 - l. Crab pot storage and other crabbing and commercial fishing gear.
 - m. Crab shedders and associated operations.
 - n. Craft production and retail sales.
 - o. Electrician.
 - p. Electronics.
 - q. Excavating and equipment.
 - r. Hardwood flooring, carpet, vinyl and ceramic tile installation.
 - s. Heating and air.
 - t. History home place tours and interpretation of village lifestyle.
 - u. Home schooling.
 - v. House and boat moving business.
 - w. Landscape and lawn care.
 - x. Music lessons.
 - y. Outboard engine repair.
 - z. Painter and dry wall.

- aa. Photographer.
- bb. Plumber.
- cc. Potter, clay works, ceramics.
- dd. Pressure washing business.
- ee. Radio, TV broadcasting and film production studio.
- ff. Roofer.
- gg. Seafood sales as per North Carolina regulations.
- hh. Small engine repair.
- ii. Small trucking business – parking business truck on site.
- jj. Taxidermist.
- kk. Tree removal, stump grinding, log splitting and wood sales.
- ll. Welding shop.

4. Specific waterfront commercial accessory uses associated with principal use:

- a. Commercial fishing and crabbing business, retail and wholesale markets, including all rigging and storage of crab and fish gear.
- b. Boat dockage of 10 slips or less.
- c. Boat shop not to exceed 1200 square feet of floor area and limited to the construction of 36-foot boats.
- d. Boathouses and sheds.
- e. Boat rentals limited to non-motorized watercraft.
- f. Fishing party excursions 1/2 day and full day trips.
- g. Private boat ramps for residential use or commercial accessory use.
- h. Schools offering private lessons for sailing and other outdoor activities.

(11) Agriculture farming, livestock, waterfowl, poultry and related activities for personal use.

(12) Aquaculture and associated activities related to fish farming as regulated by the State.

(13) Private home antennas and on-site accessory business use antennas.

(14) County, state and U.S. government owned and leased facilities.

(15) Heritage gardens – designated areas of land leased to the public for gardening projects.

(16) Radio and broadcast studio facilities and associated broadcast transmission towers that existed prior to March 24, 2006. Replacement or reconstruction of towers that existed prior to March 24, 2006 may be authorized as permitted uses provided that such towers have received all necessary Federal Communications Commission license and Federal Aviation Administration license prior to March 24, 2006 and shall not exceed the height authorized by the FCC. The standards of Section 22-29.2 shall not apply to towers that qualify for replacement under this section. Replacement towers shall be located in a manner that maximizes separations from all property lines and in no case shall the setbacks be less than those of the Highway 345 district. Documentation shall be submitted that is signed and sealed from a North Carolina licensed engineer that the replacement tower meets the

structural requirements of the North Carolina building code and a professional engineering certification which states that the structure's construction will cause the tower to crumble inward so that in the event of collapse, no damage to surrounding structures will result. Lighting of the tower shall be according to all Federal Communications Commission and Federal Aviation Association standards.

(17) Residential recovery and treatment center to include housing in multifamily structures and educational training. Center can be located in a single structure or multiple structures on one parcel of land. If more than one structure on parcel, it will be considered a group development subject to conditional use permit review according to Section 22-31 of the Dare County Zoning Ordinance.

(c) **Conditional uses:** Any use in existence on June 5, 2006 shall be allowed to continue in operation without seeking approval from Dare County, regardless if that use is listed as a permitted use or is listed as a conditional use in any of the Wanchese zoning districts. Additions or expansion of uses in existence on June 5, 2006 shall be subject to administrative review and approval by the Dare County Planning Department for compliance with the zoning regulations. Construction of additional principal use structures at existing business sites that would require a conditional use permit if not already established prior to June 5, 2006 shall trigger review and approval under the conditional use permit process.

The following conditional uses and no other conditional uses may be permitted, subject to the requirements of this district and the regulations and requirements imposed by the Board of Commissioners as provided by Article IX of this chapter. Any use not permitted herein shall be deemed prohibited.

(1) Boat building facilities.

(2) Churches, fire stations, cemeteries, and other public buildings.

(3) Telecommunication towers subject to all standards established in Section 22-29.2 of the Zoning Ordinance. (Amended 6-18-2018)

(4) Home occupations as defined in Section 22-2.

(5) Elder in-home care, up to 4 non-related patients (private home nursing) provided the following minimum requirements are met:

a. Employee and visitor parking according to Section 22-56 in addition to 1 parking space for each non-resident employee.

b. Other reasonable conditions imposed by the Board of Commissioners.

(6) Fuel storage only associated with on-site business use.

(7) Group development housing projects according to Section 22-31 plus the following requirements:

a. Density shall not exceed 1 unit per 20,000 square feet of soils not classified as coastal wetlands; duplex home 25,000 square feet of soils not classified as coastal wetlands provided this area may be reduced to 20,000 square feet if duplex is served by central water supply.

b. Every dwelling unit shall be accessible to emergency service vehicles and Dare County Public Works vehicles.

c. Turning lane into project shall be provided with additional setback buffer along state-maintained rights-of-way into the residential neighborhoods.

d. Building height limit of 40 feet as defined in this section.

e. No mooring of permanent floating homes and other permanent floating structures as defined in 15A NCAC 7M00602 in the surrounding public trust waters of Dare County.

- f. Accessory dwelling units are not allowed in sites developed as a group housing development.
- g. A traditional village business use is not allowed in sites developed as a group housing development.
- h. Other requirements that may be imposed by the Board of Commissioners.

(8) Commercial group development projects (more than one principal structure per parcel under single ownership) according to Section 22-31.

(9) Marinas, boat dockage, village marina store with fuel pumps, boat rentals for fishing excursions, and other non-motorized boat rentals provided the following minimum conditions are met:

- a. Lot size shall be sufficient to meet requirements of the Dare County Health Department and to provide adequate siting for structures, parking, loading and maneuvering space as provided in Section 22-56.

- b. Food and beverage service and/or a restaurant may be associated with a marina.

- c. All boat rentals, except for fishing excursion rentals, shall be limited to non-motorized vessels and shall be limited to a total of 10 vessels offered for rent.

- d. Fuel pumps shall not be located within 50 feet of a residential zoning district or residential use and that such fuel pumps shall be setback a minimum of 25 feet from all rights-of-way.

- e. One 10' x 20' parking space shall be provided for each wet boat slip.

- f. Outdoor lighting shall be complete cut-off design, low-profile, shielded and oriented in such a manner to minimize spill across property lines and prevent glare at any location on or off the property. A lighting plan shall be submitted as part of the site plan.

- g. Subject to the other requirements of the Zoning Ordinance and other reasonable conditions as may be imposed by the Board of Commissioners.

(10) Public and private utilities (shall provide a planted vegetative buffer 10 feet in height).

(11) Private meeting and recreational facilities such as an event center for weddings and group parties, including private boat launching areas, tennis courts, picnic areas, private swimming pools and beaches, whereby catering is an integral part thereto. The following minimum requirements shall be met:

- a. Parking for the event center and associated uses shall be based on the maximum occupancy of the proposed structure. Maximum occupancy shall be determined according to the North Carolina state building codes. One 10' x 20' space for every 4 persons or a minimum of 30 spaces whichever is greater.

(12) Pet grooming provided the following minimum requirements are met:

- a. Shall be owner and/or family occupied residential premises.

- b. Day care only for grooming – hours of operation limited to 7:00 a.m. to 6:00 p.m.

- c. No outdoor run facilities and no overnight guests (not a kennel).

- d. Other reasonable conditions imposed by the Board of Commissioners.

(13) Restaurants, food service, café provided the minimum following conditions are met:

- a. Lot size shall be sufficient to meet requirements of the Dare County Health Department and to provide adequate siting for structures, parking, loading and maneuvering space as provided in

Section 22-56. In addition, a fence or vegetative buffer shall be provided adjacent to residential use or residential zoning district.

b. The restaurant shall not feature drive-thru window service whereby patrons are served while seated in a motor vehicle or drive-up wait service whereby patrons are served while seated in a motor vehicle.

c. The restaurant shall include facilities for indoor and outdoor seating.

d. On-site parking shall be according to Section 22-56 – one 10' x 20' parking space for every 3 customer seats plus one 10' x 20' space for every 3 employees and loading space.

e. Outdoor lighting shall be complete cut-off design, low-profile, shielded and oriented in such a manner to minimize spill across property lines and prevent glare at any location on or off the property. A lighting plan shall be submitted as part of the site plan.

f. Other reasonable conditions as may be imposed by the Board of Commissioners.

(14) Retail garden shops and landscaping business may be permitted, subject to requirements of this chapter, provided the following minimum conditions are met:

a. Storage of mulch material may be allowed for retail sale only. Storage "stockpiles" shall not exceed 6 feet in height and no more than 3 stockpiles allowed for each site. Industrial production of mulch is not permitted.

b. One accessory greenhouse for storage and outdoor protection of plants is permitted. Greenhouse is not to be used for wholesale growing of plants.

c. Associated equipment used by the landscape business such as trailers, lawn mowers, single-axle trucks and tractors may be stored on the site. Storage area that is well buffered from general public may include draglines, bulldozers backhoes and other heavy equipment.

d. Storage areas of mulch and equipment shall be buffered with fencing.

e. Outdoor display and storage of plants, bags of soil, mulch, fertilizer, landscaping stone, landscape timbers, yard ornaments, and the like shall not restrict parking areas. Bags of mulch, soil, and the like shall be stacked in an orderly manner.

f. Bulk irrigation piping shall be stored indoors.

g. Other conditions imposed by the Board of Commissioners.

(15) Storage/warehousing and warehouse storage centers, including boat trailers and long-term storage containers and mobile storage, provided the following minimum conditions are met:

a. Site shall be buffered with wooden opaque fencing not to exceed 10 feet in height and also provide sound and site screening as visual and sound buffer to residential homes in and around area of warehouse storage site.

b. Outdoor lighting plan shall be submitted with a site plan.

c. Hours of operation shall be included as part of CUP review.

d. Other reasonable conditions as may be imposed by the Board of Commissioners.

(16) Village center project: a mixed use development situated on single parcel of land under single ownership whereby an existing commercial building, or new structure, may be developed and limited to retail sales units on the lower level of the structure with residential units on upper level. Additional residential units may be situated on the site. The following minimum requirements shall be met:

- a. Village center complex site must contain a minimum of 3 acres.
 - b. Approval of all supplementary local, state and federal permits. Site must be adequate for siting commercial structure, parking, loading and maneuvering space as required by Article VII. Two 10'x 20' parking spaces per residential use shall be provided. Overflow parking, if applicable, shall be directed to off peak use of commercial spaces.
 - c. Site screening - a vegetative or fence buffer not to exceed 10 feet in height. A 10-foot wide setback shall be required where the site abuts a residential use or zone (not subject to 20-foot dimensional requirements in D.1 – Dimensional requirements).
 - d. Food service shall be limited to packaged items, such as snacks, drinks and ice cream. Food service may be located outside the building on site as a refreshment pavilion to serve patrons in the village complex. Food service shall be exempt from parking as required for restaurants.
- (17) Village general store with fuel pumps provided that no principal or accessory building shall be located within 50 feet of a residential use, accessory dwelling unit, or residential district and that such fuel pumps shall be set back at least 25 feet from all rights-of-way. The following minimum requirements shall be met for open canopy lighting to preserve the night time environment :
- a. The area directly below the canopy may be illuminated with a minimum foot candle of 4 but not to exceed a foot-candle rating of 10.
 - b. Parking spaces provided under a canopy shall be 10' x 20' in area.
- (18) Spoil sites for maintenance dredging.
- (19) Wind energy research facilities according to the standards of Section 22-29.3. (Adopted 4-18-11)
- (20) Temporary, portable concrete plant including silos, aggregate bins, dust collector, hoppers, conveyors, batch mix, office and other accessory equipment necessary to the operation of the portable concrete plant including storage of aggregate and other materials necessary for the making of concrete.
- a. The lot or parcel upon which the portable concrete plant is located shall contain at least four (4) acres of contiguous non-wetland area.
 - b. The plant and all accessory equipment shall be mobile and may be not permanently attached to the property. The equipment may be temporarily secured to the property for safety reason but must be removed upon the expiration of the conditional use permit.
 - c. Notwithstanding any other provision of the Zoning Ordinance, the portable concrete plant when erected shall not exceed 60 feet in height.
 - d. The concrete plant and storage of aggregate and other materials shall be at least twenty-five (25) feet from any property line and there shall be wooden opaque fence no less than ten (10) feet high between the plant and any residence or residential zone.
 - e. The concrete plant shall include a dust collection system which collects dust at the load out point and the particulate that is collected is recycled into the system.
 - f. All aggregate stored on the site shall be kept moist at all times to prevent dust.
 - g. All outdoor lighting shall be low profile, shielded with glare directed on-site and away from any adjoining properties and streets.
 - h. No more than eight (8) trucks used for the transport of concrete may be parked overnight on the property.

i. There shall be no concrete transport trucks that enter or exit the site between the hours of 7:00 a.m. to 8:30 a.m. and 2:00 p.m. to 3:30 p.m. on any day public schools in Dare County are in session.

j. The concrete plant shall be operated in accordance with all requirements of the North Carolina Department of Transportation and any other regulatory body.

k. This conditional use permit shall remain in effect for a period of 39 months. This 39-month period shall commence on the date identified by NC Department of Transportation in the notice to proceed issued by NCDOT to the bridge contractor. Upon the showing of good cause, the Dare County Board of Commissioners may extend the permit for up to 180 additional days. Good cause shall mean unavoidable conditions or events necessitating the continued operation of the plant for the purpose for which it was originally installed.

l. Upon expiration of the conditional use permit, operation of the concrete plant shall cease and the concrete plant and all accessory equipment and materials shall be removed from the site and the site returned to its original condition within thirty (30) days.

m. A performance bond, satisfactory to Dare County, to be used for removal and reclamation activities shall be established by the permittee at the time a site specific development plan and conditional use permit for a temporary portable concrete plant is authorized by Dare County. The bond shall be in the amount of \$20,000 shall be issued to Dare County to be used in the event the permittee does not remove all equipment from the site and restore the site to its original condition as provided above. If this amount is insufficient to cover the cost of reclamation of the site, then the property owner shall be held accountable for the additional amount and a lien shall be placed on the site for any amount over the \$20,000 bond amount that is incurred by Dare County in the reclamation of the site. The bond shall remain in place until released by Dare County upon certification by Dare County of compliance with the conditions of this permit. Dare County shall be authorized to use the bond to cover all costs and expenses of removal, including but not limited to all legal fees or other costs or expenses associated with enforcement of the provisions of the conditional use permit. This bond shall be forfeited if the concrete plant, all equipment, components and accessories of the concrete plant have not been removed from the site and the site restored to its pre-plant conditions within the time required by this conditional use permit. In lieu of a bond, permittee may post a cash bond with Dare County to be held for the purposes set forth above. (Adopted 11-19-2012)

(d) Dimensional requirements for residential uses:

(1) Minimum lot size:

a. Single-family lots with accessory dwelling units and accessory commercial structures used in association with a single-family use shall be of sufficient size to meet the requirements of the Dare County Environmental Health Department and to provide adequate setbacks for the single-family structure, accessory dwelling unit and all other accessory use structures.

Existing lots – All lots that were subdivide and recorded before June 5, 2006 shall meet the approval of the Dare County Environmental Health Department for well and on-site wastewater systems. The setbacks and lot coverage standards of Section 22-27.18 shall apply to lots recorded June 5, 2006.

b. Newly platted lots -- For those lots subdivided and recorded after June 5, 2006:

Single family lots:

15,000 square feet of soils not classified as coastal wetlands for lots connected to a central water supply.

20,000 square feet of soils not classified as coastal wetlands for lots connected to a private well.

(c) Duplex lots if served by a private well regardless of wastewater disposal method: 20,000 square feet.

Duplex lots if served by central water regardless of wastewater disposal method: 15,000 square feet. (Amended 10-15-2018)

(2) Minimum lot width: 75 feet at building setback line.

(3) Minimum front yard: 25 feet.

(4) Minimum side yard: 10 feet; an additional 5-foot side setback for corner lots adjacent to a street. Lots less than 75 feet in width shall have an 8-foot setback and an additional 5-foot setback for corner lots adjacent to a street.

(5) Minimum rear yard: 20 feet maximum, or 20% of lot depth. Zero line setback for waterfront lots.

(6) Lot coverage: 30% as defined in Section 22-2. Lot coverage of 50% may be authorized for those sites with an accessory dwelling unit and/or a traditional village business.

(7) Building height: 40 feet to the highest elevation of any feature of the structure or portion of the roof measured from the base flood elevation, from natural ground elevation if natural ground elevation exceeds the base flood elevation, or from an unnatural ground elevation created by placement of fill material on a site on or before June 5, 2006. Chimneys, lightning rods, weather vanes, wind gauges, and other similar roof appurtenances shall not be considered the highest portion of the roof. The pitch of the principal roof shall be no less than 4/12. Principal roof is defined as the largest section of roof on the structure.

(e) Dimensional requirements for individual commercial use on separate lot or parcel that is not in conjunction with principal residential use:

(1) Minimum lot size: Commercial lots need to be of sufficient size to meet the requirements of the Dare County Environmental Health Department and to provide adequate siting for structures, parking, loading and maneuvering space according to Section 22-56. Also, a visual buffer of vegetation or fencing and a 20-foot wide setback is required when an individual commercial use abuts a residential use or residential zone. All outdoor lighting shall be low profile, shielded with glare directed on site and away from all adjoining properties and streets.

(2) Minimum front yard: 15 feet.

(3) Minimum side yard: 10 feet; an additional 5-foot side setback for corner lots adjacent to a street. Lots less than 75 feet in width shall have an 8-foot setback and an additional 5-foot setback for corner lots adjacent to a street.

(4) Minimum rear yard: 20 feet maximum, or 20% of lot depth for interior lots. Zero line setback for waterfront lots.

(5) Lot coverage: 60% as defined in Section 22-2.

(6) Building height: 40 feet to the highest elevation of any feature of the structure or portion of the roof measured from the base flood elevation, from natural ground elevation if natural ground elevation exceeds the base flood elevation, or from an unnatural ground elevation created by placement of fill material on a site on or before June 5, 2006. Chimneys, lightning rods, weather vanes, wind gauges, and other similar roof appurtenances shall not be considered the highest portion of the roof. The pitch of the principal roof shall be no less than 4/12. Principal roof is defined as the largest section of the roof on the structure.

(7) Maximum commercial building size: 10,000 square feet of heated space excluding decks, porches, and other non-heated space. Non-heated space shall not exceed 20,000 square feet of

area. The total building size shall not exceed 30,000 square feet based on these heated/non-heated square footage limitations. Hotels, motels, churches, fire stations, schools and other public buildings are excluded from this building size limitation.

(8) Density limitations for motels, hotels, and similar seasonal lodging structures:

a. Structures on a lot or tract that has no soils classified as wetlands, coastal marsh or section 404 jurisdictional soils: 10 rental rooms per acre.

b. Structures on a lot or tract that has between .01% and 19.9% of its soils classified as wetlands, coastal marsh, or section 404 jurisdictional soils: 8 rental rooms per acre.

c. Structures on a lot or tract that has more than 20% of its soils classified as wetlands, coastal marsh or section 404 jurisdictional soils: 6 rental rooms per acre.

(f) Non-conforming uses and non-conforming structures:The standards of Section 22-27.19 shall apply to this district.

(g) Performance standards and other information:The standards of Section 22-27.20 shall apply to this district.

(h) The sections contained in Articles I, Article III, Article VII, Article VIII, and Article IX of the Dare County Zoning Ordinance shall apply to this district.

(Adopted by the DCBC on June 5, 2006; amended 2-20-2017; amended 11-20-2017)

Commercial Development

As noted in the previous section, residential development is the preferred pattern of development for unincorporated Dare County. However, some commercial development is necessary to provide goods and services to the local residents and our seasonal visitors. One objective established for commercial development is that such development should reflect the Outer Banks coastal heritage. In the Planning Board discussions of this issue, various alternatives were addressed and it was noted that this objective will be difficult to implement. Most often building design standards are used to establish architectural features, façade, and paint schemes. Reaching a consensus of appropriate building design standards is difficult and often faced with opposition from the business community. The importance of aesthetics as a quality of life issue and our continued appeal to seasonal visitors was stressed by the Planning Board in writing the policies for this topic.

One objective identified for this management topic was to keep commercial development on a neighborhood scale and of a scope that is not designed to attract regional markets. In 2003, the Dare County Board of Commissioners adopted gross floor limitations for the commercial zoning districts in unincorporated areas of the County. The zoning maps for Mann Harbor and Wanchese also included gross floor area limitations. In 2007, a gross floor area limitation was also adopted by the Board of Commissioners for the unzoned areas of Dare County. These gross floor area limitations should assist with the objective of neighborhood commercial development, not commercial development for regional markets.

The Planning Board also noted that the 2003 policy encouraging the continued existence of locally owned businesses should be included in the 2009 update. Many of the locally owned businesses have been in operation for many years, and in some instances, before zoning regulations were adopted by Dare County. Some of the businesses may have been rendered non-conforming with the overlay of zoning regulations. Amendments to the Zoning Ordinance to address the non-conforming status of older, existing businesses should be considered to ensure the replacement or repair of non-conforming commercial structures in support of the policy for locally-owned businesses. The eclectic nature of the businesses in unincorporated Dare County, especially along the Highway 12 corridor on Hatteras Island, is part of the appeal of the Outer Banks. Creating a favorable environment for the business community will assist with the continued success of the small neighborhood shops and stores in existence today.

Another potential tool identified during the LUP update process to implement the County's objectives is amendment of the Zoning Ordinance to limit drive-thru window service at restaurants and food service businesses. Most franchise food service businesses, especially the fast-food industry, rely on drive-thru window service. An amendment to eliminate this option for food service establishments

would provide an additional layer of protection for the unincorporated areas from franchise businesses that often employ unoriginal, generic, or replicated corporate building designs that are inconsistent with the traditional architecture of the Outer Banks. In addition to the incompatibility of these franchise restaurants with existing coastal village atmosphere, there are secondary impacts such as trash, lines of waiting vehicles, and a decrease in the appeal of the neighborhood that accompany these commercial developments.

The first section of the LUP noted that the needs of the permanent population and the seasonal population vary in terms of what commercial services and goods are desired. Many of the commercial businesses in Dare County are solely focused on the provision of souvenirs and tourist-related goods to the visiting population. The proliferation of these tourist-oriented businesses was identified by a vast majority of the respondents to the Citizen Involvement Poll as an important issue of concern. This concern was also voiced at all of the public input workshops held at the beginning of the update process in 2007. Other jurisdictions have adopted building design standards to address concerns about the aesthetics of these tourist-oriented retail operations. Building design standards do not address the profusion of such retail establishments. The legality of targeting one segment of the retail market and how to do so was identified as an implementation strategy by the Planning Board. Although it may prove extremely difficult to craft an ordinance aimed at tourist-related businesses, there was a strong consensus among the Planning Board that such efforts were worthy of study and research.

Policy LUC #5

Dare County encourages the continued existence and development of locally-owned businesses in unincorporated Dare County.

Implementation Strategy:

1. Inventory of older existing commercial businesses and consideration of zoning amendments to ensure their replacement or repair in the event of damage from a natural disaster. (2011)

Policy LUC #6

Commercial development should be designed to meet the needs of Dare County's unincorporated villages and not to serve as regional commercial centers. The gross floor area limitations of the Dare County Zoning Ordinance and other applicable land use codes shall be used as a tool to manage the footprint of commercial structures. The goal is to manage the size of the commercial structures, which serves as a disincentive for regional commercial centers for location in villages.

Section 22-27.16- Highway 345 Business District

(b) Permitted Uses. The following uses shall be permitted by right

(14) Commercial storage yards as defined in Section 22-2 provided the following conditions are met:

a. Storage areas shall be enclosed with fencing for security purposes. Such fencing shall be at least 6 feet in height but shall not exceed 10 feet in height. The security fencing shall be maintained as needed by the property owner.

b. A vegetative buffer in addition to the security fencing shall be installed and perpetually maintained where the storage yard abuts a residential zone or a residential use to the side or the rear of the site. The vegetative buffer shall be of a sufficient size and height to effectively buffer the site from the abutting residential zone or residential use. A plan detailing the type, size, and species of vegetation proposed for use as a buffer shall be provided to the Zoning Administrator for review and approval. Existing on-site vegetation may be used if deemed to be sufficient by the Zoning Administrator. Solid fencing of wood or a composite material may be used in lieu of the vegetative buffer at a height not to exceed six feet in height. No buffer is required if the site does not abut a residential use or residential district.

c. There shall be no storage of inoperable or junked vehicles and equipment; unoccupied mobile (manufactured) homes; unattached flatbed trailers or container-type trailers designed for connection to tractor-trailer trucks; or large pieces of equipment used in dredging operations, road construction, and other industrial uses. Any vehicle or trailer stored on the site shall have a valid license plate and/or valid owner registration.

d. No recreational vehicles, travel trailers, or campers stored on the site shall be occupied or used for habitation while stored at the site.

e. All vehicles and equipment stored on the site shall be locked, enclosed or otherwise fashioned to such an extent that it is impossible for a child to obtain access or be entrapped in such vehicle or equipment.

f. There shall be no bulk storage of fuel, paint, or other combustible or hazardous materials at the site.



Adoption of the 2020 Schedules, Standards, and Rules for Real Property Appraisal

Description

The Schedules, Standards, and Rules for Real Property Appraisal to be used for the 2020 countywide property revaluation effective January 1, 2020 were submitted to the Board on November 4, 2019, and a public hearing on the Schedules was held on November 18, 2019. In order for the Schedules to be in place as of January 1, 2020, as required by G.S. 105-317, the Board should consider and adopt the Schedules at its December 2, 2019 meeting.

Board Action Requested

Adopt 2020 Schedules, Standards, and Rules for Real Property Appraisal

Item Presenter

Greta Skeen, County Assessor
Hosea Wilson, Assistant County Assessor

COUNTY OF DARE



NOTICE OF ORDER OF ADOPTION OF SCHEDULES, STANDARDS, AND RULES FOR THE 2020 COUNTYWIDE REVALUATION

TAKE NOTICE that at the regularly scheduled Meeting of the Dare County Board of Commissioners held on December 2, 2019, an Order was issued adopting and approving the Schedules, Standards, and Rules to be used in the reappraisal of real property in Dare County at its true value and at its present-use value beginning January 1, 2020. The Schedules are open for examination at the following locations:

County Assessor's Office, Dare County Justice Center, 962 Marshall C Collins Drive, Manteo;
The Fessenden Center, 46830 Highway 12, Buxton.
An electronic copy is available online at www.darenc.com.

Any property owner who asserts that the Schedules are invalid may except to the Order and appeal therefrom to the North Carolina Property Tax Commission no later than thirty (30) days after the first publication of this Notice.

This 2nd day of December 2019
Chairman, Dare County Board of Commissioners



Consent Agenda

Description

1. Approval of Minutes (11.18.19)
2. Budget Amendment for Beach Nourishment Fund
3. Budget Amendment for Water Department
4. Worxtime Contract
5. Road Request - Sherwood Drive, Manteo

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

Robert Outten, County Manager



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., November 18, 2019

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

Commissioners absent: Danny Couch due to weather conditions of Hwy 12

Others present: County Manager/Attorney, Robert Outten
Asst. Finance Director, Sally DeFosse
Master Public Information Officer, Dorothy Hester
Clerk to the Board, Cheryl 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 5:00 p.m. Chairman Woodard called the regularly scheduled meeting to order with appropriate prior public notice having been given. He invited George Lurie, from The Jewish Community of Outer Banks, to share a prayer, and 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:

Commissioner Couch would not be present due to Highway 12 conditions, but he would join the meeting via the Fessenden Center Annex connection.

NC Association of County Commissioners District met this month.

He attended the Southern Shore council meeting with the County Manager to share information concerning funding of their potential beach nourishment project.

He was the keynote speaker at the Outer Banks Home Builders Assoc. meeting where he shared an update on the College of the Albemarle project.

He attended the First Annual Educators and First Responders dinner.

He attended two local Veterans’ Day ceremonies and thanked the veterans for their service.

ITEM 2 – PRESENTATION BY SHERIFF J.D. “DOUG” DOUGHTIE (Att. #)

Sheriff J.D. Doughtie made a presentation with Kelli Harmon from the VFW to Cpt. Trey Piland with the VFW National Life Saving Award to recognize his heroism for the June 4, 2018 rescue of a young girl from the swimming hole in Manteo.

The Chairman asked for a motion to amend Agenda having Item 7 presented after Item 2.

MOTION

Vice Chairman Overman motioned to have Item 7 presented after Item 2.

Commissioner House seconded the motion.

VOTE: AYES unanimous

ITEM 3 – ALBEMARLE COMMISSION

Melody Wilkins, Executive Director of the Albemarle Commission, provided an overview of the Commission, whose mission is to improve member governments the ability to enhance quality of lives of its citizens. They represent Camden, Chowan, Currituck, Dare, Gates, Hyde, Perquimans, Pasquotank, Tyrrell and Washington counties with fifteen board members. The Commission works closely with local governments and provides many assistance programs which include: grant applications, administrative services, workforce development, legal assistance, senior and caregiver programs, and as a regional ombudsman for long-term healthcare centers. In the ten-county region, the Commission served 116,030 congregate and home-delivered meals to 1,244 recipients. Ms. Wilkins also shared the termination of the Revolving Loan Fund Grant program, which had assisted businesses since 1994. A recent review of the program found it no longer cost effective, in part due to rising legal costs and staffing of the program. The Commission also provides youth tutoring along with medical and general transportation.

ITEM 4 – PUBLIC HEARING: PROPOSED SCHEDULES, STANDARDS AND RULES FOR REAL PROPERTY APPRAISAL

At 5: 50 p.m. the Board held a Public Hearing to receive input concerning this agenda item. The Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton.

No one from Manteo or Buxton responded to the invitation to address the Board of Commissioners on this issue. The County Manager closed the Public Hearing at 5:51 p.m.

ITEM 5 – PUBLIC COMMENTS

At 5:51 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 comment was made in Manteo

Penny Adams, President of the Dare County Association of Educators, asked the Board to fund a local supplement increase for teachers and noted the population and tourism activity had grown; however, teachers had not received a salary increase since 2008. She quoted the NCAE’s motto of “strong students, strong teachers and strong communities” and noted it was difficult to appear “strong” while working two or three jobs, as they contend with the area’s high cost of living.

There were no comments made in Buxton

The County Manager closed Public Comments at 5:56 p.m.

**ITEM 6 – DARE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH DIVISION RESOLUTION IN SUPPORT OF BUILDING COMMUNITY
RESILIENCE IN DARE COUNTY (Att. # 1)**

Nancy Griffin, Executive Director of the Children and Youth Partnership, presented an overview of the Pair of ACEs, Adverse Childhood Experiences and Adverse Community Environments. Research has provided evidence revealing children's positive experiences are vital to forming a strong foundation, as their negative experiences bring greater risks for disease, substance abuse disorders, learning problems and other long-term impacts. In order to support the ongoing collaborative efforts of Be Resilient OBX, November 18-24, as Resilience Week, will raise awareness to support recovery from the impact of ACEs and help children, families and Dare County strengthen themselves with core life skills. A statewide broadcast of the film, "Resilience: The Biology of Stress and the Science of Hope" is available for presentation to further provide the basis of the research to help organizations build awareness and take responsive action.

MOTION

Vice Chairman Overman motioned to adopt a Resolution in Support of Building Community Resilience in Dare County and recognize Nov. 18-24 as Resilience Week in Dare County. Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

ITEM 7 – MEDICAL PLAN UPDATE

Mark Browder, of Mark III Employee Benefits, Sarah Kershner, RN and Manager of the Wellness Clinic, along with Marielle Silk, nurse practitioner, presented an update on the performance of the medical coverage plan for the County. There had been no budget increase for 2019-20 and financially the plan realized a 22% reduction in emergency room costs for participants. Overall inpatient admissions were down by 5% and routine/preventive office visit compliance remained at 48%. Some of the services provided include prevention and wellness, health coaching, diabetes education as well as tobacco cessation support. The top three risks for Dare County employees were reported as their weight, cholesterol levels and blood pressure issues. The biometric results from 2018 to 2019 have greatly improved with 67 employees not passing the criteria in 2018 and only 35 employees not passing in 2019. With additional staff and now in a new location with three exam rooms, the clinic has improved early detection, disease prevention and provides a life-coach with nutrition counseling. The Center works hard with a continuum of care follow-up. They have not had any vaping cases; however, the Center has three tobacco treatment specialists on site to help members.

ITEM 8 – CONSENT AGENDA

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

MOTION

Commissioner House motioned to approve the Consent Agenda:

- 1) Approval of Minutes (11.04.19) **(Att. # 2)**
- 2) Memorandum of Understanding between US Coast Guard Sector North Carolina and Dare County

3) Tax Collector's Report

4) DHHS – Social Services Division Budget Amendment

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

ITEM 9 – 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:

Commissioner Ross

- Audit Committee met today and were presented with an extremely strong audit report.
- He attended an Aging Conference in Edenton with a presentation of senior lifestyle and home improvement recommendations, as well as nutrition counseling.
- He was impressed with the Wellness Center's reported results and the terrific improvement in the lives they touch.
- Albemarle Commission would meet this month and he congratulated Ms. Wilkins on a "stellar job" as the new executive director.
- Trillium Board would be meeting later this month.
- He attended the country/western music concert which benefited our area veterans.
- NC Aquarium Foundation hosted a program which showcased the operation of North Carolina aquariums.
- Capital Improvements Committee will be meeting on November 20.
- Motorcycle Toy Run group had raised over \$16,000 for area children.
- College of the Albemarle had a film screening of a local artist, Glenn Eure, with the Stations of the Cross he had created displayed in Kitty Hawk.
- Tourism Board Task Force would meet in December to begin a plan and objective for the new event property.

Commissioner Tobin

- He went to Houston for a tour of the new dredge with the naval architects and the corps personnel involved in the project for a Q & A regarding the specific systems of the boat, which included efficiencies and inefficiencies.
- He attended a Task Force meeting. NOAA representative introduced a digital navigational charting system to replace paper charts. The program would offer efficiency and permit rapidly changing bottom readings to be produced within a month or two. A digital chart of Oregon Inlet revealed that most of the traffic goes through "the crack", which is not a proper channel. It was discussed how to make "the crack" part of the system (or at least marked). This would involve a survey and a request to NOAA to have it included along with marking it by perhaps the Coast Guard.
- EJE had received a 95% complete dredge engineer plans and within a month the County may put out an RFQ to builders.
- He offered condolences to Susan Rose Evans, a former County employee, who recently lost her husband.

Commissioner Couch

- He attended the NCBIWA in Wilmington and the County Manager gave an overview of the dredge project which was well received.
- He saw a presentation from Wit Tuttell on hurricanes and their impact on tourism. He noted, however, since North Carolina has such outstanding beaches, hurricanes have been shown to actually have a minimal impact with regular, loyal tourists.
- Reminded of the upcoming dredge management presentation plan in December.
- Coastal Counties and the State were now looking at “dredge spoil” as a valuable resource to be used in many alternative ways, such as bird habitats.
- He congratulated the Wellness Center on their success and mentioned they had been an asset in his own health management.
- Mentioned the flooding experienced lately had become the “new normal” and he recognized County EMS & Sheriff’s departments along with the NCDOT Ferry Division as fully capable as they continued to work through these events.

Commissioner Bateman

- Thanked EMS, Sheriff’s Dept. and everyone who assisted with the recent marathon.
- He attended and enjoyed the First Responder and Educator event with Commissioner Ross and Chairman Woodard.
- Commented on the preview of local artist Glenn Eure’s remarkable work on the Stations of the Cross in Kitty Hawk.
- He congratulated Cpt. Trey Piland on receipt of National Life-Saving Award from VFW.
- He reported the Recovery Court currently had fifteen participants. The judge and team were working hard to help participants return to society and lead productive lives.
- Offered condolences to the family of Phil Ferguson who recently died.

Vice Chairman Overman

- Congratulated Trey Piland and noted it was a well-deserved award.
- Wished everyone a safe and Happy Thanksgiving.

Commissioner House

- Congratulated Capt. Trey Piland and praised him for his heroism.
- Offered condolences to the family of Phil Ferguson.
- He attended the Juvenile Crime Prevention Council. The State expanded the program beyond age sixteen to eighteen and Dare County has received \$17,000 to help.
- He introduced a Resolution to Oppose the Blue Crab Fishery Management Plan, Amendment 3. Marine Fisheries contend the blue crab is 98% overfished. Federal commissions report endangerment of the turtles in the crab pots. This amendment would increase the crab pot escape holes from 2 5/16” to over 3”, and place additional financial burden on fisherman to either modify or purchase new crab pots. The County Manager read the resolution for consideration.

MOTION

Commissioner House motioned to adopt the Resolution Opposing Blue Crab Fishery Management Plan, Amendment 3. **(Att. # 3)**

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

RECESS at 6:38 p.m. – Reconvened at 6:42 p.m.

Commissioner House

The NC Wildlife Resources Commission wanted to look at the lines which constitute inland and coastal waters. NC Marine Fisheries Commission had looked at the boundary waters and neither side in two joint meetings wanted to agree on the definition of the boundaries of jurisdictional waters. NC Wildlife Resources Commission released their report on delineation of water boundaries based on salinity. In his extensive research, Commissioner House could not find a state or country that based their coastal waters definition upon salinity. He stated the salinity of waters change from season to season with weather patterns. This amendment could lead to two different agencies regulating the waters and defining coastal water or inland waters boundaries. Commercial fishermen can only fish in coastal waters. The amendment would affect many local, state and federal agencies, to include CAMA permitting, changing regulations and result in other environmental impacts. This amendment could lead to the designation of a good portion of Currituck Sound, Albemarle Sound, all of the Alligator River and many estuaries to become defined as inland waters.

The County Manager read the proposed Resolution. Commissioner House mentioned the issue has “some weight behind it” and he wanted to send the adopted resolution to the following: NC Marine Fisheries Commission, Steve Murphey, Director of NC Marine Fisheries Division, NC Wildlife Resources Commission, Gordon S. Myers, Exc. Dir. of NC Wildlife Resources Commission, all of the Coastal Counties, Rep. Bobby Hanig, Rep. Edward Goodwin, House Speaker Tim Moore, Sen. Bob Steinburg, Sen. President Pro Temp. Phil Berger, Lt. Gov. Dan Forest, as well as to Governor Roy Cooper.

MOTION

Commissioner House motioned to adopt the Resolution Opposing Reclassification of Jurisdictional Waters. **(Att. # 4)**

Commissioner Tobin declared point of order noting the presented resolution did not contain the words “square acres” in the reference of “144,984” at the fifth paragraph as read. Vice Chairman Overman also noted a correction to be made to the sixth paragraph, which should reflect “MFC”. Those corrections were made to the final resolution.

Commissioner Tobin and Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

Commissioner House added the Division of Marine Fisheries would also be looking at amendments to the fisheries management plans. On December 17, 2019, at 6:00 p.m., there would be a Southern Flounder Fishery Management Plan Amendment 3 Scoping Meeting; and local fisherman would be able to attend and provide both input and discussion.

Commissioner House concluded with two items he reported had taken place in history on November 18. In 1978, the Peoples Temple Founder, Jim Jones, led hundreds of his followers in a mass murder-suicide in Guyana and in 1928 Mickey Mouse had his debut with the premier showing of the film known as “Steamboat Willie”.

MANAGER’S/ATTORNEY’S BUSINESS

County Manager read a letter he had received from a group of citizens who in October were scheduled to go to Ireland. Due to the storm conditions, Highway 12 was closed, proven impassable and they thought they would have to miss their scheduled flights. The County Manager notified Chief Deputy Derringer, who had expertly handled the situation with transportation enabling them to not miss their flight departures. The group greatly appreciated and praised the Sheriff’s Department and County for their above and beyond assistance.

Dorothy Hester had nothing to report.

Sally DeFosse reported the full audit report would be presented on December 2, 2019.

Chairman Woodard asked for a motion to adjourn.

MOTION

Commissioner Ross motioned to adjourn the meeting.

Commissioner House seconded the motion.

VOTE: AYES unanimous

At 7:04 p.m., the Board of Commissioners adjourned until 9:00 a.m., December 2, 2019.

Respectfully submitted,

[SEAL]

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

APPROVED: By: _____
Robert Woodard, Sr., 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.



Budget Amendment for Beach Nourishment Fund

Description

On November 4 the Board approved \$250,000 each for feasibility and preliminary costs for potential projects for Avon and Southern Shores. The results of the beach nourishment model for fiscal year 2019 were \$560,000 better than projected, therefore there will be no effect on projections for future years.

Board Action Requested

Adopt budget amendment

Item Presenter

David Clawson, Finance Director

DARE COUNTY

BUDGET AMENDMENT

F/Y 2019-2020

| ACCOUNT | CODE | | | INCREASE | DECREASE |
|---|--------|--------|---------|-----------|----------|
| | Org | Object | Project | | |
| Department: | | | | | |
| Beach Nourishment Fund | | | | | |
| <u>Revenues:</u> | | | | | |
| Appropriated fund balance | 223090 | 499900 | | \$500,000 | |
| <u>Expenditures:</u> | | | | | |
| Avon feasibility & preconstruction | 224580 | 537638 | | \$250,000 | |
| Southern Shores feasibility & preconstruction | 224580 | 537636 | | \$250,000 | |

Explanation:

As approved by the Board of Commissioners on November 4, 2019

Approved by:

Board of Commissioners: _____

Date: _____

County Manager: _____

Date: _____

COPY

(sign in red)

Finance only:

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



Water Department Budget Amendment

Description

To move funds received by NCDOT water line relocations payment to Distribution Lines-ND.

Board Action Requested

Approval of budget amendment.

Item Presenter

Pat Irwin

DARE COUNTY

BUDGET AMENDMENT

F/Y 2019-2020

| ACCOUNT | CODE | | | INCREASE | DECREASE |
|--------------------------|--------|--------|---------|-----------|----------|
| | Org | Object | Project | | |
| Department: Water | | | | | |
| <u>Revenues:</u> | | | | | |
| NCDOT Reimbursement | 363800 | 427550 | | \$138,459 | |
| <u>Expenditures:</u> | | | | | |
| Distribution Lines-ND | 364815 | 518004 | 36001 | \$138,459 | |

Explanation:

NCDOT reimbursed the Water Department \$138,459 for moving a water line for the Kitty Hawk Road Bridge project. NCDOT has requested the Water Department relocate another water line near the same location, and part of the NCDOT reimbursement will be used to pay for this additional relocation.

Approved by:

Board of Commissioners: _____

Date: _____

County Manager: _____

Date: _____

(sign in red)

Finance only:

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



Worxtime Contract

Description

Contract renewal, Worxtime handles the Affordable Care Act reporting that is required by the Federal Government. Per the Affordable Care Act, Dare County has to show proof of insurance per employee per month. Worxtime organizes the information for distribution to the IRS and all employees. Worxtime also keeps track of employee benefit eligibility per specific measurement periods. Budget neutral, cost covered by Mark III.

Board Action Requested

Approval of contract for three years.

Item Presenter

Elizabeth Reilly, HR Director

UNIVERSAL SERVICE AGREEMENT

This UNIVERSAL SERVICE AGREEMENT (the "Agreement") is entered into and shall be binding upon the parties as of the last date executed below, and effective as of August 1, 2019 (the "Effective Date"), by and between Worxtime, LLC ("Worxtime"), a Georgia Limited Liability Company (and a wholly owned subsidiary of TALX Corporation), and County of Dare ("Client"), a/an County Government. The parties agree as follows:

1.0 CONTRACT SERVICES

By entering into this Agreement, Client hereby authorizes Worxtime to provide the employment or payroll related services (the "Services") as described in each applicable schedule, or schedule set, and any exhibits attached thereto (the "Schedule(s)"). The parties may enter into one or more Schedule(s), each Schedule corresponding to a service or group of services provided by Worxtime, and such schedules, whether attached hereto or entered into after the execution of this Agreement, shall be a part of this Agreement. The terms of this Agreement shall apply to each Service, except as the parties may otherwise provide in the Schedule(s).

2.0 TERM

The term for each Service is set forth in the applicable Schedule. A Schedule may expire or be terminated without affecting the other Schedules. This Agreement shall remain in effect as long as there is an outstanding schedule with a term then in effect.

3.0 WORXTIME OBLIGATIONS

Worxtime agrees that the Service (i) will be provided in compliance with laws and regulations applicable to Worxtime's performance thereof, and (ii) will not infringe trademarks, patents or other intellectual property rights of others. Worxtime MAKES NO WARRANTIES AS TO THE SERVICE OR THE DATA, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF Worxtime KNOWS OF SUCH PURPOSE.

4.0 CONFIDENTIALITY

The parties agree that the following will be treated as "Confidential Information": (i) all employment and income data ("Data") provided by or on behalf of Client to Worxtime; (ii) all information provided by Worxtime to Client pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as "Confidential," "Proprietary" or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential. Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to Worxtime, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement.

"Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Recipient, (ii) was known by the Recipient at the time of disclosure of the information without any obligation of confidence, and that knowledge is evidenced by reasonable proof, (iii) was or becomes available from a source other than the owner if the source was not legally bound to maintain the confidentiality of the information, or (iv) the Recipient independently develops without use of or reference to the Confidential Information. Each party acknowledges that unauthorized disclosure or use of the Confidential Information by a party may irreparably damage the other party in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information shall give the owner the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Each party hereby waives the posting of a bond with respect to any action for injunctive relief.

Upon Client's written request at any time during the Term of this Agreement (including termination or completion of the Services hereunder), Worxtime will purge, destroy, or otherwise render inaccessible,

Data housed in the Worxtime production database(s), provided that Worxtime may retain archival copies of Data for audit and dispute resolution purposes, and Worxtime may retain copies of Data on encrypted back-up media in which such Data is co-resident with other employment and income data. Worxtime shall remain under its contractual obligation of confidentiality and security to Client during such retention and such obligations shall survive termination of the Agreement.

This Section shall survive the termination of this Agreement.

5.0 DATA SECURITY AND PRIVACY

Worxtime shall maintain an information security program that includes appropriate administrative, technical and physical safeguards reasonably designed to: 1) ensure the security and confidentiality of Data; 2) protect against any anticipated threats or hazards to the security or integrity of such Data; 3) protect against unauthorized access to or use of such Data that could result in substantial harm or inconvenience to Client; and 4) dispose of such Data in a secure manner.

To comply with the safeguard obligations generally described above, Worxtime has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Data that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such Data, and assessed the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards (including encryption of Data at rest and during transmission), to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures.

Worxtime shall notify Client in writing as soon as possible and without unreasonable delay, after Worxtime has either actual or constructive knowledge of a breach which affects Data (an "Incident"). Notification may be delayed as required by law enforcement to prevent any impediment(s) to its investigation of the Incident. Worxtime shall have actual or constructive knowledge of an Incident if Worxtime actually knows there has been an Incident or if Worxtime has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. Worxtime shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. Worxtime shall promptly take appropriate action to mitigate such risk or potential problem at Worxtime's expense. In the event of an Incident, Worxtime shall, at its sole cost and expense, fully restore the Data and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.

6.0 DATA QUALITY AND DATA TRANSMISSION

Client acknowledges that the ability of Worxtime to provide accurate information is dependent upon receipt of accurate Data from Client. Client shall provide current and accurate Data necessary for Worxtime to provide the Services. Client agrees to provide such Data to Worxtime in the Worxtime format within a mutually agreeable timeframe and to promptly correct and update Data. Client further agrees to test and validate the accuracy of the Data on a mutually agreeable frequency using paper-based or electronic Data validation reports provided by Worxtime. Both parties agree to work together to identify and resolve all identified historical and ongoing Data errors within two (2) of Client's pay periods. Client agrees that any action required of Worxtime to correct the Data for Client may result in additional fees, as provided in each applicable Schedule attached hereto. Furthermore, Client agrees to transfer Data to Worxtime using one of the approved secure shipping methods provided in Attachment 1.

7.0 PROPRIETARY RIGHTS

Neither party's ownership rights, including but not limited to, any intellectual property rights in or used by Worxtime to perform the Services nor any intellectual property rights in or to Client's Data, shall be transferred pursuant to this Agreement. This Section shall survive termination of this Agreement.

8.0 INDEMNIFICATION/LIMITATION OF LIABILITY

8.1 Worxtime agrees to indemnify, defend and hold harmless the client and its affiliates, and their directors, officers and employees (each, an "Indemnified Party"), from and against any and all third party claims, demands, liabilities, suits, damages, expenses and costs (including reasonable attorneys', experts' and investigators' fees and expenses) incurred by

the Indemnified Party arising from or related in whole or in part to the indemnifying party's, or its affiliates', or its directors', officers' or employees' (i) breach of Section 4.0 or Section 6.0 of this Agreement, (ii) infringement on the intellectual property rights of third parties and/or (iii) intentional wrongful act or omission, provided that (a) the party seeking indemnity promptly notifies the indemnifying party of any claim for indemnity and cooperates fully in the defense of the claim, and (b) the party providing indemnity shall select counsel to defend any such claim.

- 8.2 IN NO EVENT SHALL DAMAGES BY EITHER PARTY HEREUNDER EXCEED THE GREATER OF (A) THE TOTAL FEES PAID BY CLIENT DURING THE TWELVE MONTHS PRIOR TO THE ACT OR OCCURRENCE WHICH GIVES RISE TO THE CLAIM, OR (B) THE SUM OF TWENTY- FIVE THOUSAND DOLLARS (\$25,000).
- 8.3 ANY OTHER TERM OR PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL EITHER PARTY, OR ITS AFFILIATES, THEIR DIRECTORS, OFFICERS OR EMPLOYEES, BE LIABLE FOR LOSS OF PROFITS OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE PERFORMANCE OF THIS AGREEMENT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.0 MISCELLANEOUS

- 9.1 **Entire Agreement.** This Agreement, which includes all schedules attached hereto and/or entered into after the execution hereof, comprises the entire Agreement between the parties, which supersedes all prior proposals, purchase orders, understandings and agreements with respect to the subject matter hereof.
- 9.2 **Force Majeure.** Neither party shall be responsible for any failure or delay in the performance of any obligations (excepting obligations to pay money) to the extent that failure is caused by acts of God, acts of terror, flood, fire, labor disputes, acts or omissions of the other party, non-delivery or delays in delivery by any other supplier of goods or services deliverable under this Agreement, or other causes beyond such party's reasonable control.
- 9.3 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable under applicable law in any jurisdiction, the validity or enforceability of the remaining provisions thereof shall be unaffected as to such jurisdiction and such holding shall not affect the validity or enforceability of such provision in any other jurisdiction. To the extent that any provision of this Agreement is held to be invalid or unenforceable because it is overbroad, that provision shall not be void but rather shall be limited only to the extent required by applicable law and enforced as so limited.
- 9.4 **Assignment/Modification.** Client shall not transfer, assign or otherwise dispose of (through operation of law or otherwise) any of its rights or obligations under this Agreement to any other person or entity, without the express written consent of Worxtime. Worxtime may assign this Agreement (and any corresponding schedules or attachments) to its affiliates, successors, or assigns, whether by way of business reorganization/reassignment, merger, sale of equity or assets, or otherwise, without the consent of Client. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective affiliates, successors, and assigns in accordance with this subsection 9.4.
- 9.5 **Notices.** Every notice required under this Agreement shall be in writing and effective three (3) days after being mailed first class postage prepaid, or upon delivery by an overnight or other courier or delivery service, in either case addressed as follows:

| | |
|--------------------|---|
| To Client: | To Worxtime: |
| County of Dare | Worxtime, LLC (a wholly owned subsidiary of TALX Corporation) |
| | 11432 Lackland Road |
| | St. Louis, MO 63146 |
| Attn: Bobby Outten | Attn: President |

Either Party may change its notice address with written notice to the other party.

9.6 **Entirety.** This Agreement, together with all appendices, exhibits, schedules, attachments and addenda attached hereto, constitutes the entire agreement between the parties with respect to its subject matter, and, with respect to that subject matter, supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, between the parties. This Agreement shall control over any other agreement or any contrary terms contained in any other agreement (including, but not limited to, master agreement(s), service agreement(s), subscription agreement(s), business associate agreement(s), or similar agreement(s)).

9.7 **Counterparts/Execution by Facsimile.** For the convenience of the parties, copies of this Agreement, including Schedules hereto, may be executed in two or more counterparts and signature pages exchanged by facsimile or scanned copies via e-mail. The parties intend that counterpart copies signed and exchanged as provided in the preceding sentence shall be fully binding as an original handwritten executed copy hereof and all of such copies together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Client County of Dare

Worxtime, LLC

By: _____

By: _____

Name: Bobby Outten

Name: _____

Title: County Manager

Title: _____

Date: _____

Date: _____

Attachment 1

Security Requirements when Client Sends Employment and Income Data to Worxtime

The following table outlines the acceptable options for the secure transfer of employment and income Data, to Worxtime. Client agrees to use one of the approved secure delivery or transmission methods provided below. The Worxtime preferred method of receiving Data is Secure File Transfer Protocol (SFTP) with PGP encryption.

| | Transfer Option | Description | For Added Protection |
|----|-----------------------------|--|--|
| 1a | SFTP | Secures credentials and information in the file during transmission using the SSH protocol. | PGP desktop software and use of the Worxtime PGP encryption key adds extra protection to the Data file itself. |
| 1b | FTPS | Secures credentials and information in the file during transmission using SSL/TLS protocols. | PGP desktop software and use of the Worxtime PGP encryption key adds extra protection to the Data file itself. |
| 2 | Encrypted Email Attachment | Secures information in email attachment only. | PGP desktop software and use of the Worxtime PGP encryption key encrypts the Data file. |
| 3 | CD/DVD | Allows for sending data files using encryption software with additional password protection. | PGP desktop software and use of the Worxtime PGP encryption key encrypts the Data file. |
| 4 | Secure Email (Voltage, TLS) | Secures information in the body of the email and attachments. | Client to confirm presence of TLS with their internal email service team. |
| 5 | Unencrypted Media | Secured transport service approved by Worxtime for unencrypted media and documents. | <ol style="list-style-type: none"> 1. USPS Certified Mail 2. USPS Overnight delivery 3. FedEx Overnight or 2-day delivery 4. UPS Overnight or 2-day delivery |

SCHEDULE A – ACA TRACKING AND REPORTING SERVICE
SERVICE PROVIDER, TERMS AND FEES FOR SERVICES

Client Name: County of Dare

Effective Date: August 1, 2019

The ACA Tracking and Reporting Service (“ACA Service”) and its corresponding Implementation and Support, the optional ACA Tax Form 1095-C Print Service (“ACA Tax Form Service”), the Employment Verification Service, and the optional ACA Subsidy Management Service, all described more fully below or in Schedule B hereto (collectively, the “Services”) are provided by Worxtime, LLC, a Georgia Limited Liability Company (a wholly owned subsidiary of TALX Corporation – “TALX”), (“Worxtime”). Client authorizes Worxtime as its authorized agent to provide the Services. Worxtime shall provide the applicable Services in accordance with the Universal Service Agreement (the “Agreement”) dated August 1, 2019, this Schedule A, and Schedule B (which are part of the Agreement) utilizing any and all of the employment data and information, and if Client elects the ACA Tax Form Service, tax form information supplied by and on behalf of Client. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.

- 1. Scope of Undertaking:** Worxtime shall provide (i) the ACA Service and applicable Implementation and Support in relation to certain of Client’s group health plans, which may or may not be “employee welfare benefit plans”, within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (“Plans”), as more specifically set forth in Schedule B; (ii) the Employment Verification Service, detailed below in Sections 6 and 7 of this Schedule A; and (iii) at Client’s option (as indicated by Client’s initials in Exhibit 1 hereto), (a) the ACA Tax Form Service and (b) the ACA Subsidy Management Service, each described more fully in Schedule B. The ACA Service is designed to assist Client in understanding its options with respect to its Plans under the employer shared responsibility provisions of Internal Revenue Code Section 4980H and related issues under the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, and the regulations and guidance issued thereunder (“PPACA”).
- 2. Term:** The initial term of this Schedule A (the “Initial Term”) shall begin on the Effective Date hereof, and shall remain in effect for one (1) year. This Schedule A shall automatically renew for three successive one (1) year terms (each a “Successive Term”) unless either party provides the other with written notice of termination at least ninety (90) days prior to the end of the then-current term.
- 3. Termination:** Either party may terminate this Schedule A if the other party has materially breached the Agreement, provided that the party claiming breach must give the other party at least thirty (30) days prior written notice in which to cure the breach before terminating this Schedule A. Notwithstanding anything to the contrary, this Schedule A may not be terminated for convenience (i.e., Client is responsible for making payments for all amounts contracted for and owed for the entire length of the term of this Schedule, and Worxtime will bill and collect any and all amounts owed under this Schedule).
- 4. Payment Terms and Fees:** All prices and fees for the Services performed under this Schedule A and Schedule B are stated in Exhibit 1 - Fees, attached hereto and made part of this Schedule A. All fees are in U.S. dollars.
 - Annual fees will commence upon execution of this Schedule A and renewing annual fees will be invoiced on the last day of the month that the Term renews.
 - All Set-up Fees and One Time Fees for historical data, additional carriers and EINs will be billed upon execution of this Schedule A. ACA Subsidy Notification and ACA Subsidy Appeals Fees will bill the month following Worxtime providing the service.
 - If applicable, fees for the ACA Tax Form Service will be invoiced after charges are incurred.
 - Invoices are due net thirty (30) days.
 - Payments not received within forty-five (45) days of the invoice date will bear interest at a rate of 1.5% per month.
 - Payments not received within sixty (60) days of the invoice date will result in the suspension of the Service (at the discretion of Worxtime) until payment is received.
 - Except to the extent that Client has provided an exemption certificate, direct pay permit, or other such appropriate documentation, Worxtime shall add to each invoice any sales, use, excise, value-added, gross receipts, services, consumption, and other similar transaction taxes, however designated, that are properly levied by any taxing authority upon the provision of the Services, excluding, however, any state or local privilege or franchise taxes, taxes based upon Worxtime’s net income, and any taxes or amounts in lieu thereof paid or payable by Worxtime as a result of the foregoing excluded items.
 - Additionally, any applicable fees for the Employment Verification Service will be set forth in Exhibit 1 – Fees.
- 5. Data:** Client acknowledges that Client is solely responsible for the quality of the Data provided by Client or by a third-party on behalf of Client. Client will validate the completeness and accuracy of all Data prior to submitting to Worxtime, and Client shall notify Worxtime in advance of any and all changes or modifications in format or type concerning the Client’s computer interface and/or any of its Data. Worxtime may use depersonalized Client Data to perform analytics, modeling and/or demographic studies. Depersonalized Client Data shall not include any information that individually, or collectively, could be used to specifically identify either Client or Client’s employees. Use of Client’s Data for Employment Verification Service is set forth in Sections 6 and 7 of this Schedule A.
- 6. Employment Verification Service:** Worxtime is authorized by Client to provide employment and income verification of Client’s employees. The Employment Verification Service is designed to assist (i) Client, (ii) employees of Client, and (iii) commercial, private, non-profit and governmental entities (“Verifier(s)”) who wish to verify an employee’s employment and/or income. Worxtime will serve the interests of Client, employees of Client, and Verifiers (a) by providing verifications to relieve the employer of the burden of employment and income verification obligations as often as practicable; (b) by providing verifications where the employee has applied for a benefit (such as a job application, subsidies, or a loan application) or has obtained a benefit, and the Verifier is seeking to determine whether the employee is qualified to receive the benefit or is seeking to enforce obligations undertaken by the employee in connection with the benefit; (c) by providing verifications where the employee is obligated by Federal, state or local law to provide the verification information to the Verifier; and (d) by providing analytics,

SCHEDULE A – ACA TRACKING AND REPORTING SERVICE
SERVICE PROVIDER, TERMS AND FEES FOR SERVICES

modeling and/or demographic studies that will not include any information that individually, or collectively, could be used to specifically identify either Client or Client's employees.

7. **Fair Credit Reporting Act ("FCRA") Obligations:** Concerning the Employment Verification Service, Client acknowledges receipt of Schedule A, Schedule B, and the "Notice to Furnisher" document provided below in Schedule B. Client agrees that it shall comply with all of the obligations of a furnisher set forth in such Notice to Furnisher. In the event that an employee notifies Worxtime of an error in any Data, and Worxtime or Client concludes that the Data is incorrect, Client shall correct the Data as required. If, after completing an investigation and acknowledging that the Data is incorrect, Client does not correct the Data, then Worxtime (by and/or through its parent company TALX) may as required under the FCRA: (i) correct the Data on behalf of Client, and/or (ii) block the Data from being accessed by Verifiers. TALX is a Consumer Reporting Agency ("CRA"), as defined by the FCRA. As such, TALX (and its subsidiary Worxtime) complies with the FCRA in providing the Employment Verification Service. FCRA compliance enhances the protections available to Client's employees, with respect to the privacy and accuracy of the Data. Client acknowledges that Worxtime (by and/or through its parent company TALX) has the responsibility to maintain Data accuracy as required under the FCRA, and grants the authority necessary to Worxtime and TALX under this Schedule to fulfill this responsibility.
8. **Set-up and Implementation:** Client acknowledges that it must undertake certain steps for the Services to be provided correctly and timely, including, without limitation, providing Data in a proper format, undergoing validation and, if applicable, testing procedures, and assisting with the Implementation and Support. Client agrees to fully cooperate with Worxtime to implement the Service and if applicable, the ACA Tax Form Service in accordance with Schedule B. Worxtime shall have no liability with regard to any errors that result from Client's failure to timely provide Data (or update Data) accurately and completely and in the format required by Worxtime.
9. **Responsibilities:** Client understands that Worxtime is not a law firm and Worxtime has not and cannot provide legal advice to Client or the Plan concerning any legal issues associated with the Services. Client is responsible for compliance with all applicable federal, state and local laws and regulations, including, but not limited to, compliance with PPACA, the San Francisco Health Care Security Ordinance and the Massachusetts Health Care Act. Client is responsible for working with its legal counsel to develop and implement any strategies (tax, legal or otherwise), and to make all determinations regarding whether to offer coverage under its Plans and to whom coverage should be offered, in response to Data or information developed as part of the Service, and to monitor and comply with any applicable laws, regulations and guidance (formal or informal) that affect the Services, and/or the Client's Plans. Client understands that Client's failure to follow any established parameters of the Services may materially affect the risks and liabilities associated with any development and implementation of any strategies based on the Services. Client acknowledges that Worxtime is not providing tax or legal advice and that Worxtime is not responsible for determining the legal and tax status of the Services and/or the Client's Plans. Worxtime does not have authority to control and manage the operation of Client's Plans. Worxtime does not assume any responsibility for the general policy design of the Plans, the terms of the Plans, the legal compliance of the Plans, the administration of the Plans or any act or omission or breach of duty by Client related to the Plans. In addition, Worxtime does not assume any financial risk or obligation with respect to the Plans. Nothing herein shall be deemed to constitute Worxtime as a party to the Plans or to confer upon Worxtime any discretionary authority, responsibility or control concerning or with respect to management of the Plans, administration of the Plans or operation of the Plans. Nothing in this Schedule A or Schedule B shall be deemed to impose upon Worxtime any obligation to any employee of Client or any person who is participating in the Plans. Worxtime is and shall remain an independent contractor with respect to the Services, and shall not for any purpose be deemed an employee of Client. Nor shall Worxtime and Client be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor.
10. **INDEMNIFICATION.** Client and Worxtime recognize that every business decision represents an assumption of risk and that neither party in furnishing Confidential Information, Data, or the Service to the other, underwrites or assumes the other's risk in any manner. To the extent permitted by laws applicable to the parties, each party agrees to indemnify, defend and hold harmless ("Indemnify") the other party and its affiliates, and their directors, officers and employees (each, an "Indemnified Party"), from and against claims, demands, liabilities, suits, damages, expenses and costs, including reasonable attorneys', experts' and investigators' fees and expenses ("Claims") brought by third parties against the Indemnified Party and arising from the indemnifying party's, or its affiliates', directors', officers' or employees' ("Indemnifying Party") (i) breach of this Agreement, (ii) negligent or intentional, wrongful act or omission, (iii) infringement on third party proprietary rights. Further, each party agrees to Indemnify the other from and against the Indemnifying Party's (i) violation of applicable law, or (ii) breach of Confidentiality obligations.
- 11.
12. **No Third Party Beneficiaries:** Nothing express or implied in this Schedule A or Schedule B is intended to confer, and nothing herein shall confer, upon any person, including any Plan participant, any rights, remedies, obligation or liabilities whatsoever.
13. **Terms & Conditions:** Worxtime will assign an account manager to assist Client with Data set-up, initial importation of Data, and system training. Worxtime will also make available appropriate technical staff as reasonably required. Certain items are to be delivered in a timely manner by Client during the onboarding process. The initial testing file is due by Client twenty-one (21) days after the initial onboarding call and delivery of the templates. Failure to provide the initial test file within the time frame will result in an additional fee of one thousand, six hundred ninety-five dollars (\$1,695). At the completion of each additional twenty-one (21) day period in which the test file has failed to be sent by Client, Client agrees to pay an additional fee in the amount of three hundred dollars (\$300) due and payable at the conclusion of each such twenty-one (21) business day period.

Schedule A and Schedule B shall be binding on the parties upon the date last executed below.

Client – County of Dare

Worxtime, LLC

SCHEDULE A – ACA TRACKING AND REPORTING SERVICE
SERVICE PROVIDER, TERMS AND FEES FOR SERVICES

By: _____

By: _____

Name: Bobby Outten

Name: _____

Title: County Manager

Title: _____

Date: _____

Date: _____

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Sally DeRose 11/25/2019

SCHEDULE A – ACA TRACKING AND REPORTING SERVICE

EXHIBIT 1 - FEES

ACA Tracking and Reporting Service

The ACA Tracking and Reporting Service is being provided on an annual basis, in accordance with the Payment Terms in Schedule A. The fees shall be in the amounts set forth below, and the pricing and fees specified herein will increase by 5% on each anniversary of the Schedule’s Effective Date, beginning two (2) years after the Schedule’s effective date.

Optional Services:

Fulfillment - Tax Form 1095-C Print Service: No

Client’s Initials required:

Subsidy Management: No

Client’s Initials required:

| | | |
|--|---|--|
| Billing mode | Monthly | |
| Contract Begin Date | | |
| Fee: PEPM (Per Employee per Month) | \$0.35 | |
| Estimated Number of Employees | 1,130 | |
| Minimum Annual Measurement Fee for measurement of less than 668 EE | \$3,500.00 | |
| One-time Initial Fees | | |
| Initial Setup Fee | One-time setup fee | |
| Historical Data Fee | One-time historical data load | |
| File Feeds | *First set of file feeds from one source/carrier | \$ Included |
| | Additional File feed uploads: \$500 per file | \$0.00 |
| Additional Fees | | |
| Additional EINs #0 | \$250 per each additional EIN | \$0.00 |
| **File Reformatting Fees | \$495 | \$0.00 |
| Data Analyst Upload Service | Data Analyst processes file(s) | |
| Optional Services | | |
| ACA Tax Form 1095-C Print Service | \$2.25 per printed & mailed 1095-C form (includes postage) | No |
| ACA Subsidy Management Service | The pricing specified herein will increase by 5% on each anniversary of the Schedule’s Effective Date | \$1,200 annually \$10 per subsidy notice case received \$15 per appeal requested |

* Set of files includes employee and coverage file from one source. Additional employee and coverage files from additional sources results in additional file feed costs.

** Reformatting fees are charged to Client when they fail to provide files in the required format.

SCHEDULE A – ACA TRACKING AND REPORTING SERVICE

EXHIBIT 1 - FEES

Billing Address

| | | |
|---|---|--|
| ACA Services to include: - Initial Setup Fee - Historical Data Fee - PEPM or Minimum Monthly Measurement Fee - One-time initial setup file feeds - One-time Additional FEIN Optional Services: - ACA Tax Form 1095-C Print Service - ACA Subsidy Management Service | Mark III 10117 Hwy 421 North Shady Valley, TN 37688 | Billing Email: john@markiiiieb.com Billing Email: |
|---|---|--|

The fees set forth above reflect a pricing discount based on your business relationship with Mark III. In the event your relationship with Mark III terminates, your fees will be adjusted to the then prevailing retail rates for your Services by Worxtime. Please note that all fees are ultimately the responsibility of the Client.

Client Purchase Orders. If the use of a Purchase Order (“PO”) or similar ordering document is required by Client, the following information must be provided as part of this Schedule. Failure to include this information reflects Client’s agreement that a PO shall not be required by Client. Client shall provide notice of any PO changes no less than ninety (90) days prior to the expiration of the current PO. No additional terms and conditions shall be included in the PO unless expressly agreed to in writing by the parties. If there is a conflict between language in the PO and the Agreement and/or Schedule, the Agreement and/or Schedule shall control.

PO Number:

PO effective dates (does not impact the Effective Date(s) or Term(s) specified in the Agreement or Schedule): from to

Dollar limit, if applicable, of initial PO (does not limit or otherwise impact any minimum ordering obligations or purchase commitments specified in the Agreement):

SCHEDULE B – ACA TRACKING AND REPORTING SERVICE

SERVICE DESCRIPTION OVERVIEW

ACA Tracking and Reporting Service

Definition and Description of the ACA Tracking and Reporting Service

The ACA Tracking and Reporting Service (the “ACA Service”) is a hosted application and relies on a software program. The software program uses Data provided by Client to assist with certain aspects of the Affordable Care Act (“ACA”). This includes measuring and tracking employee benefit eligibility and providing Client with reports, alerts and a dashboard that helps Client to analyze Data relevant to their compliance with the ACA.

The ACA Service includes:

- (1) a health care reform compliance service for the IRS-issued rules and regulations associated with ACA eligibility and reporting for the Employer Mandate, as defined in the ACA;
- (2) the utilization of a web-based data center and processing facilities which are SSAE16 compliant;
- (3) assistance with the measurement process, administration process, and stability periods to provide Client with data needed to help Client comply with the eligibility rules (as published in the Employer Mandate section of the ACA);
- (4) the creation of standard and customized reports;
- (5) access to data mapping tools for data conversion;
- (6) transmission of the 1094/5-Cs to the IRS; and
- (7) PDF file of employee 1095-C forms.

Consistent with the terms and conditions contained in Schedule A, the Data supplied by Client will be analyzed and timely submitted to the IRS forms 1095-C and 1094-C per Client’s direction and as required by the ACA. Prior to submitting the 1094-C and 1095-C forms, Client will be provided the opportunity to review, make corrections, and approve the 1095-C forms. Once approval is received, a PDF file of the 1095-C forms for distribution to employees will be provided, and the 1094-C will be filed with the IRS.

Eligibility and Affordability

The ACA Service will calculate Client employees’ full-time determination under the look-back and/or the monthly measurement method as set forth in Internal Revenue Code (IRC) Section 4980H and the regulations and guidance issued thereunder. All calculations are based on Client’s Data. The ACA Services will provide affordability and compliance status pertaining to the affordability requirements of the ACA provided Client loads complete and accurate pay data per the timesheet file specifications.

IRS Reporting

The ACA Service will support the collection and configuration of data fields required to comply with the reporting requirements under IRC §6055 and §6056.

ACA Service User Names

Client agrees to be solely responsible for all user names or passwords assigned. Client is responsible for improper use of user names and passwords and releases all liability associated with misuse.

ACA Tracking and Reporting Service - Implementation and Support

Description

The ACA Service allows employers access to the hosted Worxtime environment. Client Services is available via phone, e-mail and/or online chat during normal business hours (8:00 am to 5:00 pm, Central Time), Monday through Friday of normal business days (non-holidays).

Client agrees and understands the accuracy of setup is the responsibility of Client and agrees to perform or provide certain assigned implementation tasks. Client will be assigned an account manager to assist Client with basic ACA setup, file(s) format and structure, initial importation of Data, and system training. Client is required to upload their Data directly into the system. Should Client have Data that is not acceptable for direct upload and would require SFTP transfer of the Data, then Client will be subject to additional Data fees listed in the fee schedule.

Client agrees to make a staff member available as a ‘Point of Contact’ for ACA reporting, accountability for Data, initial setup, assist in the resolution of any issues, and completion of wizard for approving 1094/5-C forms.

SCHEDULE B – ACA TRACKING AND REPORTING SERVICE

SERVICE DESCRIPTION OVERVIEW

Client will have the ability to set up certain alerts regarding compliance with the ACA to be sent to the email address provided. From time to time, Client may be asked to verify receipt of alerts. A copy of the alerts shall be maintained on the server. Client is responsible for making any modifications to Client’s email system in the event alerts are treated as “spam” or blocked in any manner.

Optional- ACA Tax Form 1095-C Print Service

Description

The ACA Tax Form 1095-C Print Service is designed to print and mail U.S. Tax Form 1095-C for Clients’ required individuals, based on Data provided by Client.

Service Delivery Tasks

Clients must approve 1095-C forms by established deadlines, for on-time delivery of forms to employee’s mailing address. Forms will be mailed to the address provided as part of the Data importation.

Optional - ACA Subsidy Management Service

Description

The ACA Subsidy Management Service is an optional service that is designed to assist Client with the communication and management of subsidy notices from state and federal health insurance exchanges.

Modification to the Service Description Overview

Worxtime reserves the right to modify the Services from time to time, provided that any such modification applies in a similar manner to all other clients receiving such Services, and the changes made will only enhance and not reduce the quality of the Services. If the modification shall be a substantial change from this Service Description Overview, Worxtime shall provide notice of the change to Client. A substantial change shall be a change which is inconsistent with this Service Description Overview. A change that does not alter functionality of the Services, such as a change for upgraded security of Data, is not a substantial change. Client may terminate this Schedule A and B by notice given to Worxtime within thirty (30) days after notice of an amendment to the Service Description Overview, and termination shall be effective ninety (90) days after notice is provided unless the parties agree otherwise in writing. Absence of such termination shall constitute Client’s agreement to the modified Service Description Overview.

**SCHEDULE B – ACA TRACKING AND REPORTING SERVICE
SERVICE DESCRIPTION OVERVIEW**

Notice to Furnishers of Information:



Notice to Furnishers
of Information - 02-28



Road Request - Sherwood Drive, Manteo

Description

On January 3, 2012, the Board adopted a Resolution to Request for Sherwood Drive to be added to the NCDOT State maintained road system. NCDOT indicates Nottingham Phase II, Sherwood Drive, became eligible in 2019 for addition and has requested any resolution over one-year old be resubmitted.

Board Action Requested

Adoption of resolution

Item Presenter

Robert Outten, County Manager

**North Carolina Department of Transportation
Division of Highways
Request for Addition to State Maintained Secondary Road System**

North Carolina

County: Dare

Road Description: Sherwood Drive in the Nottingham II Subdivision, Manteo, NC
 approx.1.3 mile in length

WHEREAS, the attached petition has been filed with the Board of County Commissioners of the County of Dare requesting that the above described road, the location of which has been indicated in red on the attached map, be added to the Secondary Road System, and

WHEREAS, the Board of County Commissioners is of the opinion that the above described road should be added to the Secondary Road System, if the road meets minimum standards and criteria established by the Division of Highways of the Department of Transportation for the addition of roads to the System.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of the County of Dare that the Division of Highways is hereby requested to review the above described road, and to take over the road for maintenance if it meets established standards and criteria.

CERTIFICATE

The foregoing resolution was duly adopted by the Board of Commissioners of the County of Dare at a meeting on the 2nd day of December , 20 19 .

WITNESS my hand and official seal this the 2nd day of December , 20 19 .

Official Seal

Clerk, Board of Commissioners
County: _____

PLEASE NOTE:

Forward direct with request to the Division Engineer, Division of Highways



Presentation of FY 2019 Comprehensive Annual Financial Report (Audit Report)

Description

The CAFR (audit) report for the year ended June 30, 2019 will be presented.

Board Action Requested

None

Item Presenter

Bob Taylor, Partner with Potter & Company; David Clawson, Finance Director



Construction Manager at Risk Contract for DHHS Project

Description

Construction Manager at Risk contract with AR Chesson Construction Company for the Health and Human Services Capital Project

Board Action Requested

Approve contract and authorize the County Manager to execute

Item Presenter

Robert Outten, County Manager

 **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 First day of November 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)

A.R. Chesson Construction Co., Inc.
P.O. Box 1147
315 W. Main St.
Williamston, NC 27892

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

Dare County Health & Social Services
109 Exeter Street
Manteo, NC 27954

The Architect:
(Name, legal status and address)

Oakley Collier Architects, PA
109 Candlewood Rd.
Roanoke Rapids, NC 27804

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

David Clawson
954 Marshall C. Collins Drive
Manteo, NC 27954
Telephone Number: 252-475-5731
Email Address: davec@darenc.com

ADDITIONS AND DELETIONS:

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

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

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

Doug M. Chesson
P.O. Box 1147
315 W. Main St.
Williamston, NC 27892
Telephone Number: 252-792-4486
Mobile Number: 252-809-2476
Email Address: Doug@archesson.com

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

Tim Oakley
109 Candlewood Rd.
Rocky Mount, NC 27804
Telephone Number: 252-937-2500
Email Address: TOakley@oakleycollier.com

The Owner and Construction Manager agree as follows.

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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.

§ 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, 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.

§ 2.1.5.2 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.

§ 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

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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.

§ 2.1.10 Additional Pre-Construction Services

The Construction Manager as Constructor will be responsible for providing the following as Preconstruction services:

1. Confirm and/or modify with Architect, 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 systems, material selections, constructability, assemblies, etc. associated with this project and the schedule in support of their preparation of an 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 Requests for Proposal and administration of the Bidding process through solicitation and receipt of at least three bids per requirements of NC GS 143- 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 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.

§ 2.2 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.

§ 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:

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- .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. The Owner shall keep all unused contingency.

§ 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. The

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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.

§ 2.4 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.

§ 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.)*

The Construction Manager shall be paid for those Preconstruction Phase services actually provided by the Construction Manager; provided, however, in no case shall the total fees payable to the Construction Manager for Preconstruction Phase services exceed \$41,465.00

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) 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.

§ 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 thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

8 % 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.)

Six Percent (6%) of the cost of the work and shall include all items as set forth in Article 6, Sections 6.1 through 6.7.

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

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(Paragraphs deleted)

§ 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.)

The Guaranteed Maximum Price will be established during the Pre-Construction Phase by the end of Design Development.

The Construction Manager will participate in a savings agreement with the Owner as follows: 75% / 25% Owner / Construction Manager savings split (CM Cap at \$100,000)

§ 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 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.

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.

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§ 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.

§ 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.

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§ 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.

§ 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.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 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;

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- .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. 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 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 Payment shall be made by the Owner not later than thirty (30) 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:

- .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;
- .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.

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§ 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.

§ 7.2 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.

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:

§ 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
Payment and Performance Bonds

Limit of Liability or Bond Amount (\$0.00)
The full value of the contract amount

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
- Other: *(Specify)*

§ 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.)

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.

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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.

§ 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 Construction Manager shall be compensated a prorated fee through the date of termination.

§ 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. The Owner agrees to pay for the cost and work completed through the termination date.

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:

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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:
 - .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
 - .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

Robert Outten, County Manager

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Doug M. Chesson, Vice President

(Printed name and title)

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Additions and Deletions Report for AIA® Document A133™ – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:18:32 ET on 11/25/2019.

PAGE 1

AGREEMENT made as of the First day of November in the year 2019

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

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A.R. Chesson Construction Co., Inc.
P.O. Box 1147
315 W. Main St.
Williamston, NC 27892

...

Dare County Health & Social Services
109 Exeter Street
Manteo, NC 27954

...

Oakley Collier Architects, PA
109 Candlewood Rd.
Roanoke Rapids, NC 27804

...

David Clawson
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PAGE 2

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Mobile Number: 252-809-2476

Email Address: Doug@archesson.com

...

Tim Oakley
109 Candlewood Rd.
Rocky Mount, NC 27804
Telephone Number: 252-937-2500
Email Address: TOakley@oakleycollier.com
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§ 2.1.10 Additional Pre-Construction Services

The Construction Manager as Constructor will be responsible for providing the following as Preconstruction services:

1. Confirm and/or modify with Architect, 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 systems, material selections, constructability, assemblies, etc. associated with this project and the schedule in support of their preparation of an 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 Requests for Proposal and administration of the Bidding process through solicitation and receipt of at least three bids per requirements of NC GS 143- 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 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.

PAGE 6

§ 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. The Owner shall keep all unused contingency.

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The Construction Manager shall be paid for those Preconstruction Phase services actually provided by the Construction Manager; provided, however, in no case shall the total fees payable to the Construction Manager for Preconstruction Phase services exceed \$41,465.00

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) 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.

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

8 % per annum

...

Six Percent (6%) of the cost of the work and shall include all items as set forth in Article 6, Sections 6.1 through 6.7.

...

~~§ 5.1.4 Rental rates for Construction Manager owned equipment shall not exceed —percent (—%) 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) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

PAGE 10

The Guaranteed Maximum Price will be established during the Pre-Construction Phase by the end of Design Development.

The Construction Manager will participate in a savings agreement with the Owner as follows: 75% / 25% Owner / Construction Manager savings split (CM Cap at \$100,000)

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~~§ 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.~~

...

~~§ 6.7.3 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.~~

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~~§ 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-Owner. 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.~~

PAGE 14

~~§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the —day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the —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 thirty (30) days after the Architect receives the Application for Payment.~~

...

- .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;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

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Payment and Performance Bonds

The full value of the contract amount

...

Litigation in a court of competent jurisdiction

PAGE 17

§ 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.~~Construction Manager shall be compensated a prorated fee through the date of termination.

...

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. The Owner agrees to pay for the cost and work completed through the termination date.

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Robert Outten, County Manager

Doug M. Chesson, Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Al Chesson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:18:32 ET on 11/25/2019 under Order No. 6476972900 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Dare County Health & Social Services

THE OWNER:
(Name, legal status and address)
Dare County
954 Marshall C. Collins Drive
Manteo, NC 27954

THE ARCHITECT:
(Name, legal status and address)
Oakley Collier Architects, PA
109 Candlewood Rd.
Rocky Mount, NC 27804

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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 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 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor 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 Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor 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 Contractor.

§ 2.2.2 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.

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

§ 2.2.4 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.

§ 2.2.5 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.

§ 2.3 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.

§ 2.4 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 written 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 deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The 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 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating 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 make 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 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 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

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.

§ 3.6 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 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply 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 SCHEDULES

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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 maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

submittals. These shall be available to the Architect and shall be 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 the way by which 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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 written 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. 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 cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 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, and 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove 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 Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The 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.

§ 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.

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

§ 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, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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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, material and equipment 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, unless otherwise specifically stated by the Architect, 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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 subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 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 reply 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner 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 in writing; 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 such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 The 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the 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 7.3.7.

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

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and 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 7.3.7 shall be limited to the following:

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

§ 7.3.8 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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 Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material 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 material 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

§ 9.5.3 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 material or equipment suppliers to whom the

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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 Architect will reflect such payment on the next Certificate 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 material and equipment 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 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, except as may otherwise be required by law.

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

§ 9.9 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 as required under Section 11.3.1.5 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 written 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 and, 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the 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; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

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whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for 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 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify 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 LIABILITY INSURANCE

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

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

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insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual 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. The Owner shall receive full warranty extended from the date of any completed corrective work.

§ 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, whether completed or partially completed, of the Owner or separate contractors 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

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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 except that, 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to 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 such assignment.

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

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

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

§ 13.5.5 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.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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 above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 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 as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

§ 14.4.2 Upon receipt of written 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 Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work completed.

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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, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written 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 must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 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.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no 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.

Init.

/

§ 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 such 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 an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, 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 15.1.6 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 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. 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 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 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 the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201™ – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:18:16 ET on 11/25/2019.

PAGE 1

Dare County Health & Social Services

...

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

...

(Name, legal status and address)

Oakley Collier Architects, PA
109 Candlewood Rd.
Rocky Mount, NC 27804

PAGE 32

§ 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. The Owner shall receive full warranty extended from the date of any completed corrective work.

PAGE 35

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work ~~not executed.~~completed.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Al Chesson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:18:16 ET on 11/25/2019 under Order No. 6476972900 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

This is a placeholder document for the report "CMatR Precon Fee Detail". There was an error in the publishing process and it could not be converted to PDF.

**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 DHHS project per the Construction Manager At Risk contract. This ordinance amends the capital project ordinances adopted September 18, 2017, and amended August 6, 2018, January 22, 2019, February 4, 2019, June 3, 2019, June 17, 2019, July 15, 2019, July 16, 2019 and August 5, 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:

| | | |
|-------------------------------|---------------------|----------|
| DHHS preconstruction services | 615620-737500-60337 | \$41,465 |
|-------------------------------|---------------------|----------|

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 | \$41,465 |
|--------------------------|---------------------|----------|

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 | \$527,360 | |
| Manteo property & renovations | \$1,000,000 | |
| Buxton property | \$325,000 | |
| EMS equipment 2020 CIP | \$1,498,316 | |
| Total | | \$4,961,376 |

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 2nd day of December, 2019.

Chairman, Board of Commissioners

[SEAL]

Cheryl Anby, Clerk to the Board of Commissioners



Board Appointments

Description

The following Boards and Committees have appointments or reappointments this month.

1. Board of Equalization and Review
2. Special Motor Vehicle Valuation Review Board

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager



Board of Equalization and Review

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

December 2019

BOARD APPOINTMENTS

BOARD OF EQUALIZATION AND REVIEW

(One Year Term)

The following have terms to expire this month:

Nelson V. "Skip" Jones

(Current Term 12/18 – 12/19)

(Originally Apptd. 2/08)

Jonathan Waddill

(Current Term 12/18– 12/19)

(Originally Apptd. 2/16)

Jeffrey Scott

(Current Term 12/18 – 12/19)

(Originally Apptd. 2/16)

Terry Gore

(Current Term 12/18 – 12/19)

(Originally Apptd. 4/14)

Charles Evans

(Current Term 12/18 – 12/19)

(Originally Apptd. 2/16)

All would like to be reappointed.

Applications have been received from Allen Moran and David Hines

Other Members:

See attached

BOARD OF EQUALIZATION AND REVIEW
(One Year Term)

The Board of Equalization and Review is a local citizen review board that hears property tax appeals from property owners in Dare County. Under North Carolina law, each county must have an Equalization and Review Board to hear appeals of property values.

| <u>MEMBER</u> | <u>TERM EXPIRATION</u> | <u>ACTION</u> |
|--|-------------------------------|--|
| Nelson V. "Skip" Jones 1508 Captains Lane Kill Devil Hills, NC 27948 441-7882 | 12-19 | Apptd. 2-08 Reapptd. 12/08,09,10,11,12, 13,14,15,16,1-18, 12-18 |
| Jonathan Waddill 1322 N. Hwy 64 Manteo, NC 27954 252-564-4319 (H) 252-986-6392 (O) | 12-19 | Apptd. 2-16 Reapptd. 12-16, 1-18, 12-18 |
| Jeffrey Scott 4317 Shady Lane Kitty Hawk, NC 27949 252-261-3777 (H) 252 261-1500 (O) | 12-19 | Apptd. 2-16 Reapptd. 12-16, 1-18 12-18 |
| Terry Gore 140 Fearing Place Manteo, NC 27954 252-347-6710 (H) | 12-19 | Apptd. 4-14 Reapptd. 12-14,15,16, 1-18 12-18 |
| Charles Evans P.O. Box 2239 Manteo, NC 27954 252-473-2055 (H) 252-473-2171 (O) | 12-19 | Apptd. 2-16 Reapptd. 12-16, 1-18, 12-18 |

NOTES:

MEETING INFO: As needed

CONTACT INFO: Greta Skeen, Tax Assessor

MEMBERS COMPENSATED: \$50 per meeting

John Receveur replaced Judy Johnson 1/93. Myra Ladd replaced Carl Parrot 1/93.
Alvin S. Hibbs replaced Keith Fearing 2/93.
Barbara Britt replaced Myra Ladd 1/95.
Curtis Creech replaced Ron Tillett 1/98.
Michael Davenport replaced Alvin Hibbs 12/01.
Bo Taylor replaced the late Curtis Creech 12/02
Kerwin Hoy replaced Bo Taylor 4/06.

Skip Jones filled unexpired term of John Receveur 2/08.
Talmadge Jones filled unexpired term of Kerwin Hoy 3/08.
Terry Gore filled unexpired term of Barbara Britt 4/14.
Jonathan Waddill replaced Bette Gray 2/16.
Jeffrey Scott replaced Talmadge Jones 2/16.
Charles Evans replaced Michael Davenport 2/16.
Nelson Jones, Jonathan Waddill, Jeffrey Scott, Terry Gore and Charles Evans were reapptd.

REVISED 12/19

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 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

2nd choice Game & Wildlife Commission

3rd choice Equalization and Review Board

Name DAVID HINES

Address 306 First Flight Run

City/State/Zip Kitty Hawk, NC 27949

Email Address David@coastalncobx.com

Telephone Home: N/A

Business: 252-573-9547

Resident of Dare County: yes no

Occupation: REAL ESTATE / CONSTRUCTION & DEVELOPMENT

Business Address: 3210 North Cranton Highway Suite 1A
Hill Devil Hills, NC 27948

Educational background:
Attended NC State

Business and civic experience and skills:

Numerous committees in the past with OBAR

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

CURRENT MEMBER, THE BOARD OF ADJUSTMENT TOWN OF
Kitty Hawk.

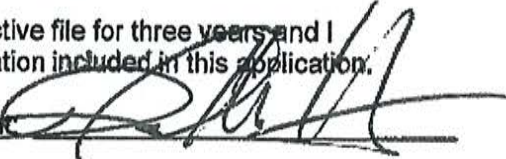
REFERENCES

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>ERVIN BATEMAN</u> | <u>RESTAURANT OWNER</u> | | <u>252-202-1072</u> |
| <u>ROBERT WOODARD</u> | <u>TOWNE INSURANCE</u> | | <u>252-702-7219</u> |
| <u>DAVID JOYNER</u> | <u>TOWNE BANK Mortgage</u> | | <u>252-599-1714</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: 02/07/19 Signature of applicant



FOR OFFICE USE ONLY:

Date received: 2/7/19

1

**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 Doughtie</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: 02/02/2018 Signature of applicant: 

FOR OFFICE USE ONLY:

Date received: _____



Special Motor Vehicle Valuation Review Board

Description

See Attached Summary

Board Action Requested

Take Appropriate Action

Item Presenter

Robert Outten, County Manager

December 2019

BOARD APPOINTMENTS

SPECIAL MOTOR VEHICLE VALUATION REVIEW BOARD

(One Year Term)

The following have terms to expire this month:

Danny Couch

(Current Term 12/18 - 12/19)

(Originally Apptd. 06/17)

Dock Sawyer

(Current Term 12/18 – 12/19)

(Originally Apptd. 1/93)

David Light

(Current Term 12/18 – 12/19)

(Originally Apptd. 1/18)

All would like to be reappointed

No applications have been received.

Other Members:

None

SPECIAL MOTOR VEHICLE VALUATION REVIEW BOARD

(One Year Term)

The Special Motor Vehicle Valuation Review Board hears and reviews appeals of listings and valuations placed upon taxable motor vehicles located within Dare county.

| <u>MEMBER</u> | <u>TERM EXPIRATION</u> | <u>ACTION</u> |
|---|-------------------------------|--|
| Danny Couch 47297 Dippin Vat Road PO Box 1001 Buxton, NC 27920 dannyc@darenc.com 252-216-7383 | 12-19 | Apptd. 06/17 Reapptd. 12/17,18 |
| Dock Sawyer P.O. Box 1292 Manteo, NC 27954 252-475-8803 | 12-19 | Apptd. 01-93 Reapptd. 12-93,94 95,96,97,98,99 00,01,02,03,04 05,06,07,08,09 10,11,12,13,14 15,16,17,18 |
| David Light PO Box 721 Wanchese, NC 27981 obxilight@embarqmail.com 252-305-2678 (home) 252-473-2678 (business) | 12-19 | Apptd. 1-18 Reapptd. 12/18 |

NOTES:

MEETING INFO: As needed

CONTACT INFO: Maggie Dennis, 475-5936

MEMBERS COMPENSATED: No

Richard Johnson replaced Shirley Hassell 12/98.
Jack Gregory replaced Mike Hedrick 1-02.
Lori Hageman replaced Jack Gregory 12/07.
Wally Overman filled unexpired term of Richard Johnson 10/13
Danny Couch filled unexpired term of Wally Overman 6/17
Unable to contact Lori Hageman, she was not reappointed 12/17
David Light replaced Lori Hageman 1/18

REVISED 12/19



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.

January, 2020

1. Tourism Board

The Outer Banks Visitors Bureau is the lead marketing and promotional agency for The Outer Banks of North Carolina and is funded by one percent of the occupancy tax and one percent of the prepared meals tax collected in Dare County. The Towns and other agencies represented on the Tourism Board submit recommendations for their appointments to the Board of Commissioners for final approval. One County Commissioner serves on the Board and there are two at-large seats for which applications are accepted.

7 terms expire

2. Working Watermen Commission

The Commission for Working Watermen works to protect and enhance the commercial fishing industry in Dare County. The Commission monitors and advises the Dare County Board of Commissioners regarding pending or proposed laws, rules, regulations, fishery management plans and coastal habitat plans, as they relate to commercial fishing in the county.

2 terms expire

February, 2020

Planning Board

The Planning Board meets to review and recommend action on land use and development plans and issues for the unincorporated areas of Dare County.

3 terms expire

March, 2020 - None

-----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, Clerk to the Board, at 252-475-5800.



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