

**LENOIR CITY COUNCIL
TUESDAY, FEBRUARY 18, 2025
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Ike Perkins, Todd Perdue, Ralph Prestwood, Kimmie Rogers, David Stevens, City Manager Scott Hildebran, City Clerk Shirley Cannon and City Attorney Timothy Rohr.

ABSENT: Councilmember Crissy Thomas.

CITY STAFF: In attendance was Finance Director Donna Bean, Fire Chief Norman Staines, Police Chief Brent Phelps, Police Major Andy Wilson, Planning Director Hannah Williams, Parks & Recreation Director Phil Harper, Public Services & Public Works Director Jon Hogan, Public Services Public Utilities Director Jeff Church, Economic Development Main Street Director Brenda Floyd, Director of Special Projects & Grants, Jared Wright and Public Information/Communication Director, Joshua Harris.

I. CALL TO ORDER

A. The meeting was opened by a moment of silence and the pledge of allegiance as led by Mayor Gibbons.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

**REZONING; 220
SUNSET ST. NW:**

A. Rezoning; 220 Sunset Street NW: A public hearing was held to consider approval of the proposed rezoning of 220 Sunset Street NW, NCPIN# 2840940055, 0.71 acre and 25 additional parcels along Sunset Street and Calvary Place, from R-9 (Medium Density Residential) to R-6 (Medium and High Density Residential) as requested by applicant Marcus Sims, MWS Investments, LLC to accommodate a minor subdivision for two duplexes based on the following consistency statement. Planning Staff and the Planning Board are in approval of the request.

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

Mayor Gibbons opened the public hearing to receive public comments regarding the rezoning request.

Planning Director Hannah Williams stated the applicant plans to build two duplexes for a total of four units on the property. The two subject properties are 220 Sunset Street NW and Sunset Street and Calvary Place. Director Williams shared that the applicant plans to retain the house located on the property on a separate lot. She explained there was not enough square footage to build the duplexes in R-9 zoning as they require 15,000 square feet for each duplex and the existing house requires 9,000 square feet. The R-6 district would allow the same development on 9,000 square foot parcels for the duplexes and a 6,000 square foot lot for the existing house.

Additionally, Director Williams explained the applicant could have garden apartments of 4 units in the R-9 zone. Two apartments could be accommodated with a different type of housing and this step would not require a rezoning.

Director Williams said that Planning Staff reviewed the neighborhood again to see if R-6 zoning may work for these properties and the additional twenty-five homes that connect with properties zoned as B-2 (General Business) on US Highway 321. She further reviewed a map of the properties zoned as R-9 which include churches, apartment complexes and a trailer park.

Director Williams reviewed two options for the Sunset Street and Calvary Place Rezoning and stated the Planning Board and Planning Staff approves Option 1 as follows:

Option 1

- Sunset St. and Calvary Place
Twenty-five (25 Parcels)
- Currently zoned Medium Multi-family residential (R-9)
 - Proposed to be rezoned to Medium and High Density Multifamily Residential (R-6)
 - Rezoning to higher density closer to the US-321 corridor

Option 2

- 220 Sunset St. NW only
- Currently Zoned R-9
 - Proposed to be rezoned to R-6
The rezoning facilitates a minor subdivision that will result in two lots, and two proposed duplexes
 - Spot Zone

As information, Director Williams clarified that spot zoning is legal in North Carolina as long as the rezoning is justified, reasonable and in the public interest. Also, she showed areas of properties that are zoned as R-6 and stated you can replace a single manufactured home in R-6 zoning. Director Williams also reviewed a table analyzing the density of the properties which is zoned existing high density and stated the rezoning proposal is in line with the current zoning.

Next, Director Williams explained there may be five vacant properties on the street and three smaller properties which would be brought into conformity. She reported that several of the Planning Board members were in favor of the proposal and several were against it.

A copy of the power point slides and the Staff Report were submitted as part of the record and are attached to these minutes.

The power point presentation includes the following information for the rezoning request:

- 1) Map of the two subject properties-Sunset Street NW & Sunset St. and Calvary Place
- 2) Map showing the proposed rezoning – Current R-9 and Proposed R-6
- 3) Map of surrounding area rezoning

- 4) Option 1 and Option 2 for Sunset St./Calvary Place Rezoning
- 5) Option 1 – Rezone the block to R-6
- 6) Option 2 – Spot Zone for Sunset Street
- 7) Photos of Sunset Street facing north and facing west
- 8) Existing and Proposed Zoning (R-9 Medium Density Multi-family and R-6 Medium to High Density Multi-family)
- 9) Existing and Proposed Density
- 10) Existing and Proposed Lot Development (existing R-9 and proposed R-6)
- 11) Recommendations and Statements along with Lenoir Future Land Use Map
- 12) List of Properties for rezoning to R-6

Director Williams further related this proposal is an up zoning and pointed out that if it were a down zoning, the properties could not be reversed back to R-9 without the approval of the property owners.

There being no further public participation, Mayor Gibbons closed the public hearing and asked Council for action.

Upon a motion by Councilmember Perdue, City Council voted 6 to 0 to approve the rezoning case for 220 Sunset Street NW and 25 additional parcels from R-9 to R-6 and the consistency statement as recommended by Staff and Planning Board. City Council also moved to include the Staff Report for the record.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 4, 2025, as submitted.
- B. Design-Build Contract, Aquatics & Fitness Center Improvements: Staff recommends execution of the agreement, AIA Document A141-2014 with J.M. Cope, Inc. for Design-Build services for the 2022 PARTF Project – Lenoir Aquatic and Fitness Center Improvements interior renovation. The pre-construction services contract will be \$25,000.00. The remainder of the project budget will be allocated to construction. (A copy of the contract is attached to these minutes as information.)
- C. Surplus Property; Lenoir Police Department Disposal to Town of Glen Alpine Police Department: Pursuant to N.C.G.S. §160A-280, Donations of personal property to other governmental units, Staff recommends transferring the submitted list of surplus ballistic vests and helmets to the Glen Alpine Police Department for use in patrol and special response duties enhancing officer protection and operational capabilities. Note: These items are all past the manufacturer's 5-year warranty dates and Glen Alpine personnel are aware of the status of the warranty dates for these specific items. (A copy of the contract is attached to these minutes as information.)
- D. Bid Award, Paving; Unity Park and Community Gardens: Following the review of bids submitted, Staff recommends awarding the bid to Asphalt Roads for the total sum of \$58,000.00 for the paving of the parking lot and driveway of the Unity Park and Community Gardens. Asphalt Roads is appropriately licensed in the state of North Carolina, is adequately equipped to perform work of this nature and has completed many paving jobs throughout Caldwell County. (A copy of the bid award is attached to these minutes as information.)
- E. Renewal; Side Street Pour House Café Permit: Staff recommends renewal of the Sidewalk Café Permit with the following conditions for Side Street Pour House Café (carried forward from the original approval):

1. The applicant must coordinate with the City's Public Works Director prior to modifying or installing any support structures for lights or awnings or modifying any enclosure fencing.
2. String lights installed over the sidewalk café are limited to white, non-blinking lights.
3. All provisions of Sec. 13-3(C) shall continue to apply to the use and operation of the sidewalk café area.
4. Current copy of Certificate of Liability Insurance naming the City as an additional insured must be provided to the Planning Department. (A copy of the Certificate of Insurance is attached to these minutes as information.)

Councilmember Perkins asked to further discuss Item C. on the Consent Agenda regarding the Police Department's request to surplus property to the Glen Alpine Police Department.

Councilmember Perkins asked if the City would have any liability due to the items being past the manufacturer's 5-year warranty dates.

Police Chief Brent Phelps explained that he discussed this issue with City Manager Scott Hildebran and Finance Director Donna Bean. Chief Phelps stated the Police Chief of Glen Alpine was a new chief with a small police department. He shared that they did not have much equipment and were glad to receive these items.

Chief Phelps further clarified that the City sent a letter to Glen Alpine's Police Chief stating that the City of Lenoir would not be held responsible for any issues due to the expired warranty and that the Chief responded back in writing certifying that he was aware the equipment was past warranty and the City of Lenoir would not be held accountable.

Also, Chief Phelps reported that being past the manufacturer's 5-year warranty date only means that the equipment is past warranty, but it is still functional.

Upon a motion by Councilmember Perkins, City Council voted 6 to 0 to adopt items A through E on the Consent Agenda as described above and as recommended.

IV. REQUESTS AND PETITIONS OF CITIZENS

COMMENTS; DOWNTOWN

BUILDINGS: A. Shana Oakley, 305 Resaca Street, expressed concern about the empty buildings in the downtown area and mentioned how the owners could possibly put a display in their windows to make them more attractive and appealing. Ms. Oakley said she was passionate about downtown and suggested that Council consider having a plan in place to protect the vacant buildings.

Ms. Oakley also mentioned downtown did not have a play area for children. She shared that Dr. Terry owns the property of the former dog park site and he may possibly be interested in donating or leasing the property for a playground area.

On behalf of City Council, Mayor Gibbons thanked Ms. Oakley and said City Council would take her comments under advisement.

COMMENTS; KENTWOOD

PARK: B. Crystal Moore, 537 Hill Street, addressed City Council about Kentwood Park that is located

behind Davenport Elementary School. Ms. Moore explained the park is not currently being maintained and needs a lot of work. Ms. Moore said she also spoke to school personnel about it and they informed her the park was owned by the City of Lenoir.

Mayor Gibbons responded the City has previously discussed the ownership of the park with the school system and that the park is owned by Caldwell County Schools. However, he reported the City would check into the matter and get back with her.

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

PLANNING BOARD:

1. The Planning Board will meet on Monday, February 24 at 5:30 p.m. at the City/County Chambers.

COMMITTEE OF THE WHOLE:

2. The Committee of the Whole will meet on Tuesday, February 25 at City Hall, Third Floor Conference Room.

FOOTHILLS REGIONAL AIRPORT AUTHORITY:

3. The Foothills Regional Airport Authority will meet on Wednesday, March 5 at noon at the Airport Facility.

CITY COUNCIL PLANNING RETREAT:

4. The City Council Planning Retreat will be held on Friday, February 28 at 8:30 a.m. at the Blue Ridge Energy meeting room.

B. Items for Council Action

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:35 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

City Council Sunset Street Rezoning

February 18, 2025

Case: Rezoning 2/25

Presented by Hannah Williams, AICP - Planning Director

Subject Properties

220 Sunset St NW

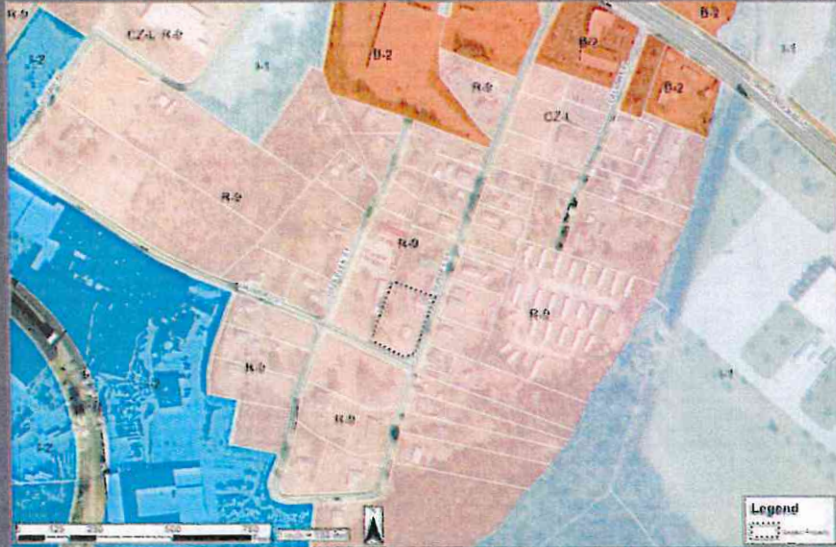


Sunset St and Calvary Pl

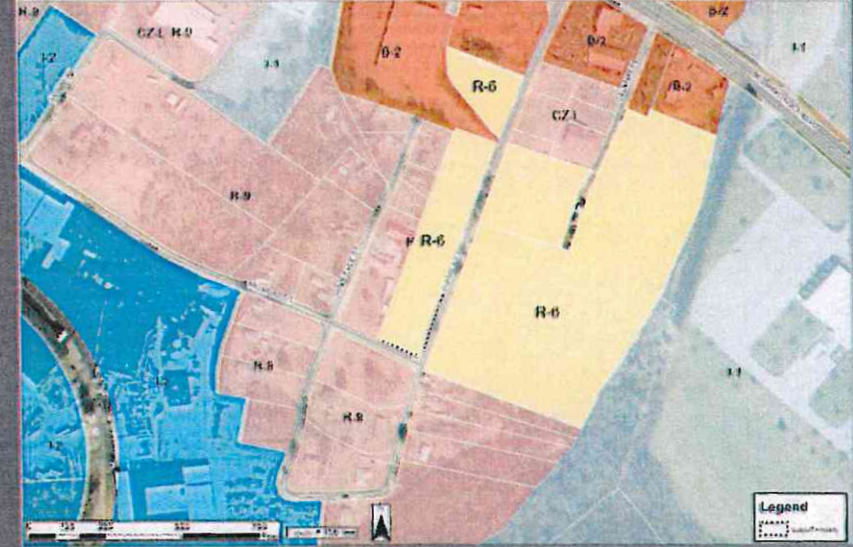


Proposed Rezoning

Current Zoning: R-9



Proposed Zoning: R-6

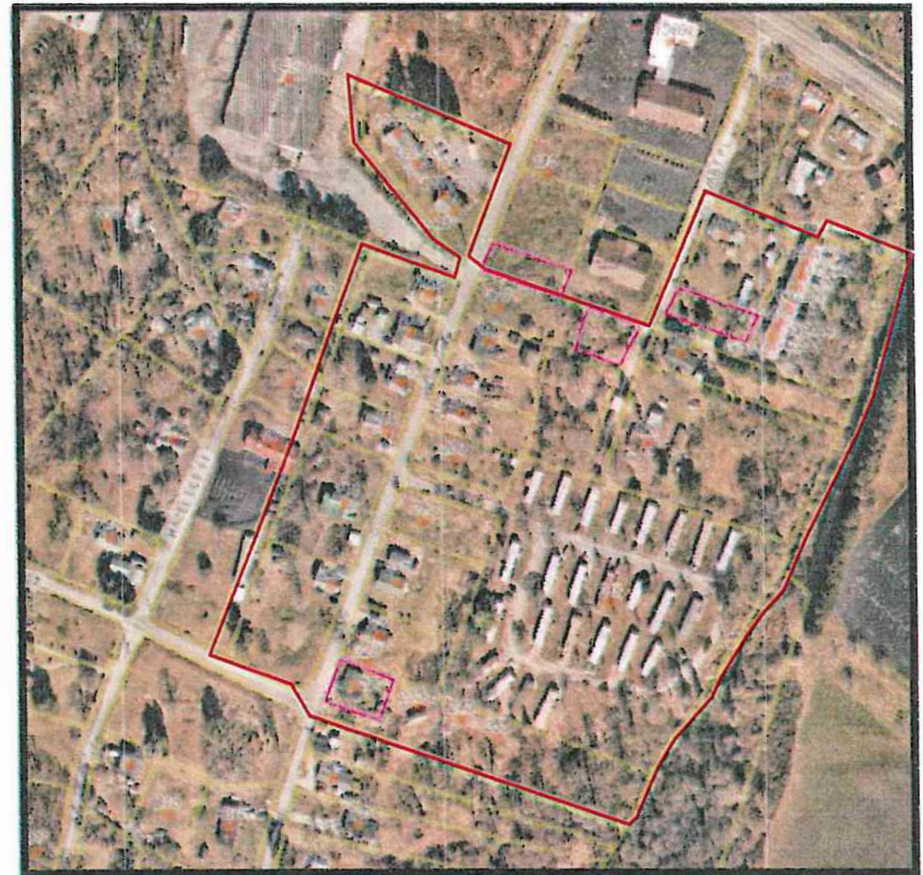


Surrounding Area - Zoning



Option 1 – Rezone the Block

- ▶ Rezoning Sunset Pl to R-6
 - ▶ Changes lot size
 - ▶ Single Family: 6,000 SF
 - ▶ 2+ Family: 9,000 SF
 - ▶ Changes multi-family density
 - ▶ 7.2 Dwelling Units per Acre “by right”
 - ▶ 15 Dwelling Units per Acre with an SUP
 - ▶ “Fixes” some issues with existing non-conforming lots
 - ▶ Lot sizes
 - ▶ Calvary Pl Apartments



Properties identified under the minimum lot size in R-9 (< 9000 square feet)

Sunset St/Calvary Pl Rezoning

Option 1

- ▶ Sunset St and Calvary Pl
 - ▶ Twenty-five (25) Parcels
- ▶ Currently zoned Medium Multi-family residential (R-9)
- ▶ Proposed to be rezoned to Medium and High Density Multifamily Residential (R-6)
- ▶ Rezoning to higher density closer to the US-321 corridor

Option 2

- ▶ 220 Sunset St NW only
- ▶ Currently zoned R-9
- ▶ Proposed to be rezoned to R-6
- ▶ The rezoning facilitates a minor subdivision that will result in two lots, and two proposed duplexes
- ▶ Spot Zone

220 Sunset St

Facing North



Facing West



Option 2 – Spot Zone 220 Sunset St NW

- ▶ Rezoning 220 Sunset St to R-6
 - ▶ Reasonable “Spot Zone”
 - ▶ Proposed development shows rational connection to neighboring homes on Sunset St
 - ▶ Similar setbacks, lot sizes, and parking arrangement



Existing and Proposed Zoning

▶ **R-9 Medium Density Multifamily**

- ▶ Accommodates “missing middle” housing at a medium density
- ▶ Allows houses, duplexes, garden apartments, doublewides
- ▶ Special uses: B&B’s, Daycares, Churches, higher density apartments
- ▶ Multi-family density: 4.8 to 9 Dwelling Units per Acre

▶ **R-6 Medium to High Density Multifamily**

- ▶ Accommodates “missing middle” housing at a medium density
- ▶ Allows houses, duplexes, garden apartments, doublewides, replacement singlewides *
- ▶ Special uses: B&B’s, Daycares, Churches, higher density apartments
- ▶ Multi-family density: 7.2 to 15 Dwelling Units per Acre

▶ *No singlewides to replace in the subject area outside of MHP

Existing and Proposed Density

	R-9	R-6
Low Density "By Right"	4.8 Dwelling Units per Acre	7.2 Dwelling Units per Acre
High Density w/ SUP	9 Dwelling Units per Acre	15 Dwelling Units per Acre

Note: Maximum densities do not apply to accessory apartments or any development of 4 or fewer total units (duplex, triplex, or quadplex developments).

Taken from Section 600, Permitted Use Chart, footnote A5 and Section 800, Table A & footnote A10

Existing and Proposed Lot Development

Existing R-9

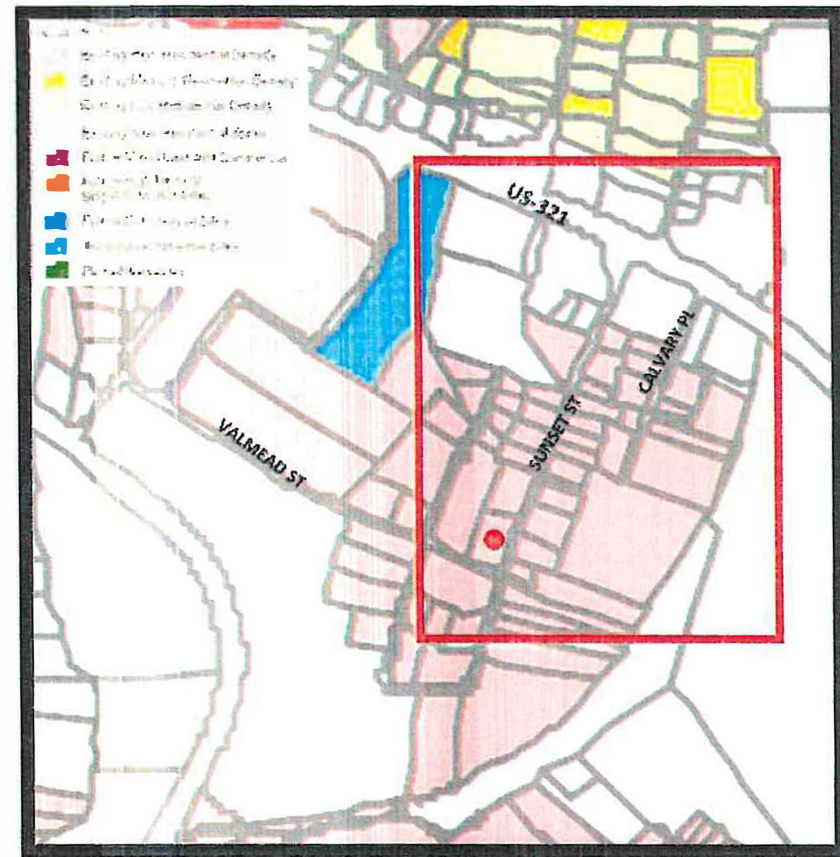
- ▶ **Min Lot Size—**
 - ▶ 9,000 SF for single-family
 - ▶ 15,000 SF for multi-family
- ▶ **Setbacks**
 - ▶ Front: 35'
 - ▶ Side Yard: 12' (non-residential abutting residential, 30')
 - ▶ Street Side Yard: 25'
 - ▶ Minimum Rear Yard: 25'

Proposed R-6

- ▶ **Min Lot Size –**
 - ▶ 6,000 SF for single-family
 - ▶ 9,000 SF for multi-family
- ▶ **Setbacks**
 - ▶ Front: 35'
 - ▶ Side Yard: 10'
 - ▶ Street Side Yard: 25'
 - ▶ Minimum Rear Yard: 25'

Recommendations and Statements

- ▶ **Staff Recommendation**
 - ▶ Approval of Request
 - ▶ Call for Public Hearing on February 18, 2025
- ▶ **Consistency Statement**
- ▶ All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel/ area as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.



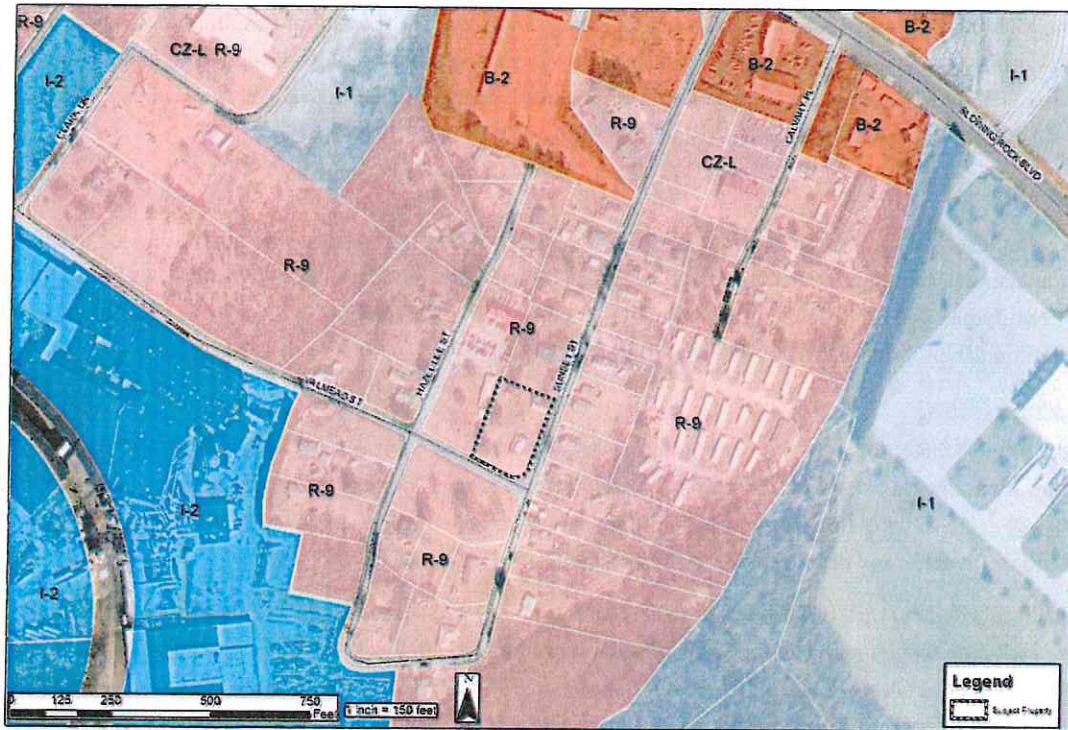
Lenoir Future Land Use Map

R 3-25 Rezone to R-6

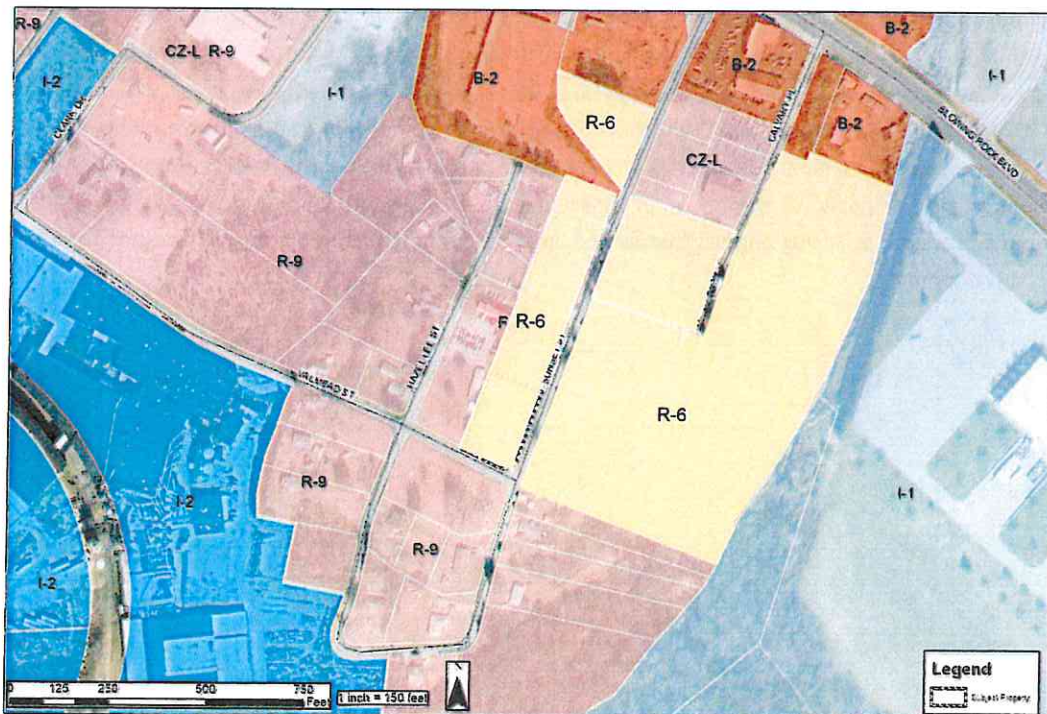
Name	Address	City	State	Zip	NCPIN
Ann Gragg	225 SUNSET ST NW	LENOIR	NC	28645	2840931952
Bobby & Adene James	PO BOX 2549 (127 Sunset St.)	LENOIR	NC	28645	2840944546, 2840945572
Caldwell Gardens Renewal LLC	11810 GRAND PARK AVE, SUITE 600 (122 Sunset St.)	ROCKVILL	MD	20852	2840943801
Crystal Bryant	121 CALVARY PL	LENOIR	NC	28645	2840947494
David Hennson	201 SUNSET ST NW	LENOIR	NC	28645	284093590
Dorothy Hendrix	203 SUNSET ST NW	LENOIR	NC	28645	2840943484
Entrust Carolina LLC F/B/O Marcus	PO Box 3495 (209 Sunset St.)	LENOIR	NC	28645	2840943342
Heather Gragg & Burlene Arnett	225 SUNSET ST	LENOIR	NC	28645	2840931952
Hubert & Helen Day	214 SUNSET ST NW	LENOIR	NC	28645	2840941205
JBRG LLC	135 COMMERCIAL CT NE	LENOIR	NC	28645	2840943526
Julian & Mary Baker	2310 HICKORY BLVD SW SUITE A (206 Sunset St.)	LENOIR	NC	28645	2840941496
Julio Garcia	106 CONLEY ST (113 Calvary Pl)	Morganto	NC	28655	2840947685
Larry & Arlene Soblotney	6155 VENICE CT (217 Sunset St)	HICKORY	NC	28601	2840942160
Louis & Cornelia Cornell	127 CALVARY PL NW	LENOIR	NC	28645	2840947546, 284097333, 2840945400
Madison & Natalie Crump	221/223 Sunset St.	LENOIR	NC	28645	2840932929
Marcus W. Sims	PO Box 3495 (211 Sunset St.)	LENOIR	NC	28648	2840945046
MWS Investments LLC	PO BOX 3495	LENOIR	NC	28645	2840940055
New Vision Trust Custodian FBO M	PO Box 3495	LENOIR	NC	28645	2840942290
Paula Gilbert	210 SUNSET ST NW	LENOIR	NC	28645	2840941367
Ricky & Cynthia Greene	202 SUNSET ST NW	Lenoir	NC	28645	2840942524
William & Karen Dickson	509 PINEHURST PL (205 Sunset St.)	LENOIR	NC	28645	2840943358

EXISTING AND PROPOSED ZONING MAPS

Existing Zoning: R-9



Proposed Zoning: R-6



BACKGROUND AND STAFF ANALYSIS

Zoning Map Amendments

The City of Lenoir Zoning Ordinance establishes an official zoning map/atlas for the City of Lenoir. The zoning map may be amended from time to time by the City Council when public necessity, convenience, general welfare, or good zoning practice justifies the amendment. The zoning map cannot be changed until the Planning Board reviews the request and makes a report to City Council on the proposed change and the City Council holds a public hearing to consider the request.

Reason for Request

The applicant is requesting a zoning change from R-9 to R-6 in order to be able to subdivide an existing lot to build two duplexes. Under the current zoning, the lot is not large enough to subdivide and accommodate two duplex lots. Both R-9 and R-6 zoning districts allow for two-family and multi-family developments. The key difference between the two zoning districts is the minimum lot size (9,000 SF for multi-family in R-6; 15,000 SF for multi-family in R-9).

Intent of the Zoning Districts

R - 9 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium density single-family residences, doublewide manufactured homes, duplexes, townhomes, low-rise garden apartments, and other compatible land uses, with higher density multi-family apartments allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

R - 6 Residential (Multi-family) District is intended to establish and preserve areas of land within the city for medium and high density residences, including single family, doublewide manufactured homes, duplexes, townhomes, multi-family developments, and other compatible uses at appropriate densities. Higher density multi-family developments are allowed as special uses. Any uses which would adversely affect or interfere with the residential character and development of these areas are excluded.

Subject and Surrounding Properties

The subject property at the intersection of Sunset Street and Valmead Street is .71 acres and can be accessed via Valmead Street coming from North Main Street or via Sunset Street coming from Blowing Rock Boulevard (US-321). The interior neighborhood is zoned R-9 on Sunset Street, Hazel Lee Street, and Calvary Place. There are two apartment complexes; one on Sunset Street with five units and one on Calvary Place with 12 units. which is considered non-conforming in the present zoning designation. The properties along US-321 are zoned B-2 (General Business), while properties to the south of the neighborhood are zoned I-2 (Heavy Industrial). The applicant owns a mobile home park off of Sunset Street called Sunset Manor, located at 211 Sunset Street. The neighborhood features a mix of stick-built single-family homes and doublewide manufactured homes in addition to the aforementioned two multi-family developments.

ZONING ANALYSIS

Minimum Lot Size

On the 220 Sunset site, the developer proposes to subdivide the lot into three lots: one lot for the existing house, and two lots for two new duplexes. Today, the existing lot is 30,990 square feet (.71 acres). Under the R-9 zoning, the single family house lot would be required to be 9,000 sq. ft., and each duplex lot would be required to have 15,000 square feet. The developer lacks around 8,000 square feet to accommodate his proposal under R-9 zoning.

In the R-6 zoning district, the single family house lot would be required to be 6,000 sq. ft., and each duplex lot would be required to have 9,000 square feet. To accomplish the proposal under R-6, the developer has more than enough land area to accommodate these minimum lot size standards. See illustration to the right, where each proposed resultant lot exceeds the minimum lot size requirement.

Unit Count and Multi-family Densities

Under the current R-9 zoning, a quadplex (4-unit apartment building) is allowed by right on a 15,000 sq. ft. lot. The developer could achieve the same number of residential units as proposed if they were 4 attached apartments rather than detached duplexes. However, the developer desires to construct duplexes rather than apartments.



Approximation of proposed subdivision

Aside from minimum lot sizes, there are a two major differences between R-9 and R-6. The first regards manufactured housing. While R-9 allows for doublewide manufactured homes on private lots, R-6 allows for doublewides and replacements of singlewide manufactured homes on private lots. In the proposed rezoning area, there are no singlewides outside of the existing manufactured home park, so there are no singlewides that will need replacing in the area. (Note: Manufactured Home Parks are permitted separately from manufactured homes on private lots.) The other major difference regards density—dwelling units per acre for multifamily complexes.

Dwelling units per acre vary between what is permitted “by right” as “low density” and what would be permitted with a Special Use Permit as high density. These numbers are different for R-9 and R-6, as illustrated in the table below and in the Zoning Ordinance:

	R-9	R-6	Note: Maximum densities do not apply to accessory apartments or any development of 4 or fewer total units (duplex, triplex, or quadplex developments).
Low Density “By Right”	4.8 Dwelling Units per Acre	7.2 Dwelling Units per Acre	
High Density w/ SUP	9 Dwelling Units per Acre	15 Dwelling Units per Acre	

Taken from Section 600, Permitted Use Chart, footnote A5 and Section 800, Table A & footnote A10

ZONING ANALYSIS

Today under R-9 zoning, the subject property could have up to 4 multifamily units on .71 acres for a low density development. With an SUP, it could have up to 6 multifamily units. Under R-6 zoning, the property would be able to have 5 multifamily units by right. With an SUP, it could have up to 21 units. (Keep in mind, other factors, such as building height, landscaping, parking lots, and open space requirements can mitigate the amount of development allowed on a site.)

Rezoning the Block vs Spot Zoning

In considering the applicant's request to rezone his property, staff analyzed the area of Sunset Street to see if a spot zone was warranted, or if the neighborhood would also benefit from rezoning to R-6. Staff narrowed down the subject area to the streets with direct access onto US-321, in order to increase density near major transportation corridors. This neighborhood features small single family homes on small lots. Most of these lots, except for three, conform to the 9,000 sq. ft minimum lot size. Only one home conforms to the 35' front yard requirement, while the rest are within 20' of the road. There are two apartment complexes in the subject area. The one at 122 Sunset St has 5 units on .86 acres, resulting in a density of 5.8 units per acre—and conforms to the low density standard of the R-9 district. The other, 119 Calvary Place has 12 units on 1.14 acre, resulting in a density of 10.5 dwelling units per acre. This exceeds the maximum density allowed in R-9, but would be considered medium to high density in R-6. This complex would require an SUP today.

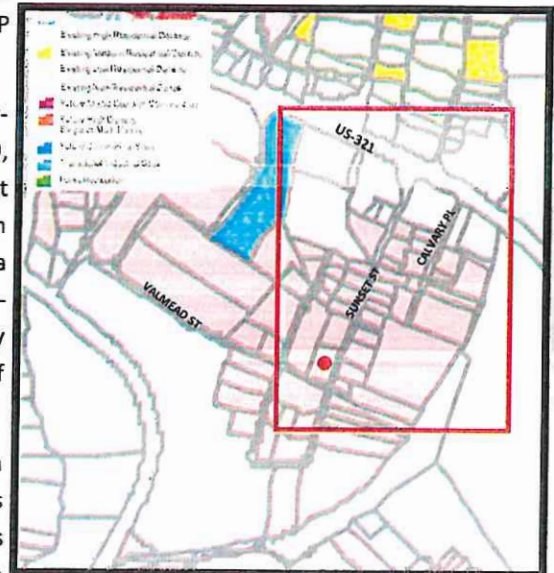
There is precedent in Lenoir for rezoning several properties in one neighborhood to accommodate a new development on one property in Lenoir (R 2-19, Summit Pl/Norwood St). It is uncommon but not illegal in NC planning to "spot zone" properties. A spot zone is a conscious decision to rezone a property in a way that does not reflect the surrounding area's land use and zoning (e.g. a property zoned B-2 in the middle of an R-15 zoning district). Good zoning practice dictates that such requests be scrutinized for their overall compatibility with the surrounding districts, and not be arbitrarily applied to the benefit of one landowner.

This neighborhood is identified in the Future Land Use Map as Existing High Density Residential. Rezoning the subject area to R-6 would be closer to its designated land use category than R-9 currently is. There are already a few lots within the neighborhood that fulfill minimum lot size standards for R-6 and are therefore non-conforming to the current R-9 zoning district. A photo on the next page identifies those properties which fall under the minimum lot size for R-9. While R-9 and R-6 maintain the same permitted uses, a lowering of minimum lot size makes living in the neighborhood a more reasonable undertaking for those seeking lower-cost housing options in the future adjacent to US-321.

For the sake of continuity, it makes sense to not only rezone the subject property, but also properties in the surrounding area to R-6. Doing so would give way for further opportunities to (re-)develop property in this neighborhood to better serve the growing population in need of more affordable and convenient housing options.

SB 382

A bill was recently passed in North Carolina (SB 382) that precludes local governments from downzoning properties without expressed consent from property owners. What is proposed in this instance, however, is an "upzoning" or, an increase in residential density. Staff is not required to obtain expressed consent from all property owners to up-zone property.



Lenoir Future Land Use Map

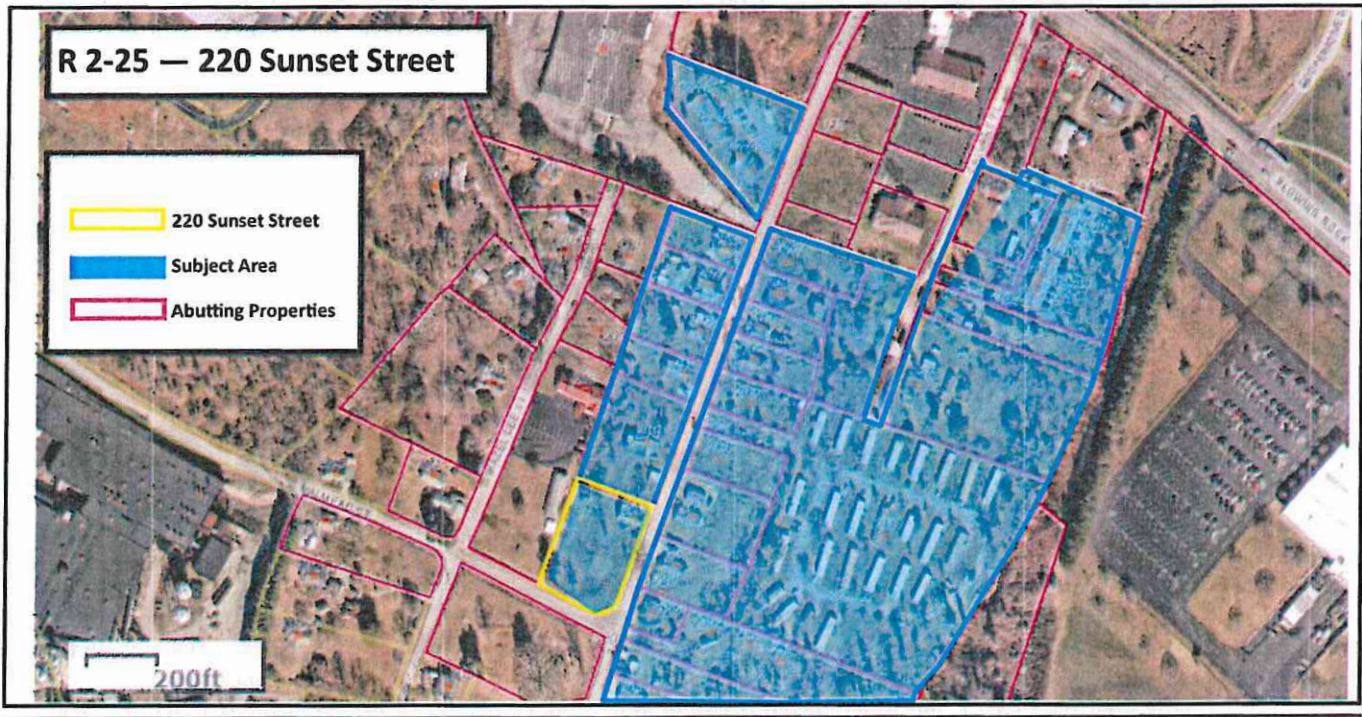


Staff Report

Zoning Amendment

CASE NUMBER R #2-25

LOCATION MAP/AERIAL PHOTOGRAPH



SUMMARY

Owner

MWS Investments LLC
(Marcus Sims)

Applicant

Marcus Sims

Location

220 Sunset St NW

NC PIN

2840940055; multiple

Project Planners

Hannah Williams, AICP, CZO
Matt Duchan, CZO

Description of Request:

The applicant is requesting to rezone the subject property (.71 AC) from R-9 (medium-density residential) to R-6 (medium- and high-density residential) to accommodate a minor subdivision for two duplexes. Planning staff recommends that the rezoning encompass the entire block of Sunset St and Calvary Pl to US-321, which is more consistent with the existing development pattern.

Staff Recommendation:

Approval of the request, based on the consistency statement on page 9.

Planning Board Recommendation:

Approval of the request as submitted by staff.

Public Comment:

Neighborhood residents, property owners, and churchgoers of Liberty Baptist Church addressed the board.

Planning Board Meeting: January 27, 2025. Notice of the meeting was mailed to the owners of all adjacent parcels (identified on map above) on January 17, 2025.

City Council (Public Hearing): Scheduled for February 18, 2025.

CITY OF LENOIR

COUNCIL ACTION FORM: February 18, 2025

I. Agenda Item:

R 2-25 Consideration of a request to re-zone 220 Sunset Street (NCPIN 2840940055) and surrounding properties along Sunset Street and Calvary Place from R-9 (Medium-density Residential) to R-6 (High-density Residential).

II. Background Information:

The applicant is requesting to rezone the property, zoned R-9, to be zoned as R-6 to allow for greater flexibility to develop multiple duplexes on the lot located at 220 Sunset Street. Planning Staff proposed to rezone several properties in addition to the subject property at 220 Sunset Street from R-9 to R-6. See attached staff report for more information.

III. Staff and Planning Board Recommendation:

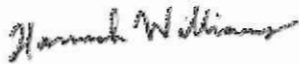
Planning Board recommends approval of the proposed rezoning of 220 Sunset St and the 25 other identified parcels along Sunset Street and Calvary Place, as recommended by staff, according to the following consistency statement:

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director: 

AERIAL PHOTOGRAPHS (SURROUNDING AREA & PROPERTY OWNERS)



Letters regarding the rezoning request were mailed on January 17, 2024 informing the property owners on the following page.



Properties identified under the minimum lot size in R-9 (< 9000 square feet)

PROPERTY OWNERS

Name	Address	City	State	Zip
Hubert & Helen Day	214 SUNSET ST NW	LENOIR	NC	28645
MWS Investments LLC	PO BOX 3495	LENOIR	NC	28645
Julian & Mary Baker	2310 HICKORY BLVD SW SUITE A	LENOIR	NC	28645
Paula Gilbert	210 SUNSET ST NW	LENOIR	NC	28645
Ricky & Cynthia Greene	202 SUNSET ST NW	Lenoir	NC	28645
Trustees of Edward & Carolyn Lutz	220 COUNTRYSIDE DR SE	LENOIR	NC	28645
Jeremy Story & Allison Hoyle	205 HAZEL LEE ST NW	LENOIR	NC	28645
Liberty Baptist Church	213 HAZEL LEE ST NW	LENOIR	NC	28645
Heather Gragg & Burlene Arnett	225 SUNSET ST	LENOIR	NC	28645
Madison & Natalie Crump	PO BOX 1654	LENOIR	NC	28645
Larry & Arlene Soblotney	6155 VENICE CT	HICKORY	NC	28601
William & Karen Dickson	509 PINEHURST PL	LENOIR	NC	28645
Dorothy Hendrix	203 SUNSET ST NW	LENOIR	NC	28645
Bobby & Adene James	PO BOX 2549	LENOIR	NC	28645
David Henson	201 SUNSET ST NW	LENOIR	NC	28645
Louis & Cornelia Cornell	127 CALVARY PL NW	LENOIR	NC	28645
Ann Gragg	225 SUNSET ST NW	LENOIR	NC	28645
Crystal Bryant	121 CALVARY PL	LENOIR	NC	28645
JBRG LLC	135 COMMERCIAL CT NE	LENOIR	NC	28645
Julio Garcia	106 CONLEY ST	Morganton	NC	28655
Minnie Church W/ Hrs C/O Kathy Church	301 SUNSET ST	LENOIR	NC	28645
Scott Benge	PO BOX 2017	LENOIR	NC	28645
Jeffrey Nichols	216 HAZEL LEE ST NW	LENOIR	NC	28645
Caldwell Gardens Renewal LLC	11810 GRAND PARK AVE, SUITE 600	ROCKVILLE	MD	20852
Dale Triplett	1349 BLOWING ROCK BLVD	LENOIR	NC	28645
Calvary Baptist Church	PO BOX 2005	LENOIR	NC	28645
Marc & Karen Guerra	28 MEANDERING WAY	GRANITE FALLS	NC	28630
Structall Building Systems LLC	350 BURBANK RD	OLDSMAR	FL	34677
Alyson Pittman	1711 POPLAR ST NW APT 13	LENOIR	NC	28645
Mary Ann Mendez	202 HAZEL LEE ST NW	LENOIR	NC	28645

Comparison of Allowable Uses

Sec. 600 of the Lenoir Zoning Ordinance establishes a chart of permitted and special uses for each zoning district. The R-9 zoning district allows for medium-density residential including single-family homes, manufactured homes, duplexes, triplexes, quadplexes, and higher-density multi-family as a special use. The R-6 zoning district allows for high-density residential and other compatible uses at appropriate densities.

Comparison of Zoning Districts

	R-9	R-6
Development Standards	Min Lot Size—9,000 SF for single-family; 15,000 SF for multi-family Setbacks Front: 35' Side Yard: 12' (non-residential abutting residential, 30') Street Side Yard: 25' Minimum Rear Yard: 25'	Min Lot Size - 6,000 SF for single-family; 9,000 SF for multi-family Setbacks Front: 35' Side Yard: 10' Street Side Yard: 25' Minimum Rear Yard: 25'
Summary of Permitted Uses	Accessory Cottage or Apartment Attached Dwellings (Townhomes) Bungalow Court Dwelling, single/two-family Group Care Facility (1-6 non-related residents) Manufactured Homes Multi-family, low-density (garden apartments) Zero Lot Line (single-family) Special Uses: Bed & Breakfast Communication Towers Day Care Centers Cultural and Community Facilities Group Care Facility (7+ residents) Group Housing (no care) (1-6 non-related residents) Manufactured Home Parks (existing) Multi-Family, medium/high-density Planned Residential Development Public Service Facilities	Accessory Cottage or Apartment Attached Dwellings (Townhomes) Bungalow Court Dwelling, single/two-family Group Care Facility (1-6 non-related residents) Manufactured Homes Multi-family, low-density (garden apartments) Zero Lot Line (single-family) Special Uses: Bed & Breakfast Communication Towers Day Care Centers Cultural and Community Facilities Group Care Facility (7+ residents) Group Housing (no care) (1-6 non-related residents) Manufactured Home Parks (existing) Multi-Family, medium/high-density Planned Residential Development Public Service Facilities

CONSISTENCY WITH THE COMPREHENSIVE PLAN AND NEXT STEPS

Consistency with the Comprehensive Plan

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

Next Steps

Following Planning Board, the rezoning request will be brought before a City Council public hearing and voted on. Pending approval, the applicant will then submit a zoning permit application along with civil and architectural plans as applicable, which will be reviewed by City of Lenoir planning staff. Concurrently, the applicant will apply for a driveway permit to establish access to the property in the future.

STAFF RECOMMENDATION AND CONSISTENCY STATEMENT

Staff recommends that the Planning Board recommend approval of the request, based on the following consistency statement, and call for a Public Hearing for City Council to consider the request on February 18th, 2025:

All decisions of the Planning Board and City Council should be based on consistency of the proposal with the comprehensive plan and any other officially adopted plan that is applicable. The comprehensive plan's future land use map identifies this parcel as "existing high density residential", flanked by future commercial sites in the ETJ, existing low-density residential to the north, and non-commercial sites to the south. Staff finds the proposed rezoning to be consistent with the goals and policy concepts of the Comprehensive Plan, as this would establish and reinforce the presence of high-density residential in an area that calls for it.

PLANNING BOARD RECOMMENDATION

Planning Board recommends approval of the rezoning of 220 Sunset Street and the 25 additional parcels from R-9 to R-6, as recommended by staff, based on the above consistency statement as presented at the Planning Board Meeting on January 27th.

PROPERTY PHOTOS (220 SUNSET ST.)



View of 220 Sunset Street home located on north-east corner of site



West view of site with Liberty Baptist Church sign and cemetery across the street in the background



Valmead St. heading west towards Clark Dr., Elizabeth Dr., and North Main St.



North view of property encompassing home on property and adjacent Liberty Baptist Church on Hazel Lee St.



AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 7th day of February in the year 2025
(In words, indicate day, month and year.)

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

City of Lenoir
801 West Avenue
Lenoir, NC 28645

and the Design-Builder:
(Name, legal status, address and other information)

J.M. Cope Inc.
346 9th Street SE
Hickory, NC 28602

for the following Project:
(Name, location and detailed description)

2022 PART F PROJECT – Lenoir Aquatic & Fitness Center Improvements
1031 Jim Bargar Court NE
Lenoir, NC 28645

Provide design and construction services for Lenoir Aquatic & Fitness Center, including renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

The Owner and Design-Builder agree as follows.

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

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A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Provide design and construction services for Lenoir Aquatic & Fitness Center, to include renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3)

racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

See attached RFQ dated November 26, 2024

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See attached RFQ dated November 26, 2024

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

To be determined.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

To be determined.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

The project budget is approximately \$700,000.00

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

To be developed

.2 Submission of Design-Builder Proposal:

January 15th, 2025

.3 Phased completion dates:

N/A

.4 Substantial Completion date:

October 31, 2025

.5 Other milestone dates:

Final Completion – 60 days after Substantial Completion

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

Ramsay Burgin Smith Architects, Inc.
225 N. Main Street, Suite 501
Salisbury, NC 28144

.2 Consultants

SE Collins Consulting – Mechanical & Plumbing Engineering
1817 E. Innes Street, Suite 201
Salisbury, NC 28146

Design Engineering – Electrical Engineering
817 E. Innes Street, Suite 201
Salisbury, NC 28146

Ramsay Burgin Smith Architects, Inc – Structural Engineering
225 N. Main Street, Suite 501
Salisbury, NC 28144

.3 Contractors

N/A

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Funding agency requirements and contracts mandate a completion of October 31, 2025.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder 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 agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

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Jared Wright, Director of Special Projects and Grants
 801 West Avenue
 Lenoir, NC 28645
 828.757.2153
 jwright@CI.LENOIR.NC.US

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

N/A

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

N/A

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Gary C. Webb, Vice President
 346 9th Street SE
 Hickory, NC 28602
 704.917.9755
 cwebb@jmcopco.com

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☒ Arbitration pursuant to Section 14.4
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall

init.

not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Preconstruction Services Lump Sum (\$25,000.00)

- Develop a comprehensive understanding of program goals and requirements.
- Review and confirm programming requirements and goals are being met through the design phase.
- Participate in design meetings with Owner and design consultants.
- Prepare and coordinate Schematic Design, Design Development and Construction Documents in accordance to owner's program.
- Provide formal deliverable with budget analysis, schedule updates, constructability, and value management throughout the design phase.
- Manage bid procedures during the bid phase.
- Provide recommendations for each bid package.
- Open book approach with trade partners solicitation, budget reconciliation for final Guaranteed Maximum Price.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached hourly billing rate for RBSA dated January 2025

Individual or Position	Rate
N/A	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of seven percent (7 %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder'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 Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.

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User Notes:

(925584218)

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;

Init.

- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.3.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing

of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants 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 Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 **Contingent Assignment of Agreements**

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; 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 an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, 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.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

N/A

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder 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 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder'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 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed 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 Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder 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 Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 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 terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder 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 Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the

Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder 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 Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- 3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build 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 6.3.7.

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

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner 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, 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 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

Init.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder 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.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder 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 Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder 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 Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design

services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.1.1, 3.1.1.2, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build 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 Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder'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 Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, 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 Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 Design-Builder 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 Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, 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 Design-Build 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 Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

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

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

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record

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copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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 an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, 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 Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, 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 Design-Build 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 Design-Builder to the Owner prior to issuance of 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 Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder 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 Design-Builder shall be responsible for precautions for the safety of, and 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

§ 10.2.7 The Design-Builder 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 the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder'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 Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder'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 Design-Builder, the Architect, Consultants, and Contractors, 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 Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be

responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time 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 and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 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.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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 Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, 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.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 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 13.2.3.1. 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 Design-Builder is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder 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.

OH&P is defined as 7%.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder 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 binding dispute resolution method selected in Section 1.3, 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

init.

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

§ 14.1.7 Claims for Consequential Damages

The Design-Builder 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 Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder 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 Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify 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.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 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.

§ 14.2.7 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 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.

§ 14.3 Mediation

§ 14.3.1 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 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, 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.

§ 14.4.1.1 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 or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 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.

§ 14.4.3 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.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 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).

§ 14.4.4.2 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 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 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, 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.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 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.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such

procedures. The Owner shall bear costs of (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 Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

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

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

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

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5

Init.

N/A

.6 Other:

N/A

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

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

Gary C. Webb Vice President

(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A141® – 2014

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 15:58:24 ET on 02/13/2025.

PAGE 1

AGREEMENT made as of the 7th day of February in the year 2025

City of Lenoir
801 West Avenue
Lenoir, NC 28645

J.M. Cope Inc.
346 9th Street SE
Hickory, NC 28602

2022 PARTI PROJECT – Lenoir Aquatic & Fitness Center Improvements
1031 Jim Barger Court NE
Lenoir, NC 28645

Provide design and construction services for Lenoir Aquatic & Fitness Center, including renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

PAGE 2

Provide design and construction services for Lenoir Aquatic & Fitness Center, to include renovating / reconfiguring two (2) family-style restrooms, separate male and female locker rooms, and existing whirlpool room, and three (3) racquetball courts. In addition, reconfiguring, replacing, or relocating existing mechanical, electrical, and/or plumbing systems.

PAGE 3

See attached RFO dated November 26, 2024

See attached RFO dated November 26, 2024

To be determined.

To be determined.

The project budget is approximately \$700,000.00

To be developed

January 15th, 2025

N/A

October 31, 2025

PAGE 4

Final Completion – 60 days after Substantial Completion

Ramsay Burgin Smith Architects, Inc.
225 N. Main Street, Suite 501
Salisbury, NC 28144

2 Consultants

SE Collins Consulting – Mechanical & Plumbing Engineering
1817 E. Innes Street, Suite 201
Salisbury, NC 28146

Design Engineering – Electrical Engineering
817 E. Innes Street, Suite 201
Salisbury, NC 28146

Ramsay Burgin Smith Architects, Inc – Structural Engineering
225 N. Main Street, Suite 501
Salisbury, NC 28144

N/A

Funding agency requirements and contracts mandate a completion of October 31, 2025.

§ 1.1.12 If the Owner and Design-Build and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, ~~or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

PAGE 5

Jared Wright, Director of Special Projects and Grants
801 West Avenue
Lenoir, NC 28645
828.757.2153
jwright@CI.LENOIR.NC.US

...

N/A

...

N/A

...

Garv C. Webb, Vice President
346 9th Street SE
Hickory, NC 28602
704.917.9755
cwebb@imcone.com

...

☒ Arbitration pursuant to Section 14.4

PAGE 7

Preconstruction Services Lump Sum (\$25,000.00)

- Develop a comprehensive understanding of program goals and requirements.
- Review and confirm programming requirements and goals are being met through the design phase.
- Participate in design meetings with Owner and design consultants.
- Prepare and coordinate Schematic Design, Design Development and Construction Documents in accordance to owner's program.
- Provide formal deliverable with budget analysis, schedule updates, constructability, and value management throughout the design phase.
- Manage bid procedures during the bid phase.
- Provide recommendations for each bid package.
- Open book approach with trade partners solicitation, budget reconciliation for final Guaranteed Maximum Price.

...

See attached hourly billing rate for RBSA dated January 2025

...

N/A

...

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of seven percent (7 %) of the expenses incurred.

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder'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 Design-Builder.

...

Two % Plus Prime rate as calculated by the Wall Street Journal on a daily basis.
PAGE 11

N/A

PAGE 30

OH&P is defined as 7%.

PAGE 34

- .5 ~~AIA Document E202™ 2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:~~

N/A

PAGE 35

N/A

...

Gary C. Webb Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Gary C. Webb, VP, 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 15:58:24 ET on 02/13/2025 under Order No. 4104242339 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



RAMSAY • BURGIN • SMITH ARCHITECTS, INC.
ARCHITECTURE • PLANNING • DEVELOPING
 225 North Main Street – Suite 501, Salisbury, North Carolina 28144 704-633-3121

OFFICE STANDARD RATE SHEET

January 2025

For additional architectural services above basic fees for projects, change orders, expert witnessing, special circumstance problem solving or projects without a clearly-defined scope, we provide services at the following hourly rates:

Principal \$ 190 per hour

The Partner in responsible charge of each project. The Principal has controlling authority to obligate the Firm in all contractual areas of design, production and finance.

Project Architect/Engineer \$ 125 per hour

The Architect responsible for overall project management. Oversees all design, construction consultations, site evaluations and preliminary studies, the preparation of plans, specifications and contract documents, administration of construction contracts and related

Intern Architect \$ 90 per hour

Graduate of an accredited School of Design working in the Intern Development Program towards partial satisfaction of the architectural licensing and certification requirements.

Technical Draftsperson \$ 80 per hour

Design and production personnel qualified in the preparation of plans, specifications and construction documents.

Administration \$ 60 per hour

All clerical, accounting and office management personnel.

Professional Consultants Cost plus 20%

Additional structural, mechanical and electrical engineering or other specialized consultant services.

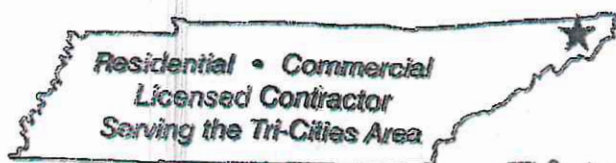
Travel Time

Travel time is billed at 1/2 the hourly rate if more than 3 hours total travel time is required for any trip.

Reimbursables

Expenses of reproduction	Cost plus 20%
Expenses of postage and handling of drawings, specifications, and other Documents.	Cost plus 20%
Expenses of renderings, models, and mock-ups	Cost plus 20%
Expense of any additional insurance coverage or limits including professional liability insurance requested by the owner in excess of that normally carried.	At Cost
Living expenses in connection with out-of-town travel.	At Cost
Long distance communications	At Cost
Fees paid for securing approval of authorities having jurisdiction over the Project.	At Cost
Transportation in connection with Project	.70 cents/mile

Asphalt Roads



3497 Hickory Boulevard
Hudson, NC 28638
Office (828) 212-5300
(828) 260-3558

TRACY Huffman

PROPOSAL SUBMITTED TO <u>UNITY PARK Community Gardens</u>	PHONE	DATE <u>2-7-25</u>
STREET <u>1431 College Ave SW</u>	JOB NAME <u>UNITY PARK</u>	
CITY, STATE AND ZIP CODE <u>Lenoir, NC 28645</u>	JOB LOCATION <u>B-Mix Asphalt</u>	

We hereby submit specifications and estimates for: 30,000 Sq. Ft.

☒ Hot Mix Topping

☐ Base

☐ Gravel

☐ Tack Coat

☐ Asphalt Sealer

☐ Grading

☐ Removal of Old Asphalt

☐ Removal of Top Soil

☐ Saw Cut and Removal

☐ Other

① Pack Stone with 4 to 6 ton Roller
② Apply tack on Concrete
③ Pave with 2" of B-Mix Asphalt

PAYMENT

Check ☒

Credit Card ☐

Cash ☐

Other ☐

NO GUARANTEE AGAINST:

Any kind of vehicle fluids, household and/or vehicle cleaning fluids. Owner responsible to fill in sides of driveway after completion of job within 6 weeks. Owners Initial _____

I, as owner, understand that I have the right to rescind the contract within three (3) business days, but would prefer to have the proposed work done today. I understand that by doing so, I waive any and all rights that I may have to rescind this contract within three (3) business days. I have read and understand the waiver.

Owner _____

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Flat Rate

dollars (\$ 58,000.00)

Payment to be made in full upon completion unless otherwise specified. All work guaranteed for 12 days 12 month.

All work is guaranteed to be as specified. All work is to be completed in workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders at additional cost. All agreements contingent upon strikes, accidents or delays beyond our control. We do not guarantee against any vegetation, grass, low spots or water damage, concrete ribbon, joints, tire marks, or power steering marks. Owner to carry fire, tornado and other necessary insurance upon above work. We cannot guarantee existing driveway from damage on any additions. In the event an attorney is employed to collect unpaid balance it will be the responsibility of the property owner for the attorney fees. The property owner will also be responsible for court costs and 18% interest on balances over 30 days.

Authorized Signature _____

Note: This proposal may be withdrawn by us if not accepted within N/A days.

ACCEPTANCE OF PROPOSAL. The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Once contract is signed, you will have 0 days to back out of contract or will be responsible for payment even if job is not done.

Signature: B. You

Date of Acceptance: _____

Witness: _____

Customer has inspected driveway and is satisfied. Signature: _____



Asphalt Roads

Residential • Commercial
Licensed Contractor
Serving the Tri-Cities Area

3497 Hickory Boulevard
Hudson, NC 28638
Office (828) 212-5300
(828) 260-3558

TRACY Huffman

PROPOSAL SUBMITTED TO <u>UNITY PARK Community Gardens</u>	PHONE	DATE <u>7-7-25</u>
STREET <u>1431 College Ave SW</u>	JOB NAME <u>UNITY PARK</u>	
CITY, STATE AND ZIP CODE <u>Lenoir, NC 28645</u>	JOB LOCATION <u>B-Mix Asphalt</u>	

We hereby submit specifications and estimates for: 30,000 Sq. Ft.

- ☒ Hot Mix Topping
☐ Base
☐ Gravel
☐ Tack Coat
☐ Asphalt Sealer
☐ Grading
☐ Removal of Old Asphalt
☐ Removal of Top Soil
☐ Saw Cut and Removal
☐ Other _____

- ① Pack Stone with 4 to 6 ton Roller
 ② Apply tack on Concrete
 ③ Pave with 2" of B-Mix Asphalt

PAYMENT

- Check ☒
 Credit Card _____
 Cash _____
 Other _____

NO GUARANTEE AGAINST:

Any kind of vehicle fluids, household and or vehicle cleaning fluids. Owner responsible to fill in sides of driveway after completion of job within 6 weeks. Owners Initial _____

I, as owner, understand that I have the right to rescind the contract within three (3) business days, but would prefer to have the proposed work done today. I understand that by doing so, I waive any and all rights that I may have to rescind this contract within three (3) business days. I have read and understand the waiver.

Owner _____

WE PROPOSE hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: Flat Rate dollars (\$ 58,000.⁰⁰)

Payment to be made in full upon completion unless otherwise specified. All work guaranteed for 12 days 12 month.

All work is guaranteed to be as specified. All work is to be completed in workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders at additional cost. All agreements contingent upon strikes, accidents or delays beyond our control. We do not guarantee against any vegetation, grass, low spots or water damage, concrete ribbon, joints, tire marks, or power steering marks. Owner to carry fire, tornado and other necessary insurance upon above work. We cannot guarantee existing driveway from damage on any additions. In the event an attorney is employed to collect unpaid balance it will be the responsibility of the property owner for the attorney fees. The property owner will also be responsible for court costs and 18% interest on balances over 30 days.

Authorized Signature _____

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ACCEPTANCE OF PROPOSAL. The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Once contract is signed, you will have 0 days to back out of contract or will be responsible for payment even if job is not done.

Signature: B. You Date of Acceptance: _____

Witness: _____

Customer has inspected driveway and is satisfied. Signature: _____





M&K Enterprises LLC

PO Box 1616 | Lenoir, North Carolina 28645
828-217-1222 | office.mkentllc@gmail.com | www.mandkenterprises.com

RECIPIENT:

City of Lenoir

College Avenue Southwest
Lenoir, North Carolina 28645

Quote #291

Sent on

Feb 06, 2025

Total

\$68,824.08

Product/Service	Description	Qty.	Unit Price	Total
Site Prep and Conditioning	We will prepare the site by placing the ABC Stone on grade to promote drainage, ensuring it is compacted and primed for the subsequent application of Asphalt. This process entails ripping the existing stone, hydrating it with precision using our tanker truck to achieve optimal moisture levels, and compacting it thoroughly with a stone compaction roller. Total Measured area is equal to 30,186 sq ft.	30186	\$0.11	\$3,320.46
Pave Standard Duty	Upon the successful preparation of the stone subgrade, we will proceed to apply a 2-inch layer of S9.5B Asphalt to the specified areas as per the request of the City of Lenoir. This scope includes two large parking areas, one smaller area surrounding the Community Garden Building on site, as well as the entrance and exit to be constructed on the lower level, which will utilize a third entrance located on College Avenue.	30186	\$2.17	\$65,503.62
Asphalt Escalation Clause and Disclaimers	Asphalt Escalation Clause: All Asphalt Concrete prices were developed based on the current terminal liquid asphalt price. Due to the high volatility of oil prices, adjustments to the asphalt concrete pricing may be required. M&K Enterprises shall have the sole option of any asphalt adjustments that may become necessary during the life of this contract. NOTE: We will provide all equipment, trucking, set-up and man-power to complete the project in the above quoted price. M&K Enterprises LLC will perform this work for the sum of (Not Including Index Adjustments for Asphalt and Stone as dictated by the Consumer Price Index or any increases associated with due to both the suppliers of Asphalt and Stone adjusted increase to meet the rise of fuel and or associated cost)	1	\$0.00	\$0.00
Contact	Contact Tim Looper at 828-764-3372 with any questions. I can also receive text or you can email me at: office.mkentllc@gmail.com	1	\$0.00	\$0.00*

* Non-taxable

**M&K Enterprises LLC**

PO Box 1616 | Lenoir, North Carolina 28645
828-217-1222 | office.mkentllc@gmail.com | www.mandkenterprises.com

Total **\$68,824.08**

This quote is valid for the next 15 days, after which values may be subject to change.

Signature: _____ Date: _____

Hoffman Paving & Grading, Inc.
711 Complex Place
Lenoir, NC 28645
(828) 754-5582

City of Lenoir
Unity Gardens
Lenoir, NC 28645

February 12, 2025

We propose to do the following work:

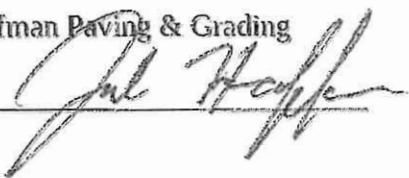
Pave the Unity Gardens as discussed. The City of Lenoir
will provide any gravel & majority of grading.
Hoffman will fine grade & pave 2" 95 B-mix Asphalt

Fine Grading	\$ 1,500.00
Asphalt Paving	<u>\$85,500.00</u>
Total	\$87,000.00

Respectfully Submitted

Hoffman Paving & Grading

By



Representative:

By _____

REQUEST TO SURPLUS CITY PROPERTY



Department Requesting Disposal of Surplus Property	
Date of Request	2/4/2025
Department Name	Police Department
Contact Name	Maj. Andy Wilson
Phone	828-757-2100

ITEM	QTY	CODE*	SERIAL/VIN #	MAKE	MODEL YEAR	MILEAGE/ MACHINE HOURS	REASON FOR REQUEST	CURRENT LOCATION OF THE ITEM	ORIGINAL PURCHASE PRICE	DATE OF PURCHASE	ESTIMATED SALVAGE VALUE	ITEM IN WORKING ORDER Y/N	APPROVED TO LIST ON GOVDEALS
Black Patrol Plate Carriers	21	S1	N/A	Rothco	NA / 2015	N/A	Transfer to Requesting Agency	Lenoir PD	\$57.00 ea.	8/16/15	\$1.00	Y	☐
Ballistic Plates	42	S1	See Attached Doc for Serial Numbers	United Shield Int.	ZETA-6H / 2015	N/A	Transfer to Requesting Agency	Lenoir PD	\$200.00 ea.	8/16/15	\$1.00	Y	☐
Black Helmets	21	S1	See Attached Doc for Serial Numbers	Ceradyne	BA3A - 2015	N/A	Transfer to Requesting Agency	Lenoir PD	\$200 ea.	7/1/15	\$1.00	Y	☐
SRT Tactical Vests	8	S1	N/A	Protech	Titan / 2014	N/A	Transfer to Requesting Agency	Lenoir PD	\$3500.00 ea.	7/1/14	\$1.00	Y	☐
Ballistic Plates	16	S1	See Attached Doc for Serial Numbers	Protech	Titan / 2014	N/A	Transfer to Requesting Agency	Lenoir PD	\$500.00	6/28/19	\$1.00	Y	
Green Ballistic Helmet	3	S1	See Attached Doc for Serial Numbers	Protech	Delta LT -2015	N/A	Transfer to Requesting Agency	Lenoir PD	\$550.00 ea.	7/1/15	\$1.00	Y	☐
													☐

* Please enter one CODE per item: (S1) Obsolete (S2) Too Costly to Maintain (S3) Beyond Repair (S4) Cannibalized

APPROVED BY	DATE

[illegible]

ALL SURPLUS ITEMS ARE LISTED ON GOVDEALS IN ACCORDANCE WITH CITY OF LENOIR RESOLUTION NO. 6-2007, NC GENERAL STATUTES 160A-270 AND NCGS 160A-270 (c)



SIDEWALK CAFE PERMIT APPLICATION

CITY OF LENOIR PLANNING DEPARTMENT

CITY HALL • 801 WEST AVENUE NW • PO BOX 958 • LENOIR, NC 28645

The City of Lenoir allows sidewalk cafes within the downtown Municipal Service District when a permit is approved by City Council, in accordance with Sec. 13-3 of the Lenoir City Code. For questions about this application form or the rules pertaining to sidewalk cafes in the City of Lenoir, please contact the Planning Department at 828.757.2200. PERMITS ARE GOOD FOR A PERIOD OF 1 YEAR AND MUST BE RENEWED ANNUALLY.

Submittal Checklist:

- ☐ Application Form
- ☐ Application Fee
- Site Plan (including dimensions):
 - Must show all tables, chairs, walkway areas, and entrances/exits to the restaurant.
 - Must show location and materials of temporary barrier to be erected around the café.
 - Must show 5 ft. clear pedestrian path on sidewalk adjacent to café area.
- ☐ Documentation of Public Liability Insurance
 - Must carry \$1,000,000.00 insuring against personal injury, wrongful death and property damage, including the City as a party insured and insuring the City against any liability resulting from the uses permitted pursuant to Section 13-3 of the Lenoir City Code.
- ☐ Copies of All Permits and Licenses
 - County Health Department and any other applicable regulatory agencies
 - Current ABC/ALE permits if the sidewalk café intends to serve alcoholic beverages on the public sidewalk. NOTE: revised permits may be required to include the expanded areas.

Permit Information:

Property Address: 128 Main St. NC PIN: _____

Zoning District: B-3 Located within Municipal Service District? ☒ Yes ☐ No

Business Name: Side Street Pour House & Grill

Will ABC permit include sidewalk café area? ☒ Yes ☐ No

Number of seats in Restaurant: 100 Number of seats* proposed for sidewalk café: 24

*Note: seating in sidewalk café can not exceed 50% of the seating within the restaurant.)

Contact Information:

Name of Restaurant Operator: Kevin Eller

Street Address: 2606 Kears Pl

City: Lenoir State: NC Zip: 28645

Phone Number: 828-234-4535

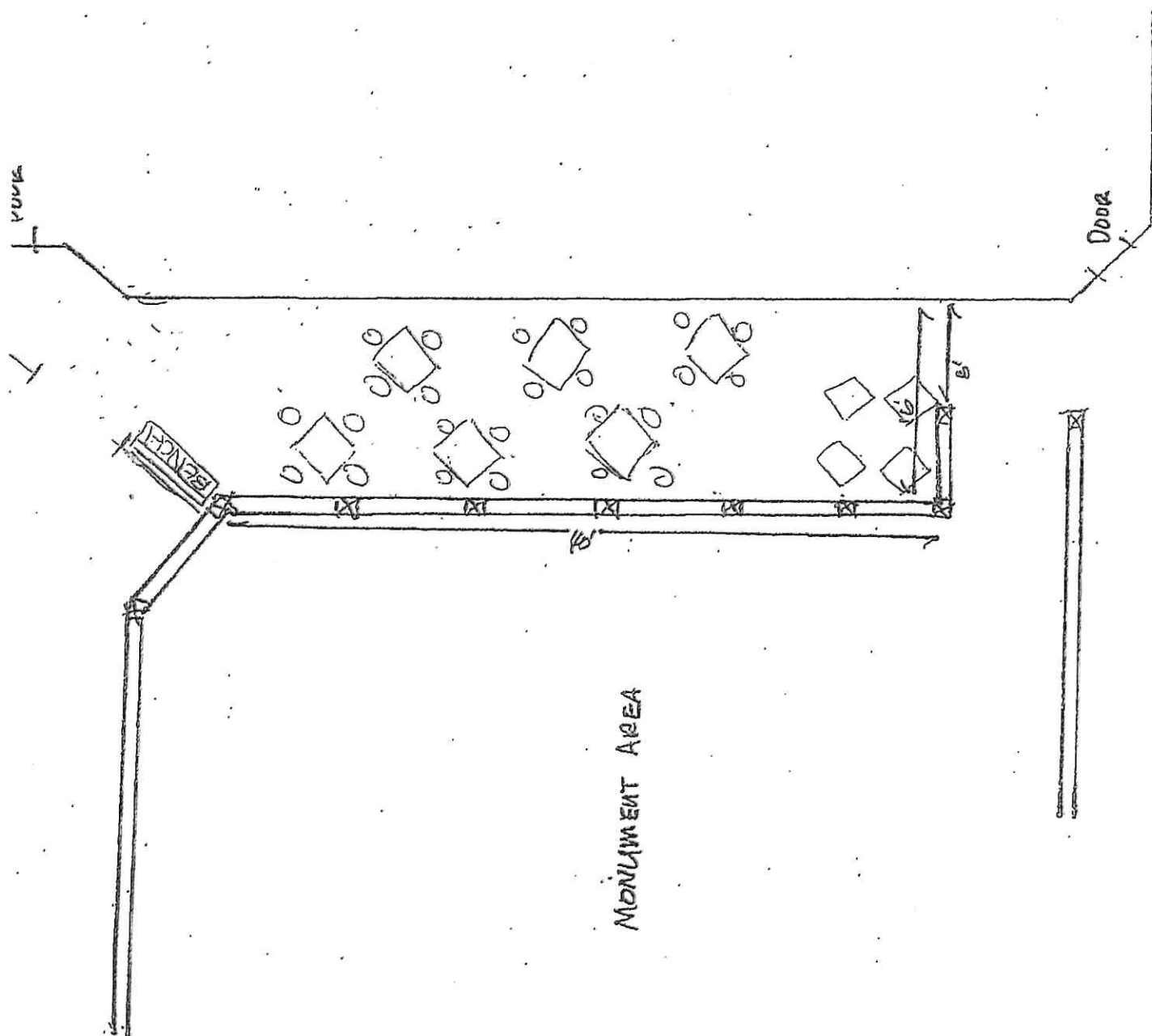
Fax Number: _____

Email: kevin.eller@yahoo.com

Owner's Signature: [Signature]

By signing, I certify that the information presented in this application is true to the best of my knowledge and I consent to enter into a hold-harmless agreement with the City and comply with all provisions of the City ordinances in the establishment and operation of the sidewalk café described in this application.

OFFICIAL USE ONLY: City Council approved on _____ Permit No. _____



GS508298



CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
02/21/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Reliable Insurance Agency Inc 512 Mulberry Street SW Lenoir NC 28645	CONTACT NAME: Kimmie Rogers	
	PHONE (A/C, No, Ext): 828-758-2364	FAX (A/C, No): 828-758-1736
	E-MAIL ADDRESS: kimmie@reliableinsurance.biz	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Nautilus Insurance Company	NAIC # 17370
INSURED Side Street Entertainment DBA Side Street Pour House & Grill PO Box 850 Lenoir NC 28645	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ GENERAL LIABILITY	Y	N	NN1768729	03/30/2025	03/30/2026	EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/OP AGG \$ 2,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						\$
	☐ NON-OWNED AUTOS						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	☐ OCCUR						AGGREGATE \$
	EXCESS LIAB						\$
	☐ CLAIMS-MADE						
	DED						WC STATU- TORY LIMITS
	RETENTION \$						OTH- ER
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						E.L. EACH ACCIDENT \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Restaurant

Certificate holder is listed as Additional Insured per form CG2026 (12/19).

CERTIFICATE HOLDER

CANCELLATION

City of Lenoir Po Box 958 Lenoir NC 28645	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Danielle Swade</i>

© 1988-2010 ACORD CORPORATION. All rights reserved.



CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
02/21/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Reliable Insurance Agency Inc 512 Mulberry Street SW Lenoir NC 28645	CONTACT NAME: Kimmie Rogers PHONE (A/C, No, Ext): 828-758-2364 FAX (A/C, No): 828-758-1736 E-MAIL ADDRESS: kimmie@reliableinsurance.biz INSURER(S) AFFORDING COVERAGE INSURER A: Nautilus Insurance Company NAIC # 17370 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Side Street Entertainment DBA Side Street Pour House & Grill PO Box 850 Lenoir NC 28645	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	Y	N	NN1768729	03/30/2025	03/30/2026	EACH OCCURRENCE
	☒ COMMERCIAL GENERAL LIABILITY						\$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							\$ 100,000
							MED EXP (Any one person)
	GEN'L AGGREGATE LIMIT APPLIES PER:						\$ 5,000
	☒ POLICY ☐ PRO-JECT ☐ LOC						PERSONAL & ADV INJURY
							\$ 1,000,000
							GENERAL AGGREGATE
							\$ 2,000,000
							PRODUCTS - COM/OP AGG
							\$ 2,000,000
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	☐ ANY AUTO						\$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per person)
	☐ HIRED AUTOS						\$
							BODILY INJURY (Per accident)
							\$
							PROPERTY DAMAGE (Per accident)
							\$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE
	☐ EXCESS LIAB						\$
	☐ DED ☐ RETENTION \$						AGGREGATE
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT
							\$
							E.L. DISEASE - EA EMPLOYEE
							\$
							E.L. DISEASE - POLICY LIMIT
							\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Restaurant

Certificate holder is listed as Additional Insured per form CG2011 (12/19).

CERTIFICATE HOLDER**CANCELLATION**

Keystone Properties Llc 2606 Keyes Place Lenoir NC 28645	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Danielle S Wade</i>
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