

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest Board of Commissioners

To be held Tuesday, October 9, 2018 at 4:30 p.m.

A. Roll Call by the Clerk

Mayor George F. Goosmann, III
Commissioner Fran G. Cogburn
Commissioner E. Glenn Kelly
Commissioner Doris P. Loomis

B. Approval of the Minutes

1. The minutes of the Regular Meeting held on Tuesday, September 11, 2018 will be presented for approval.

C. Public Comment

D. Reports of Officers

1. Chief of Skyland Fire and Rescue
2. Police Department
3. Public Works Director
4. Town Manager

E. New Business

1. Consideration of Resolution 2018-07
Requesting the North Carolina General Assembly to Consider Even-Year Election Cycles for the Town of Biltmore Forest
2. Consideration of Capital Project Ordinance for Public Works Building Project
3. Consideration of Agreement with Beverly-Grant, Inc. for Construction Manager at Risk for Public Works Building Project
4. Accessory Structure Ordinance Amendment – Discussion and Survey Results
5. Traffic Control & Speed Mitigation Survey Results – Discussion and Direction
6. Consideration of Town Code Amendment regarding Political Signs
7. Zoning Permit Timelines and Processes - Discussion

F. Petitions, Motions, and Other Business

G. Public Comment

H. Adjourn

MINUTES OF THE MEETING OF THE MAYOR AND TOWN COMMISSIONERS OF
BILTMORE FOREST HELD SEPTEMBER 11, 2018.

Be it remembered by those that follow these proceedings that the Governing Board of the Town of Biltmore Forest met and conducted the following business:

Roll call by the Clerk:

Mayor George F. Goosmann, III, present

Commissioner Fran G. Cogburn, present

Commissioner Doris P. Loomis, present

Commissioner E. Glenn Kelly, present

Mr. Jonathan Kanipe, the Town Manager, and Mr. William Clarke, the Town Attorney, were also present.

Mayor Goosmann called the meeting to order at 4:30 pm.

Mayor Goosmann asked for a motion to approve the August 14, 2018 minutes and the Public Hearing minutes. A motion was made by Commissioner Loomis to approve the minutes. The motion was seconded by Commissioner Cogburn and unanimously approved.

Mayor Goosmann asked if there was any Public Comment. There was no Public Comment.

Chief Ryan Cole gave the monthly report for the Skyland Fire Department. Three personnel from the Fire Department are deploying to help with Hurricane Florence. Three additional personnel plan to leave at the end of the week. Chief Cole will also assist with hurricane efforts. It could cause problems for us around the weekend with a lot of rain and wind but will stay minimal. Mayor Goosmann thanked the Fire Department for all their hard work.

Chief Beddingfield gave the monthly report for the Police Department. There were three days of firearms training and personnel worked very hard during this time. There is a huge opioid

epidemic and officers are fully equipped with Narcan. Commissioner Kelly confirmed the qualifications officers have to go through with handgun, shotgun, and rifle training. Commissioner Kelly also asked if officers could show residents their equipment such as the bulletproof vests and other duty equipment at the open house tomorrow. Chief Beddingfield said yes. Mayor Goosmann thanked officers for all their hard work.

Mr. Terry Crouch gave the monthly report for the Public Works department. Commissioner Kelly asked if the pond was cleaned out as the Town requested. Mr. Crouch said yes. Mayor Goosmann thanked Mr. Crouch.

Mr. Jonathan Kanipe presented for consideration Resolution 2018-06 authorizing sale of surplus equipment. This resolution allowed the Town to sell surplus service weapons to full-time, sworn law enforcement officers that currently work for the Town. This was due to the Town's purchase of new handguns in the last budget year. A motion was made by Commissioner Kelly and seconded by Commissioner Cogburn. The resolution was unanimously approved for the sale of surplus equipment.

Mr. Kanipe discussed the potential Zoning Ordinance Amendments. Mr. Kanipe said a new section would be created (section 153.049), concerning driveway gates. This proposed draft included the following provisions: Driveway gates and columns would not be allowed in the front or side yard setback. The opening has to be wide enough for emergency vehicles to get through. The gate should be accessible by siren or strobe activation, code access or key access. Emergency vehicles could be equipped with a transmitter to automatically open a gate upon approach.

Mr. Kanipe removed the exceptions from last year's fencing ordinance amendment. The proposed new section would specifically detail what would be allowed, and nothing else would be allowed. This would include front yard fencing and electric fences. Swimming pools are already a conditional use and fences around pools would be considered as a part of the conditional use application. Commissioner Cogburn said that taking out the exceptions makes this much clearer. Residents will also be able to discuss this matter at the open house tomorrow and feedback will be provided at next month's meeting.

The Board then discussed zoning permit timelines. Currently, a Town zoning permit is valid for 6 months from when it is issued. Construction must be completed within two years after construction begins. The Town's current zoning ordinance states this two-year time limit is in relation to the building permit, which would seem to indicate that Buncombe County building permit timelines prevail. Mr. Kanipe would like to clarify the timelines for a zoning permit and building permit. We have had some homes in the Town that have exceeded the two-year construction deadline. A per diem penalty was discussed for any construction that exceeds the time limit. The penalty should be connected to the time limit and not to the number of contractors who have been hired for the construction. The Board agreed that staff should meet with Buncombe County to determine how its process works, and Mr. Kanipe and Ms. Isenhower have set a meeting to review this process in consideration of aligning the procedures.

Mr. Kanipe said citizens should be educated about interactions with wildlife. The Town recently had a negative interaction that resulted in a resident shooting a bear and discharging a firearm within the Town. The Town strongly discourages this action. Residents are advised to not leave trash out before their set pickup time and are asked to put bird feeders up once bears have discovered the location. Recently, one resident contacted the police department multiple times for bears on the property but refused to remove the bird feeder. It is disrupting the police department and disrupting neighbors. Mr. Kanipe suggesting fining residents who continue to leave out bird feeders. Commissioner Kelly said it should be called an animal feeder and not necessarily a bird feeder. Grills and trashcans are also a concern. Mr. Clarke said this is a public safety issue not just a police issue. This information should be shared and discussed with residents at the open house. Any proposed ordinance could reference animal feeders, grills, and trashcans. Mr. Clarke was asked if any fine imposed would become a lien on the property; this could be possible if a judgment was first obtained. Mr. Kanipe and Mr. Clarke will meet and this will be discussed further at next month's meeting.

The open house is tomorrow from 4pm-6pm. Wildlife officials will be preparing for the hurricane so they will be unable to attend. The Cooperative Extension is also unable to attend due to a scheduling conflict. The boxwood blight issue was discussed. There have been two confirmed cases. Information will be available for residents at the open house. Cooperative Extension is

willing to give a lecture to discuss in detail, perhaps in late October or early November. Wildlife officials may also be able to give a lecture.

Mr. Kanipe gave an update on the Public Works building project. The application to the Local Government Commission is awaiting approval. We are still waiting to hear back regarding the even year elections.

The broadband project is still being worked on. The lecture series for the cabins will be held at the Country Club on September 30. The Board of Adjustments approved projects for 12 Cedar Hill Drive, 130 Stuyvesant Road, 39 Cedar Hill Drive, and 957 Hendersonville Road. Plans for the Public Works building were reviewed and approved by the Design Review Board.

Mayor Goosmann asked for Public Comment. Mrs. Joyce Young asked about the status of the ordinance for the removal of the electric fences. Mr. Kanipe said the Town has been working with property owners to remove these in compliance with the ordinance. Ms. Toya Hauf asked about input from citizens regarding traffic control and indicated her hope that the speed limit reduction would be considered even if feedback from other parts of the Town were not supportive. Mayor Goosmann said that the Board still makes the final decision for traffic control and speed limits.

There being no further business, Mayor Goosmann adjourned the meeting at 5:50 p.m. The next Board of Commissioners meeting was scheduled for Tuesday, October 9, 2018 at 4:30 p.m.

ATTEST:

Jonathan B. Kanipe
Town Manager

George F. Goosmann, III
Mayor

BILTMORE FOREST POLICE DEPARTMENT

Department Head Report

October 9, 2018 Board of Commissioners Meeting

Chris Beddingfield, Police Chief

Police Dept. Monthly Report 09/01/18 to 09/30/18

Calls for Service:

Officers responded to 569 calls for service.

Accident - 2	Accident - PI -1
Alarm - 29	Animal Carcass - 3
Assist EOC - 4	Assist Motorist - 5
Assist Other Agency -6	Assist Resident - 8
Bear Report – 9	Business Check - 71
Busy -8	Crime Prev. - 30
Chase-0	Direct Traffic -3
Distressed Animal -2	Disturbance - 4
Dog Complaint - 15	Escort - 3
Fire – 3	Gun/Gunshots - 2
Hit and Run - 0	House Check - 85
Improper Parking –3	Incomplete 911- 0
Investigation – 13	Intoxicated Driver-2
Mental Patient - 0	Missing Person - 1
Noise Disturbance – 1	Ordinance Violation - 4
Out of Service - 0	Out of Town - 2
Person Down – 0	Power Outage -1
Radar Operation – 13	Road Blocked -5
Service of Car - 1	Sign Ord Violation - 1

Special Assignment – 5	Special Check - 7
Speed/Reckless Driving-1	Suspicious Person - 9
Suspicious Vehicle - 22	Vandalism - 0
Vehicle Stop - 19	Well-being Check - 5

Total Number Of Calls: 569

Time Consumption Summary:

Approximations

Business Checks-10 hours

House Checks-47 hours

Radar Operation-4 hours

Vehicle Crash Invest.-4 hours

Notable Calls and Projects:

Open house was a huge success-overwhelmingly number one complaint from the community was speeding traffic. Traffic survey compiled and submitted. Receiving lots of positive feedback from the speed signs. Officers have been conducting more visible speed enforcement.

Conducted a lockdown/active shooter drill with Carolina Day School. Preparing for upcoming drills and active shooter training at MAHEC, Care Partners, and Forest Dermatology

Several incidents involving dogs running at large. The owner of these dogs has been criminally charged several different times and the animals were eventually seized and taken to the Buncombe County Animal Shelter until the criminal cases are adjudicated or a judge orders them returned. We may need to examine our animal ordinances and make them similar or the same as the county ordinances. This would make these incidents much easier to handle.

Incident involving a fox in distress. The fox was struggling physically and was covered with insects. An officer dispatched the animal and we sent the carcass to

be tested for disease. We had several meetings with concerned residents over both the gunfire from the officer and what the animal was possibly suffering from.

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Town Manager's Monthly Report

Date: October 3, 2018

Public Works Building Update

The Town received approval from the North Carolina Local Government Commission (LGC) on October 2 for the debt financing portion of the public works building project. This portion covers \$800,000 of the total construction cost and repayment is for a term of ten years. Public works staff is performing all tasks to empty the building after receiving this final approval, and storage containers will be located on site for the project's duration to ensure we maintain service levels during construction. As we are working through this transition, staff requests the Board's direction on a logistical matter related to construction.

The Board discussed the removal of the cardboard recycling container due to construction previously. This recycling container is used frequently by residents and usage increases during the holiday season. Before finalizing the removal of this container, staff wanted to ensure this was still the Board's desire. As a reminder, the Town does pick up cardboard with recycling every two weeks, so there is still a manner for citizens to dispose of cardboard at their home. We gathered pricing from our current recycling vendor (Curbside Management) as well as Waste Management for smaller footprint cardboard containers. Unfortunately, the price for smaller containers is not necessarily cheaper than the current 20 feet long, 25 cubic yard container. The Town pays \$300/month for one pickup per week. Curbside has a 14 feet long, 14 cubic yard container that is \$280/month for one pickup per week. Waste Management offers an 8 cubic yard container (similar to the existing trash dumpster size) for \$373/month with three pickups per week. Staff feels the additional space for storage and equipment needs are paramount, but the removal of the cardboard container will certainly result in citizen concerns.

Stormwater Master Plan Phase 1 Update

The draft stormwater report was provided to the Town in mid-September for Phase 1 of the Master Plan. The final report is being prepared, and I will provide that in its entirety to the Board next month. As we begin pressing into Phase 2 of the project (approved during the FY19 budget process), I wanted to provide a brief snapshot the Town's stormwater infrastructure.

According to the field analysis performed by WithersRavenel, 70.4 percent of the Town's stormwater structures are rated as "Fair" or below. The definition of "fair" in this instance is infrastructure in working order but showing signs of age, with significant wear and tear, and/or debris and sediment is substantial. As you can imagine, the levels below "fair" ("poor" and "needs repair") present even greater problems and conditions. The remainder of the report provides an analysis of problematic areas that were identified by the Town or by WithersRavenel hydrological analysis. Phase 2 of the Master Plan will expand upon these findings and provide specific recommended actions to improve these problematic areas.

Greenwood Park Update

Staff and the Town's consultant from WithersRavenel received a great deal of feedback during the Open House. This information is being compiled by WithersRavenel and will be presented as part of their formal master plan presentation for Greenwood Park. We received initial guidelines from the State Division of Parks and Recreation regarding the coming PARTF grant cycle, and the Town is working with WithersRavenel to prepare the Greenwood Park plan for this application process.

Boxwood Blight / Cooperative Extension Seminar

The Town has coordinated with the Cooperative Extension Service to host a seminar on boxwood blight (and likely other topics) on Tuesday, December 11 from 6-7 p.m. here at the Town Hall. Note, this is the same day as the Board's regular meeting. Cliff Ruth, the Extension Area Agent, plant pathologist Dr. Sara Villani, and Research Assistant Rachel Kreis will be presenting information at the forum. This was their first availability.

Open House Report

The Open House held by the Town on September 12 was successful. We received many positive responses and many residents were hopeful this would be an annual event. The feedback received was helpful and meaningful (see other agenda items) and it was nice for Town staff and other agencies to interact with citizens in an informal setting. Land of Sky Regional Council enjoyed being able to present information about area transportation projects, recruit volunteers for the Area Agency on Aging, and receive feedback from citizens regarding broadband options. The Town's consultants for our stormwater and parks planning projects indicated the turnout exceeded their expectations and what they were accustomed to seeing. We hope to have next year's Open House around the same time, and hope that it will coordinate with the unveiling of our new Public Works building.

Community Preservation Committee Lecture

The Biltmore Forest Community Preservation Committee held their annual lecture at the Biltmore Forest Country Club on Sunday, September 30. The event was exceptionally well attended, with some estimates ranging from 180 to 200 people. The Town appreciates the generosity of the Club and allowing the use of their space for this event. The Town anticipated the Public Works building being under construction as this lecture was originally planned, which led to all planning and logistics being made for the Country Club.



Biltmore Forest Public Works Department

Terry Crouch
Director Of Public Works
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Mobile: 777-4466
Email: tcrouch@biltmoreforest.org

PUBLIC WORKS MONTHLY REPORT **SEPTEMBER 12, 2018 TO OCTOBER 9, 2018**

- Completed all of the normal routine services to the residents on schedule, garbage collection, recycling and brush removal.
- Replaced the entire streetlight, new wiring through the light and sign holders at Stuyvesant and Hilltop intersection due to vehicle damage by a contractor.
- We have collected a total of 15 loads of brush for the residents and transported them to Asheville Stump and Dump.
- Completed several tree inspections for the residents.
- Repaired 3 streetlights (general repairs).
- Collected 28.95 tons of garbage for the month of September and 15.86 tons of recycling.
- Completed 57 special requests from the residents, extra garbage collection, meter rereads, house no. signs, recycling request, etc and completed 31 utility locate request.
- Completed the 2 monthly bacteriological water samples for September 2018 and both were in compliance with the state.
- Assisted Paynes tree service in taking down and removing a up rooted pine tree across from 11 Brookside road.

- We have completed the inspections of all of the residents RPZ devices.
- Spent several hours cleaning out storm drains and getting the Town ready for hurricane Florence.
- 48 hours were spent maintaining the Town's parks and pond.
- We have installed both the leaf boxes on the trucks in preparation for leaf season.
- Mowed and weedeated all of the road shoulders and parks as needed.
- We are still collecting litter on the road shoulders on Hendersonville road from Cedarcliff road to Busbee road weekly.
- We spent 323 hours maintaining the Town's roads and road shoulders.

Sincerely

A handwritten signature in black ink that reads "Terry Crouch". The signature is written in a cursive style with a large, stylized "T" and "C".

Terry Crouch
Director of Public Works



MONTHLY FINANCIAL REPORT

SEPTEMBER 2018

CASH ACCOUNTS

First Citizens Money Market Checking	606,080.35
NCCMT General Fund Term	2,337,940.50
NCCMT General Fund Government	804,684.96
NCCMT Water Fund Government	94,676.23
TOTAL	3,843,382.04

2018 PROPERTY TAXES

Real Property	755,256,344
Personal Property (Including BUS & IND)	6,076,905
Personal Property (Public Service Companies)	4,954,281
Exemptions	(621,350)
Deferrals	(13,565,600)
Releases	
Total Assessed	752,100,580
Total Levy	2,481,932
Budgeted Levy	2,447,140

Tax Collection To Date	Budgeted Levy	Amount Collected*	Percent Collected
Ad Valorem (2018)	2,447,140	374,420	15.30%
*(Includes Int Pymts)	2,481,932		15.09%
DMV Ad Valorem (2018)	105,634	23,937	22.66%

FIRST CITIZENS CHECKING (Monthly Transaction Report)

Beginning Balance	499,689.48
Cleared Checks	(133,407.58)
Cleared Deposits	397,981.87
Cleared Credits	8,941.61
Cleared Debits	(87,347.23)
Cleared E-payments	(71,628.84)
Change in Account Balance	114,539.83
Prelim balance	614,229.31
Outstanding Items	(8,148.96)
Ending Balance	606,080.35

NORTH CAROLINA CASH MANAGEMENT TRUST

GENERAL FUND Government

Beginning Balance	630,210.21
Transfer to GF Term Account	-
Local Gov't Distribution (NCDOR)	173,382.11
Interest Earned	1,092.64
Ending Balance	804,684.96

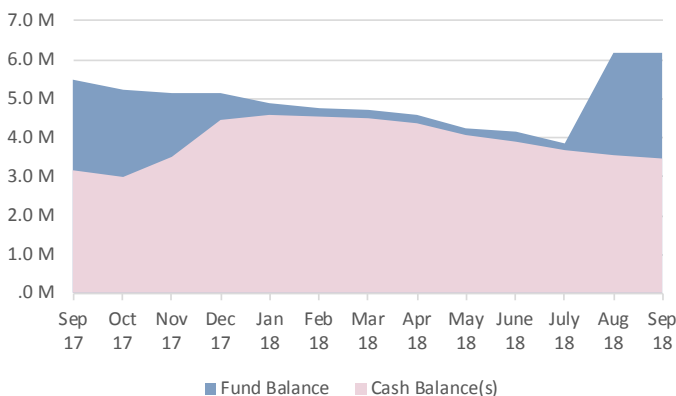
GENERAL FUND Term

Beginning Balance	2,333,915.46
Transfer from GF Gov't Account	-
Interest Earned	4,025.04
Ending Balance	2,337,940.50

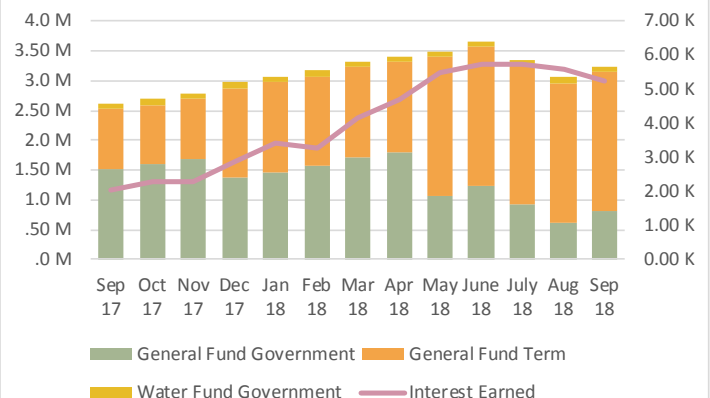
WATER FUND Government

Beginning Balance	94,532.18
Interest Earned	144.05
Ending Balance	94,676.23

13 Month Cash Flow Analysis



Investment Balances



REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

		Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used
10 General Fund						
Revenue						
	3010 Ad Valorem Tax Subtotal	\$25,268.11	\$2,505,948.74	\$0.00	\$2,555,274.00	98
	3020 Unrestricted Intergovernm Subtotal	\$142,201.88	\$327,205.10	\$0.00	\$1,273,619.00	26
	3030 Restricted Intergovernmen Subtotal	\$31,180.23	\$31,382.06	\$0.00	\$64,470.00	49
	3040 Permits & Fees Subtotal	\$431.00	\$3,552.00	\$0.00	\$26,600.00	13
	3050 Investment Earnings Subtotal	\$5,141.34	\$16,215.41	\$0.00	\$15,000.00	108
	3060 Miscellaneous Subtotal	\$2,459.50	\$3,361.45	\$0.00	\$42,664.00	8
	Revenue Subtotal	\$206,682.06	\$2,887,664.76	\$0.00	\$3,977,627.00	73
Expenditure						
	4200 Administration Subtotal	\$40,351.50	\$107,990.27	\$2,600.00	\$417,331.00	26
	4300 Subtotal	\$2,844.00	\$8,532.00	\$0.00	\$37,228.00	23
	5100 Police Department Subtotal	\$109,549.99	\$320,923.86	\$20,473.25	\$1,413,634.00	23
	5200 Fire Services Subtotal	\$0.00	\$106,250.00	\$0.00	\$425,000.00	25
	5600 Public Works Subtotal	\$34,129.85	\$110,539.96	\$4,476.80	\$589,091.00	19
	5700 Streets & Transportation Subtotal	\$5,870.56	\$21,140.38	\$1,777.13	\$359,309.00	6
	5800 Sanitation & Recycling Subtotal	\$12,666.98	\$50,465.60	\$270.03	\$310,222.00	16
	6600 General Government Subtotal	\$10,609.05	\$114,111.24	\$3,500.00	\$330,083.00	35
	6700 Debt Service Subtotal	\$0.00	\$9,214.50	\$0.00	\$105,729.00	9
	Expenditure Subtotal	\$216,021.93	\$849,167.81	\$33,097.21	\$3,987,627.00	21
Before Transfers	Deficiency Of Revenue Subtotal	-\$9,339.87	\$2,038,496.95	-\$33,097.21	-\$10,000.00	-20,385
Other Financing Source						
	3500 Other Financing Subtotal	\$0.00	\$0.00	\$0.00	\$10,000.00	0
	Other Financing Source Subtotal	\$0.00	\$0.00	\$0.00	\$10,000.00	0
After Transfers	Deficiency Of Revenue Subtotal	-\$9,339.87	\$2,038,496.95	-\$33,097.21	\$0.00	0
30 Water & Sewer Fund						
Revenue						
	3290 Subtotal	\$144.05	\$432.90	\$0.00	\$1,000.00	43
	3350 Commissions, Sw Chg Coll Subtotal	\$0.00	\$1,579.28	\$0.00	\$6,000.00	26
	3710 Water Sales Subtotal	-\$1,169.51	\$142,668.06	\$0.00	\$702,000.00	20
	3730 Water Tap & Connect Fees Subtotal	\$0.00	\$2,210.00	\$0.00	\$18,000.00	12
	Revenue Subtotal	-\$1,025.46	\$146,890.24	\$0.00	\$727,000.00	20
Expenditure						
	8100 Water Dept. Subtotal	\$85,000.53	\$126,142.17	\$0.00	\$727,000.00	17
	Expenditure Subtotal	\$85,000.53	\$126,142.17	\$0.00	\$727,000.00	17
Before Transfers	Deficiency Of Revenue Subtotal	-\$86,025.99	\$20,748.07	\$0.00	\$0.00	0
After Transfers	Deficiency Of Revenue Subtotal	-\$86,025.99	\$20,748.07	\$0.00	\$0.00	0

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

Account	Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used
10 General Fund					
Revenue					
3010 Ad Valorem Tax					
10-3010-0000 AD VALOREM TAXES (PROPERTY)	16,349.13	2,481,931.92	0.00	2,447,140.00	101
10-3010-0100 AD VALOREM TAXES (DMV)	8,917.95	23,936.94	0.00	105,634.00	23
10-3010-0200 TAX INTEREST & PENALTIES	1.03	79.88	0.00	2,500.00	3
3010 Ad Valorem Tax Subtotal	\$25,268.11	\$2,505,948.74	\$0.00	\$2,555,274.00	98
3020 Unrestricted Intergovernm					
10-3020-0000 FRANCHISE & UTILITIES TAX DIST.	45,308.47	45,308.47	0.00	168,794.00	27
10-3020-0100 ALCOHOL BEVERAGE TAX	0.00	0.00	0.00	5,996.00	0
10-3020-0200 BUNCOMBE COUNTY 1% TAX	50,166.44	146,807.55	0.00	568,397.00	26
10-3020-0300 1/2 CENT SALES TAX A.40	20,322.85	58,107.64	0.00	228,879.00	25
10-3020-0400 1/2 CENT SALES TAX A.42	26,404.12	76,981.44	0.00	298,053.00	26
10-3020-0700 GASOLINE TAX REFUND	0.00	0.00	0.00	3,500.00	0
3020 Unrestricted Intergovernm Subtotal	\$142,201.88	\$327,205.10	\$0.00	\$1,273,619.00	26
3030 Restricted Intergovernmen					
10-3030-0000 SOLID WASTE DISPOSAL TAX	0.00	201.83	0.00	970.00	21
10-3030-0100 POWELL BILL	31,180.23	31,180.23	0.00	63,500.00	49
3030 Restricted Intergovernmen Subtotal	\$31,180.23	\$31,382.06	\$0.00	\$64,470.00	49
3040 Permits & Fees					
10-3040-0000 BUILDING PERMITS	421.00	3,527.00	0.00	25,000.00	14
10-3040-0100 DOG LICENSE FEE	10.00	25.00	0.00	1,600.00	2
3040 Permits & Fees Subtotal	\$431.00	\$3,552.00	\$0.00	\$26,600.00	13
3050 Investment Earnings					
10-3050-0000 INTEREST EARNED	5,141.34	16,215.41	0.00	15,000.00	108
3050 Investment Earnings Subtotal	\$5,141.34	\$16,215.41	\$0.00	\$15,000.00	108
3060 Miscellaneous					
10-3060-0100 AMERICAN TOWER AGREEMENT	400.00	1,200.00	0.00	27,664.00	4
10-3060-0200 MISCELLANEOUS	2,059.50	2,161.45	0.00	15,000.00	14
3060 Miscellaneous Subtotal	\$2,459.50	\$3,361.45	\$0.00	\$42,664.00	8
Revenue Subtotal	\$206,682.06	\$2,887,664.76	\$0.00	\$3,977,627.00	73
Expenditure					
4200 Administration					
10-4200-0200 SALARIES	17,914.74	53,092.33	0.00	228,184.00	23
10-4200-0300 LEGAL AND ENGINEERING	0.00	73.72	0.00	0.00	0
10-4200-0500 FICA	1,310.41	3,887.05	0.00	17,265.00	23
10-4200-0600 HEALTH INSURANCE (MEDICAL)	2,443.54	7,330.62	0.00	24,621.00	30
10-4200-0650 DENTAL, VISION, LIFE INSURANCE	412.56	1,237.68	0.00	4,153.00	30
10-4200-0675 HEALTH REIMBURSEMENT ACC	375.00	1,125.00	0.00	3,750.00	30
10-4200-0700 LGERS RETIREMENT	2,551.84	7,575.01	0.00	32,074.00	24
10-4200-0800 401K SUPP RETIREMENT	896.08	2,659.32	0.00	11,284.00	24
10-4200-1000 ACCOUNTING & TAXES	12,715.00	16,867.50	0.00	35,000.00	48
10-4200-1200 POSTAGE, PRINTING, STATIONARY	164.04	948.91	0.00	8,000.00	12

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

Account	Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used
10-4200-1400 MILEAGE & BOARD SALARY	1,200.00	6,600.00	0.00	22,000.00	30
10-4200-3300 SUPPLIES AND EQUIPMENT	135.73	1,061.86	0.00	5,000.00	21
10-4200-5300 DUES & FEES	70.00	2,624.00	0.00	5,000.00	52
10-4200-5700 MISCELLANEOUS	77.56	155.12	0.00	5,000.00	3
10-4200-6500 STAFF DEVELOPMENT	85.00	2,752.15	2,600.00	16,000.00	33
4200 Administration Subtotal	\$40,351.50	\$107,990.27	\$2,600.00	\$417,331.00	26
4300					
10-4300-1000 CONTRACT	2,844.00	8,532.00	0.00	34,128.00	25
10-4300-1200 POSTAGE, PRINTING & STATIONARY	0.00	0.00	0.00	500.00	0
10-4300-3300 SUPPLIES & EQUIPMENT	0.00	0.00	0.00	500.00	0
10-4300-5300 DUES & FEES	0.00	0.00	0.00	100.00	0
10-4300-6500 STAFF DEVELOPMENT	0.00	0.00	0.00	2,000.00	0
4300 Subtotal	\$2,844.00	\$8,532.00	\$0.00	\$37,228.00	23
5100 Police Department					
10-5100-0200 SALARIES	55,751.19	166,310.51	0.00	806,975.00	21
10-5100-0300 OVERTIME	12,341.20	32,195.32	0.00	15,000.00	215
10-5100-0400 SEPARATION ALLOWANCE	2,355.18	7,065.54	0.00	30,617.00	23
10-5100-0500 FICA	5,199.68	15,157.55	0.00	60,433.00	25
10-5100-0550 UNEMPLOYMENT INSURANCE	0.00	0.00	0.00	500.00	0
10-5100-0600 HEALTH INSURANCE (MEDICAL)	10,299.52	30,866.88	0.00	126,684.00	24
10-5100-0650 DENTAL, VISION, LIFE INSURANCE	1,460.48	4,381.44	0.00	18,333.00	24
10-5100-0675 HRA HEALTH REIMB ACCT	1,750.00	5,250.00	0.00	21,000.00	25
10-5100-0700 LGERS RETIREMENT	9,747.63	27,991.21	0.00	114,593.00	24
10-5100-0800 401K SUPP RETIREMENT	3,309.64	9,514.08	0.00	39,499.00	24
10-5100-0900 SHORT TERM DISABILITY	0.00	0.00	0.00	5,000.00	0
10-5100-1500 MAINT/REPAIR - BLDG/GROUNDS	80.00	99.99	0.00	10,000.00	1
10-5100-1600 MAINT/REPAIR - EQUIPMENT	284.98	284.98	0.00	12,000.00	2
10-5100-1700 MAINT/REPAIR - VEHICLES	344.98	1,731.79	656.00	15,000.00	16
10-5100-3100 MOTOR FUELS	546.73	3,489.61	0.00	16,000.00	22
10-5100-3300 SUPPLIES	92.50	1,097.62	0.00	15,000.00	7
10-5100-3600 UNIFORMS	1,010.80	1,016.80	0.00	9,500.00	11
10-5100-3700 TECHNOLOGY & SOFTWARE	3,731.09	6,945.06	0.00	15,000.00	46
10-5100-5700 MISCELLANEOUS	190.95	5,797.34	0.00	10,000.00	58
10-5100-5800 PHYSICAL EXAMS	0.00	0.00	0.00	2,500.00	0
10-5100-6500 STAFF DEVELOPMENT	934.58	1,262.28	3,531.00	15,000.00	32
10-5100-7400 EQUIPMENT PURCHASES	118.86	465.86	16,286.25	55,000.00	30
5100 Police Department Subtotal	\$109,549.99	\$320,923.86	\$20,473.25	\$1,413,634.00	24
5200 Fire Services					
10-5200-0000 FIRE CONTRACT	0.00	106,250.00	0.00	425,000.00	25
5200 Fire Services Subtotal	\$0.00	\$106,250.00	\$0.00	\$425,000.00	25
5600 Public Works					
10-5600-0200 SALARIES	21,444.46	65,247.02	0.00	319,598.00	20
10-5600-0300 OVERTIME	642.41	2,749.94	0.00	0.00	0

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

Account	Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used
10-5600-0500 FICA	1,658.60	5,108.65	0.00	24,449.00	21
10-5600-0600 HOSPITAL INSURANCE (MEDICAL)	3,195.90	9,531.02	0.00	37,741.00	25
10-5600-0650 DENTAL, VISION, LIFE INSURANCE	519.64	1,421.72	0.00	5,218.00	27
10-5600-0675 HRA HEALTH REIMB ACCT	625.00	1,875.00	0.00	7,500.00	25
10-5600-0700 LGERS RETIREMENT	3,096.60	9,533.20	0.00	44,105.00	22
10-5600-0800 401K SUPP RETIREMENT	1,104.91	3,401.56	0.00	15,980.00	21
10-5600-1000 OUTSIDE SERVICES	0.00	0.00	0.00	10,000.00	0
10-5600-1300 STREETLIGHTS ELECTRIC	591.00	1,621.06	0.00	7,000.00	23
10-5600-1500 MAINT/REPAIR - BLDG/GROUNDS	0.00	364.10	0.00	5,000.00	7
10-5600-1600 MAINT/REPAIR- STREETLIGHTS	41.56	41.56	0.00	10,000.00	0
10-5600-1700 MAINT/REPAIR - VEHICLES	35.00	916.67	4,001.80	15,000.00	33
10-5600-3100 MOTOR FUELS	437.38	2,791.66	0.00	15,000.00	19
10-5600-3300 SUPPLIES	181.17	1,264.93	0.00	8,000.00	16
10-5600-3400 STREET SIGNS & NUMBERS	45.08	98.94	0.00	2,000.00	5
10-5600-3600 UNIFORMS	121.38	2,110.94	0.00	7,000.00	30
10-5600-5200 PARKS	0.00	1,126.07	475.00	45,000.00	4
10-5600-5800 PHYSICAL EXAMS	0.00	0.00	0.00	500.00	0
10-5600-5900 MISCELLANEOUS	290.78	646.58	0.00	5,000.00	13
10-5600-6500 STAFF DEVELOPMENT	98.98	689.34	0.00	5,000.00	14
5600 Public Works Subtotal	\$34,129.85	\$110,539.96	\$4,476.80	\$589,091.00	20
5700 Streets & Transportation					
10-5700-0200 SALARIES	3,273.98	9,782.95	0.00	47,516.00	21
10-5700-0500 FICA	250.48	748.44	0.00	3,635.00	21
10-5700-0600 HEALTH INSURANCE (MEDICAL)	548.68	1,646.04	0.00	6,749.00	24
10-5700-0650 DENTAL, VISION, LIFE INSURANCE	52.42	157.26	0.00	632.00	25
10-5700-0675 HRA HEALTH REIMB ACCT	125.00	375.00	0.00	1,500.00	25
10-5700-0700 LGERS RETIREMENT	459.01	1,371.56	0.00	6,557.00	21
10-5700-0800 401K SUPP RETIREMENT	163.69	489.13	0.00	2,376.00	21
10-5700-1700 VEHICLE REPAIRS - STREET DEPT.	0.00	0.00	0.00	5,000.00	0
10-5700-2200 CONTRACTS- PAVING & STRIPING	0.00	0.00	0.00	89,844.00	0
10-5700-2300 SUPPLIES	805.29	1,427.99	1,028.13	22,500.00	11
10-5700-2400 TRAFFIC SIGNS	192.01	192.01	0.00	500.00	38
10-5700-2500 STORM WATER DRAINAGE	0.00	0.00	749.00	75,000.00	1
10-5700-6500 STAFF DEVELOPMENT	0.00	0.00	0.00	2,500.00	0
10-5700-7400 EQUIPMENT PURCHASES	0.00	0.00	0.00	20,000.00	0
10-5700-7500 ENGINEERING	0.00	4,950.00	0.00	75,000.00	7
5700 Streets & Transportation Subtotal	\$5,870.56	\$21,140.38	\$1,777.13	\$359,309.00	6
5800 Sanitation & Recycling					
10-5800-0200 SALARIES	5,605.42	22,767.38	0.00	121,891.00	19
10-5800-0300 OVERTIME	0.00	53.79	0.00	0.00	0
10-5800-0500 FICA	428.84	1,745.91	0.00	9,325.00	19
10-5800-0600 HEALTH INSURANCE (MEDICAL)	1,097.36	4,389.44	0.00	29,716.00	15
10-5800-0650 DENTAL, VISION, LIFE INSURANCE	100.36	570.44	0.00	3,874.00	15
10-5800-0675 HRA HEALTH REIMB ACCT	250.00	1,000.00	0.00	4,500.00	22

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

Account	Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used	
10-5800-0700 LGERS RETIREMENT	785.89	3,199.56	0.00	16,821.00	19	
10-5800-0800 401K SUPP RETIREMENT	280.27	1,141.08	0.00	6,095.00	19	
10-5800-1700 MAINT/REPAIRS - VEHICLES	15.01	422.65	270.03	10,000.00	7	
10-5800-3100 MOTOR FUELS	929.30	3,344.48	0.00	10,000.00	33	
10-5800-3300 SUPPLIES	0.00	0.00	0.00	2,000.00	0	
10-5800-5900 MISCELLANEOUS	0.00	0.00	0.00	1,000.00	0	
10-5800-6000 CAPITAL OUTLAY	0.00	0.00	0.00	25,000.00	0	
10-5800-8000 TIPPING FEES & BRUSH REMOVAL	2,576.41	9,665.09	0.00	55,000.00	18	
10-5800-8100 RECYCLING	598.12	2,165.78	0.00	15,000.00	14	
5800 Sanitation & Recycling Subtotal	\$12,666.98	\$50,465.60	\$270.03	\$310,222.00	16	
6600 General Government						
10-6600-0400 OUTSIDE PROFESSIONAL SERVICES	5,698.64	13,516.14	0.00	100,000.00	14	
10-6600-1100 TECHNOLOGY	2,177.67	15,654.79	0.00	72,061.00	22	
10-6600-1300 ENERGY & BF SEWER	897.70	3,449.38	0.00	16,000.00	22	
10-6600-1500 GE. REPS. AND MAINT.	1,447.54	4,188.38	3,500.00	20,000.00	38	
10-6600-2800 ELECTIONS	0.00	0.00	0.00	6,000.00	0	
10-6600-3300 SUPPLIES & EQUIPMENT	0.00	0.00	0.00	2,000.00	0	
10-6600-5400 INSURANCE	162.50	71,839.30	0.00	75,000.00	96	
10-6600-6000 CONTINGENCY	0.00	0.00	0.00	9,022.00	0	
10-6600-6100 MISCELLANEOUS	225.00	712.26	0.00	5,000.00	14	
10-6600-6300 COMMUNITY EVENTS	0.00	4,750.99	0.00	20,000.00	24	
10-6600-6400 WILDLIFE MANAGEMENT	0.00	0.00	0.00	5,000.00	0	
6600 General Government Subtotal	\$10,609.05	\$114,111.24	\$3,500.00	\$330,083.00	36	
6700 Debt Service						
10-6700-0100 Police Dept Renovations-Principal	0.00	5,833.33	0.00	23,334.00	25	
10-6700-0200 Street Improvements-Principal	0.00	1,666.67	0.00	6,667.00	25	
10-6700-0300 2016 Garbage Truck-Principal	0.00	0.00	0.00	32,638.00	0	
10-6700-0400 2017 Garbage Truck-Principal	0.00	0.00	0.00	33,543.00	0	
10-6700-1100 Police Dept Renovations-Interest	0.00	1,333.50	0.00	5,001.00	27	
10-6700-1200 Street Improvements-Interest	0.00	381.00	0.00	1,429.00	27	
10-6700-1300 2016 Garbage Truck-Interest	0.00	0.00	0.00	706.00	0	
10-6700-1400 2017 Garbage Truck-Interest	0.00	0.00	0.00	2,411.00	0	
6700 Debt Service Subtotal	\$0.00	\$9,214.50	\$0.00	\$105,729.00	9	
Expenditure Subtotal	\$216,021.93	\$849,167.81	\$33,097.21	\$3,987,627.00	22	
Before Transfers	Deficiency Of Revenue Subtotal	-\$9,339.87	\$2,038,496.95	-\$33,097.21	-\$10,000.00	-20,054
Other Financing Source						
3500 Other Financing						
10-3500-0000 SALE OF PERSONAL PROPERTY	0.00	0.00	0.00	10,000.00	0	
3500 Other Financing Subtotal	\$0.00	\$0.00	\$0.00	\$10,000.00	0	
Other Financing Source Subtotal	\$0.00	\$0.00	\$0.00	\$10,000.00	0	
After Transfers	Deficiency Of Revenue Subtotal	-\$9,339.87	\$2,038,496.95	-\$33,097.21	\$0.00	0
30 Water & Sewer Fund						
Revenue						

REVENUE & EXPENDITURE STATEMENT

Town of Biltmore Forest

09/01/2018 To 09/30/2018

FY 2018-2019

Account	Current Period (\$)	YTD (\$)	Encumbrance (\$)	Budget (\$)	% Used
3290					
30-3290-0000 INTEREST EARNED	144.05	432.90	0.00	1,000.00	43
3290 Subtotal	\$144.05	\$432.90	\$0.00	\$1,000.00	43
3350 Commissions, Sw Chg Coll					
30-3350-0000 COMMISSIONS, SEWER CHARGE COLL	0.00	1,579.28	0.00	6,000.00	26
3350 Commissions, Sw Chg Coll Subtotal	\$0.00	\$1,579.28	\$0.00	\$6,000.00	26
3710 Water Sales					
30-3710-0000 WATER CHARGES	-319.09	82,308.98	0.00	415,000.00	20
30-3710-0100 MSD CHARGES	-844.98	58,961.88	0.00	280,000.00	21
30-3710-0200 AMI TRANSMITTER CHARGES	-5.44	1,397.20	0.00	7,000.00	20
3710 Water Sales Subtotal	-\$1,169.51	\$142,668.06	\$0.00	\$702,000.00	20
3730 Water Tap & Connect Fees					
30-3730-0000 WATER TAP AND CONNECTION FEES	0.00	2,210.00	0.00	18,000.00	12
3730 Water Tap & Connect Fees Subtotal	\$0.00	\$2,210.00	\$0.00	\$18,000.00	12
Revenue Subtotal	-\$1,025.46	\$146,890.24	\$0.00	\$727,000.00	20
Expenditure					
8100 Water Dept.					
30-8100-0200 SALARIES	1,273.06	1,273.06	0.00	29,371.00	4
30-8100-0300 OVERTIME	0.00	0.00	0.00	2,247.00	0
30-8100-0400 PROFESSIONAL SERVICES	25.00	1,096.25	0.00	0.00	0
30-8100-0500 FICA	0.00	0.00	0.00	5,435.00	0
30-8100-0600 HEALTH INSURANCE (MEDICAL)	0.00	0.00	0.00	838.00	0
30-8100-0650 DENTAL, VISION, LIFE INSURANCE	0.00	0.00	0.00	750.00	0
30-8100-0675 HRA HEALTH REIMBURSEMENT ACCT	0.00	0.00	0.00	4,053.00	0
30-8100-0700 LGERS RETIREMENT	0.00	0.00	0.00	1,469.00	0
30-8100-0800 401K SUPP RETIREMENT	0.00	0.00	0.00	14,600.00	0
30-8100-1200 POSTAGE, PRINTING, & STATIONARY	920.01	920.01	0.00	5,000.00	18
30-8100-1500 GENERAL REPAIRS	0.00	92.46	0.00	20,000.00	0
30-8100-3300 SUPPLIES & EQUIPMENT	989.89	2,055.98	0.00	20,000.00	10
30-8100-4800 WATER PURCHASES	19,699.36	57,777.43	0.00	232,656.00	25
30-8100-4900 SEWER PURCHASES	60,623.51	60,623.51	0.00	280,000.00	22
30-8100-5000 AMI TRANSMITTER FEES	684.41	1,379.50	0.00	7,000.00	20
30-8100-5700 MISCELLANEOUS	29.34	88.02	0.00	1,500.00	6
30-8100-6500 STAFF DEVELOPMENT	755.95	835.95	0.00	5,000.00	17
30-8100-7400 CAPITAL IMPROVEMENT	0.00	0.00	0.00	97,081.00	0
8100 Water Dept. Subtotal	\$85,000.53	\$126,142.17	\$0.00	\$727,000.00	17
Expenditure Subtotal	\$85,000.53	\$126,142.17	\$0.00	\$727,000.00	17
Before Transfers	Deficiency Of Revenue Subtotal	-\$86,025.99	\$20,748.07	\$0.00	0
After Transfers	Deficiency Of Revenue Subtotal	-\$86,025.99	\$20,748.07	\$0.00	0

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Consideration of Resolution Requesting Change for Municipal Election Schedule

Date: October 2, 2018

In July, the Board expressed their desire to move the Town's municipal election cycle to an even-year schedule. This was due to the North Carolina General Assembly's session law that amended elections for the City of Asheville.

There has been discussion among Buncombe County municipalities since that time and others remain undecided on requesting a switch to even-year elections. At this writing, it appears that the Towns of Black Mountain and Montreat are likely to request this change, and Weaverville and Woodfin are still considering the matter. Senator Terry Van Duyn recently presented information regarding the legislation that created the even-year election cycle for the City of Asheville and requested municipalities interested in moving their election cycles to draft a resolution stating as such.

I have taken the liberty to draft the attached resolution for your consideration. Please note that this resolution includes three provisions directed by the Town Board that must be included in order to support moving to an even-year election cycle. These provisions are that the terms of office be extended for current elected officials by one year and no election held in 2019; the Town elections remain nonpartisan; and the municipal elections continue to be held every four years in accordance with the Town Charter amendment approved in 2011.

There is no pressing timeframe for which this must be adopted, as the General Assembly will not be able to consider this matter until the start of their new session in 2019. Please let me know if you have questions or would like to consider this resolution prior to considering it for adoption.

STATE OF NORTH CAROLINA)
)
COUNTY OF BUNCOMBE)

**TOWN OF BILTMORE FOREST
BOARD OF COMMISSIONERS**

RESOLUTION 2018-07

WHEREAS, Session Law 2018-123 of the North Carolina General Assembly revised the charter for the City of Asheville to provide for the election of city council members from districts and to provide for the creation of those districts and to provide for even-year municipal elections; and

WHEREAS, the Board of Commissioners of the Town of Biltmore Forest recognizes the need to maintain uniformity in election cycles for municipal elections within a county; and

WHEREAS, there are potential cost increases for elections conducted for the Town of Biltmore Forest due to the City of Asheville's municipal elections being moved to an even-year election cycle; and

WHEREAS, the Board of Commissioners of the Town of Biltmore Forest desires to create efficiency for voters during election cycles by eliminating additional and burdensome costs and creating a more streamlined election process.

NOW, THEREFORE, BE IT RESOLVED by the Biltmore Forest Board of Commissioners that the Town hereby requests its local delegation in the North Carolina General Assembly draft and introduce a bill moving the municipal elections for the Town of Biltmore Forest from odd-year elections to even-year elections, provided that the following provisions are met:

- (1) No regular election shall be conducted in the Town of Biltmore Forest in 2019. The terms of commission members elected in 2015 shall be extended until 2020.
- (2) Elections for Mayor and Board of Commissioners shall continue to be held on a nonpartisan basis.
- (3) The Mayor and Commissioners shall be elected every four (4) years beginning in 2020 consistent with an amendment to the Town Charter approved by the Town of Biltmore Forest Board of Commissioners on June 21, 2011. Elections shall be held in even-numbered years on the Tuesday after the first Monday in November, beginning in 2020 and occurring every four (4) years thereafter

This the 9th day of October, 2018.

George F. Goosmann, III
Mayor

Attest:

Jonathan B. Kanipe
Town Manager

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Consideration of Capital Project Ordinance for Public Works Building Project

Date: October 2, 2018

Pursuant to NCGS 159-13.2, the Town is allowed, and it is recommended, to approve a project ordinance for a project financed in whole or in part by debt proceeds for a project involving the construction of a capital asset. The Public Works Building project requires this ordinance as the Town is borrowing \$800,000 from BB&T and performing renovations and construction work to its existing public works building. The project may not begin until the Board has authorized the Capital Project Ordinance (CPO), which identifies the balanced expenditures and revenues for the duration of the project. Please note, this CPO does not have to be adopted annually and can be utilized for the duration of the project. In this instance, the projected construction timeline for this project is nine (9) months, which will take us into July 2019. Similar to regular town budgets, this project fund may be amended by the Board from time to time if necessary.

The Capital Project Ordinance attached is presented for your consideration and approval. This will allow staff the ability to initiate the construction project and commence drawing funds from the BB&T project fund account as necessary. Please let me know if you have any questions.

STATE OF NORTH CAROLINA)
COUNTY OF BUNCOMBE)

TOWN OF BILTMORE FOREST
BOARD OF COMMISSIONERS

CAPITAL PROJECT ORDINANCE
BILTMORE FOREST PUBLIC WORKS BUILDING RENVOATION

BE IT ORDAINED by the Town of Biltmore Forest Board of Commissioners that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the Biltmore Forest Public Works Building Renovation to be financed in part by an installment financing instrument through Branch Banking and Trust (BB&T) and in part by the Town's General Fund balance.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the budget contained herein.

Section 3. The following amounts are appropriated for the project:

Design	\$ 22,000
Construction	<u>\$1,497,250</u>
Total	\$1,519,250

Section 4. The following revenues are anticipated to be available to complete this project.

Installment Financing (BB&T)	\$800,000
Transfer from General Fund	<u>\$719,250</u>
Total	\$1,519,250

Section 5. The Finance Officer is hereby directed to maintain within the Biltmore Forest Public Works Building Renovation project fund detailed accounting records.

Section 6. The Budget Officer is hereby directed to include a detailed analysis of the past and future costs and revenues on this capital project in every budget submission made to this Board.

Section 7. Copies of this Capital Project Ordinance shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted this 9th day of October, 2018.

George F. Goosmann, III
Mayor

Attest:

Jonathan B. Kanipe
Town Manager

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Consideration of Agreement with Beverly-Grant, Inc. for Construction Manager at Risk

Date: October 2, 2018

In March 2018, the Board of Commissioners accepted Beverly-Grant, Inc. as the Construction Manager at Risk for the Town's Public Works Building project. Since that time, staff has worked with Beverly-Grant to conduct appropriate bidding for the subcontractors on this project. This consisted of prequalifying potential subcontractors, followed by public bidding for the portions of the contract. The Town held two bid openings with the first taking place on September 18. The second bid opening was necessary due to the Town not receiving three (3) bids on specific divisions of the project. The second bid opening occurred on September 25, 2018. Beverly-Grant conducted the public advertising, prequalification, and bidding solicitation/verification for this project. The bid tabulations for each opening are included in this agenda packet for your review. The remaining portions of the construction project are those activities that Beverly-Grant is able to self-perform. Note, Beverly-Grant's preconstruction services fee of \$7,500 is inclusive of all activities performed above and other design review with the Town's architect prior to the commencement of construction activities.

I have included the revised budget sheet (schedule of values and estimates) from Beverly-Grant with the bid prices included. The construction work itself is budgeted at \$1,265,467, with Beverly-Grant receiving \$177,053 in profit/overhead from the work. There is an additional contractor's contingency factored in to the final budget numbers for \$55,000. This equates to a final guaranteed total maximum payment of \$1,497,520. This guaranteed maximum falls just under the \$1.5 million threshold we set for the project. The Town's loan with BB&T for \$800,000 will be drawn down as a project fund, and once these resources are completely utilized, we will begin drawing down funds from the Town's General Fund balance for the difference/remaining work.

The proposed agreement between Beverly-Grant and the Town is reflective of these amounts and the work that will be performed on the project. The Town Attorney and I have both reviewed and requested a change from the standard AIA language regarding disputes. We have requested changing the language to require mediation, instead of arbitration, and specified that differences unresolved via mediation be handled at the Superior Court level in Buncombe County. As of this publication, we have not received word regarding the acceptability of this change, but

should have that clarified for you Tuesday. If agreeable to Beverly-Grant, I will have clean (non-draft and template) copies of this agreement for your review available before the meeting.

For your ease, please allow me to provide some description for the documents attached to this memorandum.

- (1) Bid tabulation sheet for opening on September 18, 2018
- (2) Bid tabulation sheet for opening on September 26, 2018
- (3) Schedule of Values and Estimates – these are the bids that were received for the project as well as the amount B-G is charging for profit/overhead on the project. This sheet (final page) also includes the contractor's contingency fee.
- (4) A133 draft – Master contract w/ B-G as Construction Manager at Risk. (Note, this includes \$7,500 for preconstruction services performed by Beverly-Grant to this point)
- (5) A133 exhibit – Guaranteed Maximum Price Amendment (certifies that the Town's maximum price for construction will be \$1,497,250)
- (6) A201 – defines general conditions governing contract language in A133

Town of Biltmore Forest Public Works

355 Vanderbilt Road
Asheville, NC 28803

18-Sep-18

Construction Manager (Beverly-Grant Inc.)

Architect (Clark Nexsen)

Bid Package/Scope Budgets

Bidder

Bid Amount \$\$\$

BP 0204 - Demolition

Building & Misc Demolition

Total Scope Budget

DH Griffin Wrecking Co.

\$ 57,000.00

GQC

\$ 65,000.00

Elkin Rowe

\$ 84,885.00

BP0500 - Steel

Handrails & Steel

Other Rails

Total Scope Budget

Dave Steel

\$ 16,200.00

Welding Unlimited

\$ 16,850.00

Ryan Steel

\$ 30,450.00

BP0740 - Roofing

Shingles 12/12

Shingles 6/12

Membrane

Gutters/Downspouts

Total Scope Budget

Cityscape Roofing

\$ 71,000.00

Carolina Mountain Roofing

\$ 72,570.00

Benton Roofing

\$ 74,705.00

BP0925 - Metal Studs/Insulation/Drywall

Wood Blocking

Insulation

Metal Studs, GWB, ACT

Other GWB Ceilings

Access Panels

Total Scope Budget

Appalachian Drywall

\$ 80,360.00

	Styles Contracting	\$	133,052.00
	Divisions Contracting	\$	177,834.00
BP0960 - Carpet/Hardwood/Resilient Base			
Wood Flooring			
VCT & Vinyl Base			
Anti-Skid Tape			
Walk Off Mats			
Moisture Barrier			
Total Scope Budget			
	Carpet One	\$	12,150.00
	Bonitz Flooring	\$	18,186.00
	Professional Business Interiors	\$	19,523.00
BP01005 - Div 10 Accessories			
Mirrors			
Fire Cabinets/Extinguishers			
Signage			
Toilet Accessories			
Shower Seat (1X)			
Total Scope Budget			
	Accessories Unlimited	\$	6,611.00
	Architectural Interior Products	\$	7,850.00
	AAC Enterprises	\$	8,320.00
BP2200 - Plumbing			
Roof Leader Piping			
Plumbing			
Total Scope Budget			
	TP Howard's Plumbing	\$	88,140.00
	HVAC Inc.	\$	97,700.00
BP2300 - HVAC	Duncan Plumbing	\$	165,000.00
HVAC Systems			
Total Scope Budget			
	Pyatt Heating & Air	\$	62,236.00
	Horizon Heating & Air	\$	62,273.00
	R&W	\$	64,994.00
	HVAC Inc.	\$	82,000.00
	SKMES	\$	194,790.00
BP2600 - Electrical			
Electrical			
Generator			

Low Voltage		
Fire Alarm		
Total Scope Budget		
	Grigg Electric	\$ 162,675.00
	Emory Electric	\$ 204,600.00
	A-American Electric	\$ 244,600.00
		End of Bid Tabulation

Town of Biltmore Forest Public Works

355 Vanderbilt Road
Asheville, NC 28803

26-Sep-18

Construction Manager (Beverly-Grant Inc.)

Architect (Clark Nexsen)

Bid Package/Scope Budgets

Bidder

Bid Amount \$\$\$

BP 0105 - Cleaning

Final Cleaning	Platinum Pro Clean	\$ 438.00
Total Scope Budget	Classic Cleaning & More	\$ 1,805.00

BP0300 - Concrete

Excavate Walls/Compact	Thorsland Concrete	\$ 107,896.00
Foundation Backfilling		
Wall Backfilling		
Termit Treatment		
Foundation Drains		
Slabs, Walls, Sidewalks, Etc		
Damp Proofing		
Total Scope Budget		

BP0400 - Masonry

Masonry Turnkey	Merrill Masonry	\$ 44,500.00
Total Scope Budget	Hustle Masonry	\$ 47,600.00
	Steep Creek Stoneworks	\$ 60,400.00

BP0610 - Wood Framing & Windows

Rough Carpentry	Builder's First Source	\$ 81,192.00
Windows		
Total Scope Budget		

BP0746 - Siding

Siding	Builder's First Source	\$ 43,229.00
Total Scope Budget		

BP0836 - Overhead Doors

Overhead Doors	Garage Door Specialists	\$	11,725.00
Total Scope Budget	Southeastern Dock & Door	\$	22,732.00
	Maxson Associates	\$	29,500.00
BP0840 - Turnkey Doors Frames/Hardware			
HM Doors/Frames	Architectural Interior Products	\$	30,740.00
Wood Doors	Cook & Boardman	\$	35,045.00
Finish Hardware			
Installation			
Total Scope Budget			
BP0924 - Stucco			
Stucco Gables & Misc	Styles Contracting	\$	51,200.00
Stucco	Upstate Stucco	\$	92,546.00
Total Scope Budget	Carolina Synthetic Wall	\$	123,888.00
BP0930 - Tiling			
Floor Tile	Tile-It	\$	10,109.00
Wall Tile			
Total Scope Budget			
BP0990 - Painting			
Painting & Floor Sealers	Frank's Painting	\$	22,896.00
Total Scope Budget	Robinson & Company	\$	32,681.00
BP1230 - Finish Carpentry & Casework			
Casework/Tops/Shelving	Lentz Cabinets	\$	13,892.00
Total Scope Budget	Western Carolina Casework	\$	19,250.00
	Forest Millworks	\$	23,250.00
BP1400 - Elevators			
Elevators	Independent Elevator	\$	43,500.00
Total Scope Budget	Asheville Elevator	\$	47,254.00
			End of Bid Tabulation

PROJECT NAME Town of Biltmore Forest Public Works

SIZE _____

SQ FT 4,451DATE 9.26.18

CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST	REMARKS
01-000	GENERAL REQUIREMENTS												
01-020	Supervision	38	wks			1700	90,440			250	9,500	99,940	Supervision
01-025	Project Manager												
01-130	Supt. Phone / Data / Fuel	38	wks	140	5,320							5,320	
01-310	Survey & Layout								750			750	Survey (stairs, light pole, misc)
01-320	Engineering Fees Structural												**By Owner - NIC**
01-330	Engineering Fees PME												**By Owner - NIC**
01-335	Engineering Fees Civil												**By Owner - NIC**
01-340	Architectural Fees												**By Owner - NIC**
01-350	Reimbursables				2500							2,500	Permit, Ammendments, Bid Prep, Packages
01-400	Soil Testing												**Testing By Owner**
01-410	Concrete Testing												**Testing By Owner**
01-510	Temp. Roads												
01-520	Safety / Informational Signs				300		245					545	Directional/safety signage
01-525	Project Sign												No project sign included
01-530	Temp. Sanitary Facilities	9	mths	160	1,440							1,440	3 porta johns
01-540	Temp. Tool & Material Storage	9	mths										
01-550	Temp. Construction Office	9	mths										Temp Office **By Owner - NIC**
01-560	Temp. Utilities (Power / Water)	9	mths		(200)						200		Power/Water Provided By Owner
01-570	Temp. Heat & Weather Protection	4	mths	750	3,000					1,800	7,200	10,200	2X Temp Units/Humidity Control
01-575	Warranty / Closeout										1,500	1,500	
01-590	Temp. Construction Fencing	350	lf					18	6,300		1,000	7,300	Const Fencing (w/ green screening / 2 gates)
01-600	Periodic & Final Cleanup	4.50	Msf	0.50	2,250	0.75	4,725	0.35	1,575			8,550	Temp clean, protection materials
01-610	Cleaning Floors & Windows								438			438	BP-105 (Final Cleaning)
01-620	Trash Removal	9	mths							900	8,100	8,100	2X Dumps/mth
01-710	Load & Unload						4,200					4,200	
01-720	Mobilization										750	750	Basic Setup & Materials (Interior Supplies)
01-730	Repair to Adjoining Property												
01-800	Non-Labor / Equipment										7,500	7,500	Small tools, incidentals, equipment
01-810	Building Permits	2			13,835							13,835	Building Only -- Buncombe County
01-811	Grading Permit												
01-815	Temp. C.O. and Power Permits										800	800	
01-820	Sewer Depletion and Impact Fees												
01-830	Zoning and Driveway Permits												
01-850	Performance Bonds										18,640	18,640	Performance Bond
01-860	Builder's Risk Insurance										3,094	3,094	Builder's Risk Premium
01-870	Travel Expense												
01-880	Living Expense	9	mths										
01-950	Labor Burden					40%							Payroll Taxes Have Been Distributed
01-970	Safety				300		420					720	
01-980	Security / Badging												
Jun17	TOTAL 01-000 SERIES				28,745		100,030		9,063		58,284	196,122	

PROJECT NAME **Town of Biltmore Forest Public Works**

SIZE _____

SQ FT **4,451**DATE **9.26.18**

CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
02-000	SITE WORK													
02-100	Site Clearing										5,000	5,000		By Beverly-Grant (Asphalt Demo)
02-110	Demolition Site													
02-115	Demolition Building								57,000			57,000		BP - 204 Demolition
02-201	Site Grading													in 03-800 (BP-0300)
02-202	Rock Removal (Mass)		cy											**NIC**
02-203	Rock Removal (Trench)		cy											**NIC**
02-210	Foundation Backfilling													in 03-800 (BP-0300)
02-212	Wall Backfilling													in 03-800 (BP-0300)
02-214	Curb & Gutter Backfilling													
02-220	Finish Grade						700					700		By Beverly-Grant
02-250	Termite Treatment		Msf											in 03-800 (BP-0300)
02-500	Site Drainage													
02-501	Roof Leader Piping													in 15-400 (BP-2200)
02-502	Foundation Drains													in 03-800 (BP-0300)
02-503	Soil Compaction													
02-504	Manholes													
02-506	Culvert													
02-507	Piping													
02-508	Septic Tanks													
02-510	Piping & Catch Basins													
02-520	Storm Water Retention													
02-530	Site Utilities (Water / Sewer)													in 15-400 (BP-2200)
02-570	Erosion Control	220	lf					4.50	990			990		By Beverly-Grant
02-580	Unsuitable Soils													
02-590	Piling													
02-610	Paving	1,423	sf					6	8,535			8,535		By Beverly-Grant
02-620	Curbs & Gutter													
02-630	Walks, Steps, Etc.		sqft											
02-640	Road & Parking Appurt.													
02-641	Parking and Road Stripping	300	lf					5.50	1,650			1,650		By Beverly-Grant
02-642	Concrete Paving		msqft											Concrete Pads in 03-800 (BP-0300)
02-643	Guard Railings													in 05-500 (BP-0500)
02-645	Traffic Barriers / Pipe Bollards	8	ea											
02-800	Site Improvements													
02-810	Lawns and Plantings													**By Owner - NIC**
02-811	Fountains													
02-813	Irrigation Systems													
02-820	Fences													
02-830	Retaining Walls													in 03-800 (BP-0300)
Jun17	TOTAL 02-000 SERIES						700		68,175		5,000	73,875		

PROJECT NAME **Town of Biltmore Forest Public Works**

SIZE _____

SQ FT **4,451**DATE **9.26.18**

CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
03-000	CONCRETE													
03-100	Form Material		I.s.											
03-150	Additives / Accelerator		I.s.		100						(100)			
03-152	Form Oil		I.s.		100						(100)			
03-153	Felt-asbestos Expansion													
03-154	Bituminous Expansion													
03-155	Saw Cutting		Inft											
03-156	Filling		Inft											
03-211	Tie Wire & Chairs													
03-220	Bars		mlnft											
03-221	Mesh		msqft											
03-230	Anchor Bolts		each											
03-300	Grout Columns		each											
03-308	Admix													
03-311	Footings		cuyd											
03-312	Bond Beams, Lint., Blk Fill		cuyd											
03-313	Mezz Slabs		msqft											
03-314	Slabs On Grade		msqft											
03-315	Thickened Slabs													
03-316	Thickened Edge		Inft											
03-317	Turned Edge		Inft											
03-318	Pier Footings		cuyd											
03-319	Piers and Isolators		cuyd											
03-320	Dock Levelers		cuyd											
03-350	Cast-in-Place Concrete		cuyd											
03-351	Sealer		gal											
03-352	Hardeners													
03-360	Formed Concrete		cuyd											
03-400	Precast Concrete													
03-700	Stone Under Slab		tons											
03-710	Poly Under Slab		msqft											
03-720	Perimeter Insulation		sqft											
03-800	Special Placed Concrete								107,896			107,896		BP-0300 Concrete
03-810	Concrete Cutting													
03-820	Concrete Patching													
03-900	Special Finished Concrete													
Jun17	TOTAL 03-000 SERIES				200				107,896		(200)	107,896		



CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
04-000	MASONRY													
04-100	Mortar													
04-110	Type "S"													
04-111	Type "M"													
04-112	Coloring													
04-120	Sand													
04-150	Reinforced Masonry													
04-151	Wire Reinforcing													
04-152	Scaffolding													
04-153	Forklift													
04-200	Unit Masonry								44,500			44,500		BP0400 (Masonry)
04-205	Below Grade Block													
04-210	4" Block													
04-211	6" Block													
04-212	8" Block													
04-213	12" Block													
04-215	Bond & Beam Block													
04-216	Solar Screen Block													
04-217	Glazed Block													
04-218	Pavers													
04-220	Brick													
04-300	Stone													
04-301	Rough Stone													
04-302	Cut Stone													
04-303	Simulated Stone													
04-304	Flag Stone													
04-305	Cement													
04-500	Cleaning													
04-510	Sandblasting													
04-520	Masonry Sealer													
04-530	Expansion Joints													
04-540	Through Wall Flashing													
04-550	Masonry Repairs													
04-560	Toothing / Infill													
04-570	Masonry Cutting / Demo													
Jun17	TOTAL 04-000 SERIES								44,500			44,500		



ESTIMATE NO. _____

DATE 9.26.18

Print Date 9/30/2018



CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
06-000	CARPENTRY													
06-100	Rough Carpentry								81,192			81,192		BP0610 - Wood Framing & Windows
06-110	Wood Blocking													in 09-240 (BP0925)
06-111	Beams													
06-112	Stud Partitions													
06-113	Roof Trusses													
06-114	Sleepers													
06-115	Heavy Framing													
06-116	Joists													
06-117	Purlins													
06-118	Temp Walls / Bracing								1,500			1,500		Temp Walls/Protection - By Beverly-Grant
06-119	Shoring													
06-120	Furring & Grounds													
06-121	Sheeting & Underlayment													
06-122	3/8 Plywood													
06-123	1/2 Plywood													
06-124	5/8 Plywood													
06-125	3/4 Plywood													
06-126	Particle Board													
06-127	Boards 3/4													
06-128	Shelving													
06-129	Tongue & Groove													
06-130	Decking													
06-140	Shakes													
06-150	Siding								43,229			43,229		BP0746 - Siding
06-160	Window Bucking													
06-400	Finish Carpentry													
06-401	Crown Molding													
06-402	Baseboards													
06-410	Wood Trim													
06-411	Wood Stairs													
06-412	Disappearing Stairs													
06-413	Circular Stairs													
06-415	Mantel Pieces													
06-416	Laminated Framing													
06-418	Laminated Roof Deck													
06-420	Custom Wood Work													
06-421	Custom Cabinet Work								13,892			13,892		BP1230 -Finish Carpentry & Casework
06-422	Counter Tops													
06-430	Nails and Fasteners				2,500							2,500		By Beverly-Grant
Jun17	TOTAL 06-000 SERIES				2,500				139,813			142,313		



CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
07-000	MOISTURE PROTECTION													
07-140	Waterproofing													
07-150	Damp-Proofing													in 03-800 (BP0300)
07-151	Vapor Barrier													
07-200	Building Insulation													
07-210	Batts													in 09-240 (BP0925)
07-220	Blankets													
07-221	Ice and Water Shield													
07-222	Pellets													
07-230	Granules													
07-233	Panels													
07-234	Foams													
07-235	Rigid													
07-236	Shingles & Roofing Tiles								71,000			71,000		BP0740 - Roofing (Shingles/Membrane/Gutter)
07-237	Asphalt													
07-239	Slate													
07-240	Metal													
07-241	Felt													
07-500	Membrane Roofing													in 07-236 (BP0740)
07-510	Built-up Bituminous													
07-521	Elastic Sheet Roofing													
07-522	Elastic Liquid Roofing													
07-530	Sheet Metal Work													
07-531	Gutters & Downspouts													in 07-236 (BP0740)
07-532	Roof Crickets													
07-533	Roof Drains													
07-540	Scuppers													
07-543	Wall Flashing													
07-544	Roof Accessories													
07-545	Plastic Skylights													
07-550	Metal-Framed Skylights													
07-551	Roof Hatches													
07-552	Access													
07-553	Smoke Venting													
07-555	Gravity Ventilators													
07-920	Joint Sealants Vertical								6,000			6,000		By Beverly-Grant
07-930	Joint Sealants Horizontal													
Jun17	TOTAL 07-000 SERIES								77,000			77,000		



CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
08-000	DOORS, WINDOWS, GLASS													
08-100	Hollow Metal Frames													
08-110	Hollow Metal Doors													
08-111	Lead Lined Frames													
08-114	Aluminum Doors & Frames													
08-115	Metal Storm & Screen Doors													
08-190	Wood Frames													
08-200	Wood Doors								30,740			30,740		BP0840 - Doors/Frames/Hardware
08-201	Decorative Doors													
08-202	Hollow Core													
08-210	Solid Core													
08-300	Special Doors & Hardware													
08-301	Sliding Metal Fire doors													
08-302	Metal Covered Doors													
08-303	Coiling Doors & Grilles													
08-304	Plastic Faced Doors													
08-310	Overhead Doors								11,725			11,725		BP0836 - Overhead Doors
08-320	Sliding Glass Doors													
08-360	Vault Doors													
08-400	Metal Windows & Hardware													
08-410	Steel Windows													
08-420	Aluminum Windows													
08-500	Wood Windows													in 06-100 (BP0610)
08-600	Weather-stripping													
08-650	Window Wrap													
08-700	Finish Hardware													
08-710	Magnetic Locks													
08-720	Electric Strikes													
08-750	Specialty Hardware													
08-800	Glass & Glazing										450	450		Interior Glass (By Beverly-Grant)
08-810	Heat & Glare Reduction Glass													
08-820	Insulating Glass													
08-830	Tempered Glass													
08-840	Laminated Glass													
08-850	Mirrors													in 10-800 (BP01005)
08-860	Leaded or Art Glass													
08-870	Ribbed Wire Glass													
08-880	Obscure Glass													
08-890	Structural Glass													
Jun17	TOTAL 08-000 SERIES								42,465		450	42,915		



CODE	DESCRIPTION	QUANT	UNIT	UNIT M.	COST MATERIAL	UNIT L.	COST LABOR	UNIT SC	COST SUB	UNIT OTHER	COST OTHER	ESTIMATE COST		REMARKS
09-000	FINISHES													
09-010	Lath & Plaster													
09-011	Metal Furring													
09-012	Metal Lath													
09-020	Partition Systems													
09-021	Studs													
09-022	Furring Channels													
09-023	Runners													
09-033	Plaster													
09-050	Acoustical Plaster													
09-110	Stucco								51,200			51,200		BP0924 - Stucco
09-220	Backer Board													
09-240	Metal Stud Framing								80,360			80,360		BP0925 - Metal/Insulation/Drywall
09-250	Gypsum Drywall													
09-260	Lead Lined Drywall													
09-300	Tile Work								10,109			10,109		BP0930 - Tile
09-310	Ceramic Tile													
09-311	Mosaic Tile													
09-320	Quarry Tile													
09-450	Terrazzo													
09-500	Integrated Ceilings													
09-510	Acoustical													
09-600	Acoustical Treatment													
09-601	Fiberglass Reinforced Panels (FRP)													
09-630	Wood Flooring													in 09-700 (BP0990)
09-650	Vinyl Composite Tile (VCT)													in 09-700 (BP0990)
09-660	Luxury Vinyl Tile													
09-670	Rubber Flooring													
09-680	Walk Off Mats													
09-700	Special Flooring								12,250			12,250		BP0960 - Carpet, Base, Hardwood, VCT
09-750	Special Coatings										5,000	5,000		Floor Patch (Allowance) - By Beverly-Grant
09-760	Epoxy Coatings													in 09-900 (BP0990)
09-770	Acid Stained Flooring													
09-900	Painting (All)								22,896			22,896		BP0990 - Painting & Epoxy Floors
09-950	Wall Covering & Wall Paper													
09-960	Carpet													
Jun17	TOTAL 09-000 SERIES								176,815		5,000	181,815		



ESTIMATE NO.

DATE 9.26.18

Print Date 9/30/2018



ESTIMATE NO.

DATE 9.26.18

Print Date 9/30/2018



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DATE 9.26.18

Print Date 9/30/2018

DRAFT AIA® Document A133™ - 2009

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

AGREEMENT made as of the «3rd» day of «October» in the year «2018»
(In words, indicate day, month and year.)

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

«Town of Biltmore Forest
355 Vanderbilt Road
Asheville, NC 28803» « »
« »

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

«Beverly-Grant Inc.
80 Peachtree Road
Suite 210
Asheville, NC 28803» « »
« »

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

«~~Templates~~»
«Town of Biltmore Forest Public Works Renovation»

The Architect:
(Name, legal status and address)

«Clark Nexsen
301 College Street
Asheville, NC 28801» « »
« »

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

«Jonathan Kanipe
Town Manager
Town of Biltmore Forest
355 Vanderbilt Road
Asheville, NC 28803»
« »
« »
« »
« »

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

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

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

« »

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

«[Allen Peele](#)
[Beverly-Grant Inc.](#)
[80 Peachtree Road](#)
[Suite 210](#)
[Asheville, NC 28803](#) »

« »

« »

« »

« »

« »

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

«[Chanel Brown](#)
[Clark Nexsen](#)
[301 College Street](#)
[Asheville, NC 28801](#) »

« »

« »

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« »

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

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

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of

construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

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

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

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

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

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

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum

Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

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

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

§ 2.3.2 Administration

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

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

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

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

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

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

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

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

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

«\$7,500 – Seven Thousand Five Hundred Dollars.. This Amount is NOT included in the Guaranteed Maximum Price (GMP) established by this contract. »

~~§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. The Contractor, Owner, and Architect acknowledge the scope of preconstruction services has been completed successfully including but not limited to advertisement for bidders, prequalification of the same, bid scope/package development, drawing review and collaboration with the architect, bidding, public announcement, contracting agreements for the scope of work.~~

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «Twenty Days» («20») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

«Wall Street Journal Prime Rate Plus 3» % «»

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

«One Hundred Seventy Seven Thousand Fifty Three Dollars - \$177,053»

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

«Cost of the work plus 14% (equal to the contract profit/overhead percentage)»

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

«15%»

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «One Hundred» percent («100» %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 5.2 Guaranteed Maximum Price

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

(Insert specific provisions if the Construction Manager is to participate in any savings.)

«One Million Four Hundred Ninety Seven Thousand Five Hundred Twenty Dollars - \$1,497,520»

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General

Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

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

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

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

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

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

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

§ 6.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

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

§ 6.6 Miscellaneous Costs

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

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

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

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

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such

costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

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

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

§ 6.7 Other Costs and Emergencies

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed

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

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

§ 6.9 Discounts, Rebates and Refunds

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

amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the «5th » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the «20th » day of the «same » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «Twenty » («20 ») days after the Architect receives the Application for Payment.

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

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

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

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

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

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee, less retainage of «Ten» percent («10» %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of «Ten» percent («10» %) from that portion of the Work that the Construction Manager self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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

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

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

«Owner Beneficial Occupancy OR Temporary Certificate of Occupancy OR Final Certificate of Occupancy AND submittal of Contractor's final close-out documents and warranty letters. »

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

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

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

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Payment & Performance Bond	Equal to contract value \$1,497,520
General Liability	\$1,000,000
Worker's Compensation	\$500,000
Automobile Liability	\$1,000,000
Umbrella Liability	\$11,000,000
Builder's Risk Insurance	Equal to contract value \$1,497,520

ARTICLE 9 DISPUTE RESOLUTION

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

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

☒ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

☐ «Step 1 is a mandatory meeting, Step 2 is mediation»

§ 9.3 Initial Decision Maker

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

« »
« »
« »
« »

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

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

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

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

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User Notes:

(1953391715)

§ 11.5 Other provisions:

« »

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~
« »
- .4 ~~AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~
« »
3. [AIA Document A133 – 2009 Exhibit A Guaranteed Maximum Price Amendment](#)
4. [Exhibit A – Schedule of Values](#)
5. [Exhibit B – Drawing Log](#)
6. [Exhibit C – Addendums 1 & 2 \(contract documents\)](#)
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)
« »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«Allen C. Peele (Vice President) / Beverly-Grant Inc.

»« »

(Printed name and title)

DRAFT AIA® Document A133™ – 2009

Exhibit A

Guaranteed Maximum Price Amendment

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

«Town of Biltmore Forest Public Works Renovation
355 Vanderbilt Road
Asheville, NC 28803 »
« »

THE OWNER:
(Name, legal status and address)

«Town of Biltmore Forest
355 Vanderbilt Road
Asheville, NC 28803 »« »
« »

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

«Beverly-Grant Inc.
80 Peachtree Road
Suite 210
Asheville, NC 28803 »« »
« »

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «One Million Four Hundred Ninety Seven Thousand Five Hundred Twenty Dollars » (\$1,497,520 « »), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

«See estimate and schedule of values attached as Exhibit »

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

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

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

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

«None »

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Roof Sheathing Replacement (11-600)	\$3,500
Wall Sheathing Replacement (11-630)	\$3,500
Structural Modifications (11-650)	\$5,000

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

«[All Design & Engineering Fees – NIC *By Owner*](#)
[Soil, Concrete, Material Testing Fees – NIC *By Owner*](#)
[Construction Office, Temp Utilities, Rental of the Same – NIC *By Owner*](#)
[Landscaping – NIC *By Owner*](#)
[Unsuitable Soils, Mass Rock, Trench Rock – NIC *By Owner*](#) »

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

«[Specifications Manual \(dated 7/9/2018\)](#) »

Section	Title	Date	Pages

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

«[Drawing Log – attached here as Exhibit](#) »

Number	Title	Date

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

«[Addendum 1 \(dated 9/10/18\)](#)
[Addendum 2 \(dated 9/14/18\)](#) »

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

«[July 2019](#) »

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«[Allen C. Peele \(Vice President\) / Beverly-Grant Inc.](#)

»« »

(Printed name and title)

PEELER

DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Town of Biltmore Forest Public Works Renovation
355 Vanderbilt Road
Asheville, NC 28803 »
« »

THE OWNER:

(Name, legal status and address)

«Town of Biltmore Forest
355 Vanderbilt Road
Asheville, NC 28803 »« »
« »

THE ARCHITECT:

(Name, legal status and address)

«Clark Nexsen
301 College Street
Asheville, NC 28801 »« »
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ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

§ 3.5 WARRANTY

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

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

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

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor

shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a

bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable,

and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final

payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary

by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 15.4 ARBITRATION

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

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Accessory Structure Ordinance Amendment – Discussion and Survey Results

Date: October 2, 2018

The latest draft of the proposed amendments to the accessory structure ordinance (attached) were provided for citizen input and review during the Open House on September 12. While many of the surveys were taken, we did not receive significant feedback at the meeting or subsequently regarding the questions. Four surveys were filled out, with the following verbatim responses:

As a reminder, the description of the proposed ordinance amendments was included before the questions.

Question 1

The Town respectfully requests your thoughts on these proposed changes to the accessory structure ordinance.

Responses to Question 1

- No gates!!! (It is suppose to look like one lawn flowing into the other)
- Driveway gates are ridiculous. Buy in the Ramble to do that.
- All of my neighbors have fences now which is driving the deer traffic through my yard. I need to put up a deterrent. My landscaping is being devastated, despite weekly spraying.
- People erect fences regardless of the town ordinance. It makes sense for the town to have a say in what materials, style, size these structures are. ANYTHING visible from the street should be rightfully regulated. If a fence serves a rightful purpose for a homeowner and is not visible from the street, it may be that a more lenient approach is appropriate.

Question 2

Do you presently have a fence, gate, wall, or driveway gate on your property, and if so, where is it located and what type of structure is it?

Responses to Question 2

- Have fence around vegetable garden in back yard (grandfathered)
- Back of property - good fences make for good neighbors
- No
- I have a chain link deer fence in my back yard.

Question 3

Please identify the street upon which you live?

Responses to Question 3

- Vanderbilt Road, Cedar Hill Drive, and Stuyvesant Crescent (one respondent did not answer)

While these responses do not capture a large percentage of the Town or even those in attendance at the Open House, they do reflect the broad spectrum of ideas related to fences and other similar accessory structures. As noted above, we have not received any additional surveys on this matter since the Open House.

If you recall, I provided a proposed ordinance amendment the day of last month's meeting that created a new section (153.049) of the Town Zoning Ordinance. My proposal removed the fence, gate, and wall language from the Town's accessory structure ordinance and clearly laid out the requirements in its own section. Section 153.029, the existing accessory structure ordinance, would be amended to state that fences, gates, and walls are regulated in accordance with the new section. I have attached that last draft, provided last month, for your review. As a reminder, before this draft ordinance or any zoning ordinance amendment may be considered, the Board must receive input from the Planning Commission regarding the proposal and a public hearing will have to be advertised and held. Please let me know if you have any questions.

*Draft Ordinance Amending Section 153.029 and
Creating New Town Zoning Ordinance
Section 153.049*

An Ordinance Amending the Town of Biltmore Forest Zoning Ordinance

WHEREAS, The Town is a unique community concerned with historic continuity. The Town, originally part of the Vanderbilt Estate, was established almost 100 years ago. Since its establishment, Biltmore Forest has been a forested residential community with substantial open space. Preservation of the forest environment requires substantial open space for trees, plants and wildlife.

WHEREAS, Given Biltmore Forest's proximity to the Biltmore Estate, and the Estate's large deer population, a number of residents have had problems with deer. The Board of Commissioners is committed to preservation and protection of the forested residential community concept. Current and prospective residents can participate in this effort by landscaping with plants that will not attract deer, confining dogs and other household pets with invisible fencing, limiting the construction of new fences, gates, and walls, and removing and not replacing existing fences, gates, and walls.

NOW, THEREFORE BE IT ORDAINED, by the Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this ordinance.

§ 153.029 – Accessory Structures and Buildings

ADD the following under § 153.029 (B):

New Number “3” states as follows:

Fences, gates, and walls shall be regulated in accordance with § 153.049 of this Zoning Ordinance.

§ 153.049 - Fence, Gate, and Wall Regulations

(A) New fences, gates, or walls may be approved by the Town Manager and do not require approval by the Board of Adjustments, if the following standards are met.

- (1) The fence, gate, or wall is constructed entirely within the backyard, is not located in any side or rear yard setbacks and is constructed of materials deemed acceptable in 153.049(D).
- (2) Mature vegetation or other buffering sufficiently obscuring the structure from neighbors may be required.

*Draft Ordinance Amending Section 153.029 and
Creating New Town Zoning Ordinance
Section 153.049*

(B) A driveway gate and supporting columns meeting the requirements of this section may be approved by the Town Manager and does not have to be approved by the Board of Adjustment. The requirements are:

- (1) The Driveway Gate and columns must not be located in the front or side yard setback of a property in order to allow sufficient time and space when multiple vehicles are entering a property
- (2) The Driveway Gate shall not be more than eight (8) feet in height, as measured by the slope of the driveway from the property line.
- (3) The Driveway Gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.
- (4) The Driveway Gate must open wide enough to provide for ingress and egress of emergency vehicles.

(C) Replacement of existing fences, gates, and walls may be approved by the Town Manager so long as the replacement fence is constructed of materials deemed acceptable in 153.049 (D) and meets the requirements below. Otherwise, replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence, gate, or wall must include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

- (1) Existing chain link fences or gates may not be replaced with new chain link fences or gates.
- (2) Existing fences, gates, or walls in the front yard may not be replaced. No new fences, gates, or walls shall be allowed in the front yard.
- (3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this ordinance.

(D) Acceptable Materials and Standards for Fences and Walls / Maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

- (1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.
- (2) Non-wooden fencing or gates shall be black, dark green or brown to blend with surrounding trees or vegetation.
- (3) No new chain link fencing or gates shall be allowed.

*Draft Ordinance Amending Section 153.029 and
Creating New Town Zoning Ordinance
Section 153.049*

- (4) Fences may not exceed six (6) feet in height without approval from the Board of Adjustments. Fences designed to prevent deer or other wildlife from entering the property may not exceed eight (8) feet in height.
- (5) Walls should be constructed of stone or similar material, and should be compatible with the construction materials of the house located on the same property.
- (6) When a fence, gate, or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the Town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

Mayor

ATTEST:

Clerk

Approved as to Form:

Attorney

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Traffic Control & Speed Mitigation Survey Results – Discussion and Direction

Date: October 2, 2018

A traffic control and speed mitigation survey was available for Open House attendees. We received 27 responses to this survey. Staff counted approximately 150 attendees at the Open House, so this would give us an approximate 18 percent response rate.

Methodology

For questions 2-7, specific statements were provided with respondents asked to give their rating of the statement on a scale of 1 to 10, where 1 is “strongly against” and 10 is “strongly in favor”. The average is listed below. Some respondents provided additional comments underneath each of the “rating” questions. Those additional comments are included below the average score for each question.

General Summary

Overall, respondents expressed a more favorable opinion of reducing the speed limit to 25 miles per hour (rating of 6.6) and were strongly in favor of all way stops at Vanderbilt/Cedarcliff and Stuyvesant/Greenwood (8.0 and 8.5, respectively). The all way stop consideration at Busbee/Vanderbilt received a lower score (6.8) than the other two proposed all way stops. Respondents expressed favorable opinions (8.1 rating) for the proposed series of three (3) speed bumps on Hilltop Road, and were also more favorable to the consideration of closing Ridgefield Place at Hendersonville Road (6.1 rating). Respondents overwhelmingly supported the idea of a construction route in the Town.

As you will see, the respondents’ primary focus was on speeding. Several respondents felt the Town was discouraging walkers, joggers, or pedestrians by the signage and messaging distributed recently regarding walking facing traffic. This may need to be a focal point of the Town in the future, whether that is in providing more areas for pedestrian access or better public information regarding why pedestrians are required to walk facing traffic. Please feel free to let me know if I can provide additional information after you review the material and responses.

Responses to Traffic Mitigation and Speed Reduction Survey

Question 1

This question asked respondents which street they lived on in Biltmore Forest.

- Amherst Road (1 response)
- Buena Vista Road (2 responses)
- Cedar Hill Drive (1 response)
- East Forest Road (1 response)
- Eastwood Road (1 response)
- Frith Drive (2 responses)
- Hemlock Road (1 response)
- Park Road (1 response)
- Stuyvesant Crescent (2 responses)
- Stuyvesant Road (2 responses)
- Vanderbilt Road (5 responses)
- White Oak Road (5 responses)
- No Street Provided (3 responses)

Question 2

The Town is considering reducing the speed limit from 35 mph to 25 mph from the intersection of Vanderbilt Road and Busbee Road north to Biltmore Village. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 6.6

Additional Comments:

- strongly against. 25 mph is really slow for such a straight road. Not necessary.
- But there needs to be more police presence to catch people who don't go 25 now
- How about 30?
- a 25 year resident complaining about #2 for years

Question 3

The Town is considering making the intersection of Cedarcliff and Vanderbilt Roads an “All Way Stop”, requiring vehicles traveling on Vanderbilt Road to come to a complete stop. This is due to the limited sight distance at this intersection and vehicle collision history. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 8.0

Additional Comments:

- strongly against. I think a blinking light at Cedarcliff on the side coming in from HVL Rd is a better solution. That is where the problem initiates.
- Lived at the corner of Vanderbilt & Cedarcliff for 2.5 years. Either option of questions 2 or 3 would work, probably not necessary for both. Visibility would increase with slower traffic or stopping.
- Yes please

Question 4

The Town is considering making the intersection of Busbee and Vanderbilt Roads an “All Way Stop”, requiring vehicles traveling on Vanderbilt Road to come to a complete stop. This is due to the vehicle collisions history. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 6.8

Additional Comments:

- strongly against. I'm surprised there has been that many accidents at this intersection.
- Low marks for Busbee/Vanderbilt because it seems more natural that approaching traffic would stop and visually it is clear for drivers on Busbee.

Question 5

The Town is considering making the intersection of Stuyvesant and Greenwood Roads an “All Way Stop”, requiring vehicles traveling on Stuyvesant Road to come to a complete stop. This is due to speed complaints and speed citation history, as well as its location adjacent to a park. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 8.5

Additional Comments:

- this one sounds crazy. I can't imagine a 4 way stop here!

Question 6

A series of three (3) speed bumps are planned for Hilltop Road, east of Stuyvesant Road, due to the narrowness of the street and increased traffic in this area. Neighbors on this road have proposed this idea. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 8.1

Additional Comments:

- stop light will help
- Not sure how I feel. This would certainly increase traffic on Eastwood Road - especially if Ridgefield is closed. I can see one speedbump but not 3.
- Bumps need on Cedar Hill, Brookside Rd, Southwood - I walk these roads & lots of speeders on these roads
- No opinion

Question 7

A recent traffic study conducted by the Town discussed the possibility of closing the intersection of Ridgefield Place with Hendersonville Road. Please rate your agreement with this on a scale of 1 to 10, with 1 being strongly against and 10 being strongly in favor.

Average Rating: 6.1

Additional Comments:

- 10 if there is a traffic light at Eastwood being installed.
- How about a traffic light instead?
- traffic light
- Traffic light would be better

Question 8

Respondents were asked to provide feedback regarding a proposed construction route within the Town. We received 26 total responses to this question, with one respondent not circling “yes” or “no”, but rather just stating “depends on what it is – do not think it would work”.

“Yes” Responses: 21

“No” Responses: 5

Additional Comments:

- Most definitely!

Question 9

Respondents were asked what concerns, if any, they had regarding traffic issues in Biltmore Forest.

Answers (Verbatim) from Respondents:

- No response
- ?
- I'd like to see more walkers, more bikes; fewer cars.
- People speeding - young & old!
- None
- Speed!
- Speed primarily. Inattention (cell phone use)
- More police monitoring speed on our streets
- Loud motors and/or lack of standard mufflers. - Certainly hope Town Manager followed through by asking DOT to not make a left turn light going north at Eastwood. We have had to accept this light because of Ballard's agreement w/ DOT but not to have a left turn into our neighborhood. As traffic gets worse every day, w/ a light giving people a cut through, our traffic will be so much worse - federal agencies do listen if asked.
- I am concerned about the message we send to motorists with an ordinance that gives them the right of way. In a town with nice wide streets and no sidewalks, where residents enjoy large private lots, as well as, walking, biking, running pushing strollers, walking dogs, it seems more conducive to the spirit of the town that motorists be asked to give pedestrians the right of way. Given the speeding issue, it makes sense to me that we make people a priority. Younger families are beginning to move back into B.F.
- I was recently concerned about a notice in our most recent newsletter regarding pedestrians using roadways. Apparently, pedestrians are required to always step out of the way of vehicles. I am concerned that our Town is favoring vehicle traffic over usage by town residents i.e. walkers, runners, strollers, kids, etc. I would appreciate a discussion about what kind of message our town wants to send to both residents and cars.
- Stuyvesant Rd from Hilltop Rd south needs additional speedbumps (2) close to 105 Stuyvesant Rd. Speeding down Stuyvesant Rd to the the speed bumps near the entry to Carolina Day School's side road is excessive. Also, the same for coming up Stuyvesant Rd. leaving the speed bumps. 2. Stuyvesant Rd. has become a pass through road between peak morning and work, letting out 5pm-6:30pm for traffic avoiding Hendersonville Rd. getting on to the Parkway heading towards 191/Brevard Rd. Plus they speed. Help!
- More speed bumps from Hilltop to Greenwood on Stuyvesant
- Speeding at our end of Vanderbilt. No one comes close to 25 mph. We have been asking for policing down here for a decade - nothing happens.
- None
- Too much traffic cutting through Vanderbilt Rd. to avoid Hendersonville Rd. traffic They drive faster to make up for lost time in traffic. This is in regard to traffic coming from Biltmore Village heading south.

- Asheville trolleys on Vanderbilt Road in front of TGIF
- None
- People don't go 25 on Busbee/Forest/in front of Town Hall -> put a 25 mph sign. People drive very close to walkers along this route - people can move over. To step off the road, I have fallen a couple of times while walking dogs. I won't go off road b/c I don't want to strain/break my ankle/leg
- Speeding! In the 25 mph areas. Signs showing your speed great start. Most motorists don't like slowing or stopping for joggers, walkers.
- None
- Long term parking on White Oak
- No long term parking on White Oak Rd.
- No Response
- None
- None

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George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Consideration of Town Code Amendment regarding Political Signage

Date: October 3, 2018

During election season, the Town receives many questions from citizens regarding when political signs can be displayed. The Town's existing ordinance states the following:

§ 93.03 SIGNS AND POSTERS; REQUIREMENTS.

(C) Political signs are allowed on any residential lot prior to a primary election, general election, or referendum provided the signs are erected as follows.

(1) Signs may be posted **30 days prior to the day of an election** and removed within five days after the day of the election.

(2) Four signs are permitted per lot, with each sign representing one candidate, or one issue if a referendum.

(3) Each sign shall not exceed four square feet in size and not contain any electrical component or lighted in any way.

(4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway.

(5) The sign shall be set back at least 20 feet from the nearest edge of the pavement of all public roads on which the house borders, and in no way shall signs be located within the public right-of-way.

(6) No portion of the sign is to extend more than four feet above the ground.

(7) A sign located on private property requires the owner's approval.

(8) The property owner shall be fined if the signs are not removed within five days of an election or referendum.

From my review, this ordinance was drafted and passed before early voting became a popular method of voting. Many residents who contact the Town to find out about our ordinances regarding political signage would like to display signs beginning at the 30 days before early voting commences, and have requested that the Town align our ordinance with that of the State of North

Carolina as it relates to their political signage on public rights of way. The State language regarding political signage, and specifically its timeline for posting, is as follows:

NCGS § 136-32. Regulation of signs.

(b) Compliant Political Signs Permitted. During the period beginning on the **30th day before the beginning date of "one-stop" early voting under G.S. 163A-1300** and ending on the 10th day after the primary or election day, persons may place political signs in the right-of-way of the State highway system as provided in this section. Signs must be placed in compliance with subsection (d) of this section and must be removed by the end of the period prescribed in this subsection.

If the Board wished to amend the Town's ordinance regulating political signage to match that of NCDOT for public rights of way, then the simplest change would be as follows to section 93.03(C)(1):

Signs may be posted 30 days prior to the ~~day of an election~~ beginning of "one-stop" early voting under G.S. 163A-1300 and removed within five days after the day of the election.

The period for political signage to be placed on a property will be underway by the time our regular Board meeting occurs, so if the Board wishes to make this amendment, staff can provide a formal amendment at next month's regular meeting. Please let me know if you would like to amend the Town's Code of Ordinances regarding this provision.

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Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Discussion of Amendment to Permit Timelines and Process

Date: October 3, 2018

Staff provided a permit process review last month and timelines utilized by other municipalities. The Board discussed various options and received information regarding how Buncombe County handles their building permit process since they conduct all building and trade permitting for the Town. The Board asked staff to return after discussing the process with Buncombe County Permit Office with suggestions that may more effectively align our zoning permit process with the building permit process.

Ms. Isenhower met with Mr. Matt Stone, head of the Permits Office in Buncombe County, and has provided the attached memorandum for your review with her findings. Please let me know if you have any additional questions before directing staff how to proceed.

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Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Jonathan Kanipe, Town Manager
From: Adrienne Isenhower, Code Enforcement Officer
Re: Permit fees for New Construction
Date: September 24, 2018

Currently, zoning permits are valid for two years from the date of issuance and the penalty after that time is \$250 per day without substantial completion of the project. This standard is somewhat troublesome as the fine would most likely be considered unreasonable if challenged. In consideration of the overall development process, staff believed following a model similar to Buncombe County would be a logical solution so building and zoning permits followed a similar timeline. A meeting was held with Matt Stone, the Director of Permits and Inspections for Buncombe County to better understand their procedures.

Mr. Stone reported that Buncombe County strictly follows the standards allowed by the N.C. General Statutes which require construction to begin within six months after issuance of the permit. Furthermore, there is no penalty or permit expiration unless the permittee halts construction for a period of one year or more. If construction is halted for a period of one year, the result is a charge of half of the original permit fee. There is a charge of \$75.00 for change of plans for residential projects.

Based on this information and research of other municipalities, staff recommends updating the current ordinance to require resubmittal of plans after the two year threshold when substantial completion has not be accomplished with a fee based on work not yet completed, omitting work already done. In addition, plan resubmittal will be required for all plan changes with a fee of \$75.00 and if a property owners change contractors two or more times, a fee will be charged of \$100. These changes will provide more reasonable penalties for permit expiration while providing a clearer method of enforcement and be more in line with the penalties enforced by the Building Inspections office.