AGENDA
Catawba County Board of Commissioners Meeting
Monday, June 3, 2019, 7:00 p.m.
Board of Commissioners Meeting Room
2nd Floor, Catawba County Justice Center
100 Government Drive, Newton, NC

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation.
4. Approval of the Minutes from the Board’s Regular Meeting of May 20, 2019, and Special Meeting of May 23, 2019.
5. Recognition of Special Guests.
6. Public Comments.
7. Public Hearings.
   b. Community Development Block Grant (CDBG) Funds. Presented by Planning and Parks Director Jacky Eubanks.
8. Appointments.
10. Other Items of Business.
    Adoption of the Catawba County Annual Budget for Fiscal Year 2019/20.
    a. Pyrotechnics Permit Application.
    b. Capital Outlay Projects Transfer of Funds Request from Catawba County Schools.

PERSONS WITH DISABILITIES: Individuals needing assistance should contact the County Clerk at 828-465-8990 within a reasonable time prior to the meeting. Participation in public meetings is without regard to race, ethnicity, religion, sex, age, or disability.
CALENDAR: The next Board of Commissioners will take place on Monday, June 17, 2019, at 7:00 p.m. in the Commissioners Meeting Room on the 2nd Floor of the Catawba County Justice Center, 100 Government Drive, Newton.
MEMORANDUM

To: Catawba County Board of Commissioners
From: Nathan Huret, Catawba County EDC
Date: June 3, 2019
Re: Project Astro Economic Development Agreement and Resolution

REQUEST
Staff requests the Board of Commissioners holds a public hearing to receive citizen comments and approves the Economic Development Agreement between the County and Star Snax LLC, the related resolution attached, and authorizes the Chair to execute these along with any other needed documents.

BACKGROUND
Since acquiring the assets of Conover-based CoPak Solutions in 2015, Star Snax has been producing a variety of corn chips (white, yellow and blue) and high-end tortilla chips (including sweet potato, beet and peach jalapeno) for major national retailers like Sam’s Club and Costco.

The company has enjoyed steady growth over the past decade, growing from $7M in sales (2008) to nearly $20M in 2017. Employment growth has nearly tripled as well during this same period, to the current headcount of 91 jobs between several Conover facilities.

Sales growth has quickened since the Star Snax acquisition, with year-over-year sales growth of 15% in 2017 and an expected 24% in 2018. Sales now outstrip the company’s current manufacturing capabilities in Conover.

PROJECT OVERVIEW
To meet significant sales growth and to further explore the opportunity to diversify its product offerings, Star Snax is considering renovating and expanding two manufacturing facilities to accommodate a new tortilla production line.

The new production line will replace two existing lines, yet will double the company’s manufacturing capacity and increase operational efficiencies. To accommodate the new line, Star Snax is considering adding 32,000 sf to one of its facilities. The company estimates a total investment of $5.8M in construction and new machinery.

This investment would ensure Star Snax’s location in Catawba County for the foreseeable future – retaining the company’s 91 employees and adding at least another 40 production and managerial positions (average $42,175) by the end of 2020.

The company has pursued alternatives to move all manufacturing and the headquarters to Virginia, as the CEO and ownership group resides in Richmond, Virginia.

ECONOMIC DEVELOPMENT INCENTIVE GRANT OVERVIEW AND CLAWBACKS
Based on the matrix developed with the Board of Commissioners, EDC staff is suggesting a Level 1 incentive: a 50% grant on new County tax receipts on this project for two years, with a $5.8M investment commitment and 40 new jobs (total maximum incentive of $33,350, prior to depreciation) over the next two years.
This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other county projects.

Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires Star Snax LLC to meet minimum thresholds of investment ($5,800,000 by the end of 2020) and job creation and maintenance (40 new jobs by end of 2020). Clawbacks are included in the agreement requiring repayment should the investment and job creation amounts not be met or sustained.

<table>
<thead>
<tr>
<th>GRANT YEAR</th>
<th>MAXIMUM PAYMENT BY COUNTY - $5.8M, 40 JOBS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (2021)</td>
<td>$16,675</td>
</tr>
<tr>
<td>2 (2022)</td>
<td>$16,675</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$33,350</td>
</tr>
</tbody>
</table>

**RECOMMENDATION**
Staff recommends the Board of Commissioners holds a public hearing to receive citizen comments and approves the Economic Development Agreement between the County and Star Snax LLC, the related resolution attached, and authorizes the Chair to execute these along with any other needed documents.
Resolution No. 2019-

Resolution Authorizing Economic Development Incentives for Star Snax LLC

WHEREAS, Star Snax LLC (herein referred to as “the Company”) requested incentives to cause a minimum investment of $5,800,000 in the Company’s Conover facility by December 31, 2020, the creation and maintenance of a minimum of 40 new jobs by December 31, 2020, with a requirement to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below, and the total average wage of the jobs be above the average wage in Catawba County, as determined annually by the North Carolina Department of Commerce.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Catawba County, North Carolina, as follows:

The Board of Commissioners approves a performance based two-year grant, based on the minimum investment of $5,800,000, and creation and maintenance of 40 new jobs within two years, with a maximum annual payment of $16,675 (cumulative maximum incentive of $33,350). This grant will be used to reimburse the Company’s expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any necessary resolutions or addenda between the Company and the County under these terms and conditions and authorizes the Chair to execute these documents.

This the 3rd day of June, 2019.

_________________________________
C. Randall Isenhower, Chair
Catawba County Board of Commissioners
STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA AND STAR SNAX, LLC  
ECONOMIC DEVELOPMENT AGREEMENT  

This JOINT ECONOMIC DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this ___ day of ____, 201_, by and between Catawba County (the “County”), a North Carolina body politic, having a mailing address of Post Office Box 389, Newton, NC, 28658, and Star Snax, LLC (or “Company” or “Star”), a Limited Liability Corporation qualified to do business in the State of North Carolina, having a mailing address of 103 Somerset Drive NW, Conover, North Carolina 28613.

WITNESSETH:

WHEREAS, North Carolina General Statute (NCGS) 158-7.1 authorizes County to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries, and Star is engaged in manufacturing and distribution within the meaning of NCGS 158-7.1; and

WHEREAS, Star intends to construct, up-fit and/or equip existing manufacturing facilities (“Improvements”) at 103 Somerset Drive NW, Conover, NC, 28613 (Parcel ID # 373213240864) (the “Property”), at a cost of not less than Five Million Eight Hundred Thousand Dollars ($5,800,000) and intends to create a minimum of Forty (40) jobs at the facility and retain Ninety One (91) permanent jobs currently at the facility, with the improvements to be made and new jobs to be created between January 1, 2019 and December 31, 2020 (the “Improvement Period”); and

WHEREAS, in an effort to encourage and maintain the highest educational attainment, Company will agree to require a minimum of a high school diploma or its equivalent (GED, Adult HS Diploma, etc.) for any permanent full-time employee 25 years of age or below; and

WHEREAS, Star expects to be a community-oriented company and intends to participate in philanthropy, community events and programs intended to increase the health and happiness of their employees and the greater community as a whole; and to consider participation in the Catawba EDC’s corporate Committee of 100 501(c)(3) non-profit sponsorship; and

WHEREAS, Star is encouraged, to the reasonable extent possible, to purchase local services and supplies, such as, but not limited to, locally produced products, local hotel, motel and hospitality services, local building and construction services, and other products and services;

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. On or before June 30, 2019 Star shall:

   Deliver to County a certificate confirming that Star owns or has the right to acquire the Property and that the installation of the Improvements will result in the creation, maintenance and availability of a minimum of 40 new jobs prior to December 31, 2020
and that the overall average weekly wage will equal or exceed 100% of the Average Weekly Wage, established for Catawba County by the North Carolina Department of Commerce’s Wage Standards for each year that County pays Star the economic development incentive provided for herein. Star affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit “A”. Such certificate shall be substantially in the form of the certificate attached to this Agreement as Exhibit “A”. It is understood and agreed the 40 new jobs referred to above means additional new jobs over and above the 91 existing jobs at Star’s Property in Conover on December 31, 2018.

2. In order to induce County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, Star represents and warrants that, as of the execution date hereof:

2.1 Star is qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

2.2 Star has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;

2.3 The undersigned representative of Star has the right, authority and duty to execute this Agreement in the name and on behalf of Star;

2.4 This Agreement (i) is the valid and binding instrument and agreement of Star, enforceable against Star in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on Star, the charter documents or operating agreement of Star or any provision of any indenture, agreement or other instrument to which Star is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which Star is a party;

2.5 There is no suit, claim, action or litigation pending, or to the knowledge of Star threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;

2.6 There is no impediment to the use of the Property for the purposes contemplated by this Agreement.

2.7 Star is not engaged in a business that would be exempt from property taxes.

3. In order to induce Star to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, County represents and warrants that, to the best of County’s knowledge that, as of the execution date hereof:

3.1 County is a North Carolina body politic corporate in nature and existing under North Carolina law;
3.2 County has the power and authority to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;

3.3 The undersigned authorized representative of County has the right, authority and duty to execute this Agreement in the name and on behalf of County;

3.4 This Agreement (i) is the valid and binding instrument and agreement of County, enforceable against County in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on County, the charter documents of County or any provision of any indenture, agreement or other instrument to which County is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which County is a party; and

3.5 There is no suit, claim, action or litigation pending, or to the knowledge of County threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein.

4. Star shall make investments to the Property and Improvements during the Improvement Period. Cumulative expenditures will meet or exceed Five Million Eight Hundred Thousand Dollars ($5,800,000) by December 31, 2020, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and Star further agrees to maintain in place, in good condition (ordinary wear and tear excepted), said Improvements for three years after the final incentive payment. “Investments and Improvements qualifying and resulting in additional value for ad valorem tax purposes” means investments and Improvements made after the date of this Agreement as certified by Star by Certificate(s) in the form of Exhibit B.

5. In addition to the 91 existing jobs on December 31, 2018, Star shall create a minimum of 40 new jobs at the Property in Conover by December 31, 2020 and agrees to maintain or make available these jobs in place for three years after the final incentive payment. A job is defined as employment that provides 1600 hours or more of work in any 12 month period.

6. Payment of economic development incentives for Real and Personal Property Investments and for Job Creation in accordance with this Agreement shall be made as follows:

   a. County will provide annual payments (each an “Annual Incentive Payment”) in an amount equal to 50% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) as paid to the County for the applicable Grant Year during the Payment Period in excess of the assessed value of the Property as of January 1, 2019. The Annual Incentive Payment for each Grant Year shall not exceed the maximum payments as reflected in the chart in paragraph 6.b.
b. In no event will the cumulative Annual Incentive Payments by County exceed Thirty Three Thousand Three Hundred Fifty Dollars ($33,350) for the Payment Period (as described in the chart).

<table>
<thead>
<tr>
<th>Payment Period</th>
<th>Maximum Annual Incentive Payment By County by Year</th>
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<tbody>
<tr>
<td>Grant Year 1</td>
<td>$16,675</td>
</tr>
<tr>
<td>(2021)</td>
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<td></td>
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<tr>
<td>Total</td>
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</tr>
</tbody>
</table>

c. The Annual Incentive Payments shall be payable annually for two years, beginning in 2021 (Grant Year 1).

d. Upon payment of ad valorem taxes to County for the Improvements for the applicable Grant Year of the Payment Period and certification by Company in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that Company has created and maintained jobs as agreed herein, County will, within sixty (60) days, pay to Company the applicable Annual Incentive Payment. This same process will be followed by County and Company in the following one (1) year.

e. Company shall furnish to County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Paragraph 6 and proof of payment of all applicable taxes. If requested, Company shall provide County, at County’s expense, independent certification as to such expenditures and number of existing jobs.

7. Force Majeure. Notwithstanding the provisions of Paragraph 8, in the event Star or Landlord is unable to meet the requirements of this Agreement as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Star; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as Star shall (a) have furnished County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements. In accord with the foregoing, should the Star be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay, shall be suspended until such time as the Star is relieved from the effect of an event of force majeure and resumes completion of the Improvements.
8. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

a. If Star, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining 91 permanent jobs at the facility as existed as of December 31, 2018 and, in addition, creation and maintenance of a minimum of 90% (36) of the number (40) of new jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;

b. If Star shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded;

c. If Star fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1st when taxes are billed, and any qualifying incentive would be due to Star, this shall be deemed a breach of the Agreement and notwithstanding paragraph 9 below, the sole remedy will be that County will not owe Star any incentive that may have otherwise been due had those filings properly been made when due.

d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by Star to County in connection with the transaction described in this Agreement, shall, to Star’s knowledge, to be false or misleading in any material respect at the time given;

e. If Star shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

f. If County, except in the event of force majeure, fails to pay Star when such payment is due or is otherwise unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of an emergency manager, receiver, trustee, liquidator or conservator or any similar entity; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or North Carolina;
g. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Star or of the whole or any substantial part of their properties, or approves a petition filed against Star seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Star or of the whole or any substantial part of their properties;

h. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing an emergency manager, custodian, receiver, trustee, liquidator, or conservator or any similar entity for County, or approves a petition filed against County seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of County; or

i. If Star shall allow its taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the facility contemplated by this Agreement.

9. County Remedy: If Star fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and Star shall immediately refund to County all economic development incentive payments paid to Star prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date Star receives the notice of the Event of Default and prime will be the prime rate as published in the Wall Street Journal (WSJ). Star shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

10. Star Remedy: If County fails to cure an Event of Default for which it receives written notice from Star, the obligations of Star as set out herein shall terminate. County shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

11. Star and County acknowledge that any monies appropriated and expended by County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction rules to which either Star or County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, Star will make such repayment to County. In the event one or more lawsuits are brought against County or any County elected official, officer, agent or employee, or Star, challenging the legality of this Agreement, then County and Star shall exercise their best efforts to defend against any and all such lawsuits, at their own cost and expense.

12. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with
a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

County of Catawba: Catawba County
Attn: County Manager
25 Government Drive
PO Box 389
Newton, NC, 28658

Copy to: County Attorney
Attn: Debra Bechtel, County Attorney
25 Government Drive
PO Box 389
Newton, NC, 28658

Star Snax: Star Snax
Attn: Randall Wilson, Chief Operating Officer
103 Somerset Drive NW
Conover, NC, 228613

County or Star may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

13. This Agreement shall inure to the benefit of, and is binding upon, County and Star and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, nor claims created by this Agreement may be transferred by Star without the prior, written approval of County, which approval will not be unreasonably withheld.

14. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

15. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.

16. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

17. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.

18. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to Star and Star fulfilling all of its requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.
19. Both Star and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both Star and County.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

County of Catawba,
A North Carolina Body Politic

Attest:
(SEAL)

By: ______________________________ (Seal)
C. Randall Isenhower, Chair
Catawba County Board of Commissioners

___________________________
Barbara E. Morris, Clerk

STAR SNAX, LLC

By: ______________________________ (Seal)
Randall Wilson, Chief Operating Officer
STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, ________________________________ a Notary Public of said county and state, certify that Barbara E. Morris personally came before me this day and acknowledged that she is County Clerk to the Catawba County Board of Commissioners, a body politic corporate in nature, and that by authority duly given and as the act of the body politic the foregoing instrument was signed in its name by its Chair, sealed with its body politic seal, and attested by herself as County Clerk.

Witness my hand and seal this _____ day of _________________________, 201_.

[Seal]

___________________________________
Notary Public

My commission expires: ________________________

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, ________________________________ a Notary Public of said County and State, do certify that Randall Wilson, Chief Operating Officer, personally appeared before me this day and acknowledged on behalf of STAR SNAX, LLC the voluntary due execution of the foregoing document, all for the purposes therein expressed.

Witness my hand and seal this _____ day of _________________________, 201_.

[Seal]

___________________________________
Notary Public

My commission expires: ________________________

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

______________________________ Robert Miracle, Catawba County Finance Director

Approved as to form on behalf of County of Catawba only:

______________________________ Debra Bechtel, County Attorney
CERTIFICATE

TO: Catawba County

This Certificate is delivered pursuant to Paragraphs 1 and 8 of the Joint Economic Development Agreement (the “Agreement”), dated __________, 201_, between Catawba County (“County”) and STAR SNAX, LLC (“Star”). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

I, ________________________________, do hereby certify, for and on behalf of Star, that:

(a) Star owns the real property necessary for the Improvements; and
(b) Star will create, maintain and make available a minimum of 40 net new jobs (in addition to the existing 91 jobs as of December 31, 2018) prior to December 31, 2020 and the overall average weekly wage will equal or exceed the 100% Average Weekly Wage established for Catawba County by the North Carolina Department of Commerce’s Wage Standards for each year that County pays Star the economic development incentive provided for herein; and
(c) Star agrees to comply with the Calendar of Responsibilities listed below.

Calendar of Responsibilities:

By January 5: Star makes payment to County according to Tax Listing filed by January 31st of the previous year unless extension is requested and approved for April 15th. Any extension request must be filed by January 31st.

By March 5: Star must provide Exhibit A and Exhibit B, supporting documents and proof of payment and/or compliance as required within Agreement.

By April 22: County Tax Office to provide Tax Listing on Specified Accounts.*

*Note: This is not a company responsibility.

Dated at Catawba County, North Carolina, this _____ day of ____________, 201__.

STAR SNAX, LLC

BY: ________________________________

TITLE: ______________________________
EXHIBIT B
Joint Economic Development Agreement
Between County of Catawba and Star Snax, LLC

CERTIFICATE

TO: Catawba County

This Certificate is delivered pursuant to Paragraphs 6 and 8 of the Joint Economic Development Agreement ("the “Agreement”) dated ________, 201_, between Catawba County ("County") and STAR SNAX, LLC ("Star"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

Star does hereby certify that:

(a) The following improvements were made during the 20__ Calendar Year: (see attached)
(b) The following jobs were created during the 20__ Calendar Year: (attach the most recent quarterly Form NCU1 101 or 3rd party payroll report);
(c) The average wage of all of those employed at the Property during the 20__ Calendar Year is as follows: (attach Wage Forms Total Payroll divided by number of employees);
(d) Total cumulative personal property valuation installed at the Property during the 20__ Calendar Year ___________________________; and
(e) Proof of taxes paid is attached to this certificate.

Dated at Catawba County, North Carolina, this _____ day of ____________, 20__.

Star Snax, LLC

________________________________
BY: __________________________
TITLE: __________________________

Calendar of Responsibilities:
By January 5: Company makes payment to County according to Tax Listing filed by January 31st of the previous year unless extension is requested and approved for April 15th. Any extension request must be filed by January 31st.
By March 5: Company must provide Exhibit A and Exhibit B, supporting documents and proof of payment and/or compliance as required within Agreement.
By April 22: County Tax Office to provide Tax Listing on Specified Accounts.*

*Note: This is not a company responsibility.

<table>
<thead>
<tr>
<th>Year of Investment</th>
<th>Assessment of Value</th>
<th>Taxes Billed</th>
<th>Grant Paid</th>
<th>Grant Yr</th>
<th>Grant Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 (2019)</td>
<td>1/1/2020</td>
<td>7/1/2020</td>
<td>2021</td>
<td>Year 1</td>
<td>50%</td>
</tr>
<tr>
<td>Year 2 (2020)</td>
<td>1/1/2021</td>
<td>7/1/2021</td>
<td>2022</td>
<td>Year 2</td>
<td>50%</td>
</tr>
</tbody>
</table>
Memo

TO: Catawba County Board of Commissioners

FROM: Planning & Parks Director Jacky Eubanks

DATE: June 3, 2019

SUBJECT: Community Development Block Grant (CDBG) Funds

REQUEST:
Staff requests the Board of Commissioners holds a public hearing to receive citizen input regarding CDBG funds for the next twelve-month funding cycle.

BACKGROUND:
The State of North Carolina receives approximately $45 million annually from the US Department of Housing and Urban Development to be made available to eligible local governments to serve low and moderate income persons, families and communities. The Rural Economic Development Division (REDD)/State CDBG program provides funding in the categories of economic development, neighborhood revitalization, disaster recovery, and various pilot programs, including downtown redevelopment and broadband assistance.

The purpose of this public hearing is to receive citizen input as to the needs of low income and moderate income residents and neighborhoods within the County. Based on the needs identified, the County may be eligible to apply for CDBG funds to address those needs within the next 12 months. Should the County choose to apply for any CDBG funds within the next twelve months of this public hearing, a second public hearing will be held directly related to a specific project and that application for CDBG funds.

RECOMMENDATION:
Staff recommends the Board of Commissioners holds a public hearing to receive citizen input regarding CDBG Funds as required by CDBG regulations.
APPOINTMENTS

RANDY (Upcoming) Economic Development Corporation Board of Directors
6/30/19 Robin Nicholson Eligible for a 3rd term
              Susanne Swinnie Eligible for a 2nd term

3-year term
Chair Isenhower recommends the reappointment of Robin Nicholson for a third term and
Susanne Swinnie for a second term on the Economic Development Corporation Board of
Directors. These terms will expire June 30, 2022.

RANDY (Upcoming) Juvenile Crime Prevention Council
6/30/19 Ronn Abernathy Eligible for a 9th term
              Jennie Connor Eligible for a 9th term
              Karen Harrington Eligible for a 3rd term
              Jennifer Mace Eligible for a 6th term
              Sgt. Eric Page Eligible for a 2nd term
              Brandi Tolbert Eligible for an 8th term

2-year term
Chair Isenhower recommends the reappointment of Sgt. Eric Page for a second term, Karen
Harrington for a third term, Jennifer Mace for a sixth term, Brandi Tolbert for an eighth term
and Ronn Abernathy and Jennie Connor for ninth terms on the Juvenile Crime Prevention
Council. These terms will expire June 30, 2021.

SHERRY (Upcoming) Catawba County Council of the Arts
6/30/19 Adam Stewart Eligible for a 2nd term

3-year term
Commissioner Butler recommends the reappointment of Adam Stewart for a second term on
the Catawba County Council of the Arts. This term will expire June 30, 2022.

DAN (Upcoming) Newton-Conover Auditorium Authority Board of Directors
6/30/19 Janie Sigmon Eligible for a 2nd term

3-year term
Commissioner Hunsucker recommends the reappointment of Janie Sigmon for a second term
on the Newton-Conover Auditorium Authority Board of Directors. This term will expire June
30, 2022.
MEMORANDUM

TO: Catawba County Board of Commissioners
FROM: Bob Miracle, Chief Financial Officer
Tina Wright, Purchasing Manager
DATE: June 3, 2019
SUBJECT: Bid Award Request for Approval of Board of Elections Construction Contract

REQUEST
Staff requests the Board of Commissioners a.) approves a bid award for the construction of a new Board of Elections site to Wilkie Construction Company, Inc. of Lenoir, NC in an amount not to exceed One Million Seven Hundred Sixteen Thousand Six Hundred Dollars ($1,716,600.00), and b.) authorizes a budget transfer in the amount of One Million Eight Hundred Dollars ($1,800,000.00) from an existing capital project.

BACKGROUND
Currently, Elections utilizes office and storage space totaling 2,706 square feet spread across several different locations throughout the County, which has proven to be a challenge in terms of accessing records and equipment as it is needed. By renovating the former animal shelter, Elections will gain 5,671 square feet to meet its space needs, for a total of 8,377 square feet. The project will provide office space, a large meeting room to host training and education sessions for poll workers, County-wide staff, and District meetings, a unity room for election night reporting, voting equipment testing room, and storage rooms. In addition, this solution will enhance Elections’ ability to access records and equipment efficiently and will improve security.

On February 18, 2019, the Catawba County Board of Commissioners authorized staff to move forward with the design of the new Board of Elections site at 145 Government Drive, Newton, North Carolina, awarding the design contract to Yates-Chreitzburg-Hughes Architects, P.A.

On April 18, 2019, Catawba County issued a Public Advertisement for Bids to solicit bid responses from licensed contractors interested in providing construction services for renovation of the new Board of Elections site.

On May 17, 2019, all bids received were publicly opened and read. The bid specifications included one (1) alternate:

Alternate No. 1:

To provide a new 250kw diesel generator and associated automatic transfer switch, pad, circuit breaker, and feeder as indicated on the electrical drawings.

A total of four (4) bid responses were received (bid tabulation attached). The results of those bid responses are as follows:
<table>
<thead>
<tr>
<th>Bidders</th>
<th>Base Bid</th>
<th>Alternate 1 Generator</th>
<th>Total of Base Bid and Alternate</th>
</tr>
</thead>
<tbody>
<tr>
<td>C4 Builders</td>
<td>$1,740,000.00</td>
<td>$134,550.00</td>
<td>$1,874,550.00</td>
</tr>
<tr>
<td>Hickory Construction Company</td>
<td>$1,623,000.00</td>
<td>$103,000.00</td>
<td>$1,726,000.00</td>
</tr>
<tr>
<td>Simcon Company</td>
<td>$1,589,000.00</td>
<td>$125,000.00</td>
<td>$1,714,000.00</td>
</tr>
<tr>
<td>Wilkie Construction Company</td>
<td>$1,498,000.00</td>
<td>$118,600.00</td>
<td>$1,616,600.00</td>
</tr>
</tbody>
</table>

Wilkie Construction Company, Inc., with its principal office located in Lenoir, North Carolina, is the lowest responsible and responsive bidder. Staff recommends including Alternate No. 1 for back-up power in the bid award. The bid award also includes a One Hundred Thousand Dollars ($100,000; 6%) project contingency, of which any unused funds will be returned to the County. The construction will take approximately One Hundred Eighty (180) days, with a completion date on or before November 30, 2019.

The total project is estimated to cost Two Million Fifty-Six Dollars ($2,056,100.00), broken down as follows:

- Architect fees / design services: $94,500 (previously authorized)
- Construction services: $1,716,600 (recommended for award)
- Furniture, fixtures and equipment (including technology): $245,000 (estimated)

Staff is requesting the Board of Commissioners authorize the transfer below from unspent funds previously appropriated to the Justice Center expansion project. The Justice Center expansion project has a current budget available balance of approximately $2,200,000. The remaining $400,000 budget available balance will be used to help fund the Sheriff’s office expansion in the old Justice Center.

From:
Justice Center Project 410-460100-98800-12001 $1,800,000.00

To:
Old Animal Shelter Renovation 410-460100-988000-12038 $1,800,000.00

**RECOMMENDATION**
Staff recommends the Board of Commissioners a.) approves a bid award for the construction of a new Board of Elections site to Wilkie Construction Company, Inc. of Lenoir, NC in an amount not to exceed One Million Seven Hundred Sixteen Thousand Six Hundred Dollars ($1,716,600.00), and b.) authorizes a budget transfer in the amount of One Million Eight Hundred Dollars ($1,800,000.00) from an existing capital project.

**Attachments:**
Bid Opening Results
Construction Agreement for Renovations for Catawba County Board of Elections
Catawba County Board of Elections Facility
<table>
<thead>
<tr>
<th>BIDDERS</th>
<th>C4 Builders</th>
<th>Hickory Construction</th>
<th>Simcon Company</th>
<th>Wilkie Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>License No.</td>
<td>73522</td>
<td>1145</td>
<td>65243</td>
<td>71862</td>
</tr>
<tr>
<td>Receipt of Addenda No. 1, 2, 3, &amp; 4</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bid Deposit</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Non-Collusive Affidavit</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Affidavit of Compliance (E-Verify)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Authority to Execute Contract</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Good Faith Effort</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Intent to Perform Contract with Your Own Work Force / Identification of Minority Business Participation</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Identification of MBWE Participation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>BASE BID</td>
<td>$1,740,000.00</td>
<td>$1,623,000.00</td>
<td>$1,589,000.00</td>
<td>$1,498,000.00</td>
</tr>
</tbody>
</table>

**ALTERNATES**

Provide a new 250kw diesel generator and associated automatic transfer switch, pad, circuit breaker, and feeder as indicated on the electrical drawings. For Base Bid, provide NEMA 3 junction box in place of automatic transfer switch for connection to future generator.

|                        | $134,550.00 | $103,000.00 | $125,000.00 | $118,600.00 |

**TOTAL OF BASE BID + ALTERNATES:**

|                        | $1,874,550.00 | $1,726,000.00 | $1,714,000.00 | $1,616,600.00 |
# BID OPENING RESULTS

Renovations for the
Catawba County Board of Elections

Single Prime General Construction Contract

<table>
<thead>
<tr>
<th>BIDDERS</th>
<th>C4 Builders</th>
<th>Hickory Construction</th>
<th>Simcon Company</th>
<th>Wilkie Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNIT PRICE ALLOWANCES (IN BASE BID)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UNIT PRICES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Removal/Replacement of Unsuitable Soil <em>(Per Cu. Yard)</em></td>
<td>$40.00</td>
<td>$25.00</td>
<td>$50.00</td>
<td>$40.00</td>
</tr>
<tr>
<td>SUBCONTRACTORS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heating, Ventilating, and Air Conditioning</td>
<td>Curry's</td>
<td>Curry's</td>
<td>Curry's</td>
<td>McMillian Elect.</td>
</tr>
<tr>
<td>Plumbing</td>
<td>TM Caldwell</td>
<td>TM Caldwell</td>
<td>TM Caldwell</td>
<td>TM Caldwell</td>
</tr>
<tr>
<td>Electrical</td>
<td>Connelly Springs</td>
<td>Connelly Springs</td>
<td>Connelly Springs</td>
<td>McMillian Elect.</td>
</tr>
<tr>
<td>General</td>
<td>C4 Buildings</td>
<td>Hickory Construction</td>
<td>Simcon Company</td>
<td>Wilkie Construction</td>
</tr>
</tbody>
</table>

I hereby certify that to the best of my knowledge and belief, the above is a true and accurate tabulation of all bids received on the above project.

[Signature]
CONSTRUCTION AGREEMENT
FOR
RENOVATIONS FOR CATAWBA COUNTY
BOARD OF ELECTIONS

THIS AGREEMENT, made as of the 4th day of June, 2019, by and between Catawba County, a body politic and a political subdivision of the State of North Carolina, (hereinafter “County”) and Wilkie Construction Company, Inc., a corporation, (hereinafter “Contractor”).

WITNESSETH:

Contractor and County, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. **SCOPE OF WORK:** Contractor shall furnish and deliver all of the materials and perform all of the work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

The Contract Documents consist of this Agreement, General Conditions of the Construction Contract, Specifications, Drawings, Addenda issued prior to 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 this Contract as if attached to this Agreement or repeated herein. 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 Documents consist of this Construction Agreement and the following:

1. General Conditions to Construction Contract, attached as Exhibit A
3. Drawings bearing the general title “Renovations for Catawba County Board of Elections”
5. Completed Bid Form
6. Insurance and Bonds

2. **TIME OF COMPLETION:** The Contractor shall commence work to be performed under this Contract on or about June 4, 2019 and shall fully complete all work hereunder on or before November 30, 2019, or within approximately One Hundred Eighty (180) consecutive calendar days from the Notice to Proceed. For each day in excess of the above number of days, the Contractor shall pay the Owner the amount of Two Hundred and Fifty Dollars ($250.00) as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner should the Contractor fail to complete the Work within the time specified. If the Contractor is delayed at any time in the progress of his work by any act or negligence of the Owner, its employees or its separate contractor, by changes ordered in the work; by abnormal weather conditions; by any causes beyond the
Contractor's control or by other causes deemed justifiable by Owner, then the contract time may be reasonably extended in a written order from the Owner upon written request from the contractor within ten (10) days following the cause for delay.

3. **CONTRACT ADMINISTRATION:** The Architect, Bill Hughes, AIA, will provide administration of the Contract for this project.

4. **CONTRACT SUM:** The Contract Sum in for an amount not to exceed One Million Seven Hundred Sixteen Thousand Six Hundred Dollars ($1,716,600.00). The Contract Sum includes Alternate No. 1 in the amount of One Hundred Eighteen Thousand Dollars ($118,000.00) and One Hundred Thousand Dollars ($100,000.00) in contingency funds. Any unused contingency will be returned to the Owner. The Contractor agrees to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of the above titled project in full and complete accordance with the plans, specifications and contract documents to the full and entire satisfaction of Catawba County with a definite understanding that no money will be allowed for extra work without written consent of the Owner.

5. **BID SECURITY:** Each Bid must be accompanied by bid security made payable to Owner in an amount of five percent (5%) of the Bidder's Bid Price and in the form of cash, cashier's check, certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation, or a bid bond issued by a surety meeting the requirements of the Owner. The Owner will only select one Bid for contract award.

6. **PAYMENT BOND:** The Contractor is required to submit a Payment Bond in the amount of 100% of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable.

7. **PERFORMANCE BOND:** The Contractor is required to submit a Performance Bond in the amount of 100% of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the bid and contract documents.

8. **NOTICES:** Any notice required by this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

   Owner: Catawba County  
   Attn: John Cameron  
   25 Government Drive  
   Post Office Box 389  
   Newton, North Carolina 28658  

   Contractor: Wilkie Construction Company, Inc.  
   Attn: Robert Rowe  
   2025 Harper Avenue SW  
   Post Office Box 1410  
   Lenoir, North Carolina 28645

9. **UTILITIES:** Owner may provide certain utilities such as power or water with connections and extensions by the Contractor.
10. **ACCESS CONTROL:** The Contractor will be issued construction badges that will allow access to building / departments. These badges will be required to be turned back in to Owner before final payment is issued.

11. **CONSTRUCTION MANAGER:** The Contractor’s Point of Contact for this project is the Catawba County Construction Manager, John Cameron, (828) 320-2484. Any questions regarding the project shall be directed to him.

12. **HOURS OF OPERATION:** The normal hours of operation are Monday through Friday, 8:00 a.m. to 5:00 p.m. If working outside of those normal hours for any reason, you must coordinate that with the Catawba County Construction Manager, John Cameron at (828) 320-2484.

13. **NO SMOKING POLICY:** All Catawba County grounds and buildings are smoke and tobacco free.

14. **E-VERIFY:** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina Statutes.

15. **TIME OF THE ESSENCE:** Time is of the essence in the performance of this contract.

16. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

17. **WAIVER OF DEFAULT:** Waiver by the County of any default or breach in compliance with the terms of this Agreement by Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of the County and the Contractor and attached to the Agreement.

18. **CHOICE OF LAW:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina. Venue for any adversarial proceeding shall be set in Catawba County.

19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement and understanding between the parties respecting the subjects covered herein, and shall not be modified in any respect except in a writing that is signed by both parties. The parties may enter into additional agreements to the extent they are not inconsistent with the terms hereof. In the event there is an inconsistency, the terms of this agreement shall prevail.
20. **EXECUTION:** This Agreement may be executed in multiple counterparts, with each part so executed being deemed an original, however, collectively constituting but a single document.

21. **HEADINGS:** The Section and Paragraph headings in this Agreement are not material parts of the agreement and should not be used to construe the meaning thereof.

22. **SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

23. **SIGNATURE WARRANTY:** The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Agreement.

24. **FORCE MAJEURE:** If Contractor’s performance of services is delayed by a force majeure, Contractor shall immediately notify County of the delay, the reasons therefore and the anticipated duration of any such delay. Contractor’s delay in the performance of services shall be excused during the duration of such force majeure.

25. **INDEMNIFICATION:** The work to be performed by Contractor under this Agreement shall be performed entirely at Contractor’s own risk. Contractor shall indemnify and save harmless the County, its commissioners, employees, agents and representatives from any and all liabilities and claims of every kind, including attorney’s fees, to which County may be subjected on account of loss, destruction or damage to property or injury to or death of persons, including Contractor and persons employed by Contractor, arising out of or in connection with performance of this Agreement. The provisions of this paragraph shall not be applicable to loss or damage caused by the negligent act of omission of County or its employees.

26. **INSURANCE:** Contractor will carry and maintain, throughout the period of this Agreement, at Contractor’s sole expense, professional and general liability insurance of no less than $2,000,000 per occurrence and $4,000,000 annual aggregate; and worker’s compensation insurance providing statutory limit coverage, plus Employer’s Liability coverage with limits of not less than $1,000,000 per accident and $1,000,000 for each employee for injury by disease. Defense costs shall be in excess of the limit of liability. Contractor shall also provide automobile insurance coverage, when applicable, for any owned, hired, or rented vehicle with a limit of not less than $1,000,000 per occurrence combined single limit for bodily injury and property damage liability and a limit of not less than $25,000 for medical payment coverage. If employees, agents or representatives of Contractor, including specifically independent contractors under contract to Contractor, transport County’s clients in their personal vehicles, Contractor will ensure that any such transportation service is covered by insurance, whether it be the insurance of Contractor or of the vehicle owner, and that vehicles are maintained in a condition that imposes no apparent risk to the clients and/or to the public.
Certificates of such insurance shall be furnished by Contractor to County at the time of, or before execution of this Agreement, and annually thereafter for any extended term hereof. Such certificates shall require the insurer issuing the underlying policy to provide County with a minimum of thirty (30) days’ notice prior to modification or cancellation of said policy. The maintenance of such insurance will not in any manner affect Contractor’s obligation to indemnify County as described herein. Contractor agrees that such insurance shall be primary, regardless of any other insurance coverage which County may procure for its own benefit.

27. ASSIGNMENT: This Agreement or any right hereunder, shall not be assigned by either party, nor shall any duty hereunder be delegated by either party, without the express written consent of the other party. Any attempt at assignment or delegation without such consent shall be void.

28. INDEPENDENT CONTRACTOR: This Agreement does not constitute Contractor an employee, agent, representative, joint venture or partner of County for any purpose whatsoever. Contractor is not authorized to make any contract, agreement, warranty or representation, express or implied, on behalf of County. Neither Contractor nor any employee or agent of Contractor has an employment status with County and are not entitled to participate in any benefits extended by County to its own employees. All persons employed by Contractor to perform Services hereunder shall be subject to the exclusive direction and control of Contractor, it being the intention of the parties that Contractor and its employees shall remain independent contractors, not subject to the control of County.

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

OWNER:

CATAWBA COUNTY

__________________________________________________
Signature

__________________________________________________
Printed Name and Title

__________________________________________________
Date
CONTRACTOR:

WILKIE CONSTRUCTION COMPANY, INC.

Signature

Printed Name and Title

Date

THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

Date: ____________________________  Bob Miracle, Chief Finance Officer

APPROVED AS TO FORM:

Date: ____________________________  Jodi Stewart, Attorney
ARTICLE 1 GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1 Contract for Construction. 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.

1.1.2 Contract Documents. The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, advertisement or invitation to bid, Instructions to Bidders, other documents listed in the Agreement and Modifications issued after execution of the Contract. In the event of conflicts among the contract documents, the Specifications shall take precedence over the Drawings, and the Supplementary Conditions shall take precedence over the General Conditions. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor or Sub-subcontractor.

1.1.3 Contractor. The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Unless otherwise stated, the term "Contractor" means the General Contractor or the General Contractor’s authorized representative.

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

1.1.5 Designer. The Architect or Engineer registered in accordance with the provisions of Chapter 89C of the NC General Statutes, identified as such in the Contract for Construction and is referred to throughout the Contract Documents as if singular in number. The term "Designer" refers to the Designer or the Designer's authorized representative(s). The Designer shall be entitled to performance and enforcement of obligations under the Contract for Construction intended to facilitate performance of the Designers’ duties.

1.1.6 Modification. A Modification is (1) a written amendment to the Contract signed by the 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 Designer.

1.1.7 Owner. The person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner’s authorized representative.

1.1.8 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 or by separate contractors.

1.1.9 Project Manual. The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

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

1.1.11 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.
1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Designer shall identify such unsigned Documents and insure that they are properly signed by the necessary parties.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, has checked and verified all site conditions, and hereby waives any and all claims, present or future, for misrepresentation on the part of the Owner or Designer.

1.2.3 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.

1.2.4 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 Subcontractor.

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

1.3 OWNERSHIP AND USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS. The Drawings, Specifications and other documents prepared by the Designer are instruments of the Designer's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Designer. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyright of the drawings, specifications and other documents prepared by the Designer. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Designer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project; they are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects without the specific written consent of the Owner and Designer. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Designer appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Designer. 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 Owner's copyright or other reserved rights.

1.4 CAPITALIZATION. Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents.

1.5 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.

ARTICLE 2 OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER
2.1.1 The Owner shall furnish plan and profile of existing County utilities. The Contractor is responsible for locating all existing utilities prior to Work.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, 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.

2.1.3 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.1.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2 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 seven-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 after such seven-day period, 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 cost of correcting such deficiencies, including compensation for the Designer's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior review and confirmation by the Designer. 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. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.1, and shall at once report to the Designer errors, inconsistencies or omissions discovered. If the Contractor performs any construction activity knowing or should have known it involves an error, inconsistency or omission in the Contract Documents without such notice to the Designer, the Contractor shall assume full responsibility for such performance and shall bear the full costs for correction.

3.1.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Designer immediately.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.11.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 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 Contract Documents give other specific instructions concerning these matters.

3.2.2 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 performing portions of the Work under a contract with the Contractor.
3.2.3 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 Designer in the Designer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3 LABOR AND MATERIALS

3.3.1 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.

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

3.3.3 Materials, equipment or items required for a complete job which are shown on the drawings but not mentioned in the specifications or materials, equipment or items required by the specifications but not shown on the drawings, shall be furnished and installed the same as though both shown on the drawings and required by the specifications.

3.4 WARRANTY

3.4.1 The Contractor warrants to the Owner and Designer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Designer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.4.2 Except as otherwise specifically stated below, the Contractor shall guarantee his materials and workmanship against defect due to faulty materials or faulty workmanship or negligence for a period of twelve (12) months following Substantial Completion of the Work. Where the manufacturer's warranty on equipment or parts thereof exceeds twelve (12) months, the guarantee period on such equipment or parts thereof shall be extended to include the full warranty of the manufacturer. The Contractor shall repair or replace such defective materials, equipment or workmanship to the full satisfaction of the Owner within the stipulated guarantee period without cost to the Owner.

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

3.6 PERMITS, FEES AND NOTICES

3.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract for Construction and which are legally required when bids are received or negotiations concluded.

3.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.
3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Designer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.6.4 If the Contractor performs Work the Contractor knows or should have known it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Designer and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.7 ALLOWANCES

3.7.1 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 against which the Contractor makes reasonable objection.

3.7.2 Unless otherwise provided in the Contract Documents: (1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work; (2) allowances shall cover the cost to the Contractor of materials and equipment delivered to the site and all required taxes, less applicable trade discounts; (3) 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 and not in the allowances; (4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by a Change Order. The amount of the Change Order shall reflect (a) the difference between actual costs and the allowances under Clause 3.7.2.(2) and (b) changes in Contractor's costs under Clause 3.7.2.(3).

3.8 SUPERINTENDENT. 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. Important communications shall be confirmed in writing upon request.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.9.1 Promptly after being awarded the Contract, the Contractor shall prepare and submit for the Designer's review and comment a construction schedule for the Work. The schedule shall not exceed time limits provided in 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. If separate prime contracts are awarded by the Owner in connection with this Project, the Contractor shall additionally submit a Contractor's construction schedule for the Work to the General Contractor in order for the General Contractor to carry out its duties under Article 6.

3.9.2 The Contractor shall prepare and keep current, for the Designer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Designer reasonable time to review submittals.

3.9.3 The Contractor shall conform to the most recent schedules.

3.10 DOCUMENTS AND SAMPLES AT THE SITE. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Designer and shall be delivered to the Designer for submittal to the Owner upon completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
3.11.1 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.

3.11.2 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.

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

3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Designer is subject to the limitations of Paragraph 4.1.6.

3.11.5 The Contractor shall review, approve and submit to the Designer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.11.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or other appropriate action taken by the Designer. Such Work shall be in accordance with approved submittals.

3.11.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.11.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Designer's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Designer in writing of such deviation at the time of submittal and the Designer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Designer’s approval thereof.

3.11.9 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 Designer on previous submittals.

3.11.10 Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.

3.11.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.12 USE OF SITE. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13 CUTTING AND PATCHING

3.13.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
3.13.2 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.

3.14 CLEANING UP

3.14.1 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 from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials.

3.14.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.15 ACCESS TO WORK. The Contractor shall provide the Owner and Designer access to the Work in preparation and progress wherever located.

3.16 ROYALTIES AND PATENTS. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Designer harmless from loss unless a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Designer.

3.17 INDEMNIFICATION

3.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Designer, Designer's consultants, and agents and employees of any of them from and against claims, damages, economic losses and expenses of any kind (including but not limited to fees and charges of engineers, attorneys, and other professionals and costs related to court action or arbitration), arising out of or resulting from performance of the Work under this Agreement, provided 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) including loss of use resulting therefrom, caused in whole or in part by 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 unless caused in whole or part by the negligence of Owner. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.17.

3.17.2 In claims against any person or entity indemnified under this Section 3.17, 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 this Section 3.17, 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.

3.17.3 The obligations of the Contractor under this Section 3.17, shall not extend to the liability of the Designer, the Designer's consultants, and agents and employees of any of them arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Designer, the Designer's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 DESIGNER'S ADMINISTRATION OF THE CONTRACT
4.1.1 The Designer will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative during construction through final payment, and with the Owner's concurrence, from time to time during the correction period described in Paragraph 11.2. The Designer will advise and consult with the Owner. The Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.1.2 The Designer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s responsibility as provided in Paragraph 3.2. The Designer will not be responsible for the Contractor’s failure to carry out the Work in accordance with the Contract Documents. The Designer 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 of any other persons performing portions of the Work.

4.1.3 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 through the Designer. Communications by and with the Designer’s consultants shall be through the Designer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Designer.

4.1.4 Based on the Designer's inspections, observations and evaluations of the Contractor's Applications for Payment, the Designer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.1.5 The Designer will have authority to reject Work which does not conform to the Contract Documents. Whenever the Designer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Designer will have authority to require additional inspection or testing of the Work in accordance with Paragraphs 12.5.2 and 12.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Designer 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 Designer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.1.6 The Designer 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 Designer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Designer'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 Designer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 3. The Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Designer, of any construction means, methods, techniques, sequences or procedures. The Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.1.7 The Designer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.1.8 The Designer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
4.1.9 The Designer will interpret and decide matters concerning performance under and requirements of the Contract documents on written request of either the Owner or Contractor. The Designer’s response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Designer shall be furnished in compliance with this Paragraph 4.1.9, then delay shall not be recognized on account of failure by the Designer to furnish such interpretations until 15 days after written request is made for them.

4.1.10 Interpretations and decisions of the Designer 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 Designer will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.

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

4.1.12 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Article 11.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Designer may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Designer to stop the Work shall not give rise to a duty on the part of the Designer to exercise this right for the benefit of the Contractor or any other person or entity.

4.2 CLAIMS AND DISPUTES

4.2.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made pursuant to the Dispute Resolution Procedure set forth in Paragraph 4.4. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.2.2 DECISION OF DESIGNER. Claims, including those alleging an error or omission by the Designer, shall be referred initially to the Designer for action as provided in Paragraph 4.4. A decision by the Designer shall be required as a condition precedent to mediation and litigation of a Claim between any party involved in this construction Project as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work or the extent to which the Work has been completed. The decision by the Designer in response to a Claim shall not be a condition precedent to litigation in the event (1) the position of Designer is vacant, (2) the Designer has not received evidence or has failed to render a decision within agreed time limits, or (3) 45 days have passed after the Claim has been referred to the Designer.

4.2.3 TIME LIMITS ON CLAIMS. Claims by the Contractor must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered.

4.2.4 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.2.5 WAIVER OF CLAIMS: FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from: (1) unsettled claims arising out of the Contract; or (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.

4.2.6 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract
Documents or (b) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Designer will promptly investigate such conditions and, if 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 Designer 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 Designer shall so notify the Owner and Contractor in writing stating the reasons, Claims by either party in opposition to such determination must be made within 21 days after the Designer has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Designer for initial determination, subject to further proceedings pursuant to paragraph 4.4.

4.2.7 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make 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 Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (a) a written interpretation from the Designer, (b) a written order for a minor change in the Work issued by the Designer, (c) termination of the Contract by the Owner, Claim shall be filed in accordance with the procedure established herein. This Article and Article 7, shall be the exclusive means by which the Contractor may claim additional cost or damages from the Owner, and the Contractor hereby waives any and all right to claim additional cost or damages by any other remedy including, without limitation, quantum meruit, subrogation, or implied contract.

4.2.8 CLAIMS FOR ADDITIONAL TIME. If the Contractor wishes to make 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. Adverse weather conditions shall not be a basis for a Claim for additional time nor costs.

4.3 INJURY OR DAMAGE TO PERSON OR PROPERTY. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice as such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.2.7 or 4.2.8.

4.4 DISPUTE RESOLUTION PROCEDURE

4.4.1 To prevent disputes and litigation, it is agreed by the parties that any claim, question, difficulty or dispute arising from this Agreement or the construction process shall be first submitted to the Designer to address the issue. Upon review of the Claim, the Designer shall take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Designer expects to take action, (3) reject the Claim in whole or in part stating reasons for rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. The Designer may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Designer will prepare or obtain appropriate documentation.

4.4.3 The laws of the State of North Carolina shall apply to the interpretation and enforcement of this Agreement. Prior to initiating a legal action, any party to this Agreement shall initiate the mediation process as provided in Appendix A to these General Conditions. Mediation, pursuant to this Section, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. All mediation sessions shall be held in Catawba County, North Carolina.
4.4.4 If the disputed issue cannot be resolved in mediation, the parties may seek resolution in the General Court of Justice in the County of Catawba and the State of North Carolina.

4.4.5 The dispute resolution procedure set forth in this Section shall be made available to any party involved in this construction project including County, Contractor, Designer, Subcontractors as well as Sub-subcontractors and is a precondition to initiation of litigation concerning the dispute.

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 Designer 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, including (1) Heating, ventilating, and air conditioning, (2) Plumbing, (3) Electrical, and (4) General. The Designer will promptly reply to the Contractor in writing stating whether or not the Owner or the Designer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Designer to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall NOT substitute any person or company listed in the Contractor’s original Bid Proposal, except (1) if the listed subcontractor’s bid is later determined by the Contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the work, or (2) with the approval of the Owner for good cause shown by the Contractor.

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 and conditions of the Contract Documents and Contract for Construction, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner and Designer. Each subcontract agreement shall preserve and protect the rights of the Owner and Designer 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.
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.

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 General Contractor shall provide for coordination of the activities 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 General Contractor 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 and separate contractors 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 which 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 and 11.

6.1.5 The General Contractor shall be responsible for scheduling the work of all contractors; the maintenance of the progress schedule for all prime contractors for this project; and for the notification of the Designer of any changes in the progress schedule.

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 Designer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate Contractors' 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 Costs caused by delays, by improperly timed activities, defective construction, or any other damages shall be borne by the party responsible therefor. The Owner shall not be liable nor responsible for any delays or damages to the Contractor caused by separate Contractors or the Designer.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate Contractors as provided in Paragraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate Contractor shall be subject to the provisions of Sections 4.2 and 4.4, provided the separate Contractor has reciprocal obligations.

6.2.6 The Owner and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.13.
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 as described in Paragraph 3.14, the Owner may clean up and allocate the cost among those responsible as the Designer determines to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

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 Designer; a Construction Change Directive requires agreement by the Owner and Designer 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 Designer alone pursuant to Paragraph 7.4.

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.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive 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.

7.1.5 Overhead and profit shall not exceed 15% of the value of labor and material for work performed by any contractor or subcontractor. If the work is performed by a subcontractor, the prime contractor's overhead and profit shall not exceed 5%.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Designer and signed by the Owner, Contractor, and Designer, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any; and (3) the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Paragraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Designer and signed by the Owner and Designer, directing a change in the Work and stating a proposed basis for 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 Paragraph 7.3.6.
7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Designer 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.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Designer 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, a reasonable allowance for overhead and profit. In such case, and also under clause 7.3.3(3), the Contractor shall keep and present, in such form as the Designer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph 7.3.6 shall be limited to the following: costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance; costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Designer. 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.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Designer for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK. The Designer will have 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 shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of substantial Completion is the date certified by the Designer in accordance with Paragraph 9.9.

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. The Contractor and the Contractor’s surety shall be liable for and shall pay the Owner such sums as shall be set forth in the Agreement between Owner and Contractor as liquidated damages each calendar day of delay until the work is substantially complete.

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 the Contract for Construction to be furnished by the Contractor. The date of commencement of the work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Designer, the Contractor shall notify the Owner and Designer in writing not less than five days before commencing the Work.

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 progress of the Work by an act or neglect of the Owner or Designer, 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, unavoidably casualties or other causes beyond the Contractor’s control, or by delay authorized by the Owner pending litigation, or by other causes which the Designer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Designer may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.2.8.

8.3.3 Should the work be interrupted or hindered by the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to such interruption or hindrance but such interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.

8.3.4 Should the work be delayed in whole by any act or acts of the Contractor, the Contractor shall not be entitled to an extension of time pursuant to Paragraph 4.2, nor shall such delay constitute a claim either for damages or for loss of anticipated profits by the Contractor. Should the work be delayed in part by any act or acts of the Contractor and in part by any act or acts of the Owner or Designer, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2 in an amount equal to that portion of the delay for which the Contractor is not responsible, but such delay shall not constitute a claim either for damages or for loss of anticipated profits by the Contractor.

8.3.5 Should the work be delayed, interrupted or hindered, in whole or in part, by any act or acts of any separate prime contractors, the Contractor shall be entitled to an extension of time pursuant to Paragraph 4.2.8 in an amount equal to such delay, interruption or hindrance but such delay, interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.

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. Before the first Application for Payment, the Contractor shall submit to the Designer a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer may require. This Schedule of Values, unless objected to by the Designer, shall be used as a basis for reviewing the Contractor’s Applications for Payment.
9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Designer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, supported by such data substantiating the Contractor’s right to payment as the Owner or Designer may require, such as copies of requisitions from subcontractors and material suppliers and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.2 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.3 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.4 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 applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.5 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.

9.3.6 Provided an Application for Payment is received by the Designer not later than the tenth (10th) day of a month, the Owner shall make payment to the Contractor not later than the thirtieth (30th) day of the month.

9.4 RETAINAGE. To ensure proper performance of this Contract, Owner shall retain five percent (5%) of the amount of each approved Application for Payment until the project work is 50% complete provided that the Contractor continues to perform satisfactorily and any non-conforming work identified in writing prior to that date has been corrected by the Contractor and accepted by the Owner. If the Owner determines the Contractor’s performance is unsatisfactory, the Owner may reinstate retainage in the amount of 5% for each subsequent periodic Application for Payment until the Contractor’s performance becomes satisfactory. The project shall be deemed fifty percent (50%) complete when the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete. Following 50% completion of the project, the Owner may also withhold additional retainage from any subsequent periodic payment, not to exceed 5%, in order to allow the Owner to retain 2 ½% total retainage through the completion of the project. Within sixty (60) days after the submission of a final pay application, the Owner with written consent of the Surety shall release to the Contractor all retainage on payments held by the Owner if (1) the Owner receives a certificate of substantial completion from the architect, Designer or design consultant in charge of this Project, or (2) the Owner receives beneficial occupancy or use of the project. However, the Owner may retain sufficient funds to secure completion of the project or corrections to any work. If the Owner retains funds, the amount retained shall not exceed two and one half times the estimated cost of the work to be completed or corrected. Any reduction in the amount of retainage on payments shall be with the consent of the Contractor’s Surety. Retainer provisions contained in Contractor’s subcontracts may not exceed the terms and conditions for retainage provided herein. Contractor is further required to satisfy the retainage provisions of N.C.G.S. 143- 134.1(b2) with regard to subcontracts for early finishing trades (structural steel, piling, caisson,
and demolition) and to coordinate the release of retainage for such trades from the retainage held by Owner from the Contractor pursuant to statute. Nothing herein shall prevent the Owner from withholding payment to the Contractor in addition to the amounts identified herein for unsatisfactory job progress, defective construction not remedied, disputed work, or third party claims filed against the owner or reasonable evidence that a third party claim will be filed.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 The Designer will, within seven (7) 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 Designer determines is properly due, or notify the Contractor and Owner in writing of the Designer's reasons for withholding certification in whole or in part as provided in Paragraph 9.6.1.

9.5.2 The Designer's certification for payment shall constitute a representation to the Owner, based on the Designer's inspections at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that the inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of his profession; and that to the best of his knowledge and in the professional opinion of the Designer, the Contractor has fulfilled the obligations of such plans, specifications, and contract. The Designer's certification for payment shall be signed and sealed by the Designer and presented to the Owner. 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 minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Designer. The issuance of a Certificate for Payment shall further constitute a representation by the Designer, that the Contractor is entitled to payment in the amount certified.

9.6 DECISIONS TO withhold CERTIFICATION

9.6.1 The Designer may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Designer's opinion, the representations to the Owner required by Paragraph 9.5.2 cannot be made. If the Designer is unable to certify payment in the amount of the Application, the Designer will notify the Contractor and Owner as provided in Paragraph 9.5.1. If the Contractor and Designer cannot agree on a revised amount, the Designer will promptly issue a Certificate for Payment for the amount for which the Designer is able to make such representations to the Owner. The Designer may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Designer's opinion to protect the Owner from loss due to: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims; failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment; reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; damage to the Owner or another contractor; 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 persistent failure to carry out the Work in accordance with the Contract Documents.

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

9.7 PROGRESS PAYMENTS

9.7.1 After the Designer 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 Designer.

9.7.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 similar manner.

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

9.7.4 Neither the Owner nor Designer 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.

9.7.5 Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 9.7.2, 9.7.3, and 9.7.4.

9.7.6 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.

9.8 FAILURE OF PAYMENT. The Contractor shall not stop the Work for the failure of the Designer to issue a Certificate of Payment or the Owner to make timely payment.

9.9 SUBSTANTIAL COMPLETION

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

9.9.2 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 Designer a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item or such list does not alter the responsibility for the Contractor to complete all Work in accordance with the contract Documents. Upon receipt of the Contractor's list, the Designer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer. The Contractor shall then submit a request for another inspection by the Designer to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Designer will prepare a Certificate of Substantial Completion which 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. 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.

9.9.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Designer, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.10 PARTIAL OCCUPANCY OR USE

9.10.1 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 authorized by public authorities having jurisdiction over the Work. 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 Designer as provided under Subparagraph 9.9.2. 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 Designer.

9.10.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Designer 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.

9.10.3 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.

9.11 FINAL COMPLETION AND FINAL PAYMENT

9.11.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Designer will promptly make such inspections and, when the Designer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Designer will promptly issue a Final Certificate for Payment stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's observations 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 said Final Certificate is due and payable. The Designer's Final Certificate for Payment will constitute a further representation that the conditions listed in Paragraph 9.11.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.11.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Designer (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 for Construction 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 or additional data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances rising 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.

9.11.3 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 Designer so confirms, the Owner shall, upon application by the Contractor and certification by the Designer, 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 and accepted 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 Designer 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.

9.11.4 Acceptance of final payment by the Contractor, 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

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

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (hereinafter “PCB”) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Designer by phone and in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Designer.

10.1.3 The Contractor shall not be required to perform without consent of Owner and Designer any Work relating to asbestos or PCB.

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: employees working on the Project and other persons who may be affected thereby; 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 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 give notices and comply with applicable laws, ordinances, rules, 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 erecting necessary barricades or other temporary walls and structures as required during the period of construction, 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 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 to property referred to in Paragraphs 10.2.1.(2) and (3), caused in whole or in part by the Contractor, 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 Paragraphs 10.2.1.(2) and (3), except damage or loss attributable to acts or omissions of the Owner or Designer 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 Article 3. All costs to repair any damage and loss to property referred to in Paragraphs 10.2.1.(2) and (3), shall be the sole responsibility of the Contractor and such repair or replacement shall be performed expeditiously without cost to the Owner.

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, required under Paragraph 3.8, unless otherwise designated by the Contractor in writing to the Owner and Designer.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
10.2.8 Existing utilities have been identified and described in the Contract Documents insofar as information is reasonably available, however, it is the Contractor’s responsibility to verify such information and to preserve all existing utilities whether shown in the Contract Documents or not. If utility conflicts are encountered by the Contractor during construction, Contractor shall file sufficient notice to the owners of the utilities so that they may make the necessary adjustments, as well as the Designer or Designer.

10.3 EMERGENCIES. In an emergency affecting the 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 Paragraphs 4.2.7, 4.2.8 and Article 7.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK

11.1.1 If a portion of the Work is covered contrary to the Designer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Designer, be uncovered for the Designer's observation and be replaced at the Contractor's sole expense without change in the Contract Time.

11.1.2 If a portion of the Work has been covered which the Designer has not specifically requested to observe prior to its being covered, the Designer may request to see such Work and it shall be uncovered by the Contractor. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner or separate contractor shall be responsible for payment of such costs. If such work is in accordance with the Contract Documents, the Owner, by appropriate Change Order, shall be charged with the cost of uncovering and replacement.

11.2 CORRECTION OF WORK

11.2.1 The Contractor shall promptly correct Work rejected by the Designer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear any and all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Designer's services and expenses made necessary thereby.

11.2.2 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 Paragraph 9.10.1 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. This period of one year 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 performance of the work. This obligation under this Paragraph 11.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

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

11.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.2. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Designer, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have
been borne by the Contractor, including compensation for the Designer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

11.2.5 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 which is not in accordance with the requirements of the Contract Documents.

11.2.6 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Paragraph 11.2.2, 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.

11.3 ACCEPTANCE OF NONCONFORMING WORK. If the Owner prefers to accept Work which 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 12 MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW. This Contract for Construction shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract, shall be brought in the General Court of Justice in the County of Catawba and the State of North Carolina, after exhausting the dispute resolution procedure set forth in Section 4.4, herein.

12.2 SUCCESSORS AND ASSIGNS. The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. 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.

12.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 to the business address listed in the Contract for Construction.

12.4 RIGHTS AND REMEDIES. 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.

12.5 WAIVER OF A RIGHTS. No action or failure to act by the Owner or Designer shall constitute an obligation or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

12.6 COMPLIANCE WITH LAWS. Contractor represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this contract will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

12.7 TESTS AND INSPECTIONS
12.7.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. 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 the Owner shall bear the costs of tests, inspections, and approvals. Should any retest be necessary due to the failure of the Work to pass the first test or for any other reason whatsoever, the Contractor shall bear all related costs of retests, inspections or re-inspections, and approvals. The Contractor shall give the Designer timely notice of when and where tests and inspections are to be made so the Designer may observe such procedures.

12.7.2 If the Designer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Paragraph 12.5.1, the Designer 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 Designer of when and where tests and inspections are to be made so the Designer may observe such procedures.

12.7.3 If such procedures for testing, inspection or approval under Paragraphs 12.5.1 and 12.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Designer’s services and expenses.

12.7.4 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 Designer.

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

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

12.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD. As between the Owner and Contractor:

Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.

Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the Final Certificate for Payment.

After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the Final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.4, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 11.2 or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY THE CONTRACTOR

13.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 180 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons: issuance of an order of a court or other public authority having jurisdiction; an act of government, such as a declaration of national emergency,
making material unavailable; because the Designer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 9.6.

13.1.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days written notice to the Owner and Designer, terminate the Contract and recover from the Owner payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, not including overhead, profit, or damages.

13.2 TERMINATION BY THE OWNER FOR CAUSE

13.2.1 The Owner may terminate the Contract if the Contractor: persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials; fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or otherwise is in substantial breach of a provision of the Contract Documents.

13.2.2 When any of the above reasons exist, the Owner, upon certification by the Designer 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 (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of surety: take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and finish the Work by whatever reasonable method the Owner may deem expedient.

13.2.3 When the Owner terminates the Contract for one of the reasons stated in Paragraph 13.2.1, the Contractor shall not be entitled to receive further payment.

13.2.4 If the unpaid balance of the Contract Sum does not cover the cost of finishing the Work, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner, shall be certified by the Designer, upon application, and this obligation for payment shall survive termination of the Contract.

13.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

13.3.1 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.

13.4 TERMINATION BY OWNER FOR CONVENIENCE

13.4.1 The Owner may, at any time, terminate the Contract for the Owner’s Convenience and without cause.

13.4.2 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.

13.4.3 In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive payment for Work properly executed and costs incurred by reason of such termination. Termination shall not relieve the Contractor of its responsibilities for any completed portion of the Work nor shall it relieve its sureties of their obligation for and concerning any claims arising out of the Work performed.
13.4.4 In the event of termination by the Owner for convenience, the Contractor shall not be entitled to any other compensation, including compensation for lost profit, lost opportunity, or any other direct or consequential cost, lost or damage.

13.5 BANKRUPTCY

13.5.1 The bankruptcy of the Contractor shall not terminate this Contract until such time that it is specifically rejected by the Trustee or Contractor in bankruptcy. During the election period the Contractor has to assume or reject this Contract, the Contractor shall continue to perform its Work under the Contract.

13.5.2 In the event the Contractor in Bankruptcy assumes the Contract, the Contractor shall apply progress payments to all of its unpaid obligations on this project before using any of these monies for either administrative expenses of the bankruptcy or as general assets of the estate.

13.6 SECURITY OF NON-PUBLIC RECORDS.

13.6.1 Pursuant to N.C.G.S. § 132-1.7 entitled, “Sensitive Public Security Information”, public records, as defined in N.C.G.S. § 132-1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Therefore, all information provided, received, gathered or obtained by Contractor containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities shall be held confidential and shall be used by the Contractor only for the purpose of fulfilling the terms of this Agreement. All plans and drawings shall be returned to the County, or otherwise destroyed at the direction of the County, upon termination or expiration of this Agreement. Any breach of this paragraph by Contractor shall result in the immediate termination of this contract.
Appendix A

RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CATAWBA COUNTY CONSTRUCTION PROJECTS
Adopted: May 6, 2002

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RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

A. Purpose of Mandatory Settlement Conferences. Pursuant to Catawba County Code Chapters 230.09(H) and 508.50, these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

B. Initiating the Dispute Resolution Process

1. Any party to a Catawba County contract governed by Catawba County Code Chapters 230 or 508.30-50 and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least $15,000 may submit a written request to Catawba County for mediation of the dispute.

2. Prior to submission of a written request for mediation to Catawba County, the parties requesting mediation,
   a. If a prime contractor, must have first submitted its claim to the Project Designer (Architect, Engineer or head of project as designated by County) for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit their written request for mediation to Catawba County.
   b. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit its written request for mediation to Catawba County.
   c. If the party requesting mediation is the Project Designer, then it must first submit its claim to Catawba County to resolve. If the dispute is not resolved with Catawba County's involvement, then the Project Designers' dispute is eligible for mediation in this dispute resolution process, and the Project Designer may submit its written request to Catawba County for mediation.

RULE 2. SELECTION OF MEDIATOR

A. Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with Catawba County a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and the other parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

B. Nomination and Catawba County Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and Catawba County is otherwise qualified by training or experience to mediate the action.
If the parties select a non-certified mediator, the requesting party shall file with Catawba County a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

Catawba County shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

C. **Appointment of Mediator by Catawba County.** If the parties cannot agree upon the selection of a mediator, either the party or party's attorney shall notify Catawba County and request, on behalf of the parties, that Catawba County appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, Catawba County shall appoint a certified attorney mediator. If no preference is expressed, Catawba County may appoint a certified attorney mediator or a certified non-attorney mediator.

D. **Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program which Catawba County does.

E. **Disqualification of Mediator.** Any party may request replacement of the mediator by Catawba County for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

**RULE 3. THE MEDIATED SETTLEMENT CONFERENCE**

A. **Where Conference is to be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in Catawba County. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

B. **When Conference is to be Held.** The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.

C. **Request to Extend Deadline for Completion.** A party, or the mediator, may request that Catawba County extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to Catawba County.

Catawba County may grant the request by setting a new deadline for completion of the conference or deny the request to extend the deadline.

D. **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

E. **The mediated settlement or the matter subject of the mediation conference shall not be cause for the delay of the construction project which is the focus of the dispute.**
RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN THE DISPUTE RESOLUTION PROCESS

A. Attendance.

1. All parties to the dispute originally presented to the Designer or Prime Contractor or County for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in Catawba County's withholding of monthly payment to that party until such party attends the mediation.

2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.

3. Attorneys on behalf of parties may attend the mediation but are not required to do so.

4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

B. Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel, if counsel is present.

C. Mediation Fee. The mediation fee shall be paid in accordance with N.C.G.S. 143-128(g).

D. Failure to compensate mediator. Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by Catawba County.

RULE 5. AUTHORITY AND DUTIES OF MEDIATORS

A. Authority of Mediator.

1. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.

2. Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

3. Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B. Duties of Mediator

1. The mediator shall define and describe the following at the beginning of the conference:
   a. The process of mediation;
   b. The difference between mediation and other forms of conflict resolution;
   c. The costs of the mediated settlement conference;
d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;

e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;

g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1(1);

h. The duties and responsibilities of the mediator and the participants; and

i. That any agreement reached will be reached by mutual consent.

2. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

3. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.

4. Reporting Results of the Conference. The mediator shall report to Catawba County within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator’s report shall inform Catawba County of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. Catawba County must require the mediator to provide statistical data for evaluation of the mediated settlement conference program.

5. Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the Rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from Catawba County.

RULE 6. COMPENSATION OF THE MEDIATOR

A. By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. 143-128(g) are observed.

B. By Appointment. When the mediator is appointed by Catawba County, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administration rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION

All certified mediators shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by Catawba County upon the request of the parties to the mediation.)

When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.
All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of Catawba County to mediate any dispute in accordance with these Rules.

RULE 8. RULE MAKING

These Rules are subject to amendment by Catawba County at any time the County deems it appropriate.

RULE 9. TIME LIMITS

Any time limit provided for by these Rules may be waived or extended by the mediator the County appoints for good cause shown. If the mediator has not yet been appointed, the Designer of Record shall decide all waivers or extensions of time for good cause shown.
MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Mark Pettit, Assistant Emergency Services Director

DATE: June 3, 2019

RE: Pyrotechnics Permit Application

Request

Staff requests the Board of Commissioners approval of a Pyrotechnics Permit to Hale Artificier, Inc.

Background

Sherry Mull has contracted with Hale Artificier, Inc. which has submitted a Pyrotechnic Permit application. The requested permit is for a fireworks display to be conducted on July 4, 2019 on property located at 7788 Providence Church Rd. Vale, NC 28168. This property is owned by Mr. Fitzhugh Young who has granted permission for the fireworks display to occur on his property. This display is part of an all-day religious gathering. The display is scheduled to occur at 9:00 p.m. and is expected to end by 9:30.

Hale Artificier, Inc. has a valid “Outdoor Pyrotechnics Display Operators Permit” through the North Carolina Department of Insurance, Office of State Fire Marshal. Based on the application, all statutory requirements have been or will be met. If at any time, any requirement of the permit is not satisfied the Fire/Rescue Division will immediately revoke the permit.

Recommendation

Staff recommends Board of Commissioners approval of this Pyrotechnics Permit to Hale Artificier, Inc.
CATAWBA COUNTY

Department of Emergency Services
Fire/Rescue Division
P.O. Box 389 – 100 A Southeast Blvd.
Newton, North Carolina 28658-0389

828.465.9230 (phone)
828.464.4860 (fax)
828.465.8200 (TDD)

FCPR-04-2019-31672

BLASTING PERMIT APPLICATION

PERMIT FEE $150.00 (per permit)

APPLICATION DATE: ___________________ EXPIRATION DATE: ___________________
(not to exceed 60 days)

Location/Address of Blasting 7788 Providence Church Rd., Vale, NC 28168

Work of blasting will begin 04/01/19 and will be completed by 04/01/19

TO THE FIRE MARSHAL:

Application is hereby made for a permit for blasting at the above location. The undersigned hereby agrees to comply with the provisions of the NC Fire Prevention Code and the County Code of Catawba County and with all other provision law relating to this subject.

PROPERTY OWNER

Sherry Hull

ADDRESS 7788 Providence Church Rd., Vale, NC 28168

PHONE 828-325-9055

CONTRACTOR

Jasa Vaughan

ADDRESS 3659 Caldwell Rd., Newton, NC 28658

PHONE 828-241-7415

(Sign Here)

Sherry Hull

Approved ____________________ (Date)

(Catawba County Fire Marshal or designee)

When satisfactory evidence has been submitted that the applicant has conformed to all the provisions governing the issuing of such permit, and when signed by the Fire Marshal of Catawba County (or his designee), this application will be taken to the Catawba County Permit Center, where a blasting permit may be issued to perform such work as described at the location listed.

As required by the NC Fire Prevention Code, before application for a permit is approved, the applicant shall file a bond and provide documentation of such to the Fire Marshal’s Office. This bond shall become available for payment of any damages arising from the permitted blasting. The bond is to be in the amount of no less than $1,000,000 and the insurance policy shall include coverage for injuries or damages arising from the blasting operations.

The applicant shall notify the Fire Marshal’s Office prior to commencing actual blasting operations. Catawba County shall not be responsible for any damages to property or injuries to persons by reasons of issuance of a permit or inspections made. Applicant by acceptance of this permit will hold harmless and indemnify Catawba County for any loss or damages resulting from the activity permitted by this permit.

"Keeping the Spirit Alive Since 1842!"

CATAWBA COUNTY FIRE REVIEW

APPROVED WITH NOTES

6.3.19
Outdoor Pyrotechnics Display
OPERATORS LICENSE

Tara Vaughan
License # 3400

MAR 2022
July 4th Celebration

To whom it may concern

I, (Fitzhugh Young) property owner, have granted permission for the pyrotechnic (fireworks) show on July 4th, 2019 to be held on a part of my property on Providence Church Road in Vale, NC.

Sherry Mull
Fitzhugh Young

Tent Location:
7878 Providence Ch Rd
Vale N.C. 28168

Blast Location:
7783 Providence Ch Rd
Vale N.C. 28168

Dave Kistler
Current Pyrotechnic License Holders

Select License Type of Interest

License Type
- Pyrotechnic 1.3G
- Pyrotechnic 1.4G
- Proximate Audience

License Level
- Operator
- Assistant

Get License Holder Information

Pyrotechnic License Number: 3400
Driver's License Number: 

Holder's Full Name: Tara Locklin Vaughan
Business Name: Hale Artificier, Inc.
Government ID By: North Carolina
Government ID Type: Driver License
ID Number: *******4291

License Number: 3400
License Type: 1.3G Pyrotechnic
License Level: Operator
License Status: Valid
Expiration Date: 03/05/2022

License Number: 3141
License Type: 1.3G Pyrotechnic
License Level: Assistant
License Status: Not Renewed
Expiration Date: 06/15/2017

Get a list of license holders by Last Name or Business/Employer

Last Name
Business/Employer

Search for List
1.4G Materials List:

2 - 51 shot “All In”

2 - 25 shot “Sky Fall”

1 - 220 shot “Amazing Ballet”

1 - 92 shot “USA Conqueror”

2 - 30 shot “Big Mother Clucker”

2 - 38 shot “Curfew Breaker”

2 - 30 shot “Own the Night”

2 - 40 shot “Game On”

2 - 28 shot “Can’t Touch This”

2 - 96 shot “Galaxy”

2 - 12 Shot “War Stopper”

2 - 36 shot “Neon Blast”

1 - 9 shot “Ghost Shell”

1 - 9 shot “Trinity”

1 - 9 shot “Crazy Lemon”

1 - 9 shot “Perfect Round”

50 - 1.75” Assorted Aerial Shells

All Materials to be 1.4G Consumer Grade, 500 gram multi-shot box items, with the 50 - 1.75” Consumer Aerial shells.
National Indemnity group of insurance companies

Producing Agent: UNKNOWN

New Risk Submission

Tara Vaughan, NC 28168

<table>
<thead>
<tr>
<th>Each Occurrence:</th>
<th>1,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage to Premises Rented:</td>
<td>100,000</td>
</tr>
<tr>
<td>Medical Expense: (Any One Person)</td>
<td>5,000</td>
</tr>
<tr>
<td>Personal and Advertising Injury:</td>
<td>1,000,000</td>
</tr>
<tr>
<td>General Aggregate:</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Products/Completed Operations Aggregate: Incl in Gen Agg</td>
<td></td>
</tr>
</tbody>
</table>

BI Deductible: (Per Claim) 1,000
PD Deductible: (Per Claim) 1,000

- Quote is based on information received and may be changed if different or additional information is obtained.
- Some coverages may differ from what you requested.
- If bound, the policy will include the exclusions and endorsements per the attached schedule.

Policy Is Subject To and May Be Cancelled Without:
- A completed and signed ACORD or company application (M-5593) and any appropriate supplemental application.
- Verification of three years prior loss experience (if applicable).
- Insured cooperation with audit or inspection. Exposures are subject to verification and could lead to premium adjustments upon audit.

Rating and Coverage Notes:
- Materials included with submissions are reviewed solely for underwriting and pricing decisions, not for determining coverage compliance.
- Exposure basis of 'Total Cost' is the total cost of labor, materials (including those purchased by the insured), and equipment.
- Company does not offer primary/non-contributory wording, all with products/completed operations coverage, or per project aggregates.
- The policy will include company-specific, non-standard endorsements which may be restrictive or exclusionary in nature. Copies of these forms are available for review upon request.
- TRIA form (M-5823) needs to be signed and returned only if the Insured is electing to purchase coverage for Terrorism Insurance.
- Loss of Electronic Data Limit: 104,000
- For class codes with premium basis of payroll, the calculation of premium for any active owner or executive is based on the payroll amount of $30,000.

- M5294 is attached to limit coverage to the following operations:
  July 4th celebration event on 7/4/2019, taking place at 7860 & 7878 Providence Church Rd, Vale, NC 28168.

<table>
<thead>
<tr>
<th>Haz</th>
<th>Class Code - Class Description</th>
<th>State</th>
<th>ZIP Code</th>
<th>Basis</th>
<th>Rate</th>
<th>Premium</th>
<th>Hazard Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>63209 - Special Events - Community Celebrations</td>
<td>NC</td>
<td>402 28168</td>
<td>U: 2,500</td>
<td>0.331</td>
<td>0.000</td>
<td>828 Included</td>
</tr>
<tr>
<td>2</td>
<td>63321-03 - Special Events - Fireworks/Pyrotechnics Exhibition (Contractor's and Sponsor's Risk)</td>
<td>NC</td>
<td>402 28168</td>
<td>U: 1</td>
<td>580.387</td>
<td>0.000</td>
<td>580 Included</td>
</tr>
</tbody>
</table>

I hazards Subtotal: 1,408

Stop Gap Premium: 0 Garagekeepers Premium: SL Taxes: 0.00
Addl. Ins. Premium: 200 Additional Premium to Meet Min. Premium: 48 SL Pol: 0.00
LTD Waiver Premium: 0 Total Premium: 1,656 SL Stamp: 0.00
TRIA Premium: 0 Pol. Period Min. Prem.: 100% of Total Prem.: 1,656 SL Other: 0.00
E-Data Premium: 0 Min. Earned Prem.: 100% of Total Prem.: 1,656

Version: 1.6.0.7

THIS QUOTE IS VALID FOR 30 DAYS AFTER: 04/11/2019

Quote Num: 339434
SCHEDULE OF FORMS AND ENDORSEMENTS AT POLICY INCEPTION

POLICY #

INSURED
Tara Vaughan

EFFECTIVE
07/04/2019

Quote Last Saved: 04/11/2019

Addl Insureds
CG 2011 4/2013 Additional Insured - Managers or Lessees of Premises

Mandatory
CG 0001 4/2013 Commercial General Liability Coverage Form
CG 0300 1/1996 Deductible Liability Insurance
CG 0437 6/2014 Electronic Data Liability
CG 2139 10/1993 Contractual Liability Limitation
FM-3777b 10/2009 Commercial General Liability - Declarations
M-3776b 7/2004 Commercial General Liability Schedule
M-3787a 2/2007 Special Events Endorsement
M-3792b 12/2002 Amendatory Endorsement - Exclusion of Property Damage
M-4359c 7/2008 Total Pollution Endorsement
M-4572 12/1994 Schedule of Forms & Endorsements at Policy Inception
M-4685c 10/2005 Other Insurance Endorsement
M-5058b 10/2005 Fungi or Bacteria Exclusion
M-5075 12/2001 Exclusion - Asbestos
M-5076 12/2001 Exclusion of Damages Commencing Prior to Policy Period Broad Form Exclusion
M-5077a 9/2005 Limitation On Duty To Defend And Limitation On Supplementary Payments
M-5080 2/2002 Commercial General Liability Locations
M-5131b 11/2005 Policy Term Minimum Premium and Minimum Earned Premium
M-5141a 8/2003 Commercial General Liability Policy Jacket
M-5149 10/2003 Exclusion - Silica
M-5218 10/2005 General Liability Punitive Damage Exclusion Duty To Defend Amendment
M-5252 8/2006 Abuse or Molestation Exclusion
M-5377 10/2015 Notice of Service of Suit
M-5405 7/2009 Fireworks Handler Exclusion
M-5426 10/2009 Limits of Insurance Endorsement
M-5478 4/2010 Multiple Policies or Coverage Forms Endorsement - Nonstacking of Limits
M-5748 10/2013 Sanction Exclusion
M-5822 1/2015 Exclusion - War & Terrorism
M-5823 1/2015 Policyholder Disclosure Notice of Terrorism Insurance Coverage

Supplemental
M-5129a 8/2006 Prior Work Or Prior Sales Exclusion
M-5294 10/2007 Limitation of Coverage to Designated Premises, Projects, or Operations

M-4572 (12/94) Quote Num: 339434
# National Fire & Marine Insurance Company

**General Agent:** National Indemnity Underwriting Group  
**Policy Effective:** 07/04/2019

### New Risk Submission

- **Each Occurrence:** 1,000,000
- **Damage to Premises Rented:** 100,000
- **Medical Expense:** (Any One Person) 5,000
- **Personal and Advertising Injury:** 1,000,000
- **General Aggregate:** 1,000,000
- **Products/Completed Operations Aggregate:** Incl in Gen Agg

### BI Deductible:  
(Per Claim) 1,000  
PD Deductible:  
(Per Claim) 1,000

<table>
<thead>
<tr>
<th>Haz</th>
<th>Basis</th>
<th>Class Code</th>
<th>Class - Class</th>
<th>Base Class</th>
<th>State</th>
<th>Terr</th>
<th>Inf</th>
<th>ILF Surcharge</th>
<th>ILF High Lim</th>
<th>Fire Factor</th>
<th>Medical Expense</th>
<th>Deductible</th>
<th>LCM</th>
<th>Hazard Factor</th>
<th>Policy Factor</th>
<th>EIFS Factor</th>
<th>Subsidence Factor</th>
<th>Coverage Factor</th>
<th>Fireworks Factor</th>
<th>Assault &amp; Battery Factor</th>
<th>New Venture Factor</th>
<th>Trucks Factor</th>
<th>Surcharge Factor</th>
<th>Rate</th>
<th>Hazard Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>U:</td>
<td>63209 - Special Events - Community Celebrations</td>
<td>Products</td>
<td>0.106</td>
<td>1.104</td>
<td>1.423</td>
<td>1.656</td>
<td>1.200</td>
<td>1.000</td>
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<td>1.000</td>
<td>1.000</td>
<td>1.000</td>
<td>1.000</td>
<td>1.000</td>
<td>$28</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Stop Gap Premium:  
**Addl Insured Premium:** 200  
**Ldt Waiver Premium:**  
**TRIA Premium:**  
**Policy Period Min. Prem.:** 100  
**Minimum Earned Prem.:** 100

---

**Quote Num:** 339434  
**Version:** 1.6.0.7  
**THIS INDICATION IS VALID FOR 30 DAYS AFTER:** 04/11/2019

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***This indication is based on information received and is subject to change if different or additional information is obtained.***
Dear Chris:

Please find the attached quotation for Tara Vaughan. Here is a summary of the terms and conditions:

<table>
<thead>
<tr>
<th>INSURED:</th>
<th>Tara Vaughan</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAILING ADDRESS:</td>
<td>3857 Caldwell Rd.</td>
</tr>
<tr>
<td></td>
<td>Newton, NC 28658</td>
</tr>
<tr>
<td>CARRIER:</td>
<td>National Fire &amp; Marine Insurance Company (Non-Admitted)</td>
</tr>
<tr>
<td>PROPOSED POLICY PERIOD:</td>
<td>From 7/4/2019 to 7/4/2020</td>
</tr>
<tr>
<td></td>
<td>12:01 A.M. Standard Time at the Mailing Address shown above</td>
</tr>
<tr>
<td>LINE OF BUSINESS:</td>
<td>Event Liability</td>
</tr>
<tr>
<td>EXPIRATION DATE</td>
<td>30 days</td>
</tr>
<tr>
<td>POLICY PREMIUM:</td>
<td>Premium $1,656.00</td>
</tr>
<tr>
<td></td>
<td>Surplus Lines Taxes and Fees $89.42</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong> $1,745.42</td>
</tr>
</tbody>
</table>

**TERRORISM:**

Terrorism coverage can be purchased for an additional premium of $80 plus applicable taxes and fees. Signed acceptance/rejection required at binding.

**MINIMUM EARNED PREMIUM:** 100%

**COMMISSION:** 10.000% of premium excluding fees and taxes

**SURPLUS LINES TAX SUMMARY**

**SURPLUS LINES TAX CALCULATION:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Taxable Premium</th>
<th>Taxable Fee</th>
<th>Tax Basis</th>
<th>Rate</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surplus Lines Tax</td>
<td>$1,656.00</td>
<td>$0.00</td>
<td>$1,656.00</td>
<td>5.00%</td>
<td>$82.80</td>
</tr>
<tr>
<td>Stamping Fee</td>
<td>$1,656.00</td>
<td>$0.00</td>
<td>$1,656.00</td>
<td>0.40%</td>
<td>$6.62</td>
</tr>
<tr>
<td><strong>Total Surplus Lines Taxes and Fees</strong></td>
<td><strong>$89.42</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Important Notice:** Surplus Lines Tax Rates and Regulations are subject to change which could result in an increase or decrease of the total Surplus Lines Taxes and Fees owed on this placement. If a change is required, we will promptly notify you. Any additional taxes owed must be promptly remitted.
SUBJECTIVITIES:
- Signed App
- Completed State Packet
- Signed TRIA

COMMENTS:
The attached Quotation from the carrier sets forth the coverage terms and conditions being offered. Please review carefully with your client as terms and conditions may differ from those requested in your submission. It is your responsibility to ensure the quoted coverage terms and conditions are sufficient to meet your client’s coverage needs.

If after your review you should have any questions or requested changes, please let us know as soon as possible so we can discuss with the carrier prior to the effective date of coverage.

Thank you for the opportunity to provide this Quotation and I look forward to hearing from you.

Sincerely,

Matthew Johnson
Small Business Broker | AmWINS Access Insurance Services, LLC
T 678.586.2837 | F 770.389.1650 | matthew.johnson@amwins.com
One Gresham Landing | Stockbridge, GA 30281 | amwins.com

On behalf of,

Small Business Brokerage
AmWINS Access Insurance Services, LLC
T 678.586.2200 | F 770.389.1650 | smallbrokerage.access@amwins.com
One Gresham Landing | Stockbridge, GA 30281 | amwins.com

License 0118107

SURPLUS LINES DISCLOSURE

North Carolina
The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund.

Surplus Lines Licensee Name: ________________________________

2 Attachments
Hi Christa --

Your policy number is 72LPS034089 and this is considered bound. Market said that the actual binder will be sent on 5/4/19 as their system does not allow creation of binders more than 60 days prior to the policy effective date.

Let me know if that will be a problem and I’ll see if there’s anything they can do to help.

Thanks!

Matthew Johnson
Small Business Broker | AmWINS Access Insurance Services, LLC
T 704-944-6595 | matthew.johnson@amwins.com
4725 Piedmont Row Drive | Suite 600 | Charlotte NC 28210 | amwins.com
PERMIT TO POSSESS AND DISPLAY REGULATED PYROTECHNICS

The applicant, Hale Artificier, Inc., having met or asserting he will meet, all the requirements of NCGS 14-410, 14-413, 58-82A-3 and Chapter 33 of the NC Fire Prevention Code, the Catawba County Board of Commissioners hereby authorizes Hale Artificier, Inc. to possess and display pyrotechnics provided all statutory regulations and conditions asserted in the application are met at all times.

When atmospheric conditions, local circumstances or a ban on outdoor burning has been issued, the Fire/Rescue Division of the Catawba County Emergency Services Department has the authority to approve a new date for the pyrotechnics display. The scheduled date of discharge is July 4, 2019.

The Fire/Rescue Division has the authority to revoke this permit at any time if any requirements are not being met.

Signed this _____ day of ________________________, 2019.

__________________________________________________
Randy Isenhower, Chair
Catawba County Board of Commissioners
MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Dr. Matt Stover, Catawba County Schools Superintendent
Via Jennifer Mace, Budget & Management Director

DATE: June 3, 2019

SUBJECT: Catawba County Schools’ Clyde Campbell Elementary School Old Cafeteria Renovations

Request:
Catawba County Schools (CCS) requests the transfer of $120,000 from the Roof Gutters – Various projects to cover bid overages for the Clyde Campbell Elementary School Renovations project.

Background:
In Fiscal Year 2017/18 the Board of Commissioners appropriated $2.88M for Clyde Campbell Elementary School kitchen/cafeteria renovations and other related projects at the school. Catawba County Schools planned to use the funds to construct a new kitchen / cafeteria, renovate the existing kitchen / cafeteria to create an Exceptional Children (EC) suite, and complete installation of ramps, awnings, re-roofing, and HVAC upgrades.

As the new construction work has come to an end, Catawba County Schools is in the process of renovating the old cafeteria to create the planned EC suite. Renovations include erecting walls to create four new classrooms, new lights, new windows, replacing heating and air conditioning, and adding restroom/shower facilities, changing areas, and a sensory area. This renovation will also free the existing EC suite for use as regular classrooms, which will be helpful in mitigating the impacts of projected student growth at the school. (For the 2019-20 school year, Clyde Campbell will be allotted two additional teachers based on these projections.)

This component of the project was bid separately from the new construction, and the lowest responsive and responsible bid on the project was $605,600. The school system has funds remaining in the new kitchen/cafeteria construction project and the Clyde Campbell Renovations project to cover all but $120,000 of the cost. The original intention was to complete all major renovations at Clyde Campbell before moving on to other facilities. Based on this, the roof gutters project is a less pressing need and can be deferred as a future capital request to create financial capacity enough to complete the renovation.

Recommendation:
Staff recommends the Board of Commissioners approves the transfer of $120,000 from the Roof Gutters – Various project to the Clyde Campbell Elementary School Renovations project.

Transfer:

From:
420-750100-863200-31150-3-32 Roof Gutters – Various $120,000

To:
420-750100-863200-31110-3-02 Clyde Campbell Renovations $120,000
Memorandum

To: Mick Berry
From: Dr. Matthew W. Stover
Date: May 20th, 2019
Re: Capital Outlay Projects Transfer of Funds Request

Please consider this memorandum as a request to transfer capital outlay funds from one of our current capital projects to another current capital project.

<table>
<thead>
<tr>
<th>Project #</th>
<th>Project Name</th>
<th>Transfer Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>31150-3-32</td>
<td>Roof Gutters – Various</td>
<td>$120,000.00</td>
</tr>
</tbody>
</table>

To

Project #   Project Name
31110-3-02 Clyde Campbell Renovations

Basis for Request
After securing bids for the renovation of the “old café” at Clyde Campbell Elementary School, the school system will require the aforementioned funds in order to meet the funding shortfall for the completion of this project. Catawba County Schools will then request funding for “Roof Gutters – Various” in the 2020-21 fiscal year.

I would respectfully ask that the Catawba County Commission approve this request.

cc: Dan K. Moore
    Rick Sain
    Karla Miller
Budget Transfers: Pursuant to Board authority granted to the County Manager, the following budget transfers have been completed:

**Self-Insurance Special Contingency Transfers:**

*Purchase K-9*

**Transfer**  
**From:**
- 110-190100-994200  
  General Fund Special Contingency Expense  
  $6,500
- 110-190100-691500  
  General Fund Special Contingency Revenue  
  $6,500

**To:**
- 110-210050-985000  
  Other Equipment  
  $6,500
- 110-210050-681900  
  Donations/Grants  
  $6,500

5/29/19 – Transfer from General Fund Special Contingency to recognize a donation received by the Sheriff’s Office to purchase a law enforcement K-9.

*Replace Totaled Truck*

**Transfer**  
**From:**
- 115-150120-994200  
  Self-Insurance Special Contingency Expense  
  $19,984
- 115-150120-691500  
  Self-Insurance Special Contingency Revenue  
  $19,984

**To:**
- 115-150120-995525  
  To Solid Waste Fund from Self-Insurance  
  $19,984
- 115-150120-680800  
  Self-Insurance Fund Insurance Settlements  
  $19,984

**Supplemental Appropriation**
- 525-350200-984000  
  Motor Vehicles  
  $19,984
- 525-350200-695115  
  From Self Insurance Fund  
  $19,984

5/29/19 – Transfer from Self-insurance Special Contingency to assist the Landfill in replacing a truck that was declared totaled after it was accidentally hit by a bulldozer.