

**MAYOR**  
Michael L. Alvarez

**MAYOR PRO TEM**  
David Cohn



**TOWN COUNCIL**  
Gordon B. Daniels  
David W. Drehs  
Christopher M. King  
Gary M. Savoie

**Indian Trail Town Council Meeting**  
**August 12, 2014**  
**Civic Building**  
**6:30 p.m.**

- 1. CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**
- 2. ADDITIONS AND DELETIONS** **action**
- 3. MOTION TO APPROVE AGENDA**
- 4. PRESENTATIONS**
  - a. [Presentation of Plaques for July 4<sup>th</sup> Parade entries](#)
    1. *Most Patriotic- Ross Haigler Group at Keller Realtors*
    2. *Most Creative- Lake Park Lights/Union County Christmas Bureau*
    3. *Best Youth- Mason Killough/Killough Farms*
    4. *Best Overall- Extreme Ice Center*
  - b. [Certificate of Appreciation for Kiwanis Action Club](#)
- 5. PUBLIC COMMENTS**
- 6. LAW ENFORCEMENT UPDATE**
- 7. CONSENT AGENDA** **action**
  - a. [Approval of July 22, 2014 draft minutes](#)
  - b. [Approval of Water Line Bill of Sale for Chestnut Extension](#)
- 8. PUBLIC HEARINGS** **action**

*None*
- 9. BUSINESS ITEMS**
  - a. [Council consideration of approval of Law Enforcement Assessment Agreement](#)

- b. Council consideration of approval of the 2014 Asphalt Paving Contract

**10. DISCUSSION ITEMS**

- a. Discussion on priorities for Economic Development Advisory Committee
- b. Discussion of establishing a work session for Town Hall and Town Square Project

**11. MANAGERS REPORT**

**12. COUNCIL COMMENTS**

**13. CLOSED SESSION**

**action**

**14. ADJOURN**

**action**

**To speak concerning an item on the Agenda, please print your name and address on the sign up sheet on the table prior to the meeting. Each speaker will be limited to 3 minutes.**

**AS A COURTESY, PLEASE TURN CELL PHONES OFF WHILE MEETING IS IN PROGRESS**

*The Town of Indian Trail is committed to providing all citizens with the opportunity to participate fully in the public meeting process. Any person with a disability who needs an auxiliary aid or service in order to participate in this meeting may contact the Town Clerk at least 48 hours prior to the meeting. The e-mail address is [townclerk@admin.indiantrail.org](mailto:townclerk@admin.indiantrail.org); the phone number is 704-821-5401*



**TO:** Mayor and Town Council  
**FROM:** Susan Didier  
**DATE:** July 25, 2014  
**SUBJECT:** July 4<sup>th</sup> Parade Winners

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This year's July 4<sup>th</sup> parade float winners were judged by representatives from NY Life Insurance Company, Gotro Chiropractic and Indian Trail Arts and Historical Society. They will be receiving award plaques at the August 12<sup>th</sup> Council Meeting. The 2014 winners are the following:

Most Patriotic- Ross Haigler Group at Keller Realtors

Most Creative- Lake Park Lights/Union County Christmas Bureau

Best Youth- Mason Killough/Killough Farms

Best Overall- Extreme Ice Center

Susan Didier  
Community Development Specialist

# *Certificate of Appreciation*

*WHEREAS, a community-service group sponsored by Kiwanis International, Action Club is open to all adults living with disabilities who want to become community leaders and provide services to others; and*

*WHEREAS, Action Club members give back to the communities that have supported them for so long; and*

*WHEREAS, they conduct fundraisers, perform service projects, visit nursing homes; and*

*WHEREAS, members hold leadership roles in their club with these projects and activities, building leadership and decision-making skills along the way; and*

*WHEREAS, the Kiwanis Action Club volunteered to help beautify Crossing Paths Park by planting flowers and laid mulch and pine needles throughout the park; and*

*NOW THEREFORE, I Mayor Michael L. Alvarez, along with the Indian Trail Town Council and residents wish to express our appreciation to the Action Club for their hard work and support.*

---

*Mayor Michael L. Alvarez*



**Town of Indian Trail**  
**Minutes of Town Council**  
**July 22, 2014**  
**Civic Building**  
**06:00 P.M.**

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: David Cohn, Gordon B. Daniels, David W. Drehs, Christopher King, and Gary M. Savoie.

Absent Members: Town Attorney Keith Merritt.

Staff Members: Town Manager Joe Fivas, Town Clerk Peggy Piontek, Director of Engineering and Public Works Scott Kaufhold, Finance Director Marsha Sutton, Planning Director Shelley DeHart, Director of Community & Economic Development Kelly Barnhardt, Assistant Director of Parks & Recreation Jason Tryon, Communications Coordinator Lindsey Edmonds.

**CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Alvarez called the meeting to order and Council Member Savoie led in the Pledge of Allegiance. Mayor Alvarez announced that Council Member Drehs was not present.

## **CONSENT AGENDA**

- a. Approval of June 24, 2014 draft minutes
- b. Approval of July 8, 2014 draft minutes
- c. Approval of LGC 203 Review (**COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES**)
- d. ReApproval of Park & Recreation vehicle (**COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES**)
- e. Approval of Crooked Creek Park Capital Improvement Ordinance(**COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES**)

Gary M. Savoie made a motion to approve the Consent Agenda.  
Council voted unanimously in favor of the motion.

## **BUSINESS ITEMS**

- a. Approval of 2014 Asphalt Contract

Mr. Fivas advised that we are not prepared to present this item we will bring it back at the next meeting.

- b. Approval of 2014 Stormwater Maintenance Contract

Mr. Fivas explained historically we have had a contract, currently funds are low and with approval we will have the ability to perform some additional projects.

David Cohn made a motion to approve the 2014 Stormwater Maintenance Contract  
Council voted unanimously in favor of the motion. (**COPY ATTACHED HERETO AND MADE A PART OF THE MINUTES**)

## **RFQ FOR ARCHITECTURAL SERVICES**

Mr. Fivas explained that Council requested staff to put out a Request for Qualifications (RFQ) for architectural services. Staff solicited a number of firms and had a very strong turnout; staff reviewed the information and narrowed it down to three firms which will be presenting to you this evening. Mr. Fivas clarified that although Council has not set a timeline when this project will be completed, for the RFQ requirements staff put an estimated timeline of 18 months. During the three presentations, these firms may refer to timelines, well knowing that this is something that Council will have to work through. Mr. Fivas reiterated that the Council will establish the appropriate timeline.

### **INTERVIEW #1 - Clark Patterson Lee Associates**

Mr. Fivas introduced the firm of Clark Patterson Lee.

Jeff Shear, Principal in Charge, introduced Don Lee the founding Father of the company, Andrew Jamison who performs Architectural Design and Production and provided some information about the company. He

informed Council of the awards they have received over the years, stating that their goal is “Customer Satisfaction”.

***Council Member David Drehs entered the meeting.***

Andrew Jamerson explained the phases of the architectural process. Building Information Modeling (BIM) software is the model they use to construct the project.

Jeff Shear presented the concept sketch explaining they have many questions that will have implications during the design process to be discussed.

Don Lee explained some of the issues of concern, transportation providing some sketches with different ideas of entrances and access to the building.

Andrew Jamerson presented some photos and floor plans of a project they did in Suwannee, Georgia, explaining our project is similar to it.

Mr. Shear presented a schedule, explaining that it can be started by November but many things have to happen before then and presented a Statement of Understanding. **(A COPY OF THE POWER POINT CAN BE FOUND IN THE OFFICIAL PACKET)**

Council made some comments and asked several questions

**INTERVIEW #2 - Creech & Associates**

Mr. Fivas introduced the firm and explained they are located in Charlotte.

David Creech, Principal in Charge introduced his staff; John Crawford, Director of Construction; Brent Green, Project Manager/Lead Designer; Keith Pehl an Electrical Engineer and President of Optima Engineering; Stephen Lord an Architect for Woolpert and Sally Wright, Marketing Director. Mr. Creech explained they are known for their civic work and provided some of their past performances on similar projects explaining this is exactly what they do and do well.

Mr. Green addressed their Town Square expertise, explaining the space needs to be useable for both town events and community events.

Mr. Lord explained the existing conditions, expressing there are concerns about the utilities.

Mr. Green went over the Phase I approach: organize, analyze, develop & approve, explaining the process for each step. This is scheduled for completion by October 15, 2014, explaining their specialized expertise.

Mr. Pehl explained LEED, what it is and its benefits.

Mr. Crawford explained the proposed project schedule and the benefits of having construction management at risk.

Mr. Creech provided several reasons why Creech & Associates is a good choice. (A COPY OF THE POWER POINT CAN BE FOUND IN THE OFFICIAL PACKET)

Council made some comments and asked several questions

### **INTERVIEW #3 - ADW Architects**

Mr. Fivas introduced the final firm ADW Architects

Jim Powell, Architect and Managing Principal; Keith Carlyon, AIA, LEED AP – Senior Principal/Project Manager/Lead Project Architect; Christal Bostian, IIDA – Senior Associate/Interior Designer; and Keith Pehl, P.E., LEED AP BD+C – Optima Engineering, MEP Engineer President all introduced themselves.

Mr. Powell explained the 8 reasons why they believe the ADW team is the right fit for this project and provided some background on his company.

Mr. Carlyon, Project Manager explained his background.

Mr. Powell & Mr. Carlyon presented some examples of previous projects they created, explaining the importance of design, council chambers, technology, security, space needs, sustainability, energy consumption, construction administration, experience and commitment to meeting budget and schedule requirements, preliminary schedule and references.

Ms. Foster presented the interior design and furniture procurement for town halls, explaining the importance for durability maintenance and quality. **(A COPY OF THE POWER POINT CAN BE FOUND IN THE OFFICIAL PACKET)**

Council made some comments and asked several questions.

Christopher King made a motion to approve Creech & Associates to enter into negotiations

Mr. Fivas explained the process advising that you need to hire a firm that has the ability to follow it from cradle to completion.

Motion Passed 4 - 1 with David Cohn opposing.

Council had a discussion pertaining to funding. Mr. Fivas suggested that perhaps Council would like staff to come back with some models for financing. By consensus Council unanimously agreed to that.

### **ABC BOARD APPOINTMENTS**

Each of the candidates were asked questions from Council pertaining to why they applied, what experience they have and requested they provide a brief history of themselves.

a. Jan Brown

Mr. Brown gave his full name and address, provided some of his background explaining he served on the ABC Board for three years and read an email he received from a Board Member in 2012.

b. Klinger

*Mr. Klinger did not attend the interview.*

c. Aponte

Mr. Aponte advised he moved here about 10 years ago from Miami and wants to be part of the community. He currently is serving on another Board and he applied for the ABC Board because he wants to be a part of anything.

David Cohn made a motion to approve appointing Jan Brown to the ABC Board Council voted unanimously in favor of the motion.

**PLANNING BOARD APPOINTMENTS**

a. Long

Mr. Fivas explained the appointment policy recently changed, since Mr. Long is requesting to be moved from an Alternate Seat to a Regular Seat, the policy states that Council shall appoint him.

Christopher King made a motion to approve Steven Long as a Regular Seat Member to the Planning Board Council voted unanimously in favor of the motion.

b. Mimy

Ms. Mimy is a current member and is reapplying for the Planning Board. The policy does not require Council to interview current Board members.

c. Aponte

Council had interviewed Mr. Aponte for the ABC Board so no further interview was required.

d. Killman

Mr. Killman stated that the reason he applied is because he hears a lot from the town and feels his professional life and this appointment can go hand in hand.

e. Morrison

Andy Morrison explained he is third generation Union County resident, lives in Brandon Oaks, is a real estate appraiser and is currently on the Board of Adjustment.

Mr. Cohn inquired if he deals with developers professionally, his reply was mostly. Mr. Cohn stated it might present a conflict for him.

f. Rogers

Mr. Rogers is currently serving as an alternate on the Board of Adjustment and is asking for a Regular Seat on either Board. After a conversation, Council advised him that there are only Alternate seats available. He stated that he would prefer a Regular Seat on either Planning Board or Board of Adjustment and provided his background.

g. Ally

Mr. King inquired how many Board or Committee positions does he serve, he replied the Transportation Advisory Committee. He was asked his preference and replied the Planning Board and then provided his background

David Cohn made a motion to approve appointing John Killman as Alternate to the Planning Board  
Motion Failed 3 - 2 with Christopher King, Gordon B. Daniels, and Gary M. Savoie opposing.

David Cohn made a motion to approve Dr. Ally to an Alternate Seat on the Planning Board  
Council voted unanimously in favor of the motion.

Gary M. Savoie made a motion Mr. Aponte to an Alternate Seat on the Planning Board  
Motion Passed 4 - 1 with Gordon B. Daniels opposing.

**BOARD OF ADJUSTMENT APPOINTMENTS**

a. Howe

b. Rogers

Gordon B. Daniels made a motion to approve appointing Ms. Howe and Mr. Rogers to a Regular Seat on the Board of Adjustment.

Council voted unanimously in favor of the motion.

c. Ally

Council had interviewed Dr. Ally for the Planning Board so no further interview was required.

d. O'Connor

Mr. O'Connor advised he has lived in Indian Trail since 1983 and as a result of his recently being involved with the Board of Adjustments for his property; he found it very interesting to know what's going on in the city and what the requirements are.

Gordon B. Daniels made a motion appointing Mr. O'Connor and Dr. Ally as Alternate Seat Members of the Board of Adjustment.

Council voted unanimously in favor of the motion.

**APPOINTMENT OF ECONOMIC DEVELOPMENT ADVISORY COMMITTEE**

- a. Wetherington
- b. King
- c. Helms
- d. Barnes
- e. Chitwood
- f. Melton
- g. TenHaaf
- h. Mulhall

This is a new Committee which requires 8 members, as a result Council appointed all 8 in one motion.

David Cohn made a motion to approve appointing all the applicants to the Economic Development Advisory Committee

Council voted unanimously in favor of the motion.

**APPOINTMENT OF PARC COMMITTEE MEMBERS**

- a. Morales
- b. Aponte
- c. Ally

Christopher King made a motion to appoint Ms. Morales and Mr. Aponte as Regular Seat Members and Dr. Ally as an Alternate Seat Member of the PARC Committee.

Council voted unanimously in favor of the motion.

**APPOINTMENT OF PUBLIC SAFETY COMMITTEE MEMBERS**

- a. Spurr
- b. Krohn
- c. Deans
- d. Faulkenberry
- e. Ally

David W. Drehs made a motion to approve Chair Recommendations to Public Safety Committee (Spurr & Krohn Regular Seats – Faulkenberry Alternate Seat)

Motion Passed 3 - 2 with Gordon B. Daniels, and Gary M. Savoie opposing.

**APPOINTMENT OF STORMWATER COMMITTEE MEMBERS**

- a. Ally
- b. Klinger

Gordon B. Daniels made a motion to approve Ally & Klinger to Alt Seats on the Stormwater Advisory Committee  
Council voted unanimously in favor of the motion.

Gordon B. Daniels made a motion to approve Miller to a Regular Seat on the Stormwater Advisory Committee.  
Council voted unanimously in favor of the motion.

**CLOSED SESSION**

*None*

**ADJOURN**

Christopher King made a motion to table  
Council voted unanimously in favor of the motion.

**APPROVED:**

\_\_\_\_\_  
**Michael L. Alvarez, Mayor**

Attest: \_\_\_\_\_  
Peggy Piontek, Town Clerk



## Town of Indian Trail

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### Memo

TO: Mayor and Town Council

FROM: Scott J. Kaufhold, P.E., Director of Engineering and Public Works

COUNCIL DATE: August 12, 2014

SUBJECT: Water Line Extension Bill of Sale for Chestnut Parkway 1B and  
Warranty Guarantee

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#### **General Information:**

Prior to acceptance of the water and sewer infrastructure and as a prerequisite to activation of water and sewer service, Union County Public Works (UCPW) requires a transfer of title for all real property and infrastructure that is to be dedicated to UCPW.

UCPW also requires a Warranty/Repair Guarantee in the form of a surety in an amount equal to ten percent (10%) of the cost/value of the water and sewer improvements to be accepted by UCPW. The Town's cost is estimated at \$173,450.00. The required surety, a Letter of Credit, or Cash Surety in the amount of \$17,345.00 will be held by UCPW for one (1) year from date of acceptance.

#### **Required Actions:**

1. Council Approval of Bill of Sale
2. Council Approval of Surety Requirement

#### **Attachments:**

1. Bill of Sale

9/20/2013

Drafted by & Return to: **Union County Public Works**, 500 North Main Street, Suite 500, Monroe NC 28112-4730  
Affecting Tax Parcel(s):

**Bill of Sale for Water Line(s) Located Within Water  
Line Easement(s) and/or Road Right-of-Way(s)  
Previously Granted to Union County and/or Allowed Through  
Encroachment(s) by Third Party(s)**

**DATE:**

**GRANTOR:** TOWN OF INDIAN TRAIL

**GRANTEE:** UNION COUNTY, a political subdivision of North Carolina  
Address: C/O Public Works Department  
500 North Main Street, Suite 500  
Monroe, NC 28112-4730

The designation Grantor as used herein shall include said party, its heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

Union County has previously obtain a Water Line Easement (the "Easement") by Third Party(s) pursuant to Instrument(s) recorded in Book(s) \_\_\_\_\_, Page(s) \_\_\_\_\_ respectively, of the Union County Register of Deeds and/or executed Encroachment Agreement(s) with **NCDOT** \_\_\_\_\_ to allow the installation of water line(s) within Road Right-of-Way(s) pursuant to Encroachment Agreement(s) No(s) **13-00912** Date(s) **12-16-13** respectively, on file with **NCDOT** \_\_\_\_\_ and Union County. Pursuant to an agreement between Grantor and Grantee, Grantor has constructed a Water Distribution Line within the area of the Easement(s) and/or Road Right-of-Way(s), consisting of water distribution lines, pipes, pumps, valves, taps and other fixtures, equipment and improvements for the distribution of water (the "Water Distribution Line"). In consideration of \$1 and other valuable consideration, receipt acknowledged, Grantor hereby grants and conveys to Grantee and its assigns the Water Distribution Line located within said Easement(s) and/or Road Right-of-Way(s).

This agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors, assigns and agents.

**TO HAVE AND TO HOLD** the aforesaid Water Distribution Line and all privileges and appurtenances thereto belonging to the Grantee. Grantor covenants with Grantee, that Grantor is seized of the premises in fee simple, has the right to grant and convey the aforesaid Water Distribution Line, unencumbered, and Grantor will warrant and defend the title thereto against the lawful claims of all persons whomsoever.

**IN WITNESS WHEREOF**, Grantor has hereunto set its hand and seal the day and year first above written. If corporate bill of sale, Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers, the day and year above written.

\_\_\_\_\_  
(Print Corporation or LLC's full name, above) \_\_\_\_\_ (SEAL)  
(Individuals)  
By: \_\_\_\_\_ (SEAL)  
(Pres./V.P. for Corp. or G.P./Manager for LLC) \_\_\_\_\_ (Individuals)  
\_\_\_\_\_  
(Individuals) \_\_\_\_\_ (SEAL)  
(Individuals)

WITNESS TO ALL INDIVIDUAL SIGNATURES ON FRONT PAGE: \_\_\_\_\_,  
(Note: Partners of a partnership and officers of a corporation must acknowledge their \_\_\_\_\_ (Witness)  
signatures in presence of Notary Public; witness to their signatures is not acceptable)  
STATE OF NORTH CAROLINA – UNION COUNTY

**ACKNOWLEDGEMENT FOR WITNESS**

I, \_\_\_\_\_, a Notary Public of Union County, North Carolina, certify that  
\_\_\_\_\_ personally appeared before me this day and being duly  
sworn, stated that in his/her presence \_\_\_\_\_ signed  
the foregoing instrument acknowledged the execution thereof. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

SEAL-STAMP

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL-STAMP **ACKNOWLEDGMENT FOR INDIVIDUALS** (use only black ink)  
NORTH CAROLINA, \_\_\_\_\_ COUNTY. I, a Notary  
Public of the County and State aforesaid, certify that \_\_\_\_\_  
Grantor, personally appeared before me this day and acknowledged the execution of the foregoing  
instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
(My commission expires) \_\_\_\_\_ (NOTARY PUBLIC)

SEAL-STAMP **ACKNOWLEDGMENT FOR INDIVIDUALS** (use only black ink)  
NORTH CAROLINA, \_\_\_\_\_ COUNTY. I, a Notary  
Public of the County and State aforesaid, certify that \_\_\_\_\_  
Grantor, personally appeared before me this day and acknowledged the execution of the foregoing

instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(My commission expires) (NOTARY PUBLIC)

SEAL-STAMP

**ACKNOWLEDGMENT FOR INDIVIDUALS / LLC (Partners of Partnership)**

(use only black ink)

NORTH CAROLINA, \_\_\_\_\_ COUNTY. I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_

A General Partner of, \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(My commission expires) (NOTARY PUBLIC)

SEAL-STAMP

**ACKNOWLEDGMENT FOR INDIVIDUALS / LLC (Partners of Partnership)**

(use only black ink)

NORTH CAROLINA, \_\_\_\_\_ COUNTY. I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_

A General Partner of, \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(My commission expires) (NOTARY PUBLIC)

SEAL-STAMP

**CORPORATE ACKNOWLEDGEMENT** (use only black ink)

State of NORTH CAROLINA, \_\_\_\_\_ COUNTY.

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is Pres./Vice Pres. of \_\_\_\_\_ a North Carolina corporation, and that by authority duly given and as the act of such entity, \_\_\_\_\_ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(My commission expires) (NOTARY PUBLIC)



**TO:** Mayor and Town Council

**FROM:** Joe Fivas, Town Manager

**DATE:** August 12, 2014

**SUBJECT:** Approval of Law Enforcement Assessment Agreement

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PERF was selected by the Town Council to complete a law enforcement assessment. The Town Attorney is reviewing the submitted Law Enforcement Assessment Agreement with PERF. Once the review of this document is completed by the Town Attorney, staff will distribute the Agreement to the Council for your consideration.



## Town of Indian Trail

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### Memo

TO: Mayor and Town Council

FROM: Scott J. Kaufhold, P.E., Director of Engineering and Public Works

COUNCIL DATE: August 12, 2014

SUBJECT: 2014 Asphalt Patching Contract

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#### **General Information:**

Staff will hold an informal bid opening for the 2014 Asphalt Patching Contract on Monday, August 11. Bid tab information will be provided to Council following review by staff. The Engineer's estimate is confidential in order to remain neutral and objective for all bidders.

#### **Required Actions:**

Award of Contract

#### **Attachment:**

2014 Asphalt Patching Contract



**PROJECT MANUAL FOR**

***2014 Asphalt Patching Contract***

**PROJECT NUMBER:**

**505-2014-005**

**TOWN OF INDIAN TRAIL, NORTH CAROLINA**



**Scott J. Kaufhold, P.E.  
Director of Engineering and Public Works  
Registered, North Carolina 024973**

**TABLE OF CONTENTS**

**I. ADVERTISEMENT FOR BIDS..... 5**  
    SCOPE OF WORK:..... 6

**II. INSTRUCTIONS TO BIDDERS..... 7**  
    PROJECT NAME: ..... 8  
    CONTRACT DOCUMENTS:..... 8  
    BID DEADLINE: ..... 8  
    CONTENT OF BID: ..... 8  
    BID BOND:..... 9  
    BIDS ARE FIRM OFFERS:..... 9  
    BID PHASE CONTACT: ..... 9  
    ADDENDA: ..... 9  
    SELECTION CRITERIA: ..... 9  
    ONLY ONE BID PER ENTITY: ..... 9  
    CONTRACT AWARD: ..... 9  
    MINORITY BUSINESS ENTERPRISE GOAL: ..... 9

**III. BID DOCUMENTS..... 10**  
    ACKNOWLEDGEMENT OF ADDENDA..... 11  
    ITEMIZED BID FORM ..... 12  
    MBE FORM 1..... 14  
    MBE FORM 2..... 15  
    MBE FORM 3..... 17  
    REPRESENTATIVE PROJECTS FORM ..... 18  
    EXECUTION OF BID FORM..... 19

**IV-A. AGREEMENT..... 20**  
    AGREEMENT FOR CONSTRUCTION..... 21  
    SIGNATURE SHEET..... 24  
    AFFIDAVIT ..... 25  
    PERFORMANCE BOND..... 27  
    PAYMENT BOND..... 28  
    CERTIFICATE OF INSURANCE ..... 29

**IV-B. MINORITY BUSINESS ENTERPRISE REQUIREMENTS ..... 30**  
    SECTION A: INTENT ..... 31  
    SECTION B: DEFINITIONS..... 31  
    SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES..... 32  
    SECTION D: GOOD FAITH EFFORTS ..... 35  
    MBE FORM 4..... 36  
    MBE FORM 5..... 37  
    MBE FORM 6..... 38

**V. SUPPLEMENTARY GENERAL CONDITIONS..... 40**  
    **1. SCOPE OF WORK ..... 41**  
        1.1 ALTERATION OF WORK AND QUANTITIES ..... 41  
        1.2 MAINTENANCE OF TRAFFIC..... 41  
        1.3 FINAL CLEANING UP ..... 41  
        1.4 ACCESS TO THE WORK..... 41  
        1.5 MAINTENANCE DURING CONSTRUCTION..... 41

<b>2.</b>	<b>CONTROL OF WORK.....</b>	<b>42</b>
2.1	CONFORMITY WITH PLANS AND SPECIFICATIONS.....	42
2.2	COOPERATION OF CONTRACTOR.....	42
2.3	COOPERATION BETWEEN CONTRACTORS.....	42
2.4	AUTHORITY AND DUTIES OF INSPECTORS.....	43
2.5	INSPECTION OF THE WORK.....	43
2.6	REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK.....	43
2.7	LOAD RESTRICTIONS.....	43
2.8	RETEST OF WORK.....	44
2.9	CHARACTER OF WORKERS, METHODS AND EQUIPMENT.....	44
2.10	FIRE PREVENTION.....	44
2.11	PUMPING AND DRAINAGE.....	45
2.12	DUST CONTROL.....	45
2.13	WATER POLLUTION.....	45
2.14	ILLUMINATION.....	45
2.15	HAZARDOUS MATERIAL.....	45
2.16	EROSION CONTROL.....	45
<b>3.</b>	<b>PROSECUTION AND PROGRESS.....</b>	<b>46</b>
3.1	PRE-CONSTRUCTION MEETING.....	46
3.2	NOTICE TO PROCEED.....	46
3.3	PROSECUTION AND PROGRESS.....	46
3.4	TEMPORARY SUSPENSION OF THE WORK.....	46
3.5	ADJUSTMENT OF CONTRACT TIME.....	47
3.6	FAILURE TO COMPLETE PUNCH LIST ON TIME.....	48
3.7	DEFAULT AND TERMINATION OF CONTRACT.....	48
3.8	TERMINATION FOR CONVENIENCE.....	49
3.9	ACTIONS UPON TERMINATION OR TERMINATION FOR CONVENIENCE.....	49
3.10	PAYMENT UPON TERMINATION.....	49
3.11	PARTIAL ACCEPTANCE.....	50
3.12	FINAL ACCEPTANCE.....	50
<b>4.</b>	<b>MEASUREMENT AND PAYMENT.....</b>	<b>51</b>
4.1	MEASUREMENT OF QUANTITIES.....	51
4.2	COMPENSATION FOR ACTUAL QUANTITIES.....	53
4.3	PARTIAL PAYMENT/RETAINAGE.....	53
4.4	ACCEPTANCE AND FINAL PAYMENT.....	53
4.5	LIENS.....	53
4.6	CLAIMS FOR ADJUSTMENT AND DISPUTES.....	54
4.7	CORRECTION OF WORK AFTER FINAL PAYMENT.....	54
4.8	SUBSURFACE INVESTIGATION.....	55
4.9	EXISTING UNDERGROUND UTILITIES/FACILITIES.....	55
4.10	MATERIALS TICKETS.....	56
<b>5.</b>	<b>MISCELLANEOUS.....</b>	<b>57</b>
5.1	VENUE.....	57
5.2	INDEPENDENT CONTRACTOR.....	57
5.3	LAWS AND REGULATIONS.....	57
5.4	INDEMNITY.....	57
5.5	INSURANCE.....	57
5.6	CONTRACT MEETINGS.....	58
5.7	SUCCESSORS, ASSIGNEES AND ASSIGNMENT.....	58
5.8	AUDIT RIGHTS.....	58
5.9	OSHA REQUIREMENTS.....	58
5.10	TAX STATEMENT SUBMITTAL.....	58
5.11	PROJECT CLOSEOUT SUBMITTALS.....	59
	<b>CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM.....</b>	<b>60</b>
	<b>STATE/COUNTY SALES/USE TAX STATEMENT.....</b>	<b>61</b>

<b>VI.</b>	<b>DISPUTE RESOLUTION REQUIREMENTS .....</b>	<b>62</b>
<b>VII.</b>	<b>SPECIFICATIONS.....</b>	<b>65</b>
	7.1 ASPHALT.....	66
	7.2 CONCRETE.....	66
	7.3 EROSION AND SEDIMENTATION CONTROL MEASURES .....	68
	7.4 ASPHALT PLANT MIX, PAVEMENT REPAIR.....	68
	7.5 SAWING EXISTING PAVEMENT.....	68
	7.6 SEEDING AND MULCHING.....	68
	7.7 STORM DRAINAGE STRUCTURES & PIPES.....	69
<b>VIII.</b>	<b>PROJECT SPECIAL PROVISIONS .....</b>	<b>70</b>
	<b>PROJECT SPECIAL PROVISIONS.....</b>	<b>71</b>
<b>8.1</b>	<b>SP1 – MOBILIZATION .....</b>	<b>71</b>
	8.2 SP2 – GEOTEXTILE FABRIC.....	71
	8.3 SP3 – ASPHALT SPEED TABLES .....	71
	8.4 SP4 – TRAFFIC CONTROL.....	72
	8.5 SP5 – MATERIALS TESTING SERVICES.....	73
	<b>APPENDIX A: LOCATION MAPS.....</b>	<b>75</b>
	<b>APPENDIX B: SPEED TABLE DETAIL .....</b>	<b>79</b>

I. **ADVERTISEMENT FOR BIDS**

## 2014 Asphalt Patching Contract

The Town of Indian Trail will receive sealed bids for the following Project:

**PROJECT NAME:** 2014 Asphalt Patching Contract  
**PROJECT NUMBER:** 505-2014-005  
**BID DUE DATE & TIME:** Monday, August 11, 2014 at 12:00 p.m.

### SCOPE OF WORK:

This project includes: asphalt patching located in the **Village of Indian Trail Subdivision** (2 cul-de-sacs) and the **Brandon Oaks Subdivision** (Broadplum Lane & Fantasy Lane); asphalt patching, resurfacing, and thermoplastic pavement markings at the roundabout in the **Brandon Oaks Subdivision**; the installation of 4-22' wide asphalt speed tables (Clearwater Dr) and asphalt crack sealing (various streets) in the **Beacon Hills Subdivision**.

Interested bidders must obtain an official bid package in order to bid. Contract Documents are available for a nonrefundable charge of \$35.00 at the following:

Duncan-Parnell, Inc.  
900 South McDowell Street  
Charlotte, NC 28204  
Phone: 704-372-7766 Fax 704-333-3845  
[www.dpibidroom.com](http://www.dpibidroom.com)

A digital bid tab is available upon request by email at [vbw@engineering.indiantrail.org](mailto:vbw@engineering.indiantrail.org).

One copy of the Contract Documents will be available for reference at the Town of Indian Trail Engineering Department, 130 Blythe Drive, Indian Trail, NC 28079.

Sealed Bids must be received by the Town's Engineering Department at 130 Blythe Drive, Indian Trail, NC 28079, no later than 12:00 p.m. on Monday, August 11, 2014.

Bidders must be properly licensed under North Carolina state law to perform the work. Bid bonds are not required for this project. An MBE goal of 5% has been established for this contract.

For more project information, contact Vicky Watts, Engineering Contract Analyst, at 704-821-1314 or [vbw@engineering.indiantrail.org](mailto:vbw@engineering.indiantrail.org).

The Town of Indian Trail reserves the right to reject any and all bids and to waive any informalities or technicalities as it may deem to be in its best interest.

**II. INSTRUCTIONS TO BIDDERS**

The Town of Indian Trail (hereafter, the “Town”) will receive sealed bids for the following Project:

**PROJECT NAME:**

**2014 Asphalt Patching Contract**

**PROJECT NUMBER:**

**505-2014-005**

**SCOPE OF WORK:** This project includes: asphalt patching located in the **Village of Indian Trail Subdivision** (2 cul-de-sacs) and the **Brandon Oaks Subdivision** (Broadplum Ln & Fantasy Ln); asphalt patching, resurfacing, and thermoplastic pavement markings at the roundabout in the **Brandon Oaks Subdivision**; the installation of 4-22’ wide asphalt speed tables (Clearwater Dr) and asphalt crack sealing (various streets) in the **Beacon Hills Subdivision**.

**CONTRACT DOCUMENTS:**

The Contract Documents include this Project Manual (which contains the Advertisement, Instructions to Bidders, Bid Documents, Agreement, Minority Business Enterprise Requirements, Supplementary General Conditions, Dispute Resolution Requirements, Specifications, Special Provisions, Project Location Maps, Speed Table Detail and Alternates) and any addenda.

Interested bidders must obtain an official bid package in order to bid. Contract Documents are available for a nonrefundable charge of \$35.00 at the following:

Duncan-Parnell, Inc.  
900 South McDowell Street  
Charlotte, NC 28204  
Phone: 704-372-7766 Fax 704-333-3845  
[www.dpibidroom.com](http://www.dpibidroom.com)

A digital bid tab is available upon request by email at [ybw@engineering.indiantrail.org](mailto:ybw@engineering.indiantrail.org).

**BID DEADLINE:**

Sealed bids must be received by the Town of Indian Trail Engineering Department at 130 Blythe Drive no later than 12:00 p.m. on Monday, August 11, 2014.

**CONTENT OF BID:**

Each Bid must contain the following fully-completed forms provided by the Town. **The following shall be submitted for bid consideration:**

- a) Acknowledgement of Addenda (page 11 of this Project Manual)
- b) Itemized Bid Form (page 12 of this Project Manual)
- c) MBE Form 1 (page 14 of this Project Manual)
- d) MBE Form 2 (page 15 of this Project Manual)
- e) MBE Form 3 (page 17 of this Project Manual)
- c) Representative Projects Form (page 18 of this Project Manual)
- d) Execution of Bid Form (page 19 of this Project Manual)

All Bids shall be placed in a sealed envelope with the following information printed on the outside of the envelope:

<b>BID FOR:</b>	_____
	<i>Project Name &amp; Number</i>
<b>BIDDER'S NAME:</b>	_____
	<i>Contractor's Name</i>
<b>DO NOT OPEN UNTIL:</b>	_____
	<i>Bid Opening Date &amp; Time</i>

**BID BOND:**

Not required for this project.

**BIDS ARE FIRM OFFERS:**

All Bids shall be firm offers to contract for 180 days from the Bid Deadline.

**BID PHASE CONTACT:**

For questions regarding the Project or Instructions to Bidders, contact Vicky Watts at 704-821-1314 or [vbw@engineering.indiantrail.org](mailto:vbw@engineering.indiantrail.org). The Town will attempt to answer all questions in writing by email. The Town will not make and bidders may not rely on oral representations.

**ADDENDA:**

Addenda will be emailed all persons who have the Contract Documents. The Bidder shall be responsible for inquiring if Addenda have been issued.

**SELECTION CRITERIA:**

The Town shall select as the contractor ("Selected Bidder") the lowest responsive and responsible Bidder, as required by North Carolina General Statutes. Consideration will be given only to Bids from contractors who are properly licensed, bonded, experienced in the class of work proposed, and who can refer to projects of similar magnitude and character that have been completed by them. The Town also reserves the right to reject any and all Bids and to waive informalities and technicalities as it may deem to be in its best interest.

**ONLY ONE BID PER ENTITY:**

No entity or person may submit or participate in the submission of more than one Bid.

**CONTRACT AWARD:**

The Town will inform the Selected Bidder of its selection and request that the Selected Bidder submit the executed Agreement plus insurance certificates and payment and performance bonds. The Selected Bidder shall submit the requested documents so that they are received by the Town within 10 calendar days (or such other time as designated by Town) from the date of notice of selection. The contract shall not be deemed awarded and this Agreement shall not be binding on the Town unless and until both the Selected Bidder and Town have both executed the Agreement.

**MINORITY BUSINESS ENTERPRISE GOAL:**

A MBE goal of 5% has been established for this contact. The established MBE goal is based on the sub-total of the estimated construction cost. The contingency amount is not considered.

**END OF INSTRUCTIONS TO BIDDERS**

**III. BID DOCUMENTS**

**ACKNOWLEDGEMENT OF ADDENDA**

**PROJECT NAME:** 2014 Asphalt Patching Contract

**PROJECT NUMBER:** 505-2014-005

**ACKNOWLEDGMENT OF ADDENDA**

**The Bidder hereby acknowledges receipt of any addenda**

NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_ INITIAL: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

**ITEMIZED BID FORM**



**TOWN OF INDIAN TRAIL  
2014 ASPHALT PATCHING**

Contractor: \_\_\_\_\_

Line Item	Item Type	Item Description	Quantity	Unit	Unit Price	Amount
1	SP1	Mobilization	1	LS		
2	225	Undercut Excavation	100	CY		
3	520	Aggregate Base Course	100	TN		
4	SP2	Geotextile Fabric	100	SY		
5	SP3	Asphalt Speed Tables	4	EA		
6	607	Milling Asphalt Pavement (0-2" depth)	2000	SY		
7	610	Asphalt Concrete Surface Course, SF 9.5 A, 1" Thick	160	TN		
8	620	Asphalt Binder for Plant Mix, Grade PG 64-22	10	TN		
9	654	Asphalt Plant Mix, Pavement Repair (5" min)	700	TN		
10	657	Seal Existing Pavement Cracks	2000	LF		
11	852	5" Monolithic Concrete Island	60	SY		
12	1205	Thermoplastic Pavement Marking Lines (4", 120 MILS)	600	LF		
13	1205	Thermoplastic Pavement Marking Lines (8", 120 MILS)	200	LF		
14	1205	Thermoplastic Pavement Marking Lines (12", 120 MILS)	200	LF		
15	1205	Thermoplastic Pavement Marking Symbols (Triangles)	21	EA		
16	SP4	Traffic Control	1	LS		
17	SP5	Materials Testing Services	1	LS	\$4,000.00	\$4,000.00
			Subtotal			
			Contingency 10%			
			<b>Total</b>			



**MBE FORM 2**

“GOOD FAITH EFFORT”

COUNTY OF \_\_\_\_\_

AFFIDAVIT OF \_\_\_\_\_  
(Name of Bidder)

**I have a good faith effort to comply under the following areas checked:**  
(A minimum of 5 areas must be checked Yes in order to have achieved a “good faith effort”)

(Y/N)

- \_\_\_\_\_ (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
- \_\_\_\_\_ (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses or providing these documents to them at least 10 days before the bid or proposals are due.
- \_\_\_\_\_ (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- \_\_\_\_\_ (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- \_\_\_\_\_ (5) Attending any probed meetings scheduled by the public owner.
- \_\_\_\_\_ (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- \_\_\_\_\_ (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing.
- \_\_\_\_\_ (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily is required. Assisting minority businesses in obtaining the same unit pricing with the bidder’s suppliers in order to help minority businesses in establishing credit.
- \_\_\_\_\_ (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- \_\_\_\_\_ (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

In accordance with GS143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certified that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

**CONTRACTOR FIRM NAME:** \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn before me this  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

of \_\_\_\_\_ County

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTARY SEAL**

**MBE FORM 3**

**Town of Indian Trail**

**Intent to Perform Contract with Own Workforce**

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the Chestnut Lane – Phase 1B Contract.

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

**CONTRACTOR FIRM NAME:** \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn before me this  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

of \_\_\_\_\_ County

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTARY SEAL**

**REPRESENTATIVE PROJECTS FORM**

1. Project: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Owner Contact: \_\_\_\_\_

2. Project: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Owner Contact: \_\_\_\_\_

3. Project: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Contract Price: \_\_\_\_\_  
Date Completed: \_\_\_\_\_  
Owner Contact: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

**EXECUTION OF BID FORM**

**PROJECT NAME: 2014 Asphalt Patching Contract**

**PROJECT NUMBER: 505-2014-005**

The person executing the Bid, on behalf of the Bidder, being first duly sworn, deposes and says that:

- (1) It is the intent of the Bidder to enter into this Contract to furnish materials, labor, and equipment required to perform all work specified in accordance with the instructions, terms, conditions, provisions, specifications, plans and all other Contract Documents incorporated into this Invitation to Bid;
- (2) He/she is fully informed regarding the preparation and contents of the attached Bid and of all pertinent circumstances regarding such Bid;
- (3) He/she will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, or veteran's status; and
- (4) He/she, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.
- (5) Execution of this bid in the proper manner also constitutes the Bidder's certification of Status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.
- (6) N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**Type of Bidder:**    Sole Proprietor    Partnership    Limited Liability Company    Corporation    Joint Venture

(Check appropriate box)

**BIDDER #1**

Name \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

Printed Name \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

Title \_\_\_\_\_

NC General Contractor's License Number \_\_\_\_\_

Classification \_\_\_\_\_

Limits \_\_\_\_\_

Subscribed and sworn before me this  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

of \_\_\_\_\_ County

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTARY SEAL**

**IV-A. AGREEMENT**

## AGREEMENT FOR CONSTRUCTION

THIS AGREEMENT (“Agreement”), made and entered into on or about \_\_\_\_\_, 2014 by and between the Town of Indian Trail, North Carolina, hereinafter called “Owner” and \_\_\_\_\_, hereinafter called “Contractor” (collectively, “Parties”),

*WITNESSETH*

In consideration of the mutual promises set forth herein, the parties hereto mutually promise and agree as follows:

1. **PROJECT: 2014 Asphalt Patching Contract**
2. **COMPLETION OF WORK:** For the Contract Price, Contractor shall furnish all materials, labor, tools, equipment, and supervision for the construction of the Project and all expense, direct or indirect, connected with the proper execution of the same and of maintaining the same, until it is accepted by the Owner (the “Work”). All Work shall be performed and completed in an efficient and workmanlike manner, in accordance with the Contract Documents and in compliance with all applicable federal, local and state regulatory agencies.
3. **CONTRACT DOCUMENTS**
  - a. Advertisement
  - b. Instructions to Bidders
  - c. Bid Documents (Acknowledgment of Addenda, Itemized Bid Form, MBE Form 1, MBE Form 2, MBE Form 3, Representative Projects, Execution of Bid Form)
  - d. This Agreement
  - e. Minority Business Enterprise Requirements
  - f. Supplementary General Conditions
  - g. Dispute Resolution Requirements
  - h. Specifications
  - i. Project Special Provisions
  - j. Project Location Maps
  - k. Speed Table Detail
  - l. Addenda

The Contract Documents listed above are all essential parts of the contractual requirements. The terms “Contract Documents” and “Contract” shall have the same meaning. A requirement occurring in one Contract Document is as binding as though occurring in all. They are intended to be complementary. In case of discrepancy, detailed provisions shall have precedence over general conditions. Should any addenda, change orders or supplemental agreements be issued at a later date, they will become part of the Contract Documents, and their terms shall take precedence over conflicting terms in earlier Contract Documents.

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers an error or discrepancy, it shall immediately inform the Owner.

4. **E-VERIFY:** In performing this Contract, Contractor will comply with the requirements of Article 2 of Chapter 64 of the General Statutes, and will require that its subcontractors comply with Article 2 of Chapter 64 of the General Statutes.
5. **CONTRACT PRICE:** This is a unit price contract. The Contract Price shall be the unit price for each pay item multiplied by the actual units of each pay item certified by Contractor on a pay request as described below and approved by the Owner as satisfactorily completed in accordance with the Contract.

The pay items and their unit prices are set forth in the Itemized Bid Form. Change orders must be approved in writing prior to commencing work by both the Owner and the Contractor. The final Contract Price shall not be determined until the completion and acceptance by the Owner of the Work and shall be the sum of the approved amounts of all pay items.

6. **CONTRACT TIME:** The Contractor shall begin construction by September 1, 2014 and achieve Substantial Completion of the Work no later than 45 calendar days from the date of commencement stated in the written Notice to Proceed. "Substantial Completion" shall mean all Work has been completed, inspection has occurred and a final punch list has been agreed upon. No extensions will be authorized except as authorized by Article 108-10 of the *Standard Specifications*.

No work will take place on Town designated holidays.

7. **LIQUIDATED DAMAGES:** Contractor has obligated itself to complete the Work within the Contract Time. Contractor acknowledges that he or she will be assessed damages should the Work not be completed within the Contract Time. In lieu of proceedings to ascertain the amount of such damages, Contractor and Owner agree that such damages shall be equal to and Contractor shall be obligated to Owner in the amount of **\$500.00 (five hundred dollars) for each calendar day** the Work is not completed after the Contract Time.

8. **PAYMENTS:** Partial payments will be made upon receipt of Contractor invoice at least once each month as the Work progresses. Said payments will be based upon estimates, prepared by the Contractor and approved by Owner, of the value of the Work performed and materials complete in place in accordance with the Contract Documents. Each invoice shall include the Contractor's Affidavit Release and Waiver of Claim and the Sales and Use Tax Certification Statement.

No partial payment will be made when the amount due the Contractor since the last estimate amounts to less than ten thousand dollars (\$10,000.00).

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

9. **INDIAN TRAIL PRIVILEGE LICENSE:** An Indian Trail Privilege License must be maintained throughout the life of the contract.

10. **GUARANTEE:** The Contractor shall guarantee all materials and workmanship for a period of twelve (12) months from the date of acceptance by the Town and shall replace any portions that fail because of faulty material or workmanship at no additional cost to the Town. This guarantee shall include any grass that needs to be mowed that was seeded and mulched during construction. A six (6) month and eleven (11) month inspection will be held during the warranty period. The Contractor shall immediately repair all defective items upon notification. Items repaired under the provisions shall have an extended warranty period of twelve (12) months from the date of repair of the item. The performance bond will be held as the guarantee for the twelve (12) month period.

11. **BONDS AND INSURANCE:** Owner's obligations under this Agreement are subject to the condition precedent that the Contractor provides a Performance Bond, Maintenance Bond, and Certificate of Insurance as required by the Contract Documents.

The successful bidder shall provide the Town with a contract payment bond in an amount equal to 100 percent (100%) of the estimated Contract Price (as determined by the Town) and a contract performance bond in an amount equal to 100 percent (100%) of the estimated Contract Price (as determined by the Town) within 10 calendar days (or such other time as designated by Town) from the date of notice of

selection. All bonds shall be in conformance with G.S. 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State.

The successful bidder's failure to submit acceptable bonds shall be just cause for the forfeiture of the bid bond or bid deposit and rescinding the award of the contract. Award may then be made to the next lowest responsible bidder or the work may be re-advertised and constructed under contract or otherwise, as the Town may decide.

**END OF AGREEMENT FOR CONSTRUCTION**

**SIGNATURE SHEET**

**CONTRACTOR FIRM NAME:** \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FEDERAL TAX ID NUMBER: \_\_\_\_\_

**TOWN OF INDIAN TRAIL**

By: \_\_\_\_\_  
Joseph A. Fivas, Town Manager

\_\_\_\_\_  
Date

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

By: \_\_\_\_\_  
Marsha Sutton, Finance Director

\_\_\_\_\_  
Date

STATE OF NORTH CAROLINA

AFFIDAVIT



TOWN OF INDIAN TRAIL

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity contracting the Town of Indian Trail and hereafter called, "Employer"), after being first duly sworn, hereby swears or affirms as follows:

- 1. E-Verify is the federal program operated by the U.S. Department of Homeland Security and other federal agencies to verify the work authorization of newly hired employees.
2. Employer understands that Chapter 64, Article 2 of the North Carolina General Statutes requires certain Employers to, among other things; use E-Verify to verify the work authorization of each new employee.
3. Employer complies and will continue to comply with Chapter 64, Article 2 of the North Carolina General Statutes at all times during the term of its contract with the Town of Indian Trail ("Town").
4. At all times during the term of Employer's contract with the Town, Employer will require each of its subcontractors to comply and to remain compliant with Chapter 64, Article 2 of the North Carolina General Statutes.
5. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. Y or N (circle one)

This the \_\_\_ day of \_\_\_\_\_, 2014.

CONTRACTOR FIRM NAME: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn before me this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature of Notary Public

of \_\_\_\_\_ County

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

NOTARY SEAL

**SURETY COMPANY CONTACTS**

**PAYMENT BOND NO.:**

Surety Name:

Address:

Contact Person:

Title:

Phone No.:

**PERFORMANCE BOND NO.:**

Surety Name:

Address:

Contact Person:

Title:

Phone No.:

**SURETY AGENCY/AGENT:**

Agency Name:

Address:

Contact Person:

Title:

Phone No.:

**PERFORMANCE BOND**

(Attach Performance Bond to this sheet.)

**PAYMENT BOND**

(Attach Payment Bond to this sheet.)

**CERTIFICATE OF INSURANCE**

(Attach Certificate of Insurance to this sheet.)

**IV-B. MINORITY BUSINESS ENTERPRISE REQUIREMENTS**

**OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION  
OF MINORITY BUSINESSES FOR PARTICIPATION IN CERTAIN  
TOWN OF INDIAN TRAIL CONTRACTS**

In accordance with G.S. § 143-64.31, G.S. § 143-128.2 and G.S. § 143-133, these Guidelines establish (i) goals for minority participation in building construction or repair contracts in the amount of \$300,000 or more, (ii) outreach efforts to solicit minority participation in building construction contracts in the amount of \$30,000 up to \$300,000, and (iii) outreach efforts to solicit minority participation in contracts for architectural, engineering, and construction manager-at-risk services.

With regard to building construction and repair contracts in the amount of \$300,000 or more, the Town of Indian trail (“Town”) currently has a program goal of 5% percent for minority participation. The goal will be reviewed annually or as soon as relevant data is available.

**SECTION A: INTENT**

It is the intent of these guidelines that the Town do all things legal, proper, and reasonable to achieve participation by minority businesses in those contracts subject to G.S. § 143-64.31, G.S. § 143-128.2 and G.S. § 143-133. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not meet the other statutory criteria for award.

**SECTION B: DEFINITIONS**

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
  - a. Black, that is, a person having origins in any of the black racial groups in Africa;
  - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
  - e. Female
2. Minority Business (MBE) - means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
  - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
4. Owner – Town of Indian trail or (“Town”)
5. Designer – Any person, firm, partnership, or corporation which has contracted with the Town to perform architectural or engineering work.
6. Bidder – (i) Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract directly from the Town, or (ii) any first-tier subcontractor for construction manager at risk projects.

7. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.

8. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town to perform building construction or repair work.

9. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

10. Eligible Contracts – A contract for the repair or construction of a building, which is expected to be for \$300,000 or more, and which is bid under any of the methods authorized under G.S. 143-128(a1).

## **SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES**

### **Minority Business Responsibilities**

#### ***CERTIFICATION***

The Town does not certify minority, disadvantaged or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification  
North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification  
Small Business Administration 8(a) certification  
Other governmental agencies on a case-by-case basis

#### **Other Responsibilities**

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

### **Owner Responsibilities**

The Town will employ the following strategies to encourage participation from MBEs.

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids for building construction and repair projects and in the solicitation for architectural, engineering, and construction manager-at-risk services.
2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents.
3. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
4. Require all bidders to make good faith efforts to obtain minority participation on all Eligible Contracts.
5. Establish a percentage goal for minority participation in an Eligible Contract if, in the Town's reasonable belief, such a goal is achievable.

6. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
7. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share “best practices” and ideas to improve programs.
8. Participate in educational opportunities throughout the community as they become available and offer training sessions to share the Town’s outreach plan with interested businesses and organizations
9. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
10. Enhance the Town’s web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
11. Make available to minority-focused agencies and minority businesses that have requested notices a list of contracting opportunities when they are identified, no later than 10 days prior to the bid opening. The list shall include a description of the work, important bidding information, contact information for questions, where the bid documents may be reviewed, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
12. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with the Town have access to up-to-date information.
13. Advertise upcoming bid opportunities in minority-focused media.
14. Work with designers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

**Designer responsibilities**

For all Eligible Projects the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) and these Guidelines (i.e. bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
5. During construction phase of the project, review documentation for contract payment to MBEs (Form 6, attached) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

## **Responsibilities of Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors**

On all Eligible Contracts, the Bidders will:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner's requirements listed in the proposal for minority participation.
4. Submit with the Bid (i) the minority businesses that will be utilized on the project with corresponding total dollar value of the bid (MBE Form 1, attached) and (ii) an affidavit listing Good Faith Efforts (MBE Form 2, attached), or an affidavit of intent to self-perform (MBE Form 3). See below for full description of Good Faith Efforts.
5. Upon being named the apparent low bidder, the bidder shall provide the following: (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal (MBE Form 4, attached); and (2) if there is a contract goal and the participation percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal (MBE Form 5, attached). The documentation must include evidence of all good faith efforts that were implemented including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
6. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
7. The contractor(s) shall submit with each monthly pay request(s) and final payment(s) documentation for contract payment to MBEs (MBE Form 6, attached)
8. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
9. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.
10. Make documentation showing evidence of implementation of Prime Contractor, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by the Town, upon request.

All written statements or affidavits made by the Bidder shall become a part of the agreement between the Contractor and the Town for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by the Town that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the Town whether to terminate the contract for breach.

## **SECTION D: GOOD FAITH EFFORTS**

In determining whether a contractor has made good faith efforts, the Town will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. At least five of the following 10 good faith efforts must be made in order to satisfy the Good Faith Efforts Requirement.

1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
5. Attending any pre-bid meetings scheduled by the public owner.
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing.
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

**Town of Indian Trail**

**-Portion of the Work to be Performed by Minority Firms-**

\*\*\*\*(NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL)\*\*\*\*

If the portion of the work is to be executed by minority businesses as defined in GS 143-128.2 (g) is equal to or greater than 5% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within 72 hours after notification of being low bidder.

Affidavit of: \_\_\_\_\_ I do hereby certify that on the  
(Bidder)

\_\_\_\_\_  
(Project Name)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority Businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required.

Name and Phone Number	*Minority Category	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

Pursuant to GS 143-128.2 (d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

[Seal]

Title: \_\_\_\_\_

State of North Carolina,

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

Town of Indian Trail

-Good Faith Efforts

If the contract for goal participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts.

Affidavit of: \_\_\_\_\_  
(Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.

Minority firms contacted by Bidder  
(Attach additional sheets if required.)

Name and Phone Number	*Minority Category	Work Description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- A. Copies of solicitation for quotes to at least three (3) minority business firms from the source listed provided for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contract, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

[Seal]

Title: \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_ Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

**Town of Indian Trail**

**MBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application#: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (F), Socially and Economically Disadvantaged (D)

Date: \_\_\_\_\_

Approved/Certified By: \_\_\_\_\_

Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**\*\*THIS DOCUMENT MUST BE SUMMITTED WITH EACH PAY REQUEST & FINAL PAYMENT**

**END OF MINORITY BUSINESS ENTERPRISE**

V. **SUPPLEMENTARY GENERAL CONDITIONS**

## **1. SCOPE OF WORK**

### **1.1 ALTERATION OF WORK AND QUANTITIES**

The Owner reserves and shall have the right to make such alterations in the Work as may be necessary or desirable to complete the Work in the manner acceptable to Owner. Unless otherwise specified herein, the Owner may make such alterations in the Work as may increase or decrease the originally awarded Contract quantities, and the Contractor agrees to value the increase or decrease in quantities using the unit prices set forth in the Itemized Bid Form, or if there are none, as agreed to by the parties. These alterations shall be covered by written Change Orders signed by Owner and Contractor. Change Orders for altered Work may include extensions of Contract Time if, in the Owner's opinion, such extensions are warranted by the amount and difficulty of added work.

### **1.2 MAINTENANCE OF TRAFFIC**

When the Contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of Work that is otherwise provided for in the Contract Documents, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein.

The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway. The Contractor must contact NCDOT before any work is performed along state maintained streets.

### **1.3 FINAL CLEANING UP**

Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees on all ground occupied during the project. The contractor shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of such property owner.

### **1.4 ACCESS TO THE WORK**

The Contractor shall identify access routes with suitable signs, barricades and similar equipment. The entire access route and construction site shall be kept free and clean of all debris at all times and maintained in good repair by the Contractor. All damage to the access route caused by the actions of the Contractor or his agents shall be immediately repaired to the satisfaction of the Owner. The Contractor shall be responsible for notifying property owners five (5) days in advance of work affecting driveway access.

### **1.5 MAINTENANCE DURING CONSTRUCTION**

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations. All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

**END OF SCOPE OF WORK**

## **2. CONTROL OF WORK**

### **2.1 CONFORMITY WITH PLANS AND SPECIFICATIONS**

The current edition including revisions of the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, hereinafter referred to as the “Standard Specifications” shall apply on all portions of the project unless otherwise specified herein.

The current edition of the Union county Public Works Sanitary Sewer and Water Specifications, including revisions, applies on all portions of the project unless otherwise specified herein. All fittings and couplings shall be included in the price for all line items using linear foot units or as specified in the Itemized Bid Form. This also includes all water meter installations.

All Work and all materials furnished shall be within the specified tolerances of the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified in the contract, plans and specifications.

If the Owner finds the materials furnished, Work performed, or the finished product not within the specified tolerances of the plans and specifications but that the portion of the Work affected will, in its opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, that the affected Work be accepted and remain in place. In this event, the Owner determines an adjustment in the Contract Price for the affected portion of the Work.

If the Owner finds the materials furnished, Work performed, or the finished product are not within the specified tolerances of the plans and specifications and have resulted in an unacceptable finished product, the affected Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner’s written orders.

For the purpose of this subsection, the term “reasonably close conformity” shall not be construed as waiving the Contractor’s responsibility to complete the Work in accordance with the Contract Documents. The term shall not be construed as waiving the Owner’s right to insist on strict compliance with the requirements of the Contract Documents.

### **2.2 COOPERATION OF CONTRACTOR**

The Contractor will be supplied with two (2) copies each of the plans and specifications. He shall have available on the Site at all times, one copy each of the plans and specifications. Additional copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Owner and his/her inspectors, the Engineer and with other contractors in every way possible. The Contractor shall have a competent superintendent on the Work at all times who is fully authorized as his/her agent on the Work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Owner or his/her authorized representative.

### **2.3 COOPERATION BETWEEN CONTRACTORS**

The Owner reserves the right to contract for and perform other or additional work on or near the Work covered by this contract.

When separate contracts are let within the limits of any one project, each contractor shall conduct his/her Work so as not to interfere with or hinder the progress of completion of the Work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

Each contractor involved shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same project.

The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project. He shall join his/her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

## **2.4 AUTHORITY AND DUTIES OF INSPECTORS**

Inspectors employed by the Owner shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

## **2.5 INSPECTION OF THE WORK**

All materials and each part or detail of the Work shall be subject to inspection by the Owner or Owner's inspectors. The Owner and Owner's inspectors shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Owner or Owner's inspector requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the Work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any Work done or materials used without supervision or inspection by the Owner may be ordered removed and replaced at the Contractor's expense unless the Owner failed to inspect after having been given reasonable notice in writing that the Work was to be performed.

## **2.6 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

All Work which does not conform to the requirements of the Contract Documents will be considered unacceptable, unless otherwise determined acceptable as provided in the subsection titled CONFORMITY WITH PLANS AND SPECIFICATIONS.

Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the Work, shall be removed immediately and replaced in an acceptable manner at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with any order of the Owner made under the provisions of this subsection, the Owner will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs (incurred by the Owner) from any monies due or to become due the Contractor.

## **2.7 LOAD RESTRICTIONS**

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at its own expense.

## **2.8 RETEST OF WORK**

When as provided for in the Contract Documents, the Owner performs sampling and tests of the Work and if the tests show a failure to meet the requirements of the Contract Documents, the expense of retesting, after reworking or substitution by the Contractor will be at the expense of the Contractor and such costs will be deducted from the payments otherwise due to the Contractor.

## **2.9 CHARACTER OF WORKERS, METHODS AND EQUIPMENT**

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

All equipment which is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed work, or adjacent property.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the contract, plans, and specifications.

Any person employed by the Contractor or by a subcontractor who, in the opinion of the Owner does not perform its work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner may suspend the Work by written notice until compliance with such orders.

The failure to provide adequate labor and equipment may be considered cause for terminating the Contract.

## **2.10 FIRE PREVENTION**

Contractor shall conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention and control within or adjacent to the project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor. This includes keeping the Contract Work area clear of all trash at all times.

All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden.

Contractor shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding and burning are conducted, no inflammable materials shall be allowed, and welding activities shall be shielded. The Contractor shall post a Hot Work Permit whenever an open flame shall be utilized for work.

## **2.11 PUMPING AND DRAINAGE**

Surface or sub-surface water or other fluid shall not be permitted to accumulate in excavations or under any structure. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner and other public agencies having jurisdiction.

## **2.12 DUST CONTROL**

The Contractor, for the duration of the Contract, shall maintain all excavations, embankments, haul roads, access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry-accepted methods of dust control suitable for the area involved and approved by Owner will be permitted.

## **2.13 WATER POLLUTION**

Contractor shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, river, lake or other body of water, which may pollute the water or constitute substances or materials deleterious to fish and wild life.

## **2.14 ILLUMINATION**

When any work is performed at night or where daylight is shut off or obscured, Contractor shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in compliance with local code, securely fastened in place at all points, and shall be kept as far as possible from telephone wires, signal wires, and wires used for firing blasts.

## **2.15 HAZARDOUS MATERIAL**

The Contractor shall immediately notify Owner of any hazardous materials subsequently found on the site and shall not remove same without the permission of Owner.

If the contractor caused the hazardous material and subsequent contamination, Contractor shall remove said hazardous material and contaminated soils or materials from the site and shall dispose of same in accordance with all Federal, State or Local laws or regulations. Removal of such materials and contamination shall be monitored by a licensed hazardous materials laboratory, and said laboratory shall prepare a written report attesting to the complete removal of the contaminating material and resulting contamination, all to the satisfaction of, and at no cost to, the Owner.

## **2.16 EROSION CONTROL**

Contractor shall follow all erosion control measures on construction drawings and or plans and specifications. Contractor shall conform to all Federal, State, and local laws and regulations pertaining to erosion control within or adjacent to the project.

## **2.17 ADDITIONAL WORK**

Additional work is that which results from a change or alteration in the contract and for which there are existing contract unit prices.

## **END OF CONTROL OF WORK**

### **3. PROSECUTION AND PROGRESS**

#### **3.1 PRE-CONSTRUCTION MEETING**

A pre-construction conference will be scheduled as soon as practical after the award of the Contract. The Contractor shall attend the conference along with the prospective job superintendent, any anticipated major subcontractors and major material suppliers. A proposed progress schedule in a form satisfactory to the Engineer and a statement of the anticipated monthly progress payments showing the percent of progress each month shall be submitted.

The Contractor shall also provide at least two (2) local telephone numbers that may be used to contact the Contractor or his authorized representative in the event of an emergency after normal business hours. The Contractor will provide a Request for Taxpayer Identification Number and Certification (W-9). Upon receipt of the required documentation, a Notice to Proceed will be issued by the Engineer.

The Town will provide two (2) copies of the contract to the contractor at the pre-construction conference. Additional copies may be obtained subject to the cost of printing.

#### **3.2 NOTICE TO PROCEED**

A Notice to Proceed will be issued to the Contractor upon receipt of a fully executed contract, bonds, insurance certificates, receipt of approval by other governmental agencies (if required) and any other documentation required by the Engineer.

#### **3.3 PROSECUTION AND PROGRESS**

Unless otherwise specified, the Contractor shall submit his/her anticipated construction schedule for the Owner's approval at the pre-construction meeting. The Contractor's construction schedule, when approved by the Owner, may be used to establish major construction operations and to check on the progress of the Work.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Owner's request, submit a revised schedule for completion of the Work within the Contract Time and modify his/her operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Owner in writing at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date set forth in the Notice to Proceed.

#### **3.4 TEMPORARY SUSPENSION OF THE WORK**

The Owner shall have the authority by written notice to the Contractor, to suspend the Work wholly, or in part, for such period or periods as the Owner may deem necessary, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or to perform any or all of the Contractor's other duties under this Contract.

- A. If the Contractor is ordered by the Owner to suspend the Work under this Section due to an unforeseen cause not otherwise provided for in the other provisions of this Contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the Work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Owner's order to suspend the Work to the effective date of the Owner's order to resume the Work. Claims for such compensation shall be filed with the Owner within the time period stated in the Owner's order to resume work. The Contractor shall submit with its claim information substantiating the amount shown on the claim.

- B. If the Work is suspended under this Section for an indefinite period, the Contractor shall perform the following duties:
1. Suitably store all materials.
  2. Implement measures to protect existing work from damage or deterioration.
  3. Erect such temporary structures and barricades as necessary to provide for traffic on, to or from the Project.
  4. Periodically inspect and maintain the Work and temporary measures during the suspension period, and repair any damage to the Work during the suspension period.
  5. Maintain all insurance and bond coverage.
  6. Perform such other work as required by the Contract Documents with respect to the Project.
  7. Remobilize when ordered to resume the Work by the Engineer.

The Contractor shall notify the Owner in writing fourteen (14) calendar days prior to demobilizing. At the time that the written notice is given to the Owner, the Contractor shall submit a written estimate of any costs of remobilization except in those cases in which the Contractor will bear the costs of remobilization under Paragraph C hereof. Compliance by the Contractor with such notice requirement, and with the requirement for submitting such written estimate, shall be a prerequisite to the Contractor's right to recover any costs incurred by the Contractor to comply with this Paragraph B, to the extent the Contractor would otherwise have a claim for such costs hereunder.

- C. If the Contractor requests a suspension of the Work in whole or in part, or if the Contractor is ordered by the Owner to suspend the Work under this Section due to inclement weather, due to the Contractor's failure to carry out orders given or due to the Contractor's failure to perform any of the Contractor's other duties under this Contract, then:
1. The Contractor shall not be entitled to any additional compensation for fulfilling the duties that the Contractor is required to perform by reason of such suspension, regardless of whether any additional compensation would otherwise be allowed hereunder, including, without limitation, any additional compensation for fulfilling any of the duties that are imposed upon the Contractor under Paragraph B hereof or for fulfilling the Contractor's duty to remobilize at the end of such suspension; and
  2. The Contractor shall pay the Owner all of the costs that are incurred by the Owner by reason of such suspension, including, but not limited to, the Engineer's fees and the costs of any necessary inspections or testing during the period of such suspension.

### **3.5 ADJUSTMENT OF CONTRACT TIME**

The Contract Time may be adjusted only by change order, when requested by the Contractor in writing and approved by the Owner, for reasons outside of the Contractor's control, as follows:

- A. Natural disasters affecting the site; or
- B. Excessive rainfall during the entire calendar month, defined as total monthly rainfall in excess of the normal rainfall for that calendar month and total number of days with more than 0.10 inches of rainfall in excess of the normal number of such days for that calendar month. Normal values shall be taken as published in "Climatography of the United States No. 20 for North Carolina"; or

- C. Suspension of the Work as order by the Owner; or
- D. Delays in critical work by others that is not part of this Contract; or
- E. Significant additions to the scope of the Work.

The Contractor shall bear the burden of proof that a delay has been caused by factors outside his control, shall clearly demonstrate how the delay impacts the critical path of the Work as shown on his work schedule as last revised, and shall demonstrate that he has made reasonable and prudent efforts to overcome the impact of the delay on the critical path. With respect to item (b) above, a condition precedent to meeting its burden of proof will be the monthly submission to the owner of a statement of the number of days, if any, the Contractor was prevented from prosecuting the Work during the immediately preceding month due to excessive rainfall.

### **3.6 FAILURE TO COMPLETE PUNCH LIST ON TIME**

The Contractor shall complete all punch list items determined by the Owner within thirty (30) calendar days. Should the Contractor fail or refuse to complete all punch list items to the satisfaction of the Owner within the said 30-day period, the Owner shall have the right to complete all said punch list items. In such event, Owner shall be entitled to recover from Contractor the Owner's actual costs incurred in completing such punch list items, plus any and all consequential damages and costs incurred by Owner as a result of Contractor's failure to complete such punch list items. Failure to complete all punch list items within thirty (30) calendar days, shall be considered Default of Contract and shall result in loss of any remaining retainage otherwise due to the Contractor.

### **3.7 DEFAULT AND TERMINATION OF CONTRACT**

The Contractor shall be considered in default and such default will be considered as cause for the Owner to terminate the Contract for any of the following reasons if the Contractor:

- A. Fails to begin the Work under the Contract within ten (10) calendar days of the date of commencement specified in the "Notice to Proceed"; or
- B. Fails to perform the Work or fails to provide sufficient workers, equipment or materials to assure completion of the Work in accordance with the terms of the Contract; or
- C. Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable; or
- D. Discontinues the prosecution of the Work; or
- E. Fails to resume Work which has been suspended within a reasonable time after notice to do so; or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- G. Allows any final judgment related to the Project to stand against him unsatisfied for a period of 10 days; or
- H. Makes an assignment for the benefit of creditors; or
- I. Fails to perform any covenant of this Contract, or
- J. For any other cause whatsoever, fails to carry on the Work in an acceptable manner.

Should the Owner consider the Contractor in default of the Contract for any reason hereinbefore, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If Contractor or Surety shall fail to cure such default within 10 calendar days after such written notice from the Owner of the existence of such default or, if such default cannot with reasonable diligence be cured within a period of 10 calendar days, then upon the failure of the Contractor to commence to cure such default within said 10-day period and to proceed with due diligence to complete the remedying of said default; then the Owner will, have full power and authority, without violating the Contract, to terminate the Contract and/or to take control of the Work.

All costs and charges incurred by the Owner, together with the cost of completing the Work, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

### **3.8 TERMINATION FOR CONVENIENCE**

At any time after the acceptance of this Contract, the Owner shall have the absolute right to terminate the entire Contract or any part thereof for any reason whatsoever.

### **3.9 ACTIONS UPON TERMINATION OR TERMINATION FOR CONVENIENCE**

Upon receipt of such notice of termination, the Contractor shall:

- A. Stop the performance of the Work.
- B. Take any other action toward termination of the Work which the Owner directs, including but not limited to:
  - 1. Stabilization of the unfinished site to meet the conditions of the erosion and sediment control permit and at the direction of the Department of Environment and Natural Resources.
  - 2. Maintain the necessary traffic control devices until all potential hazards due to unfinished construction activities have been removed and/or to the satisfaction of the Owner. Traffic control devices that are determined by the Owner to remain shall become the property of the Owner.
  - 3. Complete any pay item as directed by the Owner that if left uncompleted may result in a safety hazard.
  - 4. Deliver all paid stored materials stored off site and material stored on site to a location directed by the Owner.
  - 5. Remove all temporary facilities.
  - 6. Provide any necessary items of Work to secure the Site from public access as directed by the Engineer.

### **3.10 PAYMENT UPON TERMINATION**

When the Contract, or any portion thereof, is terminated before completion of all pay items, payment will be made for the actual number of units or items of Work completed at the Contract price or as mutually agreed for items of Work partially completed.

If the Contract is terminated under Paragraph 3.9 (Termination for Convenience), reimbursement for organization of the Work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the Work and that are not incorporated in the Work shall, at the option of the Owner, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Owner.

If the sum of all previous payments and credits made by the Owner exceeds the sum payable due to the Contractor, such excess shall be refunded by the Contractor to the Owner immediately upon the determination of such excess by the owner.

If the Contract is terminated under Paragraph 3.8 (Termination for Convenience), the Contractor shall be paid a sum as profit determined taking the amount of profit the Contractor would have received upon completing this Contract, multiplied by a fraction, the numerator of which is the value of the Work completed as of the date of receipt of the notice of termination and the denominator of which is the Contract Price.

Termination of the Contract or a portion thereof shall neither relieve the Contractor of his/her responsibilities for the completed Work nor shall it relieve his/her surety of its obligation for and concerning any just claim arising out of the Work performed.

The Owner shall be given full access to all books, cost records, correspondence and papers of the Contractor relating to the Contract in order to determine amounts to be paid the Contractor due to any termination of the Contract.

### **3.11 PARTIAL ACCEPTANCE**

If at any time during the prosecution of the Work the Contractor substantially completes a usable unit or portion of the Work, the occupancy of which will benefit the Owner, he may request the Owner to make final inspection of that unit. If the Owner finds upon inspection that the unit has been satisfactorily completed in compliance with the Contract, he may accept it as being completed, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the Contract.

### **3.12 FINAL ACCEPTANCE**

Upon due notice from the Contractor of presumptive completion of the entire Work, the Owner will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The Owner shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any Work, in whole or in part, as being unsatisfactory, the Owner will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which shall constitute the final inspection, provided the Work has been satisfactorily completed. In such event, the Owner will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

## **END OF PROSECUTION AND PROGRESS**

## 4. MEASUREMENT AND PAYMENT

### 4.1 MEASUREMENT OF QUANTITIES

All Work completed under the Contract will be measured by the Owner, or his/her authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Unless otherwise specified, all pay items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

In computing volumes of excavation the average end area method or other acceptable methods will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inches.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured or proportioned by weights shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed, and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon or ton. When measured by volume, such volumes will be measured at 60°F or will be corrected to the volume at 60°F using ASTM D 4311 for asphalts or ASTM D 633 for tars.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the ton or hundredweight.

Unless otherwise specified, timber will be measured by the thousand feet board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the Work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered by the Engineer in connection with force account work will be measured as agreed in the change order or supplemental agreement authorizing such force account Work as provided in the subsection titled PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK of this section.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within one-half percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed one-tenth of 1 percent of the nominal rated capacity of the scale, but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50-pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales "over weighing" (indicating more than correct weight) will not be permitted to operate, and all materials received subsequent to the last previous correct weighing-accuracy test will be reduced by the percentage of error in excess of one-half of 1 percent.

In the event inspection reveals the scales have been "under weighing" (indicating less than correct weight), they shall be adjusted, and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit Contract prices for the various items of the project.

When the estimated quantities for a specific portion of the Work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the Work will be made, unless the dimensions of said portions of the Work shown on the plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

## **4.2 COMPENSATION FOR ACTUAL QUANTITIES**

When the actual quantities of work vary from the estimated quantities, the Contractor shall accept as payment in full, so far as pay items are concerned, payment at the unit price for the quantities of work actually completed and accepted. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly or indirectly from its unbalanced allocation of overhead and profit among the pay items, or from any other cause.

## **4.3 PARTIAL PAYMENT/RETAINAGE**

Partial payments will be made at least once each month as the Work progresses. Said payments will be based upon estimates, prepared by the Contractor and approved by Owner, of the value of the Work performed and materials complete in place in accordance with the Contract Documents. Each invoice shall include the Contractor's Affidavit Release and Waiver of Claim and the Sales and Use Tax Certification Statement.

No partial payment will be made when the amount due the Contractor since the last estimate amounts to less than ten thousand dollars (\$10,000.00).

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in the subsection titled ACCEPTANCE AND FINAL PAYMENT of this section.

From the total of the amount determined to be payable on a partial payment, five percent (5%) of such total amount will be deducted and retained by the Owner until final payment is made. The balance (%) of the amount payable, less all previous payments, shall be certified for payment. (G.S. 143-134.1)

## **4.4 ACCEPTANCE AND FINAL PAYMENT**

When the Work has been accepted in accordance with the requirements of the subsection titled FINAL ACCEPTANCE, the Owner shall determine the actual quantities of the items of work actually performed. The Contractor shall approve the Owner's statement of actual quantities or advise the Owner of his/her objections which are based on disputes in measurements or computations of the final quantities. The Contractor and the Owner shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the Owner's final statement of actual quantities. If, after such 30-day period, a dispute still exists, the Contractor may approve the Owner's statement of actual quantities under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with the subsection titled CLAIMS FOR ADJUSTMENT AND DISPUTES.

After the Contractor has approved, or approved under protest, the Owner's statement of actual quantities, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

## **4.5 LIENS**

The final payment shall become due when the Contractor delivers to the Owner: (a) an affidavit stating, if that be in fact, that all subcontractors and suppliers have been paid in full, or if the fact be otherwise, showing the name of each subcontractor and supplier who has not been paid in full and the amount due or to become due each for labor, service or material furnished; (b) Consent of Surety, if any, to final payment; and (c) if required by Owner, other data establishing payment for satisfaction of all obligations, such as receipt, releases, and waivers of lien arising out of the Contract to the extent and in such form as designated by the Owner.

#### **4.6 CLAIMS FOR ADJUSTMENT AND DISPUTES**

If for any reason the Contractor deems that additional compensation is due him for work or materials not clearly provided for in the Contract Documents or previously authorized as Extra Work, he shall notify the Owner in writing of his/her intention to claim such additional compensation before he begins the work on which he bases the claim. If such notification is not given or the Owner is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Owner has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit his/her written claim to the Owner and the Engineer. Failure to do so within the time specified will constitute a waiver by Contractor of the claim.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

The following documentation and information must be presented in order to properly evaluate such claim:

- A. Definition of the basis of the claim, including a detailed identification of which materials and what work is considered to represent a change to the original contract, an explanation of why the work or material is different than what was called for by the original Contract, and an identification of the contract provisions and anything else which the Contract relied upon;
- B. An explanation of how and why the work which is considered a change will result in any additional cost or performance time for the Contractor;
- C. An identification of the categories of additional costs which may be incurred, an estimate of the dollar magnitude of each, and a statement of the impact this work will have on the construction schedule, including the contract completion dates;
- D. An indication of how the additional costs which is believed that may be incurred can be, and are to be, quantified;
- E. Documentation of any actual additional costs and any actual impact to the construction schedule due to this work;
- F. Documentation of the cost of performing all similar "unchanged" work, to provide the Engineer a basis for comparison;
- G. All backup and other documentation which are believed to support or relate to the claim;
- H. Documentation quantifying the amount of work which is believed to constitute this "changed" Work, and the time period and the areas where such work was or is to be performed.

#### **4.7 CORRECTION OF WORK AFTER FINAL PAYMENT**

Neither the final certificate nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defect due thereto and pay for any damage to other Work resulting therefrom, which shall appear within a period of one year from date of final acceptance. Wherever the word "acceptance" occurs, it shall be understood to mean final acceptance.

The Owner shall give notice of observed defects with reasonable promptness. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after the receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. With respect to all warranties, expressed or

implied, from subcontractors, manufacturer, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall:

- A. Obtain all warranties that would be given in normal commercial practice.
- B. Require all warranties to be executed, in writing, for the benefit of the Owner.

#### **4.8 SUBSURFACE INVESTIGATION**

The Contractor shall make his own subsurface investigations. Any information obtained by the Town as a result of its own subsurface investigations will be made available upon request. This information (when available) is provided for informational purposes only and shall not relieve the Contractor from making his own investigations. The Contractor shall obtain all necessary permits prior to making any pavement cuts on existing streets.

#### **4.9 EXISTING UNDERGROUND UTILITIES/FACILITIES**

The location of all existing underground utilities will be illustrated on the approved construction drawings for information purposes only. The Town will not be held liable for the accuracy of the utility locations, sizes, depths, or for completeness of utility information. Utility owners have been notified of the project. Each utility owner will be requested to attend the preconstruction conference to discuss potential conflicts and their schedule for relocation where required. All adjustments or relocations will be made by the utility owner unless otherwise indicated in the Contract Documents.

The owners of utilities in this project could include but not be limited to:

- AT&T
- Duke Energy
- North Carolina Department of Transportation
- PSNC Energy
- Piedmont Natural Gas Company
- Time Warner Cable
- Union County Public Works
- Union Power Cooperative
- Utilities, Inc. /Carolina Water Service
- Windstream

The Contractor shall adhere to the provisions of 1985 Underground Damage Prevention Act North Carolina General Statutes 887 Chapter 785 Senate Bill 168 Article 3. To assist the contractor and utility owners in meeting the requirements of this law, there is a "one call system" called "NC ONECALL".

Most major utilities with underground facilities in the State subscribe to this service. For calls originating within North Carolina, The NC ONECALL telephone number is **811**.

Contact Union County Public Works (704-296-4210) for water and sewer line and service locates.

For locates of utilities not members of NC One-Call contact the designated project manager.

Prior to construction, the Contractor shall notify all utility owners whose facilities will be affected to determine utility locations

The Contractor shall include the cost of any coordination and cooperation of utilities in his bid.

No additional compensation shall be allowed for delays or inconveniences sustained by the Contractor due to utility relocation or adjustments. No additional payment will be made for re-mobilization required by the utility's failure to relocate

utility at the request of the Contractor. The Contractor should refer to Section 108-10 (B) paragraph 3 of the Standard Specifications.

Where changes to utility facilities are to be made solely for the convenience of the Contractor, it shall be the Contractor's responsibility to arrange for such changes, and the Contractor shall bear all costs of such changes.

The Town will not assume nor accept any responsibility for charges assessed by private or public utility companies or from the NC Department of Transportation for damages sustained to their property by virtue of action on the part of the Contractor, nor for such charges as may be imposed by the utility or Department of Transportation for personnel to furnish field location of the facility. All such costs are to be borne by the Contractor within the unit prices and/or lump sum prices stated in the Bid.

#### **4.10 MATERIALS TICKETS**

All quantity tickets for items not measurable in place shall be submitted to the Project Inspector within forty-eight (48) hours after receipt of the material on the job. Each ticket shall indicate the date, contractor, job location and name, type of material, quantity of material, truck number and signature of the contractor or his authorized representative.

**No tickets will be accepted after forty-eight (48) hours have elapsed between the time of delivery and submittal of tickets to the Project Inspector.**

#### **END OF MEASUREMENT AND PAYMENT**

## 5. MISCELLANEOUS

### 5.1 VENUE

This Contract has been executed by, delivered to and accepted by the Owner in North Carolina, and the provisions hereof shall be governed by the laws of North Carolina. Any disputes arising out of or related to this Contract shall be resolved in accordance with said laws.

The parties agree that any action or legal proceeding arising out of or related to this Contract shall be brought in the state courts of Union County, NC or in the U.S. District Court for the Western District of North Carolina; and the parties hereby consent to and waive any objection to jurisdiction or venue in said courts.

### 5.2 INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent contractor and not as the agent of Owner in performing the Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and Owner.

### 5.3 LAWS AND REGULATIONS

Contractor and its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules or regulations in effect at the time Work is performed under this Contract.

### 5.4 INDEMNITY

Contractor agrees to defend, indemnify and hold harmless the Owner, its officers, employees and agents from any and all claims, suits, actions, damages, expenses, costs (including attorneys' fees if applicable) or fines, arising from Contractor's performance of this Contract; provided that Contractor shall not be liable for any injury, damage or loss occasioned by the sole negligence of Owner, its officers, employees or agents. Contractor shall purchase insurance, as described in this Section, which insurance shall provide coverage for this contractual liability. In any case in which Contractor provides a defense to the Owner, its officers, employees or agents, pursuant to his indemnity, the defense will be provided by attorneys reasonably acceptable to the Owner. The provisions of this Section shall survive the expiration or early termination of this Agreement.

### 5.5 INSURANCE

- A. Commercial General Liability Insurance. Contractor shall maintain in force during the term of this Contract commercial general liability insurance, in an amount acceptable to Owner but no less than One Million Dollars (\$1,000,000) per occurrence. This insurance shall include coverage for products/completed operations, bodily injury, personal injury, property damage and the contractual liability assumed under the indemnity provision of the Contract. The policy shall be occurrence-based and name the Owner as an additional insured.
- B. Vehicle Liability Insurance. Contractor shall maintain in force during the term of this Contract liability insurance covering the operations of Contractors' owned, non-owned and hired automobiles and other ground vehicles, for limits satisfactory to Owner but not less than One Million Dollars (\$1,000,000) bodily injury and property damage each occurrence. The policy shall be occurrence-based and name the Owner as an additional insured.

- C. Worker's Compensation and Employer's Liability Insurance. Contractor shall maintain worker's compensation and employer's liability insurance in the amounts and form required by the laws of the State of North Carolina.
- D. A certificate evidencing all insurance coverage required of Contractor shall be filed with the Owner at the execution of this Contract, and such certificate shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) day's prior written notice to the Owner. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such coverage has been renewed shall be filed with the Owner. If such insurance coverage is canceled or reduced, the Contractor shall within fifteen (15) days after receipt of written notice from the Owner of such cancellation or reduction in coverage, file with the Owner a certificate showing the required insurance has been reinstated or provided through another insurance company or companies. The company or companies furnishing insurance shall be qualified to issue insurance effective in the State of North Carolina.
- E. Payment and Performance Bonds. Contemporaneously with Contractor's execution of the Contract Documents, Contractor shall supply the Owner with a Performance Bond and a Payment Bond, each in an amount equal to the estimated Contract Price.

## **5.6 CONTRACT MEETINGS**

The Contractor shall, as requested by Owner, attend any and all meetings called by Owner to discuss the Work. Such meetings shall be conducted and recorded by the Contractor with minutes of each meeting distributed to Owner and Contractor.

## **5.7 SUCCESSORS, ASSIGNEES AND ASSIGNMENT**

Contractor shall not assign, transfer, convey or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof, without previous written consent of the Owner and concurred to by the sureties.

## **5.8 AUDIT RIGHTS**

The Owner shall have the right to inspect, examine and make copies of any and all books, accounts, records, and other writings of contractors relating to the performance of the Work under the Contract, including change orders. Such audit rights shall be extended to any duly authorized representatives designated by the Owner. Audits shall take place at times and locations mutually agreed upon by both parties, but not later than one week following the date of a request for an audit.

## **5.9 OSHA REQUIREMENTS**

The Contractor shall comply with OSHA and all other applicable regulations.

## **5.10 TAX STATEMENT SUBMITTAL**

- A. All tax statement bodies and all signatures must be original. Photocopies of blank forms may be used, provided the document containing the information is original.
- B. All tax statements must be signed by the Contractor/Subcontractor's company officer submitting the statement and certified by a Notary Public. All tax statements must list in detail taxes paid by individual invoice. No lump sum, running total, or copies of previously reported statements will be accepted. Tax statements shall show North Carolina tax and County tax paid.
- C. A tax statement showing detailed amounts with "amounts previously reported" noted on the face will be accepted if they are original. This is the equivalent of a statement indicating "no taxes paid this period." All subcontractors for whom tax statements are included must be certified as such on the face of the Contractor's tax statement.

- D. Tax statements (the State/County Sales/Use Tax Statement form) must always accompany a payment request for the related project. All final construction payment requests must have a final tax statement regardless of whether any taxes have been paid during the period in question. If no taxes have been paid, the detail page should simply state “0”, “None”, or “No taxes paid this period.”

#### **5.11 PROJECT CLOSEOUT SUBMITTALS**

The Contractor shall submit two (2) copies (except as noted) of the following documents. Each document shall be an original, signed, and notarized where requested. Final payment will not be made until all documents are submitted:

- A. Final Application and Certificate for Payment with Sales and Use Tax Certification Statement.
- B. Contractor’s Affidavit Release and Waiver of Claim
- C. Consent of Surety to Final Payment (contracts equal to or exceeding \$100,000) (AIA Document G707).
- D. Guarantees, Warranties, and Test Results required by the Contract Documents.
- E. Operation and Maintenance Manuals and spare parts or materials (as required).

**END OF MISCELLANEOUS**

**CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

\_\_\_\_\_, of  
(Name) (Title)

\_\_\_\_\_, being first duly sworn, deposes and says that:  
(Company)

The undersigned is authorized to execute this Affidavit, Release and Waiver of Claim on behalf of the Contractor and that he has personal knowledge of all facts set forth herein;

This Affidavit, Release and Waiver of Claim is made concerning the construction of the following:

Project: \_\_\_\_\_ Project No.: \_\_\_\_\_

All payrolls, material bills, sales tax, social security tax, state and federal unemployment insurance, and all other liabilities and taxes owed by the Contractor and arising in any manner from the above-described project have been paid in full;

No claim or lien exists in favor of any supplier of materials or labor or in favor of any subcontractor furnishing materials or labor on the above-described project;

Notwithstanding the foregoing, if the Town of Indian Trail, or property of the Town of Indian Trail, is subject to any claim or lien that arises in any manner from the failure of the Contractor to pay any liability described above, the Contractor will indemnify and hold the Town of Indian Trail harmless for any amount that the Town of Indian Trail is required to pay to discharge such lien or settle such claim and, further, will pay the Town of Indian Trail's expenses, costs, and attorney fees incurred in connection therewith;

All claims, suits, and proceedings of every name, description, or nature arising out of the above project against the Town of Indian Trail, its officers, employees, and agents have been settled;

The Contractor releases and waives any and all claims of every type and description that the Contractor may have against the Town of Indian Trail arising in any manner from the construction of the above-described project.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn before me this  
the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

of \_\_\_\_\_ County

State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NOTARY SEAL**



**VI. DISPUTE RESOLUTION REQUIREMENTS**

## **DISPUTE RESOLUTION REQUIREMENTS (“Requirements”) FOR CERTAIN TOWN OF INDIAN TRAIL CONTRACTS**

In accordance with N.C.G.S. § 143-128 (f1), these Requirements establish the dispute resolution process for all Town building construction projects that cost over \$300,000, exclusive of land acquisition and design costs (“Eligible Projects”).

This dispute resolution process will be available to all parties involved in the Town’s Eligible Projects, including the Town, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors. Therefore, it is the Town’s policy that the following clauses are hereby made part of all contracts executed by the Town on Eligible Projects.

1. It is understood and agreed that NCGS 143-128(g-h) requires that disputes arising under an agreement for the erection, construction, alteration or repair of a building be subject to a dispute resolution process specified by the owner. In compliance with this statutory provision, the Town specifies this Article as the dispute resolution process to be used on Eligible Projects. It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the Parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the Town is under no obligation under any circumstance to secure or enforce the participation of any other Party in the mediation of any dispute subject to this Article and GS 143-128(g-h).
2. Any dispute arising between or among the Parties listed in Section 4 of this Article that arises from an agreement to construct the Eligible Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules (“Rules”), except as otherwise expressly set forth in this Article. To the extent any provision of the Rules is inconsistent with the provisions of this Article, the provisions of this Article shall control. To the extent any provision of this Article is inconsistent with the dispute resolution provisions of any contract between or among the Parties, this Article shall control. The mediation provided in this Article is in lieu of any dispute resolution process adopted by the North Carolina State Building Commission, which process shall not apply to this Eligible Project.
3. For purposes of this Article the following definitions shall apply:  
*Construct* or *construction* refers to and includes the erection, construction, alteration or repair of the Eligible Project; and  
*Party* or *Parties* refers to the parties listed in Section 4 of this Article.
4. The Town and any Party contracting with the Town or with any first-tier or lower-tier subcontractor for the construction of the Eligible Project agree to participate in good faith in any mediation of a dispute subject to this Article and GS 143-128(g-h), including without limitation the following Parties (if any): architect(s), engineer(s), surveyor(s), construction manager, construction manager at risk, prime contractor(s), surety(ies), subcontractor(s), and supplier(s).
5. In order to facilitate compliance with GS 143-128(g-h), all Parties shall include this Article in every agreement to which it (any of them) is a Party for the Eligible Project without variation or exception. Failure to do so will constitute a breach of contract, and the Party failing to include this Article in any agreement required by this Article shall indemnify and hold harmless the remaining Parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Article and can enforce the provisions hereof.
6. a. The following disputes are not subject to mediation:
  - i. A dispute seeking a non-monetary recovery; and
  - ii. A dispute seeking a monetary recovery of \$15,000 or less.

- b. A dispute seeking the extension of any time limit set forth in an agreement to construct the Project shall be subject to mediation pursuant to this Article and GS 143-128(g-h), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.
7. For purposes of this Article, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes.
  8. In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.
  9. Prior to requesting mediation, a Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.  
  
In addition, prior to requesting mediation, the initiating Party must request a pre-mediation meeting of the principals of the Parties engaged in the dispute. Such request for a pre-mediation meeting shall be made in writing and upon at least 10 business days' notice of the requested meeting date.
  10. If a Party breaches any provision of Section 9, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.
  11. All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the Town is named as a party to the mediation, the Town shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the Town is named as a party to the mediation, the Town shall pay at least one-third of the mediation expenses and costs divided among the Parties.  
  
All expenses incurred by a Party in preparing for, holding and attending a pre-mediation meeting of principals shall be paid by that Party.
  12. The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Union County, as the mediator shall determine.
  13. The provisions of this Article are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Article.
  14. The Parties understand and agree that mediation in accordance with this Article shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Article.

**END OF DISPUTE RESOLUTION REQUIREMENTS**

**VII. SPECIFICATIONS**

## 7.1 ASPHALT

All asphalt used in the construction of this project shall consist of all elements covered by Section 610 of the Standard Specifications.

All cost associated in raising utilities (sewer manholes, water valve boxes, etc.) or removal/hauling away existing asphalt during paving operations shall be included in the unit price bid for Asphalt.

All work associated in the adjustment of utilities shall be in accordance with Section 858 of the Standard Specifications.

## 7.2 CONCRETE

### A. Compressive Strength

All concrete used in the construction of this project shall be 3600 PSI strength at twenty-eight (28) days, unless otherwise specified. No adjustment will be allowed for the required use of high-early strength concrete. When the Contractor is requested to use high-early strength concrete in certain areas, he must furnish a copy of the delivery ticket to the project inspector prior to allowing traffic to proceed across the item in question before the required seven-day curing period.

Concrete cylinders shall be prepared by the Town's designated materials testing firm. It shall be the responsibility of the Contractor to protect the cylinders until such time as they are taken to the designated materials testing laboratory. Not less than five (5) cylinders (six (6) for structures) shall be made for each day's pour.

### B. Slump

The maximum slump of the concrete used on the project shall be as defined in Section 1000 of the Standard Specifications. The Town's designated testing firm shall provide all equipment necessary to test the slump of the concrete and at a frequency established by the Engineer and in accordance with ASTM C 143. The sample taken for determination of slump will be obtained immediately prior to the concrete being discharged onto the project. Concrete failing to meet requirements for slump will be subject to rejection.

### C. Air Content

The air content of the concrete used on this project shall be as defined in Section 1000 of the Standard Specifications. The Town's designated testing firm shall provide all equipment necessary to test the air content of the concrete and shall test the air content at a frequency established by the Engineer. The sample taken for the determination of air content will be obtained immediately prior to the concrete being discharged onto the project. Concrete failing to meet specification requirements for air content will be subject to rejection.

### D. Acceptance and Testing Standards

Concrete batching, sampling, testing and evaluation shall be done in accordance with the standards listed below:

ASTM C94	Standard Specifications for Ready Mixed Concrete
ASTM C172	Standard Method of Concrete Sampling
ASTM C470	Tentative Specification for Molds for Forming Concrete Test Cylinders Vertically
ASTM C31	Standard Method of Making and Curing Concrete
ASTM C143	Standard Method of Test for Slump of Portland Cement Concrete
ASTM C42	Obtaining and Testing Drilled Cores and Sawed Beams of Concrete
AASHTO T199-72	Air Content of Freshly Mixed Concrete by the Chace Indicator
ASTM C231-82	Standard Test for Air Content of Freshly Mixed Concrete by the Pressure Method

E. Concrete Finishes

The type of finish required will be that required by the section of specifications directly applicable to the work being constructed. All exposed surfaces of retaining walls, structures, and etc. shall be given a Class 2 finish as described by Section 420-18 (f) of the Standard Specifications unless indicated otherwise in the plans.

F. Compressive Strength Quality Assurance for Incidental Concrete

The following Quality Assurance Specifications shall apply only to incidental concrete used in the construction of this project. Incidental concrete shall be defined as any concrete not used in the construction of rigid pavement or any concrete that is not an integral part of a structure. The acceptability of any questionable structural concrete used in the construction of this project will be evaluated on a case by case basis.

It is the intent of these specifications to provide an equitable means of accepting materials that may vary slightly from the specification range stated in the Standards Specifications in lieu of total rejection, removal, repair or non-payment. The Engineer will determine acceptability of materials in accordance with the applicable sections of these specifications. When materials are not within specification limits, an adjusted payment may be allowed as delineated in these specifications, except where the level and variability of test results indicate a degree of noncompliance with requirements so great as to make the material unacceptable. Unacceptable material shall be either re-worked or replaced at no additional cost to the Town. The Engineer reserves the right to reject questionable material at any time in lieu of making reduced payment.

Concrete will be tested and accepted with respect to compressive strength on the basis of the average test results of concrete test cylinders. It shall be the responsibility of the Town's designated testing firm to prepare test cylinders in accordance with ASTM C31. It shall be the Contractor's responsibility to adequately protect the cylinders until such time as they are taken by the Town's designated testing firm to an approved Materials Laboratory for curing and testing. If the average strength of concrete cylinder test results fail to attain the specified minimum compressive strength at twenty-eight (28) days but meets or exceeds 70% of the minimum compressive strength, the Engineer will have the option of instructing the Contractor to replace all concrete represented by those cylinders with concrete meeting specifications or of allowing the concrete to remain in place at a reduced contract price. The contract unit price for such concrete left in place shall be reduced by the following formula:

$$\text{Reduced Unit Price} = \text{Contract Unit Price} \times \frac{\text{Avg. Strength of Test Cylinders at 28 Days}}{\text{Specified min. Compressive Strength}}$$

In the event that concrete cylinder tests fail to meet minimum compressive strengths at twenty-eight (28) days, the Contractor will have the option of taking cores from the concrete in question at the Contractor's expense. Cores must be taken and tested in accordance with ASTM C42. The average compressive strength of cores which are correctly tested shall then be used as the basis for acceptance of concrete in lieu of concrete test cylinder results discussed above. The above criteria for acceptance of concrete with respect to compressive strength shall then be applied to core test results. Cores must be taken thirty-one (31) days after placement of concrete. Cores will be tested by the Town's designated testing firm. A minimum of three (3) cores shall be taken from questionable concrete, unless otherwise specified by the Engineer. Cores shall be taken from locations selected by the Engineer.

**If the average strength of the concrete test results (cylinders and cores) fail to attain seventy percent (70%) of the specified minimum compressive strength at twenty-eight (28) days, all applicable concrete shall be rejected. The Contractor, at no additional cost to the Town, shall remove the rejected concrete and replace it with concrete meeting specifications.**

### 7.3 EROSION AND SEDIMENTATION CONTROL MEASURES

The Contractor shall install and maintain all erosion and sedimentation control measures and devices necessary to comply with the Erosion and Sedimentation Control Plan and applicable local and state ordinances and laws. All erosion and sedimentation control measures and devices shall be installed prior to beginning clearing or grading operations. Such devices shall be maintained in proper working condition from installation throughout the duration of the Project.

The Contractor shall indemnify and hold harmless the Town for any penalties imposed against the Town by any local or state agency for the Contractor's failure to install and properly maintain erosion and sedimentation control devices. The Contractor shall immediately correct any deficiencies in erosion and sedimentation measures identified by the Town or local or state agency. If the Contractor fails to correct the deficiencies within 24 hours after notification, the Town will have such corrections performed and assess the cost of these corrections plus a 100% surcharge against the Contractor.

The Contractor will install silt bags in all catch basins that are located in the construction area where proposed asphalt paving, widening, asphalt surface treatments or rehabilitation of the existing subgrade is being performed. These devices will be monitored on a per week basis.

If any borrow or waste areas are to be utilized, it shall be the responsibility of the Contractor to notify the property owner that the property owner is responsible for any damage occurring from the site, either as part of the agreement with the Contractor, or on his own. All work, sediment control structures, and seeding will be at the cost of the property owner or Contractor. The Town will not participate in the cost of this work on the waste or borrow areas. Prior to final payment being made, the Contractor shall obtain a release from the property owner of the borrow or waste site utilized for the Project.

There shall be no separate payment for Erosion and Sedimentation Control Measures.

### 7.4 ASPHALT PLANT MIX, PAVEMENT REPAIR

Unless otherwise shown in the plans, details, or as directed by the Engineer in the field, all asphalt street repairs will consist of digging out a minimum 5" depth specified area and replacing it with Intermediate Course (I 19.0 B) and topped with Surface Course (SF 9.5A). For street repairs exceeding 5" depth, Base Course (B 25.0B) may be incorporated as approved by the Engineer. If the repaired area is not topped with Surface Course (SF 9.5A) in a suitable time frame, the area in question will be inspected again and if found to be unsuitable the Contractor will replace the area at no cost to the Town.

### 7.5 SAWING EXISTING PAVEMENT

Where asphalt or concrete (curb, sidewalk, roadway, driveways, parking lots, etc.) is to be removed, the Contractor shall provide a neat edge along the pavement being retained by sawing the pavement a minimum of 2" deep, a maximum of 1/8" thick, and minimum 1' wide before breaking and removing adjacent pavement.

When the Contractor proposes to saw pavement more than one foot from the proposed pavement (curb, sidewalk, structure, etc.), the Contractor shall obtain approval from the Engineer prior to saw cutting and removing pavement.

The cost of sawing asphalt or concrete shall be considered incidental to the removal operation and shall be included in the proper unit price bid line items. **This includes work on existing streets that have been repaired using Full Depth Pavement Recycling.**

### 7.6 SEEDING AND MULCHING

The work covered by this special provision includes preparing seedbeds; furnishing, placing, and covering limestone, fertilizer, and seed; compacting seedbeds; furnishing, placing, and securing mulch; mowing; and other operations necessary for the permanent establishment of grasses from seed on shoulders, slopes, ditches, and on all earth areas disturbed by construction and on portions of areas seeded under previous contracts where, in the opinion of the Engineer, there is unsatisfactory vegetative cover.

All work covered in this special provision shall be in accordance with, and all materials shall conform to, the requirements of the Charlotte Mecklenburg's "Landscape Construction Standards".

## **7.7 STORM DRAINAGE STRUCTURES & PIPES**

The Contractor shall build inverts in all drainage structures. Inverts shall maintain pipe flow-line and shape with a minimum depth of 1/8th the pipe diameter and a minimum side slope of 2 inches per foot unless otherwise directed by the Engineer. There will be no separate measurement or payment for this work, as it will be considered incidental to the construction of drainage structures.

All storm drainage structures shall be masonry. No pre-cast drainage structures are allowed without prior written approval from the Engineer.

The Contractor shall provide written verification to the Engineer that all storm drainage pipes have been installed at the proposed slopes as shown on the plans or as directed by the Engineer prior to placing subgrade material over the pipes.

### **END OF SPECIFICATIONS**

**VIII. PROJECT SPECIAL PROVISIONS**

**PROJECT SPECIAL PROVISIONS**

**8.1 SP1 – MOBILIZATION**

Description: Work covered by this special provision consists of preparatory work and operations which must be performed or for costs incurred prior to beginning work on the Contract.

Payment: Payment for the entire lump sum price for the item of “Mobilization” will be made with the first pay request paid on the Contract. The bid price shall not exceed 3% of the total amount bid for the items in this Contract, excluding Mobilization.

Payment will be made under:

MOBILIZATION.....LS

**8.2 SP2 – GEOTEXTILE FABRIC**

Description: Work covered by this special provision consists of furnishing, installing, and maintaining geotextile fabrics at locations shown on the map, plans, or as directed by the Engineer. Material shall be installed per the manufacture’s recommendations. The Engineer has authority to revise methodology at any time during the installation.

Construction Methods: The geotextile fabric shall be in accordance with Section 1056 “Geosynthetics” from the Standard Specifications. Fabric shall be overlapped at the edges per the manufactures’ specifications and/or the Engineer’s recommendations. Payment will not be made for any geotextile which is not properly installed and maintained.

Measurement: The quantity of geotextile fabric to be paid for will be the actual number of square yards installed and accepted.

Payment: Payment for geotextile fabric will be the number of square yards (SY) of fabric measured in place. Such payment will be full compensation for all work covered by this special provision, including but not limited to furnishing, installing, and maintaining all fabric sections.

Payment will be made under:

GEOTEXTILE FABRIC .....SY

**8.3 SP3 – ASPHALT SPEED TABLES**

Description: Asphalt Speed Tables will be parabolic type, 22’w x 30’l x 3.75’h, with 6’ parabolic ends and a 10’ flat top. The work covered by this special provision consists of all elements of asphalt work covered by Sections 610 - 620 of the Standard Specifications, and the work listed in the following items:

- 1) Asphalt tack coat which will be in accordance with Section 605 “Asphalt Tack Coat” of the Standard Specifications.
- 2) Asphalt milling which will be in accordance with Section 607 “Milling Asphalt Pavement” of the Standard Specifications.
- 3) Any signage or obstacles that may need to be removed/replaced due to safety or visual concerns with the location of the speed tables.
- 4) The striping of each side of each asphalt speed table in accordance with the latest version of “MUTCD for Streets and Highways”, and Section 1087 and 1205 of NCDOT’s “Standard Specifications for Roads and Structures” manual.
- 5) The installation of signing in accordance with the attached detail and the latest version of “MUTCD for Streets and Highways”.

Payment: The quantity of Asphalt Speed Tables to be paid for will be the actual number of speed tables installed and accepted. This payment will be full compensation for all elements of work required to complete the Project as specified.

Payment will be made under:

ASPHALT SPEED TABLES.....EA

**8.4 SP4 – TRAFFIC CONTROL**

Beginning Work and Street Closings: The Contractor is responsible for notifying the appropriate agency of any work where the number of travel lanes is reduced from normal conditions. The Contractor shall install advance warning signs and/or message boards for the Project. These signs shall be in place for one week before construction activity begins. The Contractor shall begin construction activity on a street on the scheduled date for the closing of the travel lane.

During daily construction work hours, the Contractor will maintain at least one lane of traffic. The Contractor shall not narrow or close any travel way during the peak hours of 7:00 am to 9:00 am and 4:00 pm to 6:00 pm Monday through Friday. During periods of construction inactivity, all lanes of traffic will be open unless otherwise shown on the plans or noted in the specifications.

Traffic Control Plan: Traffic control will be performed by the Contractor based upon the current NC Traffic Control In Work Zones Standards Provisions.

The current edition of the Manual on Uniform Traffic Control Devices, the current edition of the North Carolina Department of Transportation (NCDOT) Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways, the NCDOT Roadway Standard Drawings and the current edition of the NCDOT Standard Specifications for Roads and Structures.

The Contractor shall maintain the traffic control as described herein unless the Contractor submits an alternate traffic control plan to the Engineer and it is approved by the Engineer. The Engineer may direct the Contractor to modify the traffic control if, in the Engineer’s opinion, traffic is not moving safely or efficiently.

Maintenance of Traffic: The Contractor shall maintain all travel lanes in accordance with the noted procedures and standards.

The Contractor shall use flagger control in accordance with the appropriate standard.

In areas of drop-offs and low shoulders, the Contractor shall backfill up to the edge and elevation of the existing pavement as directed by the engineer

The Contractor will be required to maintain ingress and egress to all businesses and dwellings, and easy access to fire hydrants.

The Contractor shall not work on both sides of the road simultaneously within the same area.

The Contractor shall provide adequate drainage under driveways and within the Project area for the duration of the Project.

The Contractor shall mark all hazards within the Project limits with well-maintained signs, barricades, warning and/or channelizing devices.

Traffic Control Devices: The Contractor shall furnish, install, operate, relocate, maintain and remove all temporary traffic control devices necessary for controlling traffic. All construction signs and barricades shall remain in place until the appropriate permanent signs and pavement markings are installed.

Pedestrian Considerations: The Contractor shall accommodate the needs of all pedestrians.

Equipment and Material Storage: During periods of construction inactivity, all construction materials and equipment shall be stored by the Contractor as directed by the Engineer.

Excavation and Trenches: Excavations and trenches that cannot be properly backfilled and patched prior to the end of the workday shall be secured as directed by the Engineer.

Measurement: There will be no separate measurement made for Traffic Control.

Payment: Traffic Control will be paid at the lump sum price for "Traffic Control". This payment will be full compensation for all elements of work required to complete the Project as specified.

Payment will be made under:

TRAFFIC CONTROL.....LS

**8.5 SP5 – MATERIALS TESTING SERVICES**

Description: The work covered by this special provision covers materials testing services. An ASTM certified testing laboratory will be selected by the Town to perform the required work which consists of but not limited to the following:

- A. Determine soil optimum moisture content and maximum dry unit weight;
- B. Determine soil shear strength;
- C. Perform field density testing of backfill material compaction;
- D. Provide proof-rolling observations and corrective recommendations/measures;
- E. Determine concrete compressive strength, slump, and air content (see Subarticle 6.2 CONCRETE).
- F. Perform density test on aggregate base course
- G. Pavement core verification samples for Quality Assurance.

All work shall be performed in accordance with appropriate and applicable standards.

The Contractor shall notify the Town 24 hours prior to any materials sampling and or testing.

The Town reserves the right to choose the frequency of testing needed for final acceptance of any and all work.

Payment: An allotted amount of funds will be shown on the Itemized Bid Form of this Contract. The Town will use this fund source to pay the materials testing services. The Contractor shall submit any invoices received by the testing firm with the monthly partial payment request. It will be the responsibility of the Contractor to pay all invoices submitted by the testing firm before acceptance and final payment can be issued as stated under Subarticle 4.4 "Acceptance and Final Payment", Section 4 "Measurement and Payment" of this Contract.

The Town will not bear any cost associated with testing results that indicate the work was not performed properly and/or did not meet the requirements of this Contract. All cost associated with the initial testing and any additional testing required to correct the work in question, will be paid for by the Contractor. The Town shall have the right to hold "Final Payment" if any outstanding unpaid cost to the testing firm hasn't been paid by the Contractor due to required retesting of failed Work. Until testing firm can attest to the Town that all payments due to them from the Contractor have been paid, the Town only recourse is to hold "Final Payment" until all dues are final.

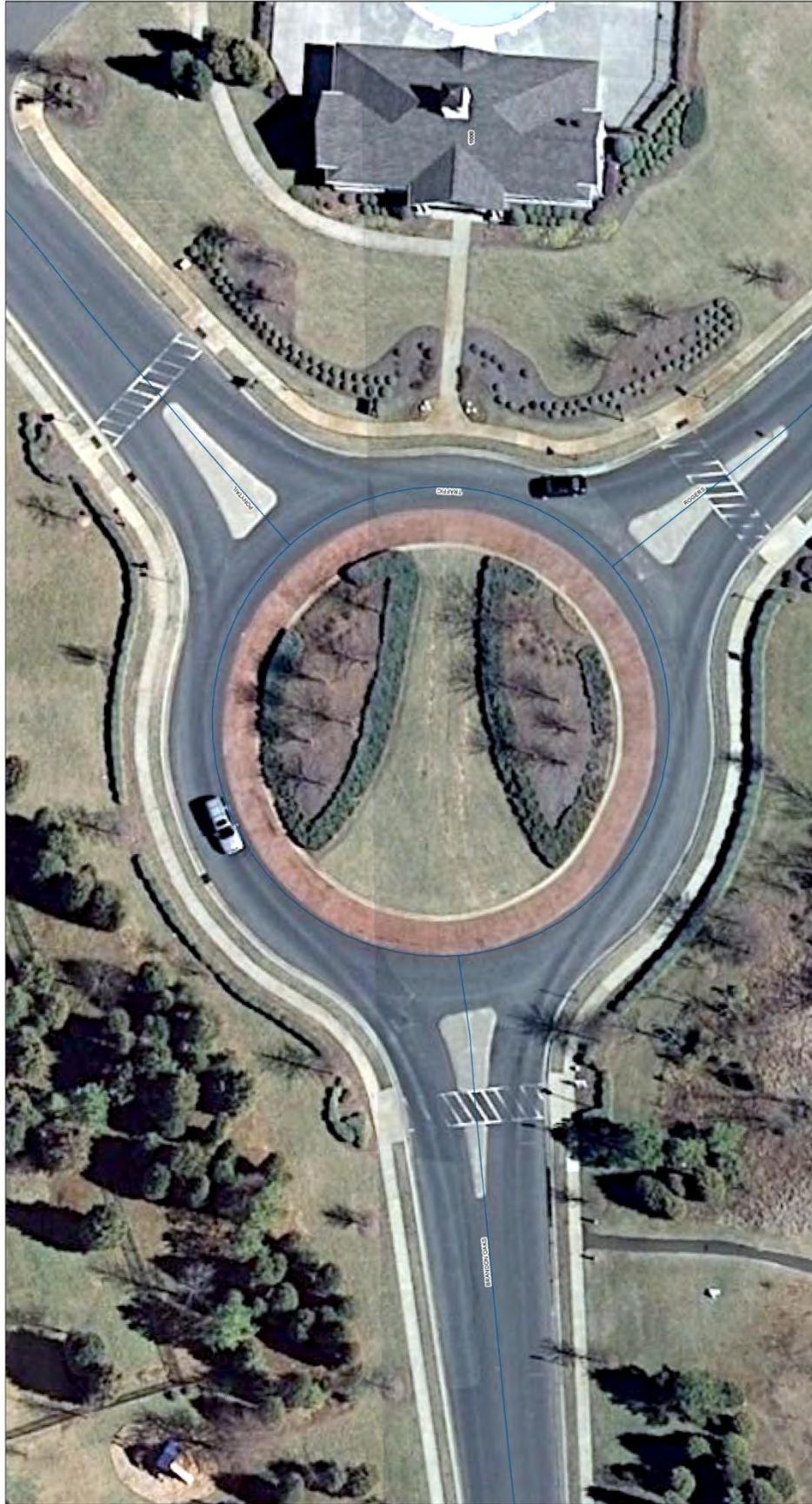
Payment will be made under:

MATERIALS TESTING SERVICES ..... LS

**END OF PROJECT SPECIAL PROVISIONS**

IX. APPENDIX

**APPENDIX A: LOCATION MAPS**



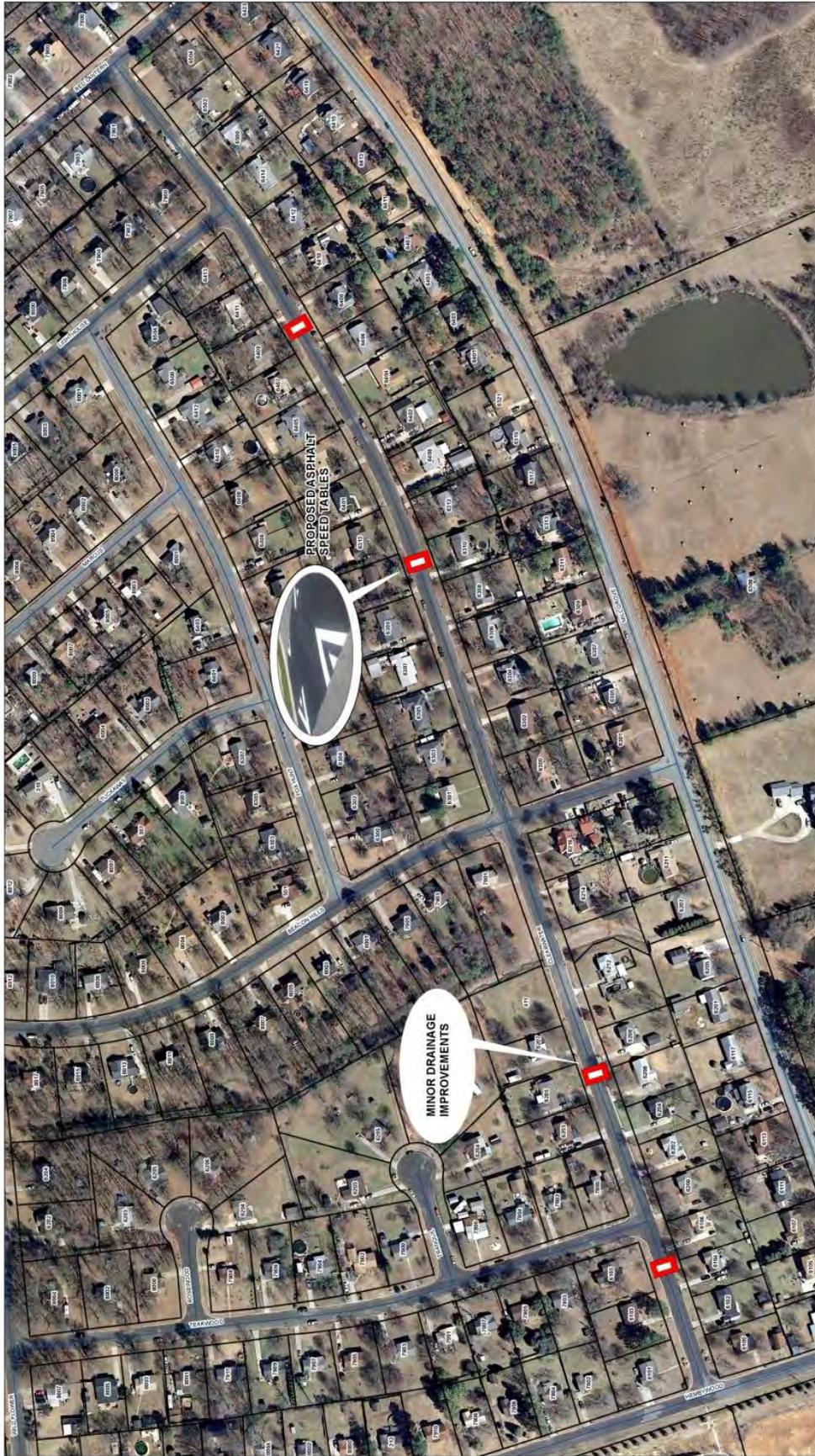
**Branding Oaks Subdivision  
Branding Oaks Pkwy  
Indian Trail , NC**

**Proposed Asphalt  
Roundabout Repairs**



Drawn By: **TODD HUNTSINGER**  
Date Created: **07/10/2014**

**NTS**



**Beacon Hills Subdivision**  
**Clearwater Drive**  
**Indian Trail, NC**

**Proposed Neighborhood**  
**Traffic Calming Layout**



Drawn By: TODD HUNTSINGER  
 Design By: SCOTT KAUFHOLD  
 Checked By: SCOTT KAUFHOLD  
 Date Created: 07/10/2014

**NTS**



**Village at Indian Trail  
Stratford & Lauren Drive  
Indian Trail, NC**

**Proposed Asphalt Patching/  
Resurfacing Cul-de-sacs**



Drawn By: TODD HUNTSINGER  
Date Created: 07/10/2014

**NTS**

**APPENDIX B: SPEED TABLE DETAIL**





**TO:** Mayor and Town Council

**FROM:** Joe Fivas, Town Manager

**DATE:** August 12, 2014

**SUBJECT:** Economic Development Advisory Committee Priorities

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The Town Council may discuss and consider the priority economic development issues that they want the committee to focus on in upcoming months.



**TO:** Mayor & Town Council

**FROM:** Joe Fivas, Town Manager

**DATE:** August 12, 2014

**SUBJECT:** Establish a Work Session for Town Hall & Town Square Project

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The Town Council can discuss and determine the next steps in the Town Hall & Town Square Project. One of the first steps considered may be establishing a Work Session to discuss all aspects of these projects.