MAYOR
Michael L Alvarez

MAYOR PRO TEM
David L. Cohn

TOWN COUNCIL
Robert W. Allen
Christopher M. King
Darlene T. Luther
David K. Waddell

Indian Trail Town Council Meeting
March 12, 2013
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** **action**

4. **PRESENTATIONS**

5. **PUBLIC COMMENTS**

6. **CONSENT AGENDA** **action**
   - **a.** Approval February 12, 2013 draft minutes
   - **b.** Approval of February 16, 2013 draft minutes
   - **c.** Approval of Month End Tax Report for February 2013
   - **d.** Resolution to assume maintenance of certain NCDOT streets
   - **e.** Request for release of interest
   - **f.** Budget Amendment
   - **g.** Approval of Fence along Blythe Drive
   - **h.** Resolution clarifying Ordinance MCA2013-1

7. **PUBLIC HEARINGS** **action**
   - **a.** ZM2012-006 Oakwood Lane Properties**:** A request rezone three properties located at the end of Oakwood Lane from a single-family residential designation to the Institutional classification. These properties were purchased last July by the Town

and have been identified as the future Sardis Park facility. Parcels 07048019L and 07048019K are newly annexed properties (Annexation Ordinance #134) and the remaining parcel is already within the Town's jurisdiction

b. CZ2012-001: Younts Miniature Golf**:** A request to establish a Conditional General Business District (CZ-GBD) zoning classification to support development of a 36-hole miniature golf course. Existing Zoning: Single-Family Residential-1 (SF-1). Location: Younts Road; Applicant: Scott Merritt

c. ZT2012-007 Text Amendment UDO Chapter 710: A request to modify UDO Chapter 710 to permit accessory residential uses within non-residential zoning districts. Location: Town-wide, Applicant: Town of Indian Trail

d. ZT2013-001 Automotive Repair in the GBD: This is a request to amend Chapter 520-Business and Commercial Zoning Districts to allow for motor vehicle repair shops (not including body work, parking and commercial repair) in the General Business Zoning Districts (GBD) within the Town. Applicant: Town of Indian Trail

8. BUSINESS ITEMS

a. Council Consideration of Approval of Rating Process Engagement Letter

b. Council Consideration of Approval of Project Manager for 'Chestnut Park'

c. Council Consideration of Approval of Carolina Courts Sub-Agreement

d. Establish a date for a Special Meeting

e. C-4957 Unionville Indian Trail Sidewalk Improvements Contract

f. Council Consideration of Approval of CEI Agreement for Unionville Indian Trail Sidewalk Improvements

g. Progress report of Sardis Park from Project Manager

h. Council Consideration of Approval of Scope of Work on Sardis Park

9. DISCUSSION ITEMS

a. Web inquiry and payment portal for tax accounts

b. Council discussion of participation in the Economic Alliance of South Charlotte Communities

c. Discussion on investigating options for Video recording of Council, Board and Committee meetings – *this item was requested by Mayor Alvarez*

10. MANAGERS REPORT

11. COUNCIL COMMENTS

12. CLOSED SESSION **action**

13. 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; the phone number is 704-821-2541

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Town of Indian Trail
Minutes of Town Council
February 12, 2013
Civic Building
6:30 P.M.

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: Robert Allen, David Cohn, Christopher King, Darlene Luther, and David Waddell.

Staff Members: Town Manager Joe Fivas, Town Clerk Peggy Piontek, Town Attorney Keith Merritt, Director of Community & Economic Development Kelly Barnhardt, Planning Director Shelley DeHart, Finance Director Marsha Sutton, Tax Collector Janice Cook, Director of Engineering and Public Works Scott Kaufhold , Director of Human Resources Miriam Lowery, Senior Planner Rox Burhans , and Public Information Officer/Events Coordinator Rebecca Carter.

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Alvarez called the meeting to order and invited Eagle Scout Paul Sharman to lead the Pledge of Allegiance.

ADDITIONS AND DELETIONS

David Waddell made a motion to approve an addition to the agenda of a discussion on doing a law enforcement study as item 9d.
Motion Failed 3 - 2 with Robert Allen, Darlene Luther, and Christopher King opposing.

MOTION TO APPROVE AGENDA

Christopher King made a motion to approve the agenda.
Motion Passed 4 - 1 with David Waddell opposing.

PRESENTATIONS

a. Certificate of Recognition for Eagle Scout Paul Sharman

Mayor Alvarez introduced Eagle Scout Paul Sharman, read the Certificate of Recognition and congratulated him on his accomplishments.

PUBLIC COMMENTS

John Quinn, currently resides in Mint Hill, NC, addressed his time in public office explaining he became aware that there was a small group of individuals who wanted to start a police department. He stated that no evidence was produced to explain its benefit to the town, more than the contract with the Union County Sheriff's Office (USCO). He referred to a study conducted in 2008 by a local University verifying that Indian Trail had a tremendous value and is receiving exemplary service from the Sheriff's Office. The Public Safety Committee did an independent study concluding the same thing and recommended adding a significant number of officers as the Town was understaffed and was one of the fastest growing towns in the United States. Mr. Quinn stated there was a petition signed by 850 people stating to keep the Sheriff's Office which was a better value and were willing to forgo the branding which was one of the main issues he had heard from the individuals who wanted a police department. This was not a big deal, what is a big deal is that the people get quality service, lower response times while paying as little as possible to obtain this. In January 2010 Council directed Joe Fivas to conduct a report determining the costs associated to start a police department to be completed and presented by the end of July 2010. Mr. Quinn stated that report never materialized. Mr. Quinn advised that every Council Member that has sat in office has requested an independent unbiased study which has never been done. Mr. Waddell tonight had suggested discussing the study but was voted down. It is his understanding that

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the Town is now starting to prepare for a police department, his conclusion comes from a campaign of misinformation against the UCSO deputies and in particular Lieutenant Coble. Mr. Quinn handed out to Council, requesting it be part of the record, an article stating new cities benefit from public safety outsourcing.

Art Spurr, 4100 Woodcreek Court, Indian Trail, NC stated he is member of the Public Safety Committee advising they were given a draft of the proposed leash ordinance and rejected it, recommending it not be approved as it does not address who will enforce it. He advised that safety is the most important thing in this town and we have the finest law enforcement he's ever seen. They are dedicated to this town and the Sheriff is as well, providing any service the town needs. He is constitutional law enforcement in this County, as such has the assets to do whatever is needed to protect this town. Mr. Spurr stated that the contract with the Sheriff's office should be a long term contract, not made up of petty little things. The Sheriff has to contract with other communities and just because we're bigger than Monroe we shouldn't make that contract change, make minor changes but not, from what he's hearing, absolutely ridiculous requests of the Sherriff. He respects and stands by the UCSO and agrees we should have a study and is appalled at the Town Council by turning down Mr. Waddell's request to discuss creating a study.

Michael Faulkenberry, 519 Pickett Circle, Indian Trail, NC addressed the breaking and entering situation in Brandon Oaks describing the amount of officers and canines present totaling 25 at the crime scene. He advised that 7 of them were Indian Trail contract deputies and the remaining 18 were not. During this event the town was covered by a deputy designated to patrol Lake Park, explaining the events that deputy covered in Indian Trail during that time span. Mr. Faulkenberry explained that these figures do not represent the detectives involved for search warrants and follow up interviews. Cost of contract service $1,500,000.00, legal liability to the Town $0, operational headache for the Town $0, all benefits from contracting with the UCSO priceless. In addition, Mr. Faulkenberry stated as a result of his research from MUMPO, it appears that the Town Council Representative has only attended 2 meetings in 2012, with no appearance by the Alternate Representative. Mr. Faulkenberry inquired, if we're all for transparent government and improving the highways of Indian Trail, why is this Representative not attending these meetings?

Amanda Faulkenberry, 519 Picketts Circle, Indian Trail, NC has been a resident for 20 years and has always been serviced by UCSO, finding them kind, courteous, professional and some of the finest she has ever know. She has sat through many meetings listening to discussions about the contract and other Council ideas. She finds it disturbing and feels these are nickel and dime issues. Her biggest concern is solid, visible coverage and she sees them throughout the community. Please don't tangle over this contract, citing the amount spent on a 4 lane road

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that goes nowhere and the current purchase of park land, stating that she never heard if those purchases were the best deal for the Town. She requested that Council not argue over the biggest bang for the buck on a contract that has served us well. She agrees to tweaking it, but requested that Council not louse it up.

Richard Straser, 3501 Elkway, Indian Trail, NC representing the Deerstyne subdivision advising there are 4 new homes currently under construction with a total of 20 homes expected upon completion. Mr. Straser feels this will increase traffic on Pioneer Lane substantially, and described the current flow of construction vehicles using the road. He expressed his neighborhood has great concerns about the entrance to Pioneer Lane advising he and his wife have encountered dangerous situations trying to enter from Indian Trail Road. Mr. Straser explained that it's impossible to see other vehicles coming up from Pioneer Lane. When exiting Pioneer it narrows to 18' when you are coming down the hill and it is a rare exception that a vehicle is not in the middle of the road as opposed to the right edge, advising a dangerous situation when encountering a dump truck, school bus or pedestrians. He respectfully requested that Pioneer Lane, at the narrows, be widened to join the rest of Pioneer Lane 37', properly striped, outfitted with signs including the existing sign. For a no outlet road it has become a highway for the Colton Ridge, Deerstyne, Wadsworth neighborhoods as well as the original homes at the rear. All this traffic is being funneled towards the dangerous and overly narrowed stretch of roadbed where visibility is hampered by a crescent hill by blind spots in both directions.

CONSENT AGENDA

a. Approval January 17 & 22, 2013 draft Minutes
b. Approval of Month End Tax Report for January 2013 **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
c. Approval of the revised 2013 Council Meeting Schedule **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
d. Budget Amendments **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
e. Tax refunds over $500 **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
f. Advertisement of delinquent real estate taxes for 2012 tax year
g. Municipal Speed Limit Ordinance for Highway 74 **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**

Robert Allen made a motion to approve the Consent Agenda.
Council voted unanimously in favor of the motion.

PUBLIC HEARINGS

NONE

BUSINESS ITEMS

a. Animal Control Ordinance

Mr. Fivas explained that the Ordinance before Council is the result of direction from them to create something similar to that of Lake Park which Mr. Merritt has done. Mr. Fivas advised that it had been emailed to Council and explained some of the requirements, fines, fees and enforcement of this ordinance.

Mr. Waddell asked how will it be enforced.

Mr. Fivas explained that it's currently structured that the Union County Sheriff's Office would essentially have to do that. It's not their obligation to enforce as written. We have had conversations with the Sheriff and Lieutenant Coble who are willing to work with us on it but have concerns associated with doing that enforcement. This is the same ordinance that they have in Lake Park, Union County Sheriff's Office has a contract with Lake Park and they perform some level of enforcement there. It could be enforced and there's a methodology in Lake Park on how it could be enforced. There is a potential for some challenges that might need to be dealt with. A draft has been sent to Union County but we have not received any comments from them to date.

Mr. Cohn inquired when it will begin to take effect. Mr. Fivas responded that is Council's choice but his recommendation is to delay it for a short period of time enabling staff to get the information out to the residents prior to its implementation. Mr. Cohn stated this is something we need to do and it's his opinion to do it today, as there are people out there who need this.

Ms. Luther supports this ordinance and explained her concerns for the ordinance previously presented to Council by the Public Safety Committee. Ms. Luther emphasized that the previous ordinance was a good one, similar to other communities, but Council did not feel that it fit the needs and desires of the residents of Indian Trail as a result of Public Comments they received at the last meeting. This is a simple ordinance requiring your dog be on a leash, contained in your yard and comes with a civil citation with fines for first, second and third offenses. Currently Union County Deputies have and do enforce the ordinance in Lake Park, so we feel it's not unreasonable to request the same service. In addition our Code Enforcement staff can write a citation if necessary because all dogs need to be tagged. If, for whatever reason, we find the enforcement is not at a level it should be it doesn't mean that we can't change it. It's amendable, a good beginning, putting in place a leash law for Indian Trail providing a feeling a safety for our residents.

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Darlene Luther made a motion to approve the Animal Control Ordinance, as written effective April 1, 2013.
Motion Passed 4 - 1 with David Waddell opposing. **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**

Mr. Fivas advised the most important thing in adopting this ordinance is the public outreach which we can achieve with the newsletter explaining what it is and what it is not. Staff would encourage any recommendations to assist us in getting this information out.

Ms. Luther advised that Union County has an Animal Control Ordinance which has been adopted by Indian Trail and is effective. It encompasses things like barking and dangerous dogs, and the necessity of rabies shots which is in effect for our community.

b. Approval of Woolpert Agreement

Mr. Fivas advised this agreement is to get the Project Manager (Woolpert) for the tentatively named Sardis Park started and creates a time frame. They have been working on a number of tasks, they anticipate coming back to us March 12th with schematics of what the first phase will look like, hopefully starting as early as May and the second phase hopefully late summer early fall. We will have to go through the schematic process which Council will have to approve, then they will create design and construction documents then it will go out to bid. It's the initial start of a very big project. Mr. Fivas introduced Andrew Pack; lead Project Manager on this project.

Andrew Pack explained the process and how they will approach the project.

Mr. King stated that according to the schedule handed out the start of construction of Phase I will begin in mid May, wrap up in mid July, and the start of construction in phase II in November. Mr. King then inquired when the completion of Phase II would be. Mr. Pack replied it all depends on the scope of the project, time lines with permitting and utilities as well.

Mr. Cohn advised he stopped at Martha Rivers Park and he liked the design.

Ms. Luther stated she would like to see walking/biking trails through the woods, spectacular playground, Dog Park, and Frisbee golf.

Christopher King made a motion to approve the general scope for phase I.
Council voted unanimously in favor of the motion. **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**

DISCUSSION ITEMS

a. Review of application process and questions for ABC Board

Mr. Fivas advised that there is a seat opening on the ABC Board on March 1st. Staff has advertised in many different venues and wanted to be sure of the process that Council would like to have conducted. You have 3 applications and if you want more applicants we can extend the time and will readvertise. Mr. Fivas wanted to be sure Council felt the applications before them would be among their choice for the position. This term expires March 1st, however the person currently appointed will stay until a replacement is in place. He inquired when Council would like to conduct the interviews, at a special meeting, 30 minutes earlier at the next scheduled meeting or at the top of the agenda of the next Council meeting. By consensus Council directed to conduct the interviews at the top of the agenda for the next meeting. Mr. Fivas stated that we have supplied questions in your packet, however if you would prefer to ask your own questions, we request that you ask those same questions to all applicants, consistency is very important.

b. Resident concerns about Pioneer Lane - this item was requested by Mayor Alvarez

Mayor Alvarez advised he has had several comments from citizens who live in the area with concerns about their safety. In the nature of transparency and clear communication he felt it a good time to add it as a discussion item at this meeting so the residents' concerns can be addressed by staff and Council.

Mr. Fivas stated that previous to this coming up as an issue we brought this area to the Council's attention that we had concerns this was an area to address. This item was ranked as the third priority project to have a turn lane on Waxhaw Indian Trail Road. The other issue is there are several neighborhoods there, when they built the street, a 34' foot road going into an 18' road. We propose doing some stripping with reflective paint, a sign advising road narrows for safety. Any of the other construction issues will come in line when we get the intersection project put together. There has been some discussion that there needs to be a turn lane at Deerstyne, we have been investigating this but no conclusion has been made. It will be a fairly major project to cut down the hill and widen the road. We will get there but in the interim we need to do some minor modification to help with the safety of the road and work with the Town Engineer to come up with a plan to do the entire intersection at the same time.

Mayor Alvarez asked if we can provide a time frame for residents. Mr. Fivas stated that stripping will begin as soon as the weather permits, the construction project we're hopeful to get NCDOT to assist in funding of widening Waxhaw Indian Trail Road and funding from

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Deerstyne to assist. Council has voted this is the 3rd level of priority, if you choose to change that, we will be happy to accommodate that.

Mr. Waddell suggested perhaps the use of some of the $7,000,000 road bond can be used for that?

Mayor Alvarez stated that if citizens have any issues contact him and advised there is no harm in them writing NCDOT to take a look at your neighborhoods.

c. Public Access to all Town Ordinances - this item was requested by Council Member Waddell

Mr. Waddell stated that there is a need to update the ordinances, rather than simply update the ordinances he would like them digitized and have them on line and have an index to enable people to navigate through them easily.

Mr. Fivas advised they are in the libraries and available on line. He believes Mr. Waddell is referring to a different type of system, a searchable system and there is technology available for that. There is a cost associated with that; he agrees there is work to be done on our overall Municipal Code as well.

Mr. Waddell inquired when we plan on updating them. Mr. Fivas replied we have been fairly busy in the last year on a number of different topics, but if Council wants to make it a priority and redo the entire Municipal Code we can do that. It's a significant undertaking of working through all the different codes, bringing them to the various committees and getting revisions.

Mr. Allen stated he agrees with Mr. Waddell that we should digitize it then update it. Mr. Fivas explained the very extensive and expensive process involved, stating that it would be both economical and practical to do it all at the same time. He agrees they need to be redone it's just a matter of time and resources. Council had a discussion to clarify what was wanted. In summary they would like the Municipal Code put on line, digitized, having a search engine that would include the UDO as well. Mr. Fivas explained staff would need to get costs and including the UDO could feasibly increase the cost by 300%. He suggested we approach it through the budget process and if it is approved we can start the project in July. Mr. King said it will not be a cheap project.

MANAGERS REPORT

Mr. Fivas stated on the parks issues, if anyone wants to go on a tour, talk and see some things, we will have a lot of decisions to make within the next 30 days. Woolpert can only work as fast as they receive decisions from us. The more we can do now will expedite the process.

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Mr. Fivas informed everyone that CSX will be doing repairs on the Wesley Chapel Stouts Road crossing and it will be closed for at least a week. We have no control over that, we wanted to make people aware of it.

Mr. Fivas advised that our event season is coming up.

COUNCIL COMMENTS

Mr. Allen explained the reason why he didn't support the motion to discuss a study for the Sheriff's Department is because we are in negations for a new contract; the cost is becoming one of our largest budget items. To discuss the cost of having a police department negates the opportunity to discuss negotiations with the UCSO. I would like to see our relationship continue but we need to take responsibility for the taxpayer's money.

Mr. King had no comments.

Mr. Waddell stated that for years it has been discussed to define a level of service, an adequate provision for law enforcement for the town from a professional standpoint, whether or not to have a police department, he would love to continue the contract with the UCSO. It's become apparent to him that we might be painting ourselves in a corner as the Sheriff has advised he will not change the contract. Here we are negotiating a contract with the Sheriff who wants to offer a uniform contract so we go through the motions of negotiating changes to the contract. It looks like sabotage to me and he hopes he's wrong. If you truly want to make it work we need to be a little more understanding that we contract for service, the County provides the services along with the equipment, we don't pay for the equipment, and the County does. For us to ask for that equipment, there's no contract been written like that; to act on this negotiation looks like a dog and pony show, he just doesn't know what's going on here and that's why he wanted us to take a good look at costing to put a police department together because we might be heading that way if we continue to make unreasonable demands of the Sheriff's office.

Ms. Luther stated we came up with a contract with the UCSO, as for unreasonable demands she believes if most people looked at the contract they would find it's extremely reasonable. This is not about the performance of deputies, staff levels or if we're going to add more, this is just about the basics and fundamentals of the contract. The contract we have now was written in 1996, the amendments only addressed the increase of deputies or cost. That was back when we had about 2,000 people and the contract is about 3 pages long. In any contract you spell out expectations on either side, you have clarity which is what you should expect from any business, any government any entity whatsoever to have a well thought out agreed upon contract. It creates obligations for each side. We pulled contracts from all around the country

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and what we have come up with is extremely typical for locations being serviced by the Sheriff's Department. To say it's unreasonable or that we want a police department is not true, we're trying to bring the level of this contract to 2013. She is not saying that anyone needs to agree or disagree whether we should have the Sheriff's Office; I'm simply stating that we have brought the expectation of the contract to what you would see anywhere. It is her understanding from Lieutenant Coble that the Sheriff wants the same contract for every municipality; well every municipality doesn't have the same needs. This is what you should want from your local government, a well thought out contract. In all fairness to the Council up here, it's not a political ploy we're addressing the needs that we have. If any of you have any questions or concerns about what's going on, please call me, I'll answer the phone, I'll meet you for coffee and I'll tell you exactly what I think, please don't assume the information you read on anonymously written websites as fact.

Mayor Alvarez stated Ms. Luther will answer the phone and have coffee with you and will tell you the truth. As for the Sheriff's contract, it is a service contract and any service you have your leasing the equipment, they keep the equipment. The advantage to a service contract is they are completely liable. What concerns me is that it is with the Sheriff's Department but doesn't indicate anything about the Sheriff himself who is the law enforcement expert in that organization. With the parks coming and the growth the ability to have more law enforcement officials on the streets which has been brought up a lot and is a concern of mine. If the residents show up requesting a police department, then we are obligated to do so. I have not seen that yet, I completely support the Sheriff's Department and the service they provide. What I don't like is the slander out there it must stop, business is business.

Mayor Alvarez thanked Council for their help to get Kilah's Law out there. He's happy to report it has been sponsored in both the House and Senate and within a few weeks we will have a new law increasing the sentencing guidelines for those that permanently debilitate and disable a child by abuse. Indian Trail deserves a pat on the back for getting this started. Mayor Alvarez stated he is very proud of the Town and the Council as a whole.

Mr. Cohn said pertaining to the Sheriff's Department he hears a lot from both sides and believes everyone on this Council is here for the right reason. We're looking out for the citizens of Indian Trail; we're trying to save them money and believe we feel that the Sheriff's Department is the best we can ever have. I don't see the point in the name calling, it seems any time you don't agree with someone you're corrupt, but that's not the case. You can have separate opinions, different ways of thinking without being corrupt. This is very hard, we're all thinking about what to do and not to do, it's a tough thing and I believe it'll work out. Mr. Cohn stated he believes somehow, someway it'll work out and hopes the Sheriff's Department will work it out with us and make this something that will go on for years and years. Maybe we can

write a contract for 5, 6, 7 years or whatever it takes, but we need some compromise on both sides then we will have a good contract. As far as the distrust, he believes both sides are working as hard as they can work for Indian Trail. We're all on the same team; we here to make sure the citizens of Indian Trail are protected the best way they can be protected with their tax dollars. He requested that it not get personal with people.

CLOSED SESSION

None

ADJOURN

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

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APPROVED:

_____

Michael L. Alvarez, Mayor

Attest:

_____

Peggy Piontek, Town Clerk

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Town of Indian Trail
Minutes of Town Council Special Meeting
February 16, 2013
Civic Building
4:00 P.M.

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: Robert Allen, David Cohn, Darlene Luther, and David Waddell.

Absent Members: Christopher King.

Staff Members: Town Manager Joe Fivas and Town Clerk Peggy Piontek.

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Alvarez called the meeting to order and led in the Pledge of Allegiance.

LAW ENFORCEMENT AGREEMENT AND OPTIONS

Mr. Fivas presented the history of this matter for the benefit of the audience.

Mayor Alvarez reminded the Council this is a very important decision to make and all options should be put on the table without emotion, personal opinion or fear.

Mr. Waddell recommended to Council that they allow for public comments during this meeting.

Mr. Fivas explained that because this is a Special Meeting, the agenda cannot be amended.

David Waddell made a motion to approve amending the agenda to allow for public comments.

Mr. Waddell withdrew his motion.

Mayor Alvarez opened the floor for Council to provide their thoughts, opinions, ideas and suggestions pertaining to law enforcement for the Town of Indian Trail. Council had a very lengthy discussion on this topic.

Darlene Luther made a motion to approve ending contract negotiations with the Union County Sherriff's Office and direct the Town Manager to form an Indian Trail Police Department by developing and implementing a plan that includes no tax increase, that has the same number of deputies and which offers a position to any deputy that is currently serving in Indian Trail.

Council had a lengthy discussion on this motion with Lieutenant Coble providing his thoughts on the matter. Mr. Allen called the question for a vote.

Council took and returned from a brief break called by Mayor Alvarez.

Motion Failed 2 - 2 with David Cohn, and David Waddell opposing.

Mayor Alvarez broke the tie by voting in opposition of the motion. The motion failed.

Council continued to discuss possible ideas and suggestions on this matter.

Sheriff Cathey spoke to the Council stating his involvement of the negotiations and providing his thoughts on some of the things that could be discussed during negotiations.

Darlene Luther made a motion to continue the contract with the Sheriff's Department and be done with it.

Mr. Fivas explained that Council would need to have the agreement in front of them before making a motion to approve it.

Ms. Luther withdrew her motion.

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CLOSED SESSION

None

ADJOURN

Robert Allen made a motion to adjourn
Council voted unanimously in favor of the motion.

APPROVED:

_____
Michael L. Alvarez, Mayor

Attest:

_____
Peggy Piontek, Town Clerk

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INDIAN TRAIL
north carolina

TO: Mayor and Town Council

FROM: Janice Cook

DATE: March 12, 2013

SUBJECT: Month end February 2013

According to G.S. 105-350 (7), it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount he has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he is taking to encourage or enforce payment of uncollected taxes.

Delinquent real estate taxes will be advertised in the Union Observer, later this month.

Description	Count	Principal Arrears/Other	Principal Fiscal 2012	Principal Fiscal 2013	Principal Future	Penalty	Total
Billing	30667	0.00	6,961,454.19	0.00	0.00		6,961,454.19
Payments	28233	74,049.75-	0.00	6,751,355.49-	0.00	4,957.61-	6,830,362.85-
Reversals	11	7,750.53	3,001.83	0.00	0.00	0.00	10,752.36
Adjustments	2162	0.00	1,775.81-	0.00	0.00	84.18-	1,859.99-
Ref Overpay	156	41,728.84	0.00	0.00	0.00	0.00	41,728.84
Penalty	4155					9,490.66	9,490.66
Totals	65384	24,570.38-	6,962,680.21	6,751,355.49-	0.00	4,448.87	191,203.21

INDIAN TRAIL
north carolina

Town of Indian Trail

Memo

TO: Mayor and Town Council

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

DATE: 3/4/13

COUNCIL DATE: 3/12/13

SUBJECT: Resolution to Assume Maintenance of Certain NCDOT Streets

General Information:

NCDOT requires a Resolution from the Town assuming maintenance in order to abandon roads from the State Maintained System.

Staff recommends the adoption of the Resolution.

Required Actions:

Council Approval

Attachments:

Resolution

PO Box 2430 . 130 Blythe Drive . Indian Trail . North Carolina . 28079 . (704) 821-1314 . Fax (704) 821-1381

STATE OF NORTH CAROLINA

RESOLUTION #

TOWN OF INDIAN TRAIL

RESOLUTION TO ASSUME MAINTENANCE OF CERTAIN NCDOT STREETS

WHEREAS, the Town of Indian Trail desires to provide certain services including but not limited to maintenance of the streets listed below; and

WHEREAS, the Town Council of the Town of Indian Trail voted to accept maintenance of the below mentioned streets;

NOW THEREFORE, BE IT RESOLVED that the Town Council of the Town of Indian Trail respectfully requests that the North Carolina Board of Transportation release the maintenance of the following streets to the Town of Indian Trail:

Road	SR	Mileage
Oakwood Lane	1561	2460 LF
Matthews Indian Trail Road	1367	2847 LF

Adopted the 12th day of March, 2013.

TOWN COUNCIL OF INDIAN TRAIL NORTH CAROLINA

_____
Michael Alvarez, Mayor

Attest:

_____
Peggy Piontek, Town Clerk

TO: Mayor and Town Council

FROM: Janice Cook

DATE: March 12, 2013

SUBJECT: Request for Release of Interest

Each year Union County gives the tax bill information to the printer for each municipality. The bills are verified by each city for accuracy. The printer mails the tax bills to the taxpayer for the town.

The mailing address was incorrect on the parcel owned by Vance and Deborah Breece, which resulted in interest being charged to the account. Town staff is recommending releasing the interest from this account due to clerical error.

The amount of interest is $12.19.

TO: Mayor and Town Council

FROM: Joe Fivas

CC: Marsha Sutton, Jennifer Smith

DATE: March 12, 2013

SUBJECT: Budget Amendments for March 12 Meeting

---

1. Reallocate funds within Transportation Improvement Department.
2. Reallocate funds within Transportation Improvement Department.
3. Reallocate funds within Stormwater Department.
4. Reallocate funds within Community and Economic Development Department.
5. Reallocate funds within Community and Economic Development Department.
6. Reallocate funds within Public Works Department.

If Council has any questions, or would like to see any of the budget amendments, please contact the Finance Director at 704-821-5401.

TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 12, 2013

SUBJECT: Fence along Blythe Dr

After reviewing and evaluating the safety of the railroad corridor along Blythe Drive, staff is recommending the installation of a black chain link fence along this corridor between Hemby Insurance property line to the end of the Town's property.

This project will be completed by the Town public works department. The materials will cost approximately $3,500. If approved by the Council, the Town staff will proceed with the project after acquiring the necessary easements from the railroad. During this time, we will also be working with CSX railroad to partner on some of these costs.

jaf

Town of Indian Trail

Memo

TO: Mayor and Town Council

FROM: Peggy Piontek, Town Clerk

DATE: March 12, 2013

SUBJECT: Resolution clarifying Ordinance MCA2013-1

The attached resolution is clarifying that Council's intent was to rescind the previous Animal Control Ordinance and enforce MCA2013-1.

PSP

STATE OF NORTH CAROLINA)
) **RESOLUTION #**
TOWN OF INDIAN TRAIL)

RESOLUTION TO RESCIND INDIAN TRAIL ANIMAL CONTROL ORDINANCE PASSED SEPTEMBER 14, 1989

WHEREAS, for the purpose of clarification of the previous adoption of Indian Trail Animal Control Ordinance MCA2013-1 adopted on February 12, 2013; and

WHEREAS, the record should reflect that it was the intention of the Indian Trail Town Council to rescind the original Animal Control Ordinance passed on September 14, 1989 and insert Ordinance MCA2013-1; and

NOW THEREFORE, Mayor Michael L. Alvarez along with the Indian Trail Town Council do hereby resolve that any law enforcement officer contracted for service by the Town of Indian Trail or any other law enforcement officer exercising proper jurisdiction or authority shall enforce Indian Trail Ordinance MCA2013-1.
Adopted this 12th day of March, 2013

APPROVED_____
Michael Alvarez, Mayor

Attest:_____
Peggy Piontek, Town Clerk

Town of Indian Trail

Memo

TO: Mayor and Town Council

FROM: Peggy Piontek, Town Clerk

DATE: March 12, 2013

SUBJECT: Resolution clarifying Ordinance MCA2013-1

The attached resolution is clarifying that Council's intent was to rescind the previous Animal Control Ordinance and enforce MCA2013-1.

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NOW THEREFORE, Mayor Michael L. Alvarez along with the Indian Trail Town Council do hereby resolve that any law enforcement officer contracted for service by the Town of Indian Trail or any other law enforcement officer exercising proper jurisdiction or authority shall enforce Indian Trail Ordinance MCA2013-1.
Adopted this 12th day of March, 2013

APPROVED_____
Michael Alvarez, Mayor

Attest:_____
Peggy Piontek, Town Clerk

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
Fax (704) 821-9045
PLANNING AND NEIGHBORHOOD SERVICES

Planning Board Transmittal for the March 12, 2013 Town Council Public Hearing

Case: ZM2012-006 Zoning Map Amendment Oakwood Lane Properties			
Reference Name	**Sardis Park**		
Planning Board Meeting Date	February 19, 2013		
Members Present	Chair Cowan ☒	Jan Brown ☒ (In audience)	Larry Miller ☒
	Vice-Chair Higgins ☒	Kelly D' Onofrio ☒	Robert Rollins ☒
	Sidney Sandy ☐	Cheryl Mimy ☒ Alternate 1	Steve Long ☒ Alternate 2
	Alan Rosenberg ☐ Alternate 3		
Case Found Complete	Yes ☒	No ☐	
Motion	Recommend approval to Town Council with draft findings		
Member Making the Motion	Boardmember Miller		
Second the Motion	Boardmember Long		
Vote	All seated members voted in favor of the Motion		

Purpose of the Map Amendment: To rezone (reclassify) three properties located at the end of Oakwood Lane from a single-family residential designation to the Institutional classification. These properties were purchased last July by the Town and have been identified as the future Sardis Park facility. Parcels 07048019L and 07048019K are newly annexed properties (Annexation Ordinance #134) and the remaining parcel is already within the Town's jurisdiction.

Town Council Action: *Receive transmittal report and public testimony and:*

1. *Concur with the findings and transmittal of the Planning Board to approve; or*
2. *Concur with the findings and approve as modified by Council; or*
3. *Do not make the findings and disapprove the amendment.*

Executive Summary

The proposed amendment will modify the Town's Official Zoning Map by changing the zoning classifications for three properties located at the end of Oakwood Lane (See map in Attachment 1- Planning Board Report). Two of the three parcels have been recently annexed into the Town (January 8, 2013) and therefore are required to have local jurisdictional zoning established per North Carolina General Statutes. The remaining subject property is being rezoned for the purpose of establishing consistent zoning for the future recombination of all three properties into one parcel. Please see "Attachment 1" for a complete analysis.

Planning Board

This proposed amendment was heard by the Planning Board on February 19, 2013, and after a general discussion the Board motioned to make the findings and transmit a unanimous recommendation to approve. The draft findings for Council consideration are noted below:

> ***Goal 1.3.1 Quality of Life –*** the rezoning of these properties to institutional provides the setting for an institutional use such as a public park and open space providing an enhanced quality of life for residents by providing both active and passive recreational opportunities.
>
> ***Goal 1.3.2 Land Use –*** the rezoning of the subject properties will provide a mix of different types of land uses within the Sardis Interchange Mix Village consistent with the future land use vision of the Comprehensive Plan. It also provides a greater separation between land uses for the adjacent residential users as the Town carries out the park vision approved by voters last November.

The request for this zoning reclassification is a reasonable request and is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of *Land Use* and is consistent with the adopted plans within the Town of Indian Trail.

Staff Contact
Shelley DeHart, AICP
srd@planning.indiantrail.org

Attachment 1- Planning Board Report
Attachment 2- Draft Ordinance

TOWN COUNCIL ATTACHMENT ONE
PLANNING BOARD REPORT

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
Fax (704) 821-9045
PLANNING AND NEIGHBORHOOD SERVICES

Zoning Map Amendment Staff Report

Case: ZM 2012-006 Oakwood Lane Properties		
Reference Name	Sardis Park	
Request	Proposed Zoning	Institutional
	Proposed Use	
Existing Site Characteristics	Existing Zoning	R-20 (Union County) & SF-1 Single-family – IT Zoning
	Existing Use	vacant
	Site Acreage	138.92 acres (approx.)
Applicant	Town of Indian Trail	
Submittal Date	11/15/2012	
Location	End of Oakwood Lane	
Tax Map Numbers	07048019L; 07048019K; 07048017	
Plan Consistency	Town of Indian Trail Comp. Plan	Interchange Mix – Village Center
		Consistent with Request
Recommendations & Comments	Planning Staff	Recommends Approval for Institutional Zoning

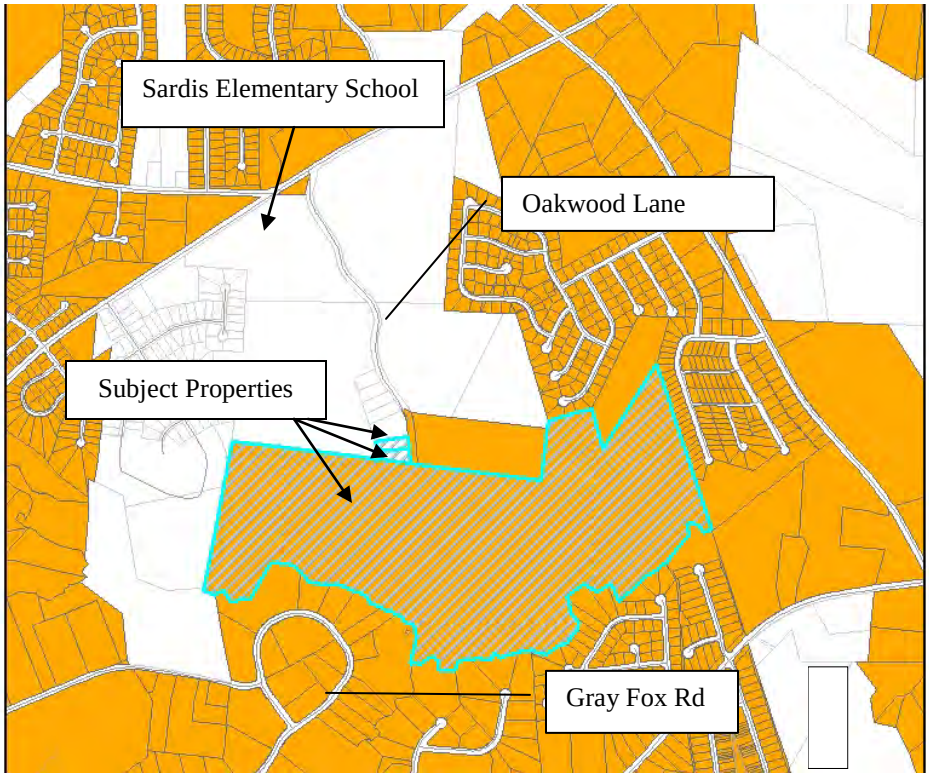
Project Summary

Request: To rezone three properties located at the end of Oakwood Lane from a single-family residential designation to the Institutional classification. These properties were purchased last July by the Town and have been identified as the future Sardis Park facility. Parcels 07048019L and 07048019K are newly annexed properties (Annexation Ordinance #134) and the remaining parcel is already within the Town's jurisdiction.

Staff Recommendation- Staff recommends the Planning Board receive the report and recommend approval to the Town Council as presented.

General Information

This rezone request consists of three properties. Two of the three parcels have been recently annexed into the Town (January 8, 2013) and therefore are required to have local jurisdictional zoning established within 60-days per North Carolina General Statutes. The remaining subject property is being rezoned for the purpose of establishing consistent zoning for the future recombination of all three properties into one parcel. The map and corresponding table provides a summary of parcel data.



Parcel Number	*Acreage*	*Old Zoning*	*Proposed Zoning*	*Purpose*
07048019L	.54	R-20 UC	Institutional	Newly Annexed
07048019K	.55	R-20 UC	Institutional	Newly Annexed
07048017	137.8	SF-1 IT	Institutional	Consistent Zoning

Zoning Information

All three properties are currently zone as a single-family residential classification. This application proposes to rezone these properties to an Institutional Classification. This classification is intended to act as a buffer between residential districts and more intense classifications such as commercial or industrial zoning districts. This classification is also typically used for government agency owned and operated properties as well. These properties were associated with the recent park bond referendum that was passed by the voters last November.

The map below provides the zoning district information in the project area.

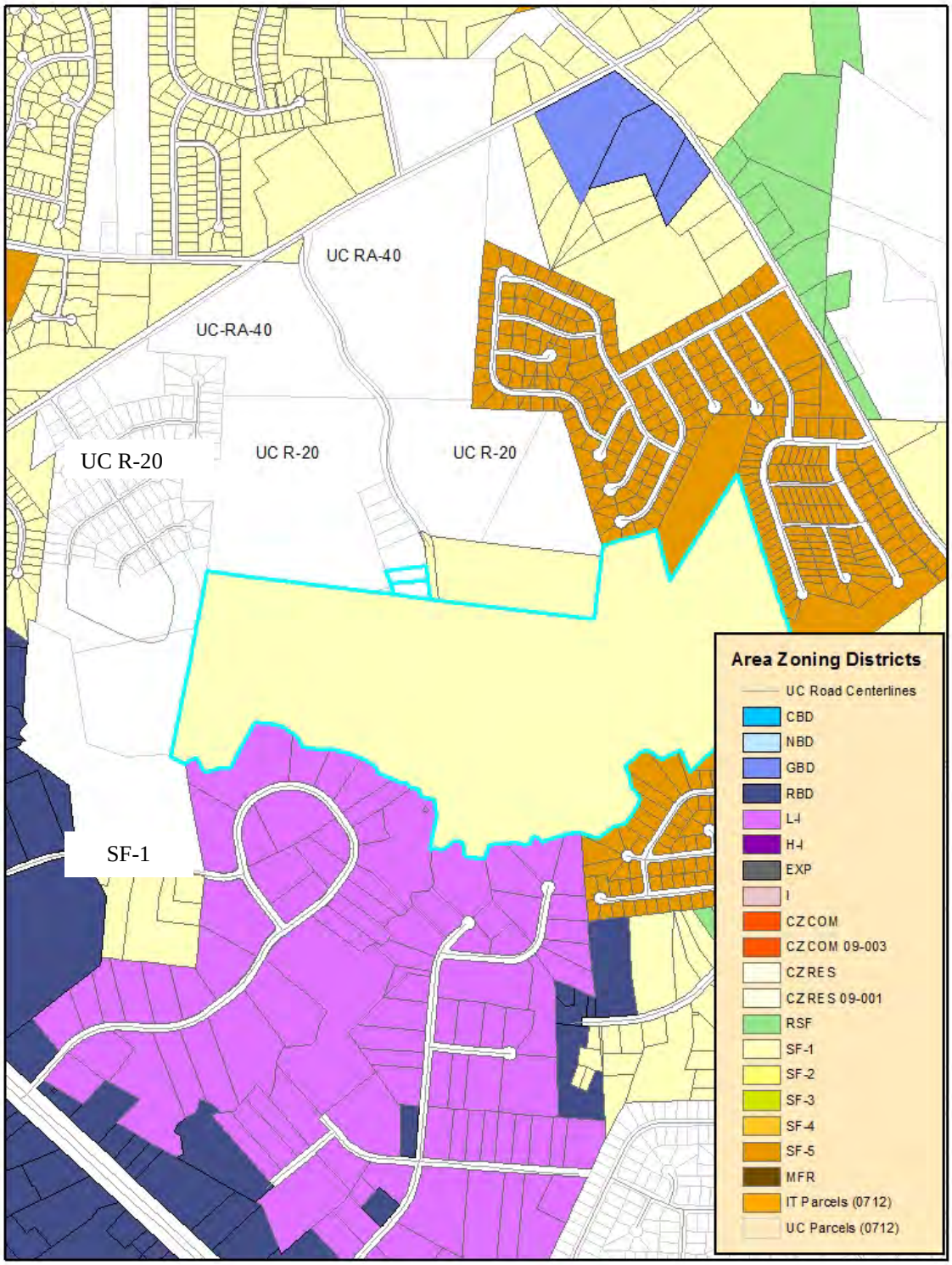


TABLE1: DIMENSIONAL REQUIREMENT COMPARISON

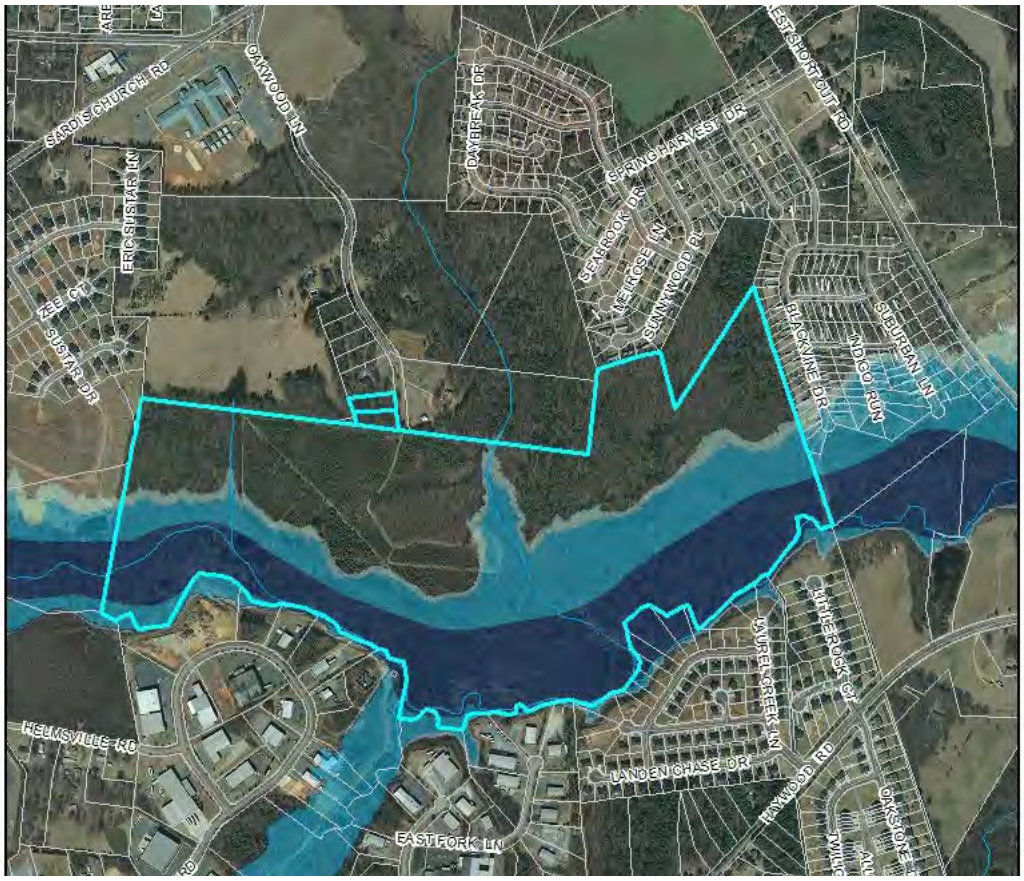
	Institutional District	Union County R-20 District	IT Single-Family 1 SF-1
Lot Width	100-ft	60-ft.	100-ft
Front Setback	50-ft	20-ft.	40-ft
Rear Setback	50-ft.	15-ft.	40-ft
Side Yard	20-ft. 25-ft abutting a residential district	5-ft/10-ft Streetside Min. 10-ft building separation	15- ft

Based on the comparison table above, the Institutional District has the larger dimensional/ separation requirements between the existing zoning classifications. Land uses in the area are:

- *Low Density Single- Family (UC RA-40 & R-20) to the north and west*
- *Light Industrial to the south (LI)*
- *Moderate to high density Single-family to the south and east (SF-3 and SF-5)*
- *Other institutional uses: Sardis Elementary School, Sardis Baptist Church, and Sardis*

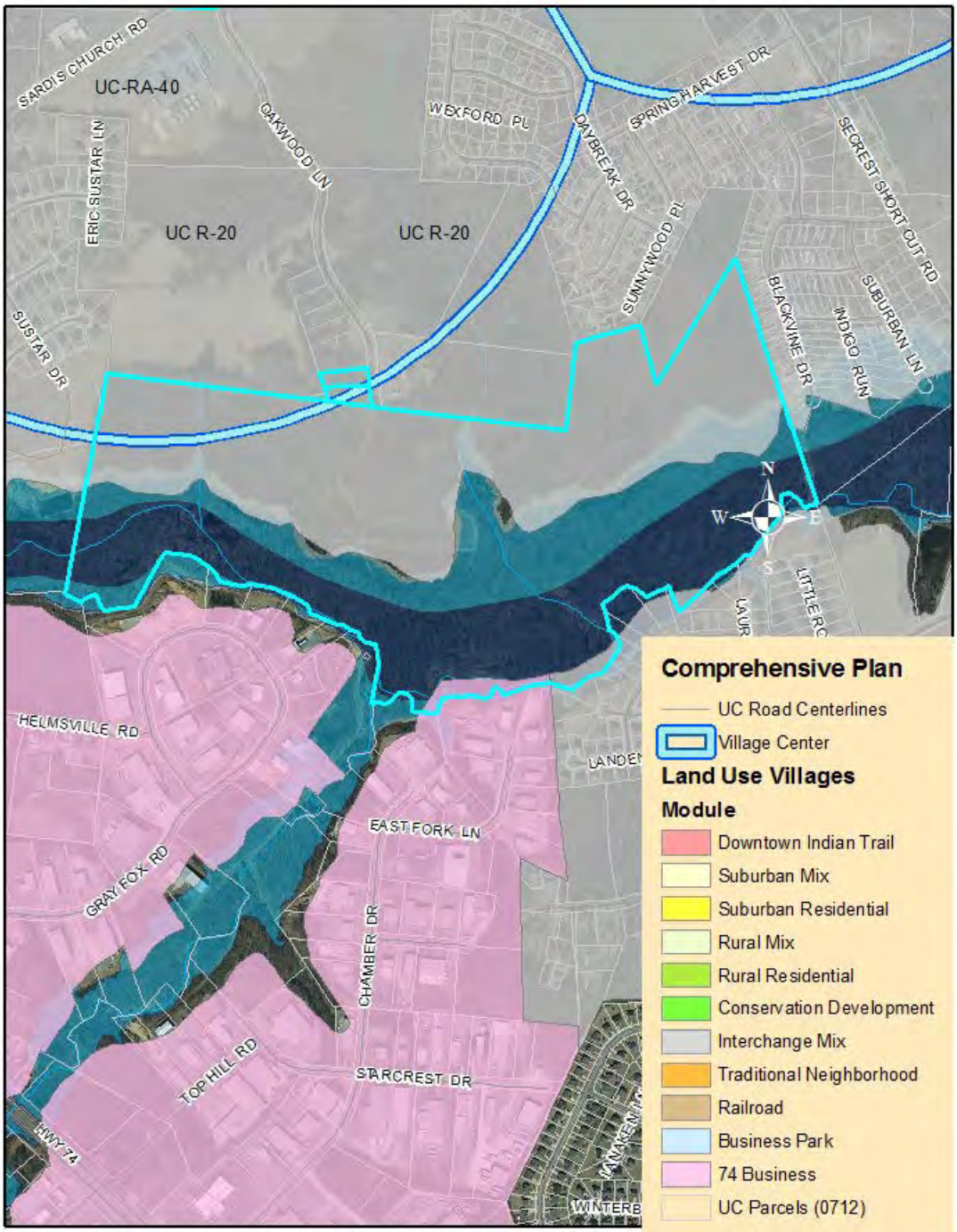
Site Characteristics

There is an existing dilapidated house that sits on the shared property line of the two newly annexed properties. The remaining property is undeveloped and has a large amount of floodplain and floodway in the southern area of the property. The map below provides an aerial view of the subject properties.



Plan Consistency

Comprehensive Plan



The properties are located within the Sardis Interchange Mix Village land use area of the Indian Trail Comprehensive Plan (see map above). This Village is based on its location between two major highways, with a few major boulevards or thoroughfares feeding into it. These properties are also on the fringe of a Village Center. The Village Center is identified for more intense uses

within the Village which can range from retail, office, and even multi-family residential. The future land uses for this Village are identified as follows:

Sardis Interchange Mix Land Uses

Land Use	Current Base	Percent Base	Flexibility Factor
Low Density Residential	2.35%	5%	+3
Medium Density Residential	31.92%	40%	+/-5
High Density Residential	22.59%	15%	-5
Multi-Family Residential	0%	15%	-5
Parks/Open Space/ Agriculture/ Forest	4.89%	5%	-
Institutional	.68%	5%	+2
Retail	1.05%	6%	-
Office	0%	4%	-
Boulevards/Thoroughfares	7.93%	5%	-
Industrial- Village Center Only at Monroe Connector Interchange- LC9	0%	-	-

This application proposes to rezone a total of 138.89 acres thus changing the future land use from the Medium Density Residential category to Institutional. Staff has determined however that the floodway/floodplain area (approximately 70 acres) has already been accounted for in the Parks/Open Space/Agriculture/Forest category. Therefore, the Institutional category will increase by 67 acres resulting in a 5 ½ percent increase for a total land use percentage of 6.3 in the Institutional use category. This increase is within the flexibility factor of the village which is 7 percent.

Action Required

The Planning Board must make findings prior to motioning for recommendation. The findings must be made that the proposed amendment is both reasonable and consistent with the Comprehensive Plan. Staff is of the opinion the following goal can be found:

> ***Goal 1.3.1 Quality of Life –*** the rezoning of these properties to institutional provides the setting for an institutional use such as a public park and open space providing an enhanced quality of life for residents by providing both active and passive recreational opportunities.
>
> ***Goal 1.3.2 Land Use –*** the rezoning of the subject properties will provide a mix of different types of land uses within the Sardis Interchange Mix Village consistent with the future land use vision of the Comprehensive Plan. It also provides a greater separation between land uses for the adjacent residential users as the Town carries out the park vision approved by voters last November.

The request for this zoning reclassification is a reasonable request and is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of *Land Use* and is consistent with the adopted plans within the Town of Indian Trail.

Recommendation

The Planning Staff believes that the findings can be made to support the petition requesting a rezone to an Institutional Zoning Classification on the subject properties.

Staff Contact

Shelley DeHart, AICP
704 821-5401 ext 225
srd@planning.indiantrail.org

Attachments:

Attachment 1- Application
Attachment 2 – Institutional Use Table and SF-1 Use Table
Attachment 3 – Draft Ordinance

PB ATTACHMENT ONE: APPLICATION

ZONING MAP AMENDMENT APPLICATION

Town of INDIAN TRAIL north carolina

Submittal Requirements

- Completed Application
- Notarized signatures of applicant and property owner
- Letter of Intent
- Fees associated with review

General Information

Project Address Sardis Park Oakwood Lane,

City Indian Trail State NC Zip 28079

Tax Parcel ID 07048019L, 07048019K 07048017 Zoning Designation Institutional

Total Acres 138.922 Impervious Area

Project Description Sardis Park Rezone

Contact Information – Applicant

Name Town of Indian Trail; Joseph Fivas

Address 130 Blythe Dr, Indian Trail; PO Box 2430

City Indian Trail State NC Zip 28079

Phone 704 821-5401 Fax 704 821-9045

Email srd@planning.indiantrail.org

Contact Information – Property Owner

Name Town Of Indian Trail; Joseph Fivas

Address 130 Blythe Dr; PO Box 2430

City Indian Trail State NC Zip 28079

Phone 704 821-5401 Fax

Email Townmanager@admin.indiantrail.org

ZONING MAP AMENDMENT APPLICATION

Town of INDIAN TRAIL north carolina

Applicant's Certification

Signature J. Anthony Fivas Date 11/15/12

Printed Name/Title Town Manager

Signature of Notary Public Helen S. Boich Date 11/15/2012

HELEN S. BOICH NOTARY My Commission Expires 02 / 01 / 2016 PUBLIC UNION COUNTY NC

Notary Seal

Property Owner's Certification

Signature Same As Above Date

Printed Name/Title

Signature of Notary Public Date

Notary Seal

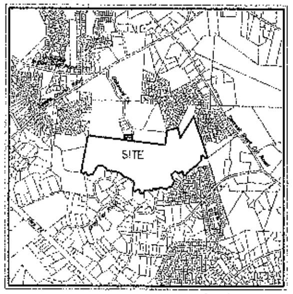
TOWN OF INDIAN TRAIL OFFICE USE ONLY

Case Number: ZM 2012-006

Date Received: 11/15/2012 Amount of Fee: N/A

Received By: Receipt #: N/A

R 000424



Vicinity Map (NTS)

ALTA COMMITMENT -2005
CHICAGO TITLE INSURANCE COMPANY
Number: 12-G05005

SCHEDULE B – Section II

EXCEPTIONS

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or assessments for the year 2012, and subsequent years, not yet due or payable.
3. Any discrepancy, conflict, excess, shortage in area or boundary lines, encroachment, encumbrance, violation, variation, overlap, setback, easement or claim of easement, riparian right and title to land within roads, ways, railroads, watercourses, burial grounds, marshes, dredged or filled areas or land below the mean highwater mark or within the bounds of any adjoining body of water, or other adverse circumstance affecting the Title that would be disclosed by a current inspection and accurate and complete land survey of the Land.

AS TO TRACT 1:

4. The correctness of the square footage/acreage computation contained in the description of the Land is not insured. (As shown on map)
5. Easement(s) to American Telephone and Telegraph Company recorded in Book 202, page 740. (As shown on map)
6. Right of Way Agreement with Union County recorded in Book 433, page 854. (Does not affect Subject Property. 15' Force Main Easement south side of Crooked Creek)
7. Deed with easement to Union County recorded in Book 453, page 782. (Does not affect Subject Property. Pump Station Easement)
8. Memorandum of Agreement with Nextel South Corp. recorded in Book 1522, page 838. See also Assignment of Leases recorded in Book 1871, page 351 and Book 1871, page 361. (Does not affect Subject Property)
9. Sanitary Sewer Line Easement to Union County recorded in Book 1516, page 390. (As shown on map)
10. Lack of a right of access to and from the Land.
11. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variation, or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Cabinet F, File 365. (As shown on map)

AS TO TRACT 2:

12. Right of Way recorded in Book 3082, page 859. (As shown on map)
13. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variation, or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Cabinet H, File 508 (a revision of Plat Cabinet H, File 188) (As shown on map)

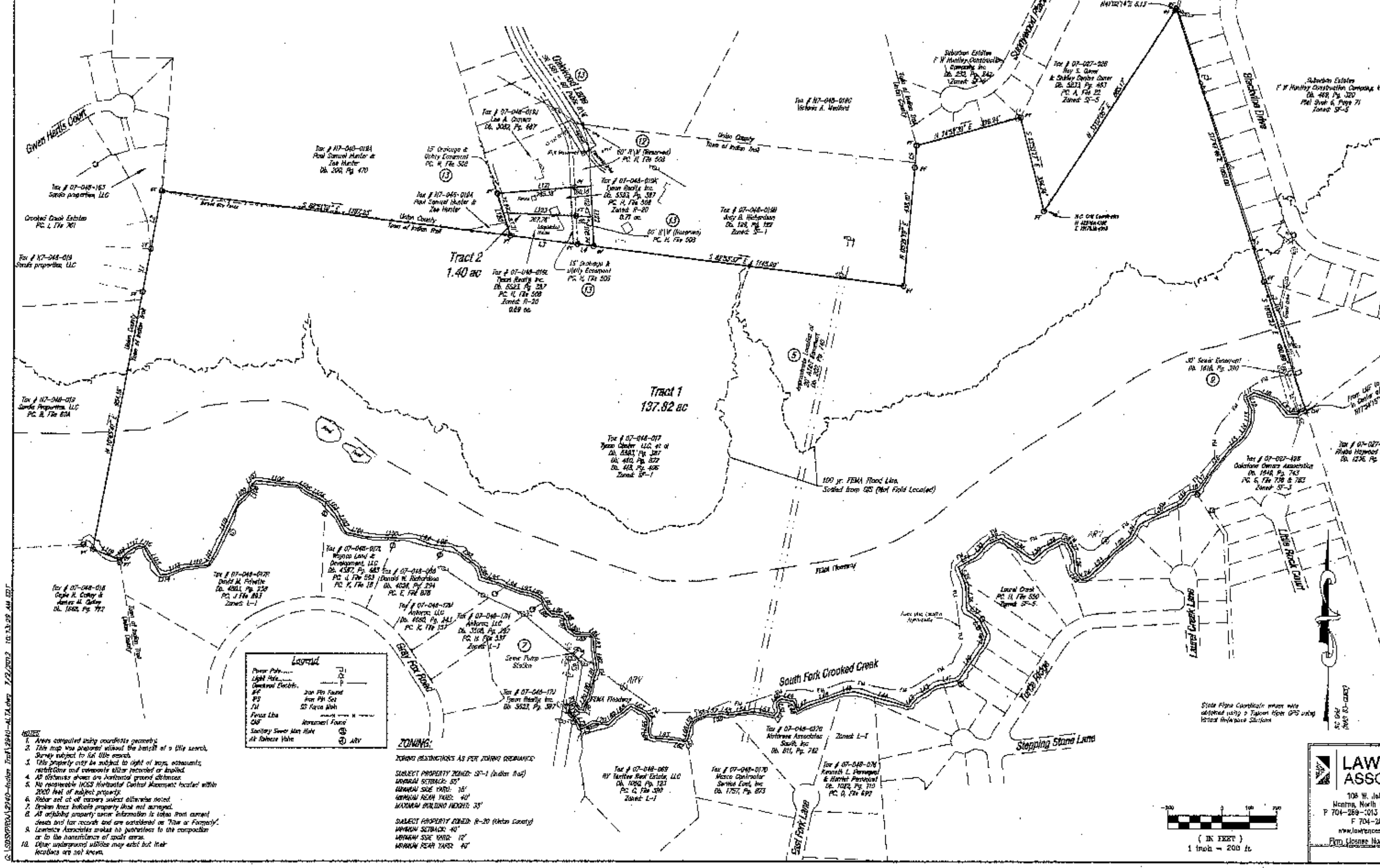
Flood Certification
I have examined the Flood Insurance Rate Map for Union County North Carolina, Community Panel Number 3710541800J dated Oct. 16, 2008, and hereby certify that this property is located in a special flood hazard area as determined by the Federal Emergency Management Agency.

To: Chicago Title Insurance Company:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 3, 4, 6A, 6B, 11A, & 13 of Table A thereof.
The field work was completed on 6-25-2012.
Date of Plat or Map: 6/28/2012

F. Donald Lawrence, NCPLS L-1290

NORTH CAROLINA PROFESSIONAL SEAL L-1290 LAND SURVEYOR F. DONALD LAWRENCE



NOTES:
1. Areas computed using coordinate geometry.
2. This map was prepared without the benefit of a title search. Survey subject to full title search.
3. This property may be subject to right of ways, easements, restrictions and covenants either recorded or implied.
4. All distances shown are horizontal ground distances.
5. No recoverable NCGS Horizontal Control Monument located within 2000 feet of subject property.
6. Rebar set at all corners unless otherwise noted.
7. Broken lines indicate property lines not surveyed.
8. All adjoining property owner information is taken from current deeds and tax records and are considered as "Now or Formerly".
9. Lawrence Associates makes no guarantees to the composition or to the nonexistence of spoils areas.
10. Other underground utilities may exist but their locations are not known.

ZONING:

ZONING RESTRICTIONS AS PER ZONING ORDINANCE:

SUBJECT PROPERTY ZONED: SF-1 (Indian Trail)
MINIMUM SETBACK: 50'
MINIMUM SIDE YARD: 15'
MINIMUM REAR YARD: 40'
MAXIMUM BUILDING HEIGHT: 35'

SUBJECT PROPERTY ZONED: R-20 (Union County)
MINIMUM SETBACK: 40'
MINIMUM SIDE YARD: 12'
MINIMUM REAR YARD: 40'

LEGAL DESCRIPTION

Lying and being in the Town of Indian Trail, Vance Township, Union County, North Carolina and being two tracts more particularly described as follows:

Tract 1:

BEGINNING at an iron pin found in the southerly corner of the Roy S. Caner and Shirley Denise Caner property, now or formerly (see Deed Book 5835, Page 463), said iron pin also having NC Grid Coordinates N 482759.4386 and E 1517938.4589; thence from said Beginning Point, along the southeasterly line of said Caner property, the following two courses and distances: (1) N 35-07-55 E a distance of 835.17 feet to an iron pin found and (2) N 41-02-14 E a distance of 3.13 feet to an iron pin found in the westerly line of the F.W. Huntley Construction Company, Inc. (Suburban Estates) property, now or formerly (see Deed Book 469, Page 320); thence the following two courses and distances along the westerly line of said Huntley Construction property: (1) S 17-47-46 E a distance of 1051.00 feet to an iron pin found and (2) S 16-05-23 E a distance of 492.68 feet to a point in the center of the South Fork of Crooked Creek, said point being located N 17-34-13 W a distance of 9.00 feet from a concrete monument found in the southerly corner of said Huntley Construction property and the northwesterly corner of the Alvin Haywood Helms property, now or formerly (see Deed Book 1236, Page 656); thence, along and within the South Fork of Crooked Creek, the following one hundred thirteen courses and distances:

1. S 62-00-07 W a distance of 38.91 feet to a point; 2. S 88-00-01 W a distance of 33.59 feet to a point;
3. N 40-15-56 W a distance of 66.45 feet to a point; 4. N 85-30-27 W a distance of 89.86 feet to a point;
5. S 57-00-15 W a distance of 32.63 feet to a point; 6. S 71-16-01 E a distance of 52.09 feet to a point;
7. S 10-02-64 W a distance of 47.81 feet to a point; 8. S 38-45-34 W a distance of 59.69 feet to a point;
9. S 48-16-05 W a distance of 57.80 feet to a point; 10. S 38-09-21 W a distance of 117.39 feet to a point;
11. S 32-49-48 W a distance of 66.14 feet to a point; 12. S 75-14-04 W a distance of 37.17 feet to a point;
13. S 38-12-01 W a distance of 48.60 feet to a point; 14. S 63-29-46 W a distance of 173.69 feet to a point;
15. S 29-07-12 W a distance of 80.77 feet to a point; 16. S 50-16-39 W a distance of 53.71 feet to a point;
17. S 44-59-17 W a distance of 120.98 feet to a point; 18. S 68-37-57 W a distance of 35.19 feet to a point;
19. N 38-14-18 W a distance of 38.14 feet to a point; 20. N 07-06-48 W a distance of 71.07 feet to a point;
21. N 28-09-49 W a distance of 41.18 feet to a point; 22. N 70-38-28 W a distance of 25.63 feet to a point;
23. S 89-23-27 W a distance of 85.38 feet to a point; 24. S 48-47-02 W a distance of 58.39 feet to a point;
25. N 56-40-17 W a distance of 140.15 feet to a point; 26. S 65-07-05 W a distance of 62.20 feet to a point;
27. S 49-33-38 W a distance of 54.20 feet to a point; 28. S 60-13-03 W a distance of 78.65 feet to a point;

[illegible]

thence, along the westerly line of said Richardson property, N 05-21-19 E a distance of 435.10 feet to an iron pin found; thence, along the easterly line of the Victoria A. Medford property, now or formerly, N 04-15-00 E a distance of 81.63 feet to an iron pin found in the easterly line of said Medford property and the southwesterly corner of the F. W. Huntley Construction Company, Inc. (Suburban Estates) property, now or formerly (see Deed Book 232, Page 242); thence, along the southerly line of said Huntley Construction property, N 74-59-39 E a distance of 376.24 feet to an iron pin found in the southerly line of said Huntley Construction property and the westerly line of the Roy S. Caner and Shirley Denise Caner property, now or formerly (see Deed Book 5835, Page 463); thence, along the southwesterly line of said Caner property, S 53-53-17 E a distance of 324.74 feet to the point and place of Beginning, Containing 137.82 acres, more or less, all as shown as "Tract 1" on the survey titled "ALTA/ACSM Land Title Survey of Tyson Center LLC, et al" dated 6/28/ 2012 by Lawrence Associates (F. Donald Lawrence, NCPLS L-1290) (Job No. 2940) (the "Survey").
The foregoing parcel is also described as all of the 137.72 acre parcel shown on the plat recorded in Plat Cabinet F, File 365 in the Union County Public Registry.

Tract 2:

BEGINNING at an iron pin found in the northerly line of the Tyson Center, LLC, et al, property, now or formerly (see Deed Book 5523, Page 387) and the southeasterly corner of the Paul Samuel Hunter and Zoe Hunter property, now or formerly (see Deed Book 290, Page 470); thence from said Beginning Point, along the easterly line of said Hunter property, N 11-13-24 W a distance of 161.26 feet to an iron pin found in the easterly line of said Hunter property and the southwesterly corner of the Lee A. Grovers property, now or formerly (see Deed Book 3082, Page 687); thence, along the southerly line of said Grovers property, N 85-12-25 E a distance of 345.56 feet to a point in the westerly line of the Judy B. Richardson property, now or formerly (see Deed Book 199, Page 122), passing along the way an iron pin found at 283.33 feet; thence along the westerly line of said Richardson property, S 02-40-37 E a distance of 221.18 feet to an iron pin found in the southwesterly corner of said Richardson property and the northerly line of said Tyson Center property; thence, along the northerly line of said Tyson Center property, the following two courses and distances: (1) N 82-48-15 W a distance of 80.84 feet to an iron pin found and (2) N 82-56-23 W a distance of 248.37 feet to the point and place of Beginning, Containing 1.40 acres, more or less, all as shown as "Tract 2" on the Survey.

The foregoing description is intended to include all of Lots 6 and 7 shown on the plat recorded in Plat Cabinet H, File 508 in the Union County Public Registry.

LAWRENCE ASSOCIATES
108 W. Jefferson St.
Monroe, North Carolina 28112
P 704-289-1013 866-557-8051
F 704-283-9035
www.lawrencesurveying.com
Firm License Number: C-2858

ALTA/ACSM Land Title Survey Of Tyson Center LLC, et al
Town of Indian Trail
Vance Township, Union County, NC

Orig. scale: 1" = 200'	Date: June 26, 2012	Drawn By: JLH
Job No. 2940	Drawing file: 2940-ALTA.dwg	Drawing no. 12/119

REVISIONS
6-28-2012 JLH

PB ATTACHMENT TWO: USE TABLES

C. Signs
(See Sign Regulations, DIVISION 900)

D. Accessory Uses and Structures
(See Supplementary Use Regulations, DIVISION 700)

Chapter 540. Institutional District

The I, Institutional district is intended to provide a transition zone between residential and business or industrial districts and to accommodate a moderate to high intensity mixture of institutional uses. Within this district, uses such as schools, hospitals, government buildings, churches, and public utility buildings may be allowed. Land designated I, Industrial District shall normally be served with public water and sewer services and has direct access to major or minor thoroughfares.

540.010 Allowed Uses

The use table below identifies permitted, special, prohibited and other uses authorized within the zoning districts identified. The uses identified are subject to compliance with all other applicable standards or requirements of this UDO.

A. Permitted Uses
Uses identified with a "P" are permitted by-right in the subject zoning district, subject to compliance with all other applicable standards of this UDO.

B. Special Uses
Uses identified with an "S" may be allowed if reviewed and approved in accordance with the special use procedures of Chapter 360, subject to compliance with all other applicable standards of this UDO.

C. Planned Developments
Uses identified with a "PD" may be allowed if reviewed an approved in accordance with the planned development procedures of Chapter 340.

D. Prohibited Uses
Uses identified with a "-" are expressly prohibited. Uses that are not listed in the table are also prohibited.

E. Use Standards
The use standards column of the following Use Table identifies use-specific standards that apply to some uses. Compliance with such standards is required regardless of whether the use is "Permitted" or a "Special Use".

F. Parking Standards
The "parking standards" column of the following Use Table contains a reference to the applicable off-street parking ratio for the listed use. Off-street parking regulations are contained in DIVISION 1000.

G. Use Table and Standards

Use Group	Zoning District	Use Standard
Specific Use Type	**I District**	
Civic and Public Uses		
Convention Facility	Conditional Zoning District	
Government Office	P	
Hospital	Conditional Zoning	

	District	
Laboratory	P	
Library	P	
Museums	P	
Non-profit Agency/Office	P	
Public Parks and Open Spaces	P	
Public Utility, Major	Conditional Zoning District	
Public Utility, Minor	P	
Recreation facilities -- private golf courses and country clubs	S	
Community Service Uses	P	
Day Care Facility	P	
Cemetery or Mausoleum	P	
College or University	Conditional Zoning District	
Community Service Center	P	
Convalescent and Nursing Home	P	
Religious Assembly	P	
Schools, Public* or Private	P	See 540.010
Social Service Agencies	P	

H. Intensity, Dimensional and Design Standards

All development shall be subject to the Intensity, Dimensional and Design Standards of this Section.

Lot and Building Standards (Institutional Districts)	**I District**
Lot Size	
Minimum lot area (square feet)	NA
Minimum lot width (feet)	100
Building Setbacks	
Building setback from front property line	50
Building setback from rear lot line	50
Side setback-not abutting residential district	20
Side setback abutting residential district	25
Maximum permitted building height	100

I. Building Size

Buildings with total floor area of more than 25,000 square feet shall require special use permit unless planned development approval is required.

J. Building Design Standards

New buildings must comply with the Integrity and Design Standards, 1220.040C.

K. Signs

All signs shall comply with the standards the Sign Regulations, DIVISION 900.

do not detract from the quality of the neighborhood as a place for peaceful, quiet and aesthetically- pleasing residential living. When evaluating an application for the MFR zoning district, emphasis shall be given to the location of the proposed district relative to adjoining developed property to ensure that such district is carefully located and achieves a satisfactory relationship with the surrounding properties.

510.020 Allowed Uses

The use table below identifies permitted, special, prohibited and other uses authorized within the zoning districts identified. The uses identified are subject to compliance with all other applicable standards or requirements of this UDO.

A. Permitted Uses

Uses identified with a "P" are permitted by-right in the subject zoning district, subject to compliance with all other applicable standards of this UDO.

B. Special Uses

Uses identified with an "S" may be allowed if reviewed and approved in accordance with the special use procedures of Chapter 360, subject to compliance with all other applicable standards of this UDO.

C. Planned Developments

Uses identified with a "PD" may be allowed if reviewed an approved in accordance with the Conditional Zoning procedures of Chapter 330 and Chapter 340.

D. Prohibited Uses

Uses identified with a "-" are expressly prohibited. Uses that are not listed in the table are also prohibited.

E. Use Standards

The use standards column of the following Use Table identifies use-specific standards that apply to some uses. Compliance with such standards is required regardless of whether the use is "Permitted" or a "Special Use".

F. Parking Standards

The "parking standards" column of the following Use Table contains a reference to the applicable off-street parking ratio for the listed use. Off-street parking regulations are contained in DIVISION 1000.

G. Residential Districts Use Table

Use Group	Zoning District							Use Standard
Use Category	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
Specific Use Type								
Household/Family Living								
Single-Family Detached (Site Built or Modular)	P	P	P	P	P	P	-	
Single-Family (Class A Manufactured Homes)	P	S	P* (O-MHP overlay only)	P* (O-MHP overlay only)	P* (O-MHP overlay only)	P* (O-MHP overlay only)	-	See Section 1310.050 standards

Use Group	Zoning District							Use Standard
Use Category	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
Single-Family (Class B Manufactured Home)	P	S	-	-	-	-	-	See Section 1310.050 standards
Single-Family (Class C Manufactured Home)	-	-	-	-	-	-	-	
Single Family (Class D Manufactured Home)	-	-	-	-	-	-	-	
Two-Family Dwelling	S				-	-	P	
Multi-Unit (3 or more units)	-	-	-	-	-	-	P	
Townhouse	-	-	-	-	-	S	P	See Chapter 660
Boarding or Rooming Houses	P	-	-	-	-	-	S	
Accessory Apartments	P	P	P	P	P	P	-	See Chapter 710.070
Group Living								
Family homes, Small	P	P	P	P	P	P	P	
Family homes, Large	S	S	S	S	S	S	S	
Halfway house	S		-	-	-	-	-	
Homes for the handicapped, aged or infirm	S	S	S	S	S	S	S	
Nursing care or skilled care facility	S	S	S	S	S	S	S	
Senior Housing, Independent living	P	S	S	S	S	S	S	
Group Living Not Otherwise Classified	S	S	S	S	S	S	S	
Public and Civic								
Colleges and Universities		-	-	-	-	-	-	
Recreational Buildings, Boy and Girls Clubs	S							
Golf-driving ranges	S		-	-	-	-	-	Accessory to residential subdivision
Skateboard parks, water slides, basketball courts	S	S	S	S	S	S	S	Accessory to residential subdivision
Privately-owned campgrounds	S	-	-	-	-	-	-	
Privately-owned	S	S	S	S	S	S	S	

Use Group	Zoning District							Use Standard
Use Category	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
recreation facilities such as golf-courses, and country clubs								
Public parks and open spaces	P	P	P	P	P	P	P	
Libraries	S							
Day Care (child/ adult care)								
Day care home (1-5 enrollees)	P	P	P	P	P	P	P	
Day Care Center (6+ enrollees)	S	S	S	S	S	S	S	Complies with state licensing rules
Hospital	S	-	-	-	-	-	-	
Religious Assembly	P	P	P	P	P	P	P	
School	P	P	P	P	P	P	P	
Utilities, Minor	P	P	P	P	P	P	P	
Utilities. Major	S	S	S	S	S	S	S	
Agricultural and Other								
Agricultural Operations without livestock	P	P	P	P	P	P	P	10 acre minimum except in RSF District
Agricultural Operations with livestock	P	-	-	-	-	-	-	
Animal Foster Care	P	S	S	S	-	-	-	Must meet definition under UDO Section 1610.080K.5
Animal Services -- veterinarian offices, kennels, and boarding facilities	S	-	-	-	-	-	-	
Greenhouse or Nursery	P							
Silver Culture Operations	P			-	-	-	-	
Horseback Riding Stables	P	S		-	-	-	-	
Wireless Communication Facilities								

Use Group	Zoning District							Use Standard
Use Category	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR	
Co-located on existing building, structure, or tower	P	P	P	P	P	P	P	See Chapter 7160
Free-standing Tower	S	-	-	-	-	-	-	See Chapter 7160

510.030 Development Types

Different development options are offered in the R districts as a way of promoting a wide variety of housing options and lifestyle choices. The development options described in this section may be used at the property owner's election.

A. Conventional Development

"Conventional development" is a term used to describe lot-by-lot development on lots that have been lawfully established. It is, in effect, any development that occurs outside of an approved open space development, cluster development or master planned development. Lot and building standards for conventional development can be found in Sec. 510.040 (Table 510.040B).

B. Open Space Development

The open space development option allows smaller lots and other flexible lot and building standards in exchange for the provision of common open space that is not typically provided in a conventional development. An open space development shall be reviewed and approved in accordance with Chapter 330 "Conditional Zoning District" and the requirements of DIVISION 1200. Lot and building standards for open space development can be found in Sec. 510.040 (Table 510.040B.) Additional open space development standards are included in the Subdivision Review Chapter.

C. Cluster Development

The cluster development option allows even greater flexibility in exchange for the provisions of a greater amount of common open space than required for open space developments. A cluster development shall be reviewed and approved in accordance with Chapter 330 "Conditional Zoning District" and the requirements of DIVISION 1200. Lot and building standards for cluster development can be found in Sec. 510.040 (Table 510.040B). Additional cluster development standards are included in the Subdivision Review Chapter.

D. Planned Unit Development

The planned unit development (PUD) option is available to accommodate new mixed-use communities, innovative development proposals or unique site conditions that cannot be readily addressed by other available development options. Planned developments shall be reviewed and approved in accordance with Chapter 330 "Conditional Zoning District". The flexibility inherent in the planned unit development plan option is intended to be granted only in exchange for development projects that contain amenities, design features and/or environmental design that are not do not typically occur through other development options. Planned unit development regulations are included in General Review Procedures Chapter.

510.040 Lot and Building Standards

A. General

1. This section establishes basic lot and building standards for all development in R districts. The standards that apply vary on the basis of zoning, building type and development type.

2. All residential and nonresidential development in R districts must comply with the lot and building standards of Table B, except as otherwise expressly provided in this ordinance.

3. Rules for measuring compliance with the lot and building standards established in Table 510.040B and applicable exceptions to the standards can be found in General Review Procedures Chapter.

B. Lot Size, Density, Setback and Height Table

Lot and Building Standards	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR
Conventional Development							
Lot Size							
Minimum lot area (sq. ft.)	40,000	20,000	15,000	12,000	10,000	8,000	
Minimum lot area per unit (sq. ft.)	40,000	20,000	15,000	12,000	10,000	8,000	3,350
Minimum lot frontage (feet)	120	100	80	80	60	60	
Maximum lot depth to width ratio	4	NA	NA	NA	NA	NA	NA
Minimum Front Setback (feet)							
Boulevards and Thoroughfares	50	50	40	40	40	30	30
All other streets	40	40	30	30	30	25	25
Minimum rear setback (feet)	40	40	40	40	40	30	30
Minimum side setback	15	15	12	12	10	10	10
Maximum building height	35	35	35	35	35	35	40
Cluster Development						*See Chapter 1210	
Overall site area							
Minimum site area (acres)	10	10	10	10	NA	NA	NA
Minimum open space (% of site)*	15%/20%	15%/20%	15%/20%	15%/20%	NA	NA	NA
Minimum site area per unit (sq. ft.)	40,000	20,000	15,000	12,000	NA	NA	NA
Lot Size							
Minimum lot area (square feet)	30,000	15,000	12,000	10,000	NA	NA	
Minimum Lot frontage (feet)	100	80	70	60	NA	NA	
Minimum Front Setback							
Arterials and Boulevards	40	40	30	30	NA	NA	

Lot and Building Standards	RSF	SF-1	SF-2	SF-3	SF-4	SF-5	MFR
All other streets	20	20	20	20	NA		
Minimum Rear Setback	20	20	20	20	NA	NA	
Minimum Side* Setback	12	12	12	12	NA	NA	See Section 1210.060
Maximum Building Height	35	35	35	35	NA	NA	
Open Space Development							
Overall site area							
Minimum site area (acres)	25	25	25	25	NA	NA	NA
Minimum open space (% of site)	25%	25%	25%	25%	NA	NA	NA
Minimum site area per unit (sq. ft.) Community Water and Waste Water	20,000	15,000	12,000	10,000	NA	NA	NA
Minimum site area per unit (sq. ft.) Private Water and Waste Water	20,000	15,000	12,000	10,000	NA	NA	NA
Lot Size							
Minimum lot area (square feet)	20,000	15,000	12,000	10,000	NA	NA	NA
Minimum Lot frontage (feet)	100	75	60	60	NA	NA	NA
Minimum Front Setback							
Arterials and Boulevards	40	40	30	30	NA	NA	NA
All other streets	20	20	20	20			NA
Minimum Rear Setback	20	20	20	20	NA	NA	NA
Minimum Side* Setback	12	12	6	6	NA	NA	See Section 1210.060
Maximum Building Height	35	35	35	35	NA	NA	NA

510.050 Other Applicable Regulations

Uses and development in R districts are subject to other standards including the following:

PB ATTACHMENT THREE: DRAFT ORDINANCE
SEE TOWN COUNCIL ATTACHMENT- 2

TOWN COUNCIL ATTACHMENT TWO

STATE OF NORTH CAROLINA)
) ORDINANCE #
TOWN OF INDIAN TRAIL)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF INDIAN TRAIL REZONING PARCELS 07048019L, 07048019K, AND 07048017 (OWNED BY THE TOWN OF INDIAN TRAIL) LOCATED AT THE END OF OAKWOOD LANE FROM A SINGLE-FAMILY RESIDENTIAL DESIGNATION (UC-R-20 & SF-1) TO AN INSTITUTIONAL ZONING DISTRICT IN THE TOWN OF INDIAN TRAIL, UNION COUNTY, NORTH CAROLINA

WHEREAS, the Town of Indian Trail has petitioned to establish zoning (Institutional District) for two newly annexed properties (07048019L & 07048019K) in compliance with the North Carolina General Statues and rezone parcel 07048017 from Indian Trail SF-1 to an Institutional classification for consistency. All three properties were part of a land purchase by the Town of Indian Trail last July and are the subject of a future public park (Sardis Park) approved by the voters last November; and

WHEREAS, this Zoning Map Amendment (ZM2012-006) was duly noticed in compliance with North Carolina General Statutes; and

WHEREAS, a public meeting was held by the Planning Board on February 19, 2013 to consider this zoning map amendment; and

WHEREAS, the Planning Board found the proposed map amendment is consistent with the following goals of the Comprehensive Plan:

Goal 1.3.1 Quality of Life – the rezoning of these properties to institutional provides the setting for an institutional use such as a public park and open space providing an enhanced quality of life for residents by providing both active and passive recreational opportunities.

Goal 1.3.2 Land Use – the rezoning of the subject properties will provide a mix of different types of land uses within the Sardis Interchange Mix Village consistent with the future land use vision of the Comprehensive Plan. It also provides a greater separation between land uses for the adjacent residential users as the Town carries out the park vision approved by voters last November.

WHEREAS, the Planning Board further found this zoning reclassification is a reasonable request and is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of *Land Use* and is consistent with the adopted plans within the Town of Indian Trail.

WHEREAS, after making the draft findings the Planning Board unanimously approved the motion to transmit a recommendation to approve to the Town Council; and

WHEREAS, the Town Council held a public hearing on March 12, 2013 to consider said request and recommendation of approval from the Planning Board; and

WHEREAS, the Town Council concurred with the Planning Board's consistency findings and hereby endorses said findings; and

NOW, THEREFORE, IT SHALL BE ORDAINED by the Town Council of the Town of Indian Trail, North Carolina hereby takes the following action:

Section 1 – Makes the required findings as stated herein; and

Section 2 - Approves ZM 2012-006 Zoning Petition thereby granting the Zoning Map amendment to establish an Institutional Zoning District on parcel numbers 07048019K, 07048019L, and 07048017.

Section 2 – This ordinance shall be effective immediately upon adoption.

AND IT IS SO ORDAINED this 12th day of March, 2013.

TOWN OF INDIAN TRAIL COUNCIL

Attest:

_____

Michael L. Alvarez, Mayor

_____

Peggy Piontek, Town Clerk

APPROVED AS TO FORM:

_____

TOWN ATTORNEY

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
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PLANNING AND NEIGHBORHOOD SERVICES

Planning Board Transmittal for the March 12, 2013 Public Hearing

Case: CZ 2012-001 Younts Miniature Golf			
Reference Name	**Younts Road Miniature Golf**		
Planning Board Meeting Date	February 19, 2013		
Members Present	Chair Cowan ☒	Jan Brown ☒ (Present non-voting)	Larry Miller ☒
	Vice-Chair Higgins ☒	Kelly D' Onofrio ☒	Robert Rollins ☒
	Sidney Sandy ☐	Cheryl Mimy ☒ Alternate 1	Steve Long ☒ Alternate 2
	Alan Rosenberg ☐ Alternate 3		
Case Found Complete	Yes ☒	No ☐	
Motion	Recommend approval to Town Council with Modifications		
Member Making the Motion	Boardmember Higgins		
Second the Motion	Boardmember Mimy		
Vote	6 to 1 Recommendation to Approve.		

Request: This is a request to establish a Conditional General Business District (CZ-GBD) zoning district on Parcel #07066001A to support development of a thirty-six (36) hole miniature golf course and related improvements located on Younts Road.

Town Council Action: *Receive transmittal report and public testimony and:*

1. *Concur with the findings and transmittal of the Planning Board to approve; or*
2. *Concur with the findings and approve as modified by Council; or*
3. *Do not make the findings and disapprove the amendment.*

Executive Summary

The proposed conditional rezoning is to support the development of a thirty-six (36)-hole miniature golf course (see Attachment 1 for concept plan). The approximately three (3) acre subject property is located on Younts Road, approximately 460-ft south of Brown Lane. The proposed development also contemplates development of a building to be utilized for accessory office and restaurant or food sale uses. Improvements to Younts Road will also be made by the project developer/applicant that include a road widening, curb and gutter, street trees, and a six (6)-ft sidewalk along the site's roadway frontage. The site's location on Younts Road is largely characterized by rural residential homes and agricultural/equestrian type uses. This rezoning (if approved) would be the first introduction of non-residential zoning along this section of Younts Road.

As part of the conditional rezoning process, the applicant conducted two neighborhood meetings held on January 30, 2013 to discuss the proposed project with interested citizens (12-total attendees). The conditional rezoning request was presented to the Planning Board at their February 19, 2013 meeting and the Board recommended approval subject to conditions as further described below.

Planning Board

This project was heard by the Planning Board at its February 19, 2013 public meeting. After receiving the report, the Board inquired about several aspects of the project such as the design concept for the golf course area, whether special events would be conducted at the facility, potential noise impacts, the type of fencing to be used and its location, and the equestrian activities conducted on adjacent parcels. Mr. Scott Merritt (rezoning applicant) responded to questions and indicated the concept for the golf course is still in development, however, a beach theme may be used. Mr. Merritt further indicated that the marketing plans are still in development, however, special events may be conducted with a focus on the youth. He further clarified that any outdoor noise would be at a volume similar to elevator music. Staff clarified that fencing has been incorporated as a condition of approval and it will enclose the entire recreation area. The fencing was incorporated as a result of feedback from the community meetings to avoid conflicts between customers/children and the horses that graze on the adjacent parcels. The fencing will also provide the applicant with overall site control/security. The Board also inquired about the Town's future vision for this area as it relates to the Comprehensive Plan. Staff provided an overview of the Town's long term vision for this area as a future Business Park Corridor, as further described in the Comprehensive Plan (see Attachment 1).

The public comment portion of the meeting was opened and two members of the public provided feedback on the proposed rezoning. Ms. June Bayless who owns approximately 7-acres of undeveloped property located directly across from the subject property (Parcel #07066001C) expressed concerns related to traffic, potential diminished property values, and lighting. Ms. Penny Primm of 3601 Bessant Street in Lake Park lives in the vicinity of the rear of the subject property and expressed concerns about lighting, safety issues associated with the existing Younts Road curvature, aesthetic issues, and impacts to the nearby grazing animals. A digital audio recording of the Planning Board discussion can be found on the Town's website here on Granicus.

Following the Planning Board meeting, staff received a telephone call from Mr. James Swanger, owner of property located at 2401 Younts Road. Mr. Swanger voiced his support for the proposed rezoning in light of the challenges of constructing residential development in this area due to a lack of sewer infrastructure and soil percolation difficulties.

Based on the Planning Board discussion, draft conditions #8 (Lighting) and #10 (Fencing) were modified to require additional shielding on perimeter light fixtures and to require fencing around the proposed stormwater pond.

After deliberations the Board motioned to make the findings and transmit a recommendation to approve as conditioned. The Draft Conditions are:

1. *Permitted Uses:* Permitted outdoor uses within the recreation area of the subject property will be limited to miniature golf and similar outdoor recreation activities with no greater impact. Permitted indoor uses within the proposed building shall be limited to office, restaurant without drive-thru, food and beverage retail sales (not including liquor sales/ABC Store), and accessory retail sales associated with the miniature golf/recreational use.
2. *Hours of Operation:* Hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. This restriction shall be eliminated in the event that adjacent properties are rezoned to non-residential zoning districts.
3. *Required Parking:* In Phase 1, paved parking shall be provided at a minimum rate of 2-stalls per golf hole. Accessory uses associated with the proposed office/restaurant building will be included within this rate. Overflow parking will be provided within the potential future Phase 2 parking area and will be graded and improved with a temporary surface to be approved by the Town. Additional bicycle parking exceeding UDO requirements will also be provided. Prior to the construction of the second 18 holes of golf, a parking analysis of the peak parking requirements of the first 18 holes will be provided to the Town to determine if the 2 spaces per hole parking rate is sufficient for the need. If not, a higher parking ratio may be required by the Town, prior to the Phase 2 course expansion.
4. *Noise*: The use of outdoor speakers and/or an intercom system shall be prohibited within the parking lot and other non-recreation areas of the site unless needed for emergency purposes. Use of speakers on the building for background music is acceptable. All reasonable efforts shall be made to limit noise from being audible offsite.
5. *Cross Access*: A pedestrian and vehicular cross access easement (min. 24' in width) shall be provided to adjacent parcels 07066001D, 07066002A, and/or 07066001 to interconnect the proposed parking area with the adjacent sites. The Planning Director may waive the cross access easement requirement in the event future adjacent uses are deemed by the Planning Director to be incompatible with the miniature golf use.
6. *Right of Way Dedication*: ROW shall be dedicated across the subject property's Younts Road frontage to the North Carolina Department of Transportation to achieve a 35-ft ROW measured from the existing Younts Road centerline (unless Town and/or NCDOT species additional ROW is needed). ROW shall be dedicated prior to any issuance of a Zoning Compliance for the subject property.
7. *Frontage Improvements*: The subject property's Younts Road frontage shall be improved with curb, gutter, 6-ft. wide sidewalk, street trees, and any additional improvements required by the Town and/or NCDOT.
8. *Lighting*: A lighting plan/photometric study shall be required for the parking and recreational areas. Light fixtures, including those utilized in the outdoor recreation area shall be limited to

20-ft in height. Taller fixtures within the recreation area meeting UDO requirements may be permitted if it can be demonstrated by the lighting plan that there will be no negative impacts to nearby properties. Pole or building mounted lights on the perimeter of the recreational area and those used to provide site/area lighting shall not have an angled orientation and shall utilize full cut off fixtures to minimize glare and lighting spillover. Perimeter light fixtures located adjacent to residential properties shall also include cut off shields.

9. *Tree Retention*: To the extent shown on the plans, the existing stand of trees located in the northwest corner of the site shall generally be left in an undisturbed condition and protected with a tree protection easement. Removal of small trees, invasive vegetation, underbrush, and vines is permitted to help create a usable, park like setting for customers. Clearing to install ROW improvements, the septic system leach field, and/or to maintain minimum sight distance is also permitted. Construction adjacent to the tree retention area and installation of septic system improvements within the retention area shall utilize best management practices to minimize damage or removal of the trees. Any removal of heritage trees or trees needed to meet min. tree canopy requirements shall be mitigated in accordance with UDO requirements. A tree protection easement shall be recorded prior to issuance of a Zoning Compliance for the subject property.
10. *Fencing*: Fencing meeting UDO Section 710.050 standards shall be installed around the perimeter of the recreation area. Fencing shall be a min. height of 5-ft. and be comprised of a powder coated aluminum material or an equivalent approved by the Town of Indian Trail. Chain link fencing is not permitted. Fencing meeting UDO 710.050 and related State and Town stormwater requirements shall also be provided around all stormwater ponds.
11. *Concept Plan:* The site shall be developed as generally depicted on the submitted Concept Plan. The proposed building shall be designed as generally depicted in the submitted building rendering (Attachment 2). The building shall be constructed primarily of cementitious siding (i.e. Hardi) and a standing seam metal roof.

The draft Findings made were as follows:

Goal 1.3.2 Land Use - The proposed conditional district will provide expanded recreational opportunities and a gathering place for Town residents, visitors, as well as current and future workers within the Old Hickory Business Park Corridor. The rezoning is subject to conditions to help avoid creating any land use impacts to neighboring properties. The proposed conditional rezoning will also help create a more balanced tax base by helping facilitate development of a commercial use on an otherwise undeveloped property in a manner that is consistent with the Comprehensive Plan. The conditional rezoning will also result in the retention of an existing grove of trees that will be an amenity to the site, while helping preserve the Indian Trail community forest.

The Planning Board further found the request for this conditional zoning district is a reasonable request and is in the public interest because it helps create a mix of uses within the Old Hickory Business Park Corridor and includes elements that benefit the general public in the area tree preservation.

Staff Contact

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Attachment 1- Planning Board Report
Attachment 2- Draft Ordinance

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PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

Conditional Zoning Staff Report

Case: CZ 2012-001			
Reference Name	Younts Miniature Golf		
Request	Proposed Zoning	Conditional Zoning General Business District (GBD) GBD-CZ	
	Proposed Uses	Miniature Golf/Outdoor Recreation	
Existing Site Characteristics	Existing Zoning	Single Family Residential-1	
	Existing Use	Vacant	
	Site Acreage	3.12 acres	
Applicant	Scott Merritt		
Submittal Date	June 29, 2012		
Location	Younts Road, Indian Trail		
Tax Map Number(s)	07066001A		
Plan Consistency	Comprehensive Plan	Designation	Business Park
		Consistent with Request	Yes
Recommendations & Comments	Planning Staff	Recommends approval of a Conditional Zoning District	

Project Summary

This is a request to establish a Conditional General Business District (CZ-GBD) zoning district to support development of a thirty-six (36) hole miniature golf course and related improvements. The approx. three (3) acre subject property is located on Younts Road, approximately 460-ft south of Brown Lane. The proposed development also contemplates development of a building to be utilized for accessory office and restaurant or food sale uses. Improvements to Younts Road will also be made by the project developer/applicant that include a road widening, curb and gutter, street trees, and a six (6)-ft sidewalk along the site's roadway frontage.

Recommendation

Staff is of the opinion the necessary findings can be made to support a Conditional Zoning request.

Analysis

Site Characteristics and Surrounding Zoning

As reflected in Maps 1 and 2 below, the proposed rezoning (if approved) would be the first introduction of commercial zoning/uses along this section of Younts Road. The subject property is surrounded by undeveloped properties, some of which are utilized as a horse pasture. Existing large lot homes are located on the western side of Younts Road, generally across from the subject property.

Map 1: Location Map

As reflected in Map 2 below, the subject property is surrounded by the SF-1 zoning district, which is a low-density residential zoning classification. The nearby Walmart site is zoned Regional Business District (RBD), which is the most intense commercial zoning district in the Town

Map 2: Existing Zoning

Concept Plan

Attachment 1 (below) reflects the Concept Plan that is a required element of the conditional rezoning application submittal. The Concept Plan reflects development of a thirty six (36) hole miniature golf course and an accessory building to be utilized for office and food service/restaurant uses. Most of the existing site has been previously cleared of trees with the exception of a small grove in the northwest corner. The following will provide a brief overview of key elements of the Concept Plan.

1. *Site Layout*: The site layout generally places the parking in the front of the site closest to Younts Road with the miniature golf course in the rear of the site. This layout will help reduce any potential impacts to existing residential uses by placing the recreational area away from existing homes along Younts Road.
2. *Phasing*: The facility will be built in phases with the first eighteen (18) holes and the proposed building to be constructed in Phase I. The remaining course will be developed in the future.
3. *Road/Frontage Improvements*: As previously described, the site's approx. 265-ft of roadway frontage with Younts Road will be improved with a road widening, curb and gutter, a six (6)-ft sidewalk, and street trees. Younts Road is currently a two-lane ditch section roadway with no sidewalk. The applicant will also dedicate a min. ROW of 35-ft from the existing road centerline to accommodate the frontage improvements.
4. *Parking*: Parking will be provided at a rate of approximately two paved stalls per-hole with an additional area set-aside for overflow parking. The paved parking area will be improved with curb and gutter. The adequacy of the parking rate will be monitored by the applicant and the Town during Phase I operations prior to any site plan approval for future recreation area expansions. Cross access areas will be set-aside within the parking lot to enable drivers to cross between abutting parking areas in the future without using Younts Road.
5. *Tree Retention*: The site contains an existing grove of trees in the northwest corner of the site (between Younts Road and Phase 2 parking area). As reflected in the Concept

Plan, most of this area will be set-aside within a tree protection easement to ensure retention of the existing, large trees. The applicant intends on clearing the underbrush and the small trees to create a park-like setting under the mature tree canopy for customer use.

Concept Plan

Architectural Design

The proposed architecture of the building contemplates a rustic design that is intended to reflect the character of the surrounding area and the overall theme for the golf course. As reflected in the rendering below, the building will feature cementitious siding (i.e. Hardi siding), a standing seam metal roof, a working fireplace and chimney, rafter tails and wall brackets along the underside of the roof, and other unique architectural details characteristic of the area.

Concept Plan-Architectural Rendering

Draft Conditions

Conditions of approval have been developed in order to ensure the proposed rezoning is consistent with the Comprehensive Plan and the underlying intent of the General Business District. The applicant has agreed to comply with the conditions noted below.

1. *Permitted Uses:* Permitted outdoor uses within the recreation area of the subject property will be limited to miniature golf and similar outdoor recreation activities with no greater impact. Permitted indoor uses within the proposed building shall be limited to office, restaurant without drive-thru, food and beverage retail sales (not including liquor sales/ABC Store), and accessory retail sales associated with the miniature golf/recreational use.
2. *Hours of Operation:* Hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. This restriction shall be eliminated in the event that adjacent properties are rezoned to non-residential zoning districts.
3. *Required Parking:* In Phase 1, paved parking shall be provided at a minimum rate of 2-stalls per golf hole. Accessory uses associated with the proposed office/restaurant building will be included within this rate. Overflow parking will be provided within the potential future Phase 2 parking area and will be graded and improved with a temporary surface to be approved by the Town. Additional bicycle parking exceeding UDO requirements will also be provided. Prior to the construction of the second 18 holes of golf, a parking analysis of the peak parking requirements of the first 18 holes will be provided to the Town to determine if the 2 spaces per hole parking rate is sufficient for the need. If not, a higher parking ratio may be required by the Town, prior to the Phase 2 course expansion.
4. *Noise*: The use of outdoor speakers and/or an intercom system shall be prohibited within the parking lot and other non-recreation areas of the site unless needed for emergency purposes. Use of speakers on the building for background music is acceptable. All reasonable efforts shall be made to limit noise from being audible offsite.
5. *Cross Access*: A pedestrian and vehicular cross access easement (min. 24' in width) shall be provided to adjacent parcels 07066001D, 07066002A, and/or 07066001 to interconnect the proposed parking area with the adjacent sites. The Planning Director may waive the cross access easement requirement in the event future adjacent uses are deemed by the Planning Director to be incompatible with the miniature golf use.
6. *Right of Way Dedication*: ROW shall be dedicated across the subject property's Younts Road frontage to the North Carolina Department of Transportation to achieve a 35-ft ROW measured from the existing Younts Road centerline (unless Town and/or NCDOT species additional ROW is needed). ROW shall be dedicated prior to any issuance of a Zoning Compliance for the subject property.
7. *Frontage Improvements*: The subject property's Younts Road frontage shall be improved with curb, gutter, 6-ft. wide sidewalk, street trees, and any additional improvements required by the Town and/or NCDOT.
8. *Lighting*: A lighting plan/photometric study shall be required for the parking and recreational areas. Light fixtures, including those utilized in the outdoor recreation area shall be limited to 20-ft in height. Taller fixtures within the recreation area meeting UDO requirements may be permitted if it can be demonstrated by the lighting plan that there will be no negative impacts to nearby properties. Pole or building mounted lights on the perimeter of the recreational area and those used to

provide site/area lighting shall not have an angled orientation and shall utilize full cut off fixtures to minimize glare and lighting spillover.

9. *Tree Retention*: To the extent shown on the plans, the existing stand of trees located in the northwest corner of the site shall generally be left in an undisturbed condition and protected with a tree protection easement. Removal of small trees, invasive vegetation, underbrush, and vines is permitted to help create a usable, park like setting for customers. Clearing to install ROW improvements, the septic system leach field, and/or to maintain minimum sight distance is also permitted. Construction adjacent to the tree retention area and installation of septic system improvements within the retention area shall utilize best management practices to minimize damage or removal of the trees. Any removal of heritage trees or trees needed to meet min. tree canopy requirements shall be mitigated in accordance with UDO requirements. A tree protection easement shall be recorded prior to issuance of a Zoning Compliance for the subject property.
10. *Fencing*: Fencing meeting UDO Section 710.050 standards shall be installed around the perimeter of the recreation area. Fencing shall be a min. height of 5-ft. and be comprised of a powder coated aluminum material or an equivalent approved by the Town of Indian Trail. Chain link fencing is not permitted.
11. *Concept Plan:* The site shall be developed as generally depicted on the submitted Concept Plan. The proposed building shall be designed as generally depicted in the submitted building rendering (Attachment 2). The building shall be constructed primarily of cementitious siding (i.e. Hardi) and a standing seam metal roof.

The Town Council may act to revoke the conditional zoning district designation if the applicant fails to meet the terms of the district.

Comments from Outside Agencies

The Town routed plans to solicit comments from outside agencies. No substantive comments were received.

Community Meetings

The applicant held two community meetings as required by UDO Section 330.020. The purpose of the meetings is to address comments and concerns from surrounding property owners. Notices for the community meetings consisted of advertising in the newspaper, sending first class mailed notices to the property owners and surrounding properties within 500 feet (approx. 28-notices), and posting a sign on the site. The first community meeting was held at the Lake Park Community Center on January 30, 2013 from 10:00 a.m.to 12:00 p.m. The second community meeting was held on January 30, 2013 at the Indian Trail Civic Building from 5:00 p.m.-7:00 p.m. Staff was contacted by one nearby resident prior to the community meetings. This resident attended the daytime community meeting. The following will provide a brief overview of the discussion at the community meetings.

- *Daytime Meeting*: This meeting was attended by eight (8) members of the public. Questions raised included concerns about children/customers being able to harass horses that graze on the adjacent property to the south and west. Concerns about lighting impacting residential properties on the opposite side of Younts Road were also raised. The applicant indicated onsite fencing could be utilized to prevent any interaction between customers and horses. Fencing has been incorporated as a condition of approval. In regards to lighting, the applicant indicated that while the

lights may be visible from across the street, the illumination will not spillover onto these properties. Town staff further clarified the UDO lighting requirements that help prevent lighting spillover, the proposed hours of operation (8:00 a.m. to 10:00 p.m.), and how the site orientation (parking in front, recreation area in rear) will help minimize any issues with recreation lights impacting residences on Younts Road. Other questions raised were regarding how the site was selected, will there be any other uses onsite, and the envisioned success of the business. The applicant indicated the site was chosen due to its rural character and accessibility, the only other uses of the property will be accessory food service uses in the building, and the business will be a family operation and there is a need for wholesome family entertainment. Attendees also inquired about whether Younts Road would be widened and if there is any impact to their property. The applicant stated the road may be widened slightly (amongst other frontage improvements) and the proposed rezoning would only affect the subject property.

- *Evening Meeting*: This meeting was attended by four (4) members of the public. Questions raised during this discussion were similar to the morning meeting. Questions not previously raised included what the Town's plans were for this area and if this proposed use will be seasonal in nature. In response, Town staff discussed the community's vision for this area as reflected in the comprehensive plan (see below). The applicant indicated the outdoor aspects of the business may close from Thanksgiving thru February depending on actual weather conditions/temperatures.

Plan Consistency

The property is located in the Old Hickory Business Park Corridor of the Comprehensive Plan. This corridor provides significant employment opportunities within the community by housing major employers that need convenient transportation, high quality services, and a worker-friendly environment. The corridor also provides for supporting uses such as retail and lodging opportunities. Table 1 below provides a summary of the existing and envisioned land use mix for the corridor.

The proposed miniature golf/outdoor recreation use is in keeping with the support uses intended to create a worker-friendly environment that also meets the needs of area residents. The proposed facility would be categorized as a retail type use and would increase the retail land use category to approximately 19.67 acres or 1.8% of total land use, which is consistent with the vision of the Business Park Corridor.

Table 1 :Business Park Corridor Village Land Uses

Corridor	Land Use	Sq. Feet	Acres	Current Base	Percent Base	Flex
Old Hickory	Med. Density Res.	7,819,908.87	179.52	16.49%	5%	+/- 2
	High Density Res.	7,090,664.09	162.78	14.95%	10%	+/- 2
	Multi-Family Res.				5%	+/- 2
	Parks/Open Space/Agriculture/Forest				5%	
	Institutional	104,420.71	2.40	0.22%	5%	+/- 2
	Retail	726,092.81	16.67	1.53%	5%	+/- 1
	Office				30%	+/- 5
	Industrial	18,446,045.94	423.46	38.90%	25%	+/- 5
	Boulevards/Thoroughfares	3,655,693.24	83.92	7.71%	10%	

Action Required

The Planning Board must adopt a statement of consistency and reasonableness prior to making a motion for recommendation. The finding must be made that the proposed amendment is both reasonable and consistent with the Comprehensive Plan. Staff is of the opinion the goals of the Comprehensive Plan are satisfied as follows:

> *Goal 1.3.2 Land Use* - The proposed conditional district will provide expanded recreational opportunities and a gathering place for Town residents, visitors, as well as current and future workers within the Old Hickory Business Park Corridor. The rezoning is subject to conditions to help avoid creating any land use impacts to neighboring properties. The proposed conditional rezoning will also help create a more balanced tax base by helping facilitate development of a commercial use on an otherwise undeveloped property in a manner that is consistent with the Comprehensive Plan. The conditional rezoning will also result in the retention of an existing grove of trees that will be an amenity to the site, while helping preserve the Indian Trail community forest.
>
> The request for this conditional zoning district is a reasonable request and is in the public interest because it helps create a mix of uses within the Old Hickory Business Park Corridor and includes elements that benefit the general public in the area tree preservation.

Recommendation

Staff is of the opinion that the findings can be made to support a conditional zoning district for the subject property. The proposed conditional rezone is consistent with the Town's Comprehensive Plan.

Attachment 1 – Application
Attachment 2 – Concept Plan
Attachment 3 – Draft Ordinance

Staff Contact
Rox Burhans, AICP
704 821-5401
rburhans@planning.indiantrail.org

PB Attachment 1

Application

R-000382

CONDITIONAL ZONING APPLICATION

Town of INDIAN TRAIL north carolina

PLANNING AND DEVELOPMENT DEPARTMENT
PO Box 2430
Indian Trail, NC 28079
Telephone (704) 821-5401
Fax (704) 821-9045

RECEIVED
JUN 29 2012
TOWN OF INDIAN TRAIL

ONLY COMPLETE APPLICATIONS ACCEPTED

Processing Fee $800.00

Notification Fee $2.50 per adjoining property owner

Date Received 6-29-12

Town of INDIAN TRAIL north carolina

CONDITIONAL ZONING APPLICATION

Applicant's Certification

Signature _____ Date 6-27-12

Printed Name/Title Scott Merritt

Signature of Notary Public Raenae H. Little Date 6-27-12

Notary Seal

RAENAE H. LITTLE
NOTARY PUBLIC
Stanly County, North Carolina
My Commission Expires 4/16/2017

Property Owner's Certification

Signature _____ Date 6.26.12

Printed Name/Title Dennis W. Moser, Member Manager

Signature of Notary Public Raenae H. Little Date 6-26-12

Notary Seal

RAENAE H. LITTLE
NOTARY PUBLIC
Stanly County, North Carolina
My Commission Expires 4/16/2017

TOWN OF INDIAN TRAIL OFFICE USE ONLY

CASE NUMBER: _____

DATE RECEIVED: 6-29-2012 AMOUNT OF FEE: waived / BFA

RECEIVED BY: K. Sorensen RECEIPT #: _____

CONDITIONAL ZONING APPLICATION

Town of INDIAN TRAIL north carolina

Submittal Requirements

- Completed Application
- Notarized signatures of applicant and property owner
- Letter of Intent
- 8 copies of Concept Plan (must be drawn to scale by architect, landscape architect, professional surveyor, or engineer licensed in North Carolina)
- Boundary Survey (acreage, current zoning, location of existing buildings, setbacks)
- List, address labels, and digital copy of all adjoining property owners within 500 feet of subject parcel
- Traffic Impact Analysis, if necessary
- Statement of Appraisal, if necessary
- Fees associated with review

General Information

Project Address: Younts Rd

City: Indian Trail State: NC Zip: 28079

Tax Parcel ID: 07066001A Zoning Designation: _____

Total Acres: 3.12 to Rd C/L Impervious Area: 1.25 Ac.

Project Description: Mini Golf

Contact Information – Applicant

Name: Scott A Merritt

Address: 5105 Sugar and Wine Rd.

City: Monroe State: NC Zip: 28110

Phone: 980-722-7810 Fax: _____

Email: MerritLand@windstream.net

Contact Information – Property Owner

Name: Younts Road Partners, LLC

Address: c/o the Moser Group Inc 231 Post Office Dr B-8

City: Indian Trail State: NC Zip: 28079

Phone: 704-882-1700 Fax: 704-882-2220

Email: dmoser@themosergroupinc.com

JUN 2 0 2012

Trails Miniature Golf

Scott Merritt

P.O.Box 456

Indian Trail ,NC 28079

980-722-7810

Business Proposal for Trails Miniature Golf Coarse

The Business

Trails Miniature golf course is going to be a natural looking miniature golf course that will act as the initial anchor. Family entertainment is a highly profitable industry that has been growing rapidly over the past several years. This is due largely to a trend within the country to return to family values. The initial profit centers will be the golf course, ice cream and bakery.

Marketing

While families with children will act as an anchor, seniors, teens, and corporate customers will add significant income. There will be a variety of fun promotions keeping the business profitable during the entire season. While our marketing plan is devised from other successful plans in the industry, there will be some additions as we start the business.

Management

Scott and Amy Merritt have successful experience in small business ownership, personal management, and financial management. The miniature golf course operates with only two people during the day and two to four during peak hours. The low personnel requirements makes management easy and keeps employee cost at a minimum.

Trails miniature golf course success sheet

1 Our business will be highly visible; the hours of operation during the peak season which is {May1st thru November 30th} will be 10 AM to 11PM

2 Friendly, happy employees providing superior customer service

3 A safe, clean environment that the community will be proud of

4 Have fun while delivering a quality product

Our Objective

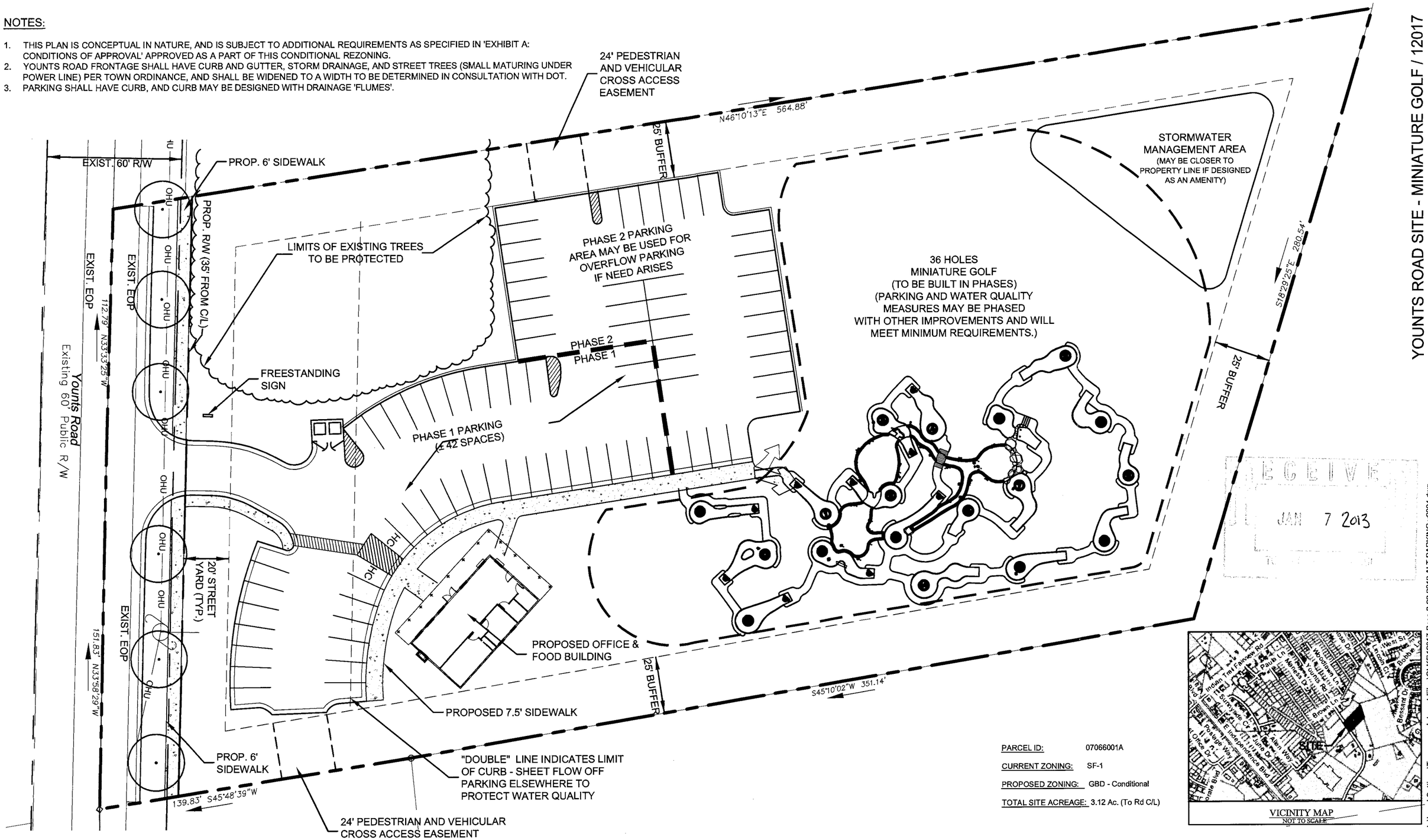
Our objective is to provide a safe, relaxing setting for a family, and friends to enjoy quality time together, while participating in a fun exciting outdoor activity.

PB Attachment 2

Concept Plan

NOTES:

1. THIS PLAN IS CONCEPTUAL IN NATURE, AND IS SUBJECT TO ADDITIONAL REQUIREMENTS AS SPECIFIED IN 'EXHIBIT A: CONDITIONS OF APPROVAL' APPROVED AS A PART OF THIS CONDITIONAL REZONING.
2. YOUNTS ROAD FRONTAGE SHALL HAVE CURB AND GUTTER, STORM DRAINAGE, AND STREET TREES (SMALL MATURING UNDER POWER LINE) PER TOWN ORDINANCE, AND SHALL BE WIDENED TO A WIDTH TO BE DETERMINED IN CONSULTATION WITH DOT.
3. PARKING SHALL HAVE CURB, AND CURB MAY BE DESIGNED WITH DRAINAGE 'FLUMES'.



YOUNTS ROAD SITE - MINIATURE GOLF / 12017

RECEIVED
JAN 7 2013

PARCEL ID: 07066001A

CURRENT ZONING: SF-1

PROPOSED ZONING: GBD - Conditional

TOTAL SITE ACREAGE: 3.12 Ac. (To Rd C/L)

VICINITY MAP
NOT TO SCALE

C:\Documents and Settings\ronnie\Local Settings\Temporary Internet Files\OLK6\12017-Base 8-26-2012 ALT PARKING v2004.dwg

DPR
landscape architecture
planning
civil engineering

DPR Associates, Inc. | 420 Hawthorne Lane | Charlotte, NC 28204
ph. 704.332.1204 | fx. 704.332.1210 | www.dprassociates.net

CZ2012-001 CONDITIONAL REZONING CONCEPT PLAN

YOUNTS ROAD SITE - MINIATURE GOLF

INDIAN TRAIL, NORTH CAROLINA

FOR

MERRITT LAND

Scale: 1"= 40'

North

0 40 80

Date: 8-26-2012 Job #: 12017 By: LM/MB	Dwg. No: CZ-1

TRAILS MINIATURE GOLF
EXTERIOR VIEW

JBA
JENNIFER BENSON
ARCHITECTURE
5803 Parkstone Drive, Matthews, NC 28104
704-930-8592 www.jenbarchitecture.com

TOWN COUNCIL ATTACHMENT 2

STATE OF NORTH CAROLINA)
) ORDINANCE #
TOWN OF INDIAN TRAIL)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF INDIAN TRAIL REZONING PARCEL 07066001A – LOCATED ON YOUNTS ROAD FROM SF-1 (SINGLE FAMILY RESIDENTIAL-1) TO CZ-GBD (CONDITIONAL ZONING GENERAL BUSINESS DISTRICT) IN THE TOWN OF INDIAN TRAIL, UNION COUNTY, NORTH CAROLINA

WHEREAS, the property owner Younts Road Partners, LLC (Dennis W. Moser, Member Manager) and designated applicant – Scott Merritt, petitioned to rezone tax parcel 07066001A from SF-1 (Single Family Residential District-1) to CZ-GBD (Conditional Zoning District-General Business) classification; and

WHEREAS, this Conditional Zoning Amendment (CZ2012-001) was duly noticed in compliance with North Carolina General Statutes; and

WHEREAS, two community meetings were held on January 30, 2013; and

WHEREAS, a public meeting was held by the Planning Board on February 19, 2013 to consider this conditional zoning request; and

WHEREAS, the Planning Board found the proposed map amendment is consistent with the following goal of the Comprehensive Plan:

> *Goal 1.3.2 Land Use* - The proposed conditional district will provide expanded recreational opportunities and a gathering place for Town residents, visitors, as well as current and future workers within the Old Hickory Business Park Corridor. The rezoning is subject to conditions to help avoid creating any land use impacts to neighboring properties. The proposed conditional rezoning will also help create a more balanced tax base by helping facilitate development of a commercial use on an otherwise undeveloped property in a manner that is consistent with the Comprehensive Plan. The conditional rezoning will also result in the retention of an existing grove of trees that will be an amenity to the site, while helping preserve the Indian Trail community forest.

WHEREAS, the Planning Board further found the request for this conditional zoning district is a reasonable request and is in the public interest because it helps create a mix of uses within the Old Hickory Business Park Corridor and includes elements that benefit the general public in the area tree preservation.

WHEREAS, after making the draft findings the Planning Board voted 6 to 1 to approve the motion to transmit a recommendation to approve as conditioned to the Town Council; and

WHEREAS, the Town Council held a public hearing on March 12, 2013 to consider said request and recommendation of approval from the Planning Board; and

WHEREAS, the Town Council concurred with the Planning Board's consistency findings and hereby endorses said findings; and

NOW, THEREFORE, IT SHALL BE ORDAINED by the Town Council of the Town of Indian Trail, North Carolina hereby takes the following action:

Section 1 – Council makes the required findings as entered into the record and found herein; and

Section 2 – Approves CZ 2012-001 Conditional Zoning Petition thereby granting the Zoning Map amendment to establish a Conditional General Business Zoning District on parcel number 07066001A subject to the following conditions:

1. *Permitted Uses:* Permitted outdoor uses within the recreation area of the subject property will be limited to miniature golf and similar outdoor recreation activities with no greater impact. Permitted indoor uses within the proposed building shall be limited to office, restaurant without drive-thru, food and beverage retail sales (not including liquor sales/ABC Store), and accessory retail sales associated with the miniature golf/recreational use.
2. *Hours of Operation:* Hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. This restriction shall be eliminated in the event that adjacent properties are rezoned to non-residential zoning districts.
3. *Required Parking:* In Phase 1, paved parking shall be provided at a minimum rate of 2-stalls per golf hole. Accessory uses associated with the proposed office/restaurant building will be included within this rate. Overflow parking will be provided within the potential future Phase 2 parking area and will be graded and improved with a temporary surface to be approved by the Town. Additional bicycle parking exceeding UDO requirements will also be provided. Prior to the construction of the second 18 holes of golf, a parking analysis of the peak parking requirements of the first 18 holes will be provided to the Town to determine if the 2 spaces per hole parking rate is sufficient for the need. If not, a higher parking ratio may be required by the Town, prior to the Phase 2 course expansion.
4. *Noise*: The use of outdoor speakers and/or an intercom system shall be prohibited within the parking lot and other non-recreation areas of the site unless needed for emergency purposes. Use of speakers on the building for background music is acceptable. All reasonable efforts shall be made to limit noise from being audible offsite.
5. *Cross Access*: A pedestrian and vehicular cross access easement (min. 24' in width) shall be provided to adjacent parcels 07066001D, 07066002A, and/or 07066001 to interconnect the proposed parking area with the adjacent sites. The Planning Director may waive the cross access easement requirement in the event future adjacent uses are deemed by the Planning Director to be incompatible with the miniature golf use.
6. *Right of Way Dedication*: ROW shall be dedicated across the subject property's Younts Road frontage to the North Carolina Department of Transportation to achieve a 35-ft ROW measured from the existing Younts Road centerline (unless Town and/or NCDOT species additional ROW is needed). ROW shall be dedicated prior to any issuance of a Zoning Compliance for the subject property.
7. *Frontage Improvements*: The subject property's Younts Road frontage shall be improved with curb, gutter, 6-ft. wide sidewalk, street trees, and any additional improvements required by the Town and/or NCDOT.
8. *Lighting*: A lighting plan/photometric study shall be required for the parking and recreational areas. Light fixtures, including those utilized in the outdoor recreation area shall be limited to

20-ft in height. Taller fixtures within the recreation area meeting UDO requirements may be permitted if it can be demonstrated by the lighting plan that there will be no negative impacts to nearby properties. Pole or building mounted lights on the perimeter of the recreational area and those used to provide site/area lighting shall not have an angled orientation and shall utilize full cut off fixtures to minimize glare and lighting spillover. Perimeter light fixtures located adjacent to residential properties shall also include cut off shields.

9. *Tree Retention*: To the extent shown on the plans, the existing stand of trees located in the northwest corner of the site shall generally be left in an undisturbed condition and protected with a tree protection easement. Removal of small trees, invasive vegetation, underbrush, and vines is permitted to help create a usable, park like setting for customers. Clearing to install ROW improvements, the septic system leach field, and/or to maintain minimum sight distance is also permitted. Construction adjacent to the tree retention area and installation of septic system improvements within the retention area shall utilize best management practices to minimize damage or removal of the trees. Any removal of heritage trees or trees needed to meet min. tree canopy requirements shall be mitigated in accordance with UDO requirements. A tree protection easement shall be recorded prior to issuance of a Zoning Compliance for the subject property.
10. *Fencing*: Fencing meeting UDO Section 710.050 standards shall be installed around the perimeter of the recreation area. Fencing shall be a min. height of 5-ft. and be comprised of a powder coated aluminum material or an equivalent approved by the Town of Indian Trail. Chain link fencing is not permitted. Fencing meeting UDO 710.050 and related State and Town stormwater requirements shall also be provided around all stormwater ponds.
11. *Concept Plan:* The site shall be developed as generally depicted on the submitted Concept Plan. The proposed building shall be designed as generally depicted in the submitted building rendering (Attachment 2). The building shall be constructed primarily of cementitious siding (i.e. Hardi) and a standing seam metal roof.

Section 3 – This ordinance shall be effective immediately upon adoption.

AND IT IS SO ORDAINED this 12th day of March, 2013.

TOWN OF INDIAN TRAIL COUNCIL

Attest:

_____

Michael L. Alvarez, Mayor

_____

Peggy Piontek, Town Clerk

APPROVED AS TO FORM:

_____

TOWN ATTORNEY

PO Box 2430
Indian Trail, NC 28079
Telephone (704) 821-5401
Fax (704) 821-9045
PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

Planning Board Transmittal for the March 12, 2013 Town Council Public Hearing

Case: ZT 2012-007 Accessory Residential Uses			
Reference Name	**Accessory Residential Uses in Commercial Zoning Districts**		
Planning Board Meeting Date	January 24, 2013		
Seated Members	Chair Cowan ☒	Jan Brown ☐	Larry Miller ☒
	Vice-Chair Higgins ☒	Kelly D' Onofrio ☒	Robert Rollins ☒
	Sidney Sandy ☐	Cheryl Mimy ☐ Alternate 1	Steve Long ☒ Alternate 2
	Alan Rosenberg ☒ Alternate 3		
Case Found Complete	Yes ☒	No ☐	
Motion	Recommend approval to Town Council with Modifications		
Member Making the Motion	Boardmember Cowan		
Second the Motion	Boardmember Long		
Vote	All seated members voted in favor of the motion		

Purpose of the Amendment: A request to amend Chapter 710 *Accessory Uses and Structures* of the Unified Development Ordinance (UDO). The proposed amendment will allow accessory residential uses in non-residential zoning districts within the Downtown Overlay District subject to specific standards. The proposed amendment will also allow accessory residential uses associated with onsite caretakers within all non-residential zoning districts, which are commonly associated with principal uses such as warehouses or self storage facilities, manufacturing facilities, large outdoor recreation facilities (i.e. golf courses, etc.), and similar uses.

Town Council Action: *Receive transmittal report and public testimony and:*

1. *Concur with the findings and transmittal of the Planning Board to approve; or*
2. *Concur with the findings and approve as modified by Council; or*
3. *Do not make the findings and disapprove the amendment.*

Executive Summary

The proposed UDO amendment is in response to inquiries from local property owners within the downtown community regarding having an allowance for residential uses within the non-residential zoning districts. The purpose of the amendment is to allow accessory residential uses in non-residential zoning districts within the Downtown Overlay District, while also allowing caretaker type residential uses within all non-residential zoning districts. The proposed standards that are a component of this amendment are to ensure accessory residential uses are in a form and scale that is acceptable and visually unobtrusive, while also meeting minimum requirements for health, safety and welfare. The following amendment to UDO Chapter 710 is required to implement this.

710.080 Accessory Residential Uses in Non-Residential Zoning Districts

A. Applicability

Accessory residential uses shall be permitted on properties located in all business and commercial, industrial, and institutional zoning districts within the Downtown Overlay District, subject to the standards identified in subsections B.1 through B.6 below.

Accessory residential uses may also be permitted on properties located within all business and commercial, industrial, and institutional zoning districts outside the Downtown Overlay District, when utilized as a dwelling unit for an onsite caretaker or guard, subject to the standards identified in subsections B.1 through B.6 below.

B. Standards

1. There shall be no more than one (1) accessory residential use for each building and/or parcel of land; and
2. Accessory residential buildings or units shall be consistent in appearance with the primary building unless the accessory building is existing. Freestanding accessory residential buildings shall not exceed the height of the primary building's roof surface unless the accessory building is existing; and
3. Accessory residential uses shall have independent and private entrances, self-sufficient and private bathroom/sanitation facilities, and a self-sufficient and private kitchen or food preparation facility; and
4. The size of accessory residential uses shall be limited to 25 percent of the gross floor area of the principal building or buildings or fifteen hundred 1,500 sq. ft. of gross floor area for the accessory building or unit; whichever is smaller in size; and
5. Accessory residential uses made available for lease shall have a minimum lease term of thirty (30) consecutive days; and
6. Accessory residential uses shall comply with applicable County, State, and Federal building, fire, and environmental health code requirements.

Planning Board

This proposed amendment was heard by the Planning Board on January 24, 2013. The Board discussed the merits of increasing the minimum duration of a lease term for accessory units to 90-consectutive days versus the staff proposed 30-days (see standard no. 5 above). Mr. Gregory Rogers, owner of Call Printing spoke in favor of the proposed amendment. Mr. Call indicated a desire to construct an accessory apartment within his commercial building at 311 Indian Trail Road and thanked staff for bringing the proposed amendment before the Board. The Board motioned to make the findings and transmit a unanimous recommendation to approve the proposed UDO amendment with modifications reflecting a minimum lease term of 90 consecutive days. Staff does not have any concerns with this modification and the proposed ordinance for ZT2012-007 reflects this modification.

The draft findings for Council consideration are noted below:

1. The proposed UDO amendment is consistent with the following goals:

   1.3.2 of the Comprehensive Plan – *Land Use*; the proposed UDO ordinance amendments will help promote a greater mix of land uses by enabling accessory residential uses to locate in non-residential districts within the Downtown Overlay District. The proposed amendments will also help support a more balanced tax base by supporting individual businesses and industrial or office parks by enabling the use of onsite caretakers for facility maintenance, management, and/or security purposes; and

   1.3.4 of the Comprehensive Plan- *Downtown Revitalization*; the proposed UDO ordinance amendment will help Downtown Indian Trail become a focal point within the community by promoting mixed-use development that will help create a lively and active environment. The proposed amendment will also help support Downtown Indian Trail merchants by helping expand the residential population within close proximity to downtown businesses; and

2. This UDO ordinance amendment is in the best interest of the public because it establishes regulations enabling accessory residential uses within Downtown Indian Trail, while also allowing Indian Trail businesses to utilize onsite caretakers subject to compliance with specific standards.

Staff Contact
Rox Burhans, AICP
rburhans@planning.indiantrail.org
(704) 821-5401

Attachment 1- Planning Board Report
Attachment 2 - Draft Ordinance

TC ATTACHMENT ONE

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
Fax (704) 821-9045

PLANNING AND NEIGHBORHOOD SERVICES

Zoning Staff Report

Case: ZT 2012-007 Amendment of UDO Related to Accessory Residential Uses		
Reference Name	Accessory Residential Uses in Non-Residential Districts	
Applicant	Town of Indian Trail	
Submittal Date	12/3/2012	
Location	Town-wide	
Tax Map Number	N/A	
Plan Consistency	Town of Indian Trail Comprehensive Plan	Consistent With Request
Recommendations & Comments	Planning Staff	Recommends Approval of Proposed Text Amendment.

Project Summary
A request to amend Chapter 710 *Accessory Uses and Structures* of the Unified Development Ordinance (UDO). The proposed amendment will allow accessory residential uses in non-residential zoning districts within the Downtown Overlay District subject to specific standards. The proposed amendment will also allow accessory residential uses associated with onsite caretakers within all non-residential zoning districts, which are commonly associated with principal uses such as warehouses or self storage facilities, manufacturing facilities, large outdoor recreation facilities (i.e. golf courses, etc.), and similar uses.

The proposed UDO amendment is in response to inquiries from local property owners within the downtown community regarding having an allowance for residential uses within the non-residential zoning districts. The UDO currently does not permit residential uses within the downtown's non-residential zoning districts. Residential uses are not only customary within downtown communities; they also help create a lively and active environment and help support downtown businesses. At a later time, staff would like to return to the Planning Board and Town Council with a more comprehensive UDO amendment enabling more residential uses within downtown and other appropriate commercial and business zoning districts.

In researching the proposed UDO amendment, staff also discovered that there were no allowances within the UDO for caretaker type residential uses within the non-residential zoning districts. Caretaker units are an important resource for property/business owners that need twenty-four (24) hour onsite staffing for security, management, and/or maintenance type services. Caretaker type units would be subject to the same standards as the previously described accessory residential uses within the Downtown Overlay District.

Areas of Analysis:

1. **The Comprehensive Plan**- The proposed text amendment is consistent with the goals of the Comprehensive Plan; *Land Use and Downtown Revitalization*.
2. **Staff Recommendation**- Staff recommends based on the guidance of the adopted plans that the text amendment be supported by recommending its approval to the Town Council

Analysis

The purpose of the amendment is to allow accessory residential uses in non-residential zoning districts within the Downtown Overlay District, while also allowing caretaker type residential uses within all non-residential zoning districts. The proposed standards that are a component of this amendment is to ensure accessory residential uses are in a form and scale that is acceptable and visually unobtrusive, while also meeting minimum requirements for health, safety and welfare. The following amendment to UDO Chapter 710 is required to implement this.

710.080 Accessory Residential Uses in Non-Residential Zoning Districts

A. Applicability

Accessory residential uses shall be permitted on properties located in all business and commercial, industrial, and institutional zoning districts within the Downtown Overlay District, subject to the standards identified in subsections B.1 through B.6 below.

Accessory residential uses may also be permitted on properties located within all business and commercial, industrial, and institutional zoning districts outside the Downtown Overlay District, when utilized as a dwelling unit for an onsite caretaker or guard, subject to the standards identified in subsections B.1 through B.6 below.

B. Standards

1. There shall be no more than one (1) accessory residential use for each building and/or parcel of land; and
2. Accessory residential buildings or units shall be consistent in appearance with the primary building unless the accessory building is existing. Freestanding accessory residential buildings shall not exceed the height of the primary building's roof surface unless the accessory building is existing; and
3. Accessory residential uses shall have independent and private entrances, self-sufficient and private bathroom/sanitation facilities, and a self-sufficient and private kitchen or food preparation facility; and
4. The size of accessory residential uses shall be limited to 25 percent of the gross floor area of the principal building or buildings or fifteen hundred 1,500 sq. ft. of gross floor area for the accessory building or unit; whichever is smaller in size; and

5. Accessory residential uses made available for lease shall have a minimum lease term of thirty (30) consecutive days; and
6. Accessory residential uses shall comply with applicable County, State, and Federal building, fire, and environmental health code requirements.

Required Consistency Findings
The Planning Board is required to make two consistency findings, one for consistency with Town adopted plans and another regarding the benefit of the public. Staff is of the opinion the following findings can be made:

1. The proposed UDO amendment is consistent with the following goals:

   1.3.2 of the Comprehensive Plan – *Land Use*; the proposed UDO ordinance amendments will help promote a greater mix of land uses by enabling accessory residential uses to locate in non-residential districts within the Downtown Overlay District. The proposed amendments will also help support a more balanced tax base by supporting individual businesses and industrial or office parks by enabling the use of onsite caretakers for facility maintenance, management, and/or security purposes; and

   1.3.4 of the Comprehensive Plan- *Downtown Revitalization*; the proposed UDO ordinance amendment will help Downtown Indian Trail become a focal point within the community by promoting mixed-use development that will help create a lively and active environment. The proposed amendment will also help support Downtown Indian Trail merchants by helping expand the residential population within close proximity to downtown businesses; and

2. This UDO ordinance amendment is in the best interest of the public because it establishes regulations enabling accessory residential uses within Downtown Indian Trail, while also allowing Indian Trail businesses to utilize onsite caretakers subject to compliance with specific standards.

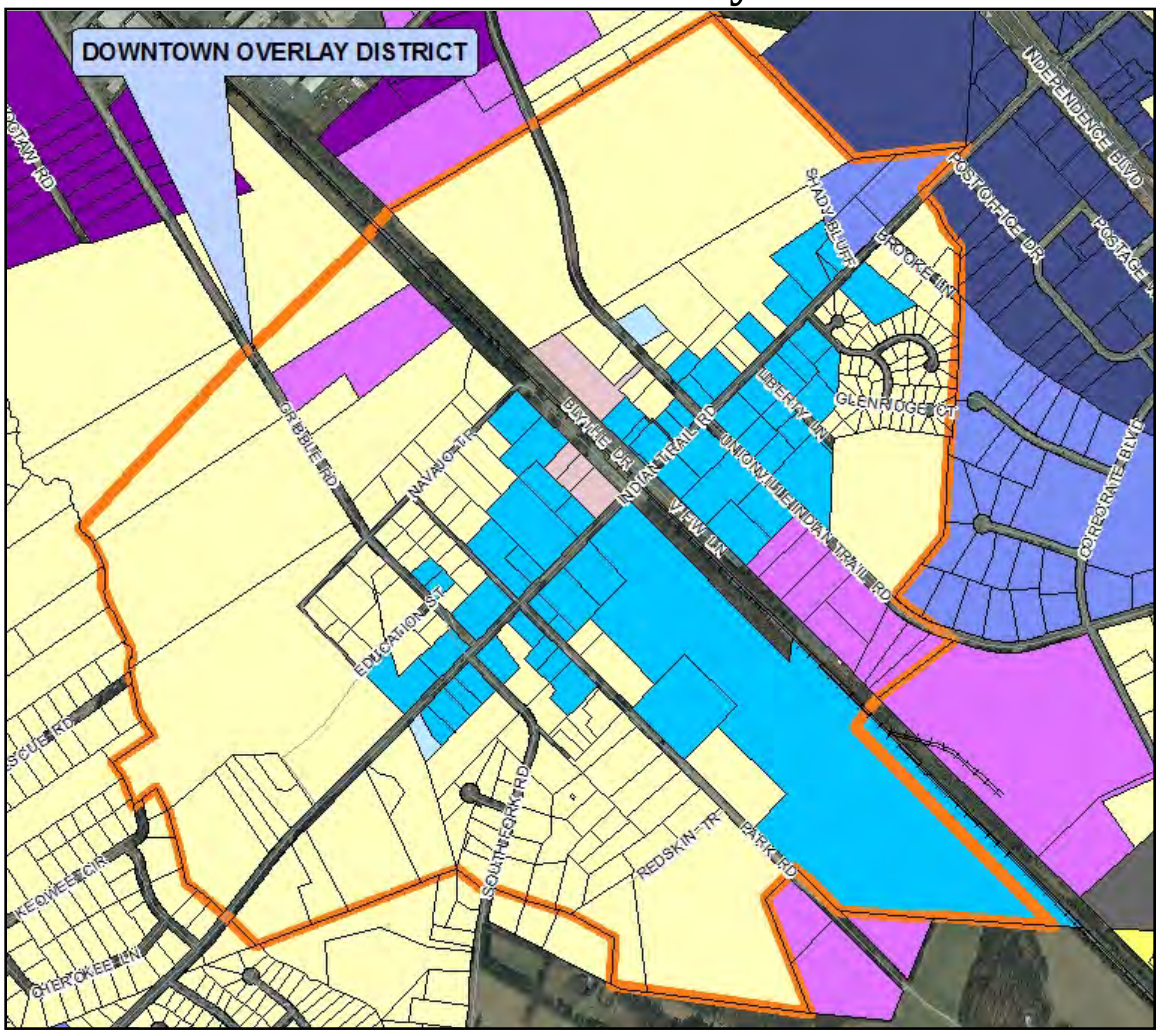
Staff recommends that the Planning Board make the required consistency findings and recommend adoption of this UDO Text Amendment as presented to the Town Council.

Staff Contact
Rox Burhans, AICP
Senior Planner
rburhans@planning.indiantrail.org

Attachment 1: Downtown Overlay District Map
Attachment 2: Draft Ordinance

ATTACHMENT ONE

Downtown Overlay District



TC ATTACHMENT TWO

STATE OF NORTH CAROLINA)
) ORDINANCE #
TOWN OF INDIAN TRAIL)

AN ORDINANCE AMENDING CHAPTER 710 ACCESSORY USES AND STRUCTURES OF THE INDIAN TRAIL UNIFIED DEVELOPMENT ORDINANCE (UDO) RELATED TO ACCESSORY RESIDENTIAL USES IN INDIAN TRAIL, NORTH CAROLINA

WHEREAS, the Town is the applicant for ZT 2012-007 requesting to amend sections of Chapter 710 Accessory Uses and Structures of the UDO to allow accessory residential uses in non-residential zoning districts within the Downtown Overlay District and to allow accessory residential uses for onsite caretakers in all non-residential zoning districts; and

WHEREAS, this Zoning Amendment (ZT 2012-007) was duly noticed in compliance with North Carolina General Statutes; and

WHEREAS, the amendment was heard by Planning Board on January 24, 2013 in a public meeting; and

WHEREAS, the Planning Board after hearing the amendment and deliberations made the following findings and recommended approval to the Town Council:

1. The proposed UDO amendment is consistent with the following goals:

   1.3.2 of the Comprehensive Plan – *Land Use*; the proposed UDO ordinance amendments will help promote a greater mix of land uses by enabling accessory residential uses to locate in non-residential districts within the Downtown Overlay District. The proposed amendments will also help support a more balanced tax base by supporting individual businesses and industrial or office parks by enabling the use of onsite caretakers for facility maintenance, management, and/or security purposes; and

   1.3.4 of the Comprehensive Plan- *Downtown Revitalization*; the proposed UDO ordinance amendment will help Downtown Indian Trail become a focal point within the community by promoting mixed-use development that will help create a lively and active environment. The proposed amendment will also help support Downtown Indian Trail merchants by helping expand the residential population within close proximity to downtown businesses; and

2. This UDO ordinance amendment is in the best interest of the public because it establishes regulations enabling accessory residential uses within Downtown Indian Trail, while also allowing Indian Trail businesses to utilize onsite caretakers subject to compliance with specific standards.

WHEREAS, the Town Council received the Planning Board transmittal for a recommendation of approval in the required public hearing held on March 12, 2013 and after

receiving the transmittal, public comment, and deliberation, concur with the required findings and amendment recommendation as transmitted by the Planning Board.

NOW THEREFORE, BE IT ORDAINED ON MARCH 12, 2013 BY THE TOWN COUNCIL OF THE TOWN OF INDIAN TRAIL, NORTH CAROLINA HEREBY TAKES THE FOLLOWING ACTION:

Section 1 – Council makes the required findings as entered into the record and found herein; and

Section 2 – UDO CHAPTER 710 is amended as follows:

710.080 Accessory Residential Uses in Non-Residential Zoning Districts

A. Applicability

Accessory residential uses shall be permitted on properties located in all business and commercial, industrial, and institutional zoning districts within the Downtown Overlay District, subject to the standards identified in subsections B.1 through B.6 below.

Accessory residential uses may also be permitted on properties located within all business and commercial, industrial, and institutional zoning districts outside the Downtown Overlay District, when utilized as a dwelling unit for an onsite caretaker or guard, subject to the standards identified in subsections B.1 through B.6 below.

B. Standards

1. There shall be no more than one (1) accessory residential use for each building and/or parcel of land; and
2. Accessory residential buildings or units shall be consistent in appearance with the primary building unless the accessory building is existing. Freestanding accessory residential buildings shall not exceed the height of the primary building's roof surface unless the accessory building is existing; and
3. Accessory residential uses shall have independent and private entrances, self-sufficient and private bathroom/sanitation facilities, and a self-sufficient and private kitchen or food preparation facility; and
4. The size of accessory residential uses shall be limited to 25 percent of the gross floor area of the principal building or buildings or fifteen hundred 1,500 sq. ft. of gross floor area for the accessory building or unit; whichever is smaller in size; and
5. Accessory residential uses made available for lease shall have a minimum lease term of ninety (90) consecutive days; and
6. Accessory residential uses shall comply with applicable County, State, and Federal building, fire, and environmental health code requirements.

Section 3- This ordinance shall be effective immediately upon adoption.

AND IT IS SO ORDAINED this 12th day of March, 2013.

TOWN OF INDIAN TRAIL COUNCIL

Attest:

_____

Michael L. Alvarez, Mayor

_____

Peggy Piontek, Town Clerk

APPROVED AS TO FORM:

_____

TOWN ATTORNEY

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
Fax (704) 821-9045
PLANNING AND NEIGHBORHOOD SERVICES

Planning Board Transmittal for the March 12, 2013 Town Council Public Hearing

Case: ZT 2013-001 Amendment of Chapter 520 of the Unified Development Ordinance			
Reference Name	**Automotive Uses in the General Business District**		
Planning Board Meeting Date	February 19, 2013		
Members Present	Chair Cowan ☒	Jan Brown ☒ (In audience)	Larry Miller ☒
	Vice-Chair Higgins ☒	Kelly D' Onofrio ☒	Robert Rollins ☒
	Sidney Sandy ☐	Cheryl Mimy ☒ Alternate 1	Steve Long ☒ Alternate 2
	Alan Rosenberg ☐ Alternate 3		
Case Found Complete	Yes ☒	No ☐	
Motion	Recommend approval to Town Council with draft findings		
Member Making the Motion	Boardmember Mimy		
Second the Motion	Boardmember Higgins		
Vote	All seated members voted in favor of the Motion		

Purpose of the Amendment: To amend Chapter 520- Business and Commercial Zoning Districts to allow for motor vehicle repair shops (not including body work, parking and commercial repair) in the General Business Zoning Districts (GBD) within the Town. Staff is of the opinion the absence of this use within the GBD was an oversight during the development of the Unified Development Ordinance (UDO) in 2008 and therefore warrants this amendment. This use is currently allowed within the Regional Business District (RBD) by right and within the Village Center Overlay by Special Use Permit.

Town Council Action: *Receive transmittal report and public testimony and:*

1. *Concur with the findings and transmittal of the Planning Board to approve; or*
2. *Concur with the findings and approve as modified by Council; or*
3. *Do not make the findings and disapprove the amendment.*

Executive Summary

The proposed amendment will modify the UDO by enabling Automotive Repair Shops (excluding body work, overnight parking, and commercial vehicle repair) within the General Business Zoning Districts (GBD), by Special Use Permit, throughout the Town of Indian Trail. This type of light vehicle repair shop use is currently allowed:

1. By right in the Regional Business District (RBD) which is located primarily along the Highway 74 corridor; and
2. By Special Use Permit in the Village Center Overlay Districts which are located throughout the town at the Village Centers.

For a use to be allowed within an "Overlay District" is must also be allowed in underlying zoning district. The primary commercial zoning classification found within our village centers is the General Business District (See Attachment 1-Zoning Map in Planning Board Report). Staff is of the opinion the absence of the use in the primary underlying zoning classification of the Village Centers was an oversight during the preparation of the UDO. Therefore it is proposed to allow the use by Special Use Permit consistent with the requirements of the Village Center Overlay District.

Planning Board

This proposed amendment was heard by the Planning Board on February 19, 2013, and after a general discussion the Board motioned to make the findings and transmit a unanimous recommendation to approve. The draft findings for Council consideration are noted below:

- ***Goal 1.3.2 Land Use –*** this amendment further expands the mix of different types of land uses while avoiding potential land use conflicts between uses it proposes to allow the use by Special Use Permit which requires a review and decision by the Indian Trail Board of Adjustments in a public forum; and
- It furthers the opportunity for a more balanced tax base by promoting the development of businesses and retail centers within the Town.

The request for the amendment of Section 520.020 G of Chapter 520 in the UDO to allow an Automotive Repair Shop (excluding body work, parking, and commercial repair) is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of Land Use and provides consistency with the Unified Development Ordinance.

Staff Contact
Shelley DeHart, AICP
srd@planning.indiantrail.org

Attachment 1- Planning Board Report
Attachment 2- Draft Ordinance

TOWN COUNCIL ATTACHMENT -1
PLANNING BOARD REPORT

P.O. Box 2430
Indian Trail, North Carolina 28079
Telephone (704) 821-5401
Fax (704) 821-9045
PLANNING AND NEIGHBORHOOD SERVICES

Zoning Text Amendment Staff Report

Case: ZT 2013-001 Amendment of Chapter 520		
Reference Name	Automotive Uses in the General Business District	
Applicant	Town of Indian Trail	
Submittal Date	01/23/2013	
Location	General Business Zoning District within the Town	
Tax Map Numbers	N/A	
Plan Consistency	Town of Indian Trail Comp. Plan	
		Consistent with Request
Recommendations & Comments	Planning Staff	Recommends Approval of Text Amendment

Project Summary

Request: To amend Chapter 520- Business and Commercial Zoning Districts to allow for motor vehicle repair shops (not including body work, parking and commercial repair) in the General Business Zoning Districts (GBD) within the Town. Staff is of the opinion the absence of this use within the GBD was an oversight during the development of the Unified Development Ordinance (UDO) in 2008 and therefore warrants this amendment. This use is currently allowed within the Regional Business District (RBD) by right and within the Village Center Overlay by Special Use Permit.

Staff Recommendation- Staff recommends the Planning Board receive the report and recommend approval to the Town Council as presented.

Analysis

Staff has recently become aware of a discrepancy within the Commercial Use Table of the UDO found in Section 520.020 G as it relates to the use Automotive Repair Shop business – not including body work, parking and commercial vehicle repair. The UDO indentifies this use as allowed:

3. By right in the Regional Business District (RBD) which is located primarily along the Highway 74 corridor; and
4. By Special Use Permit in the Village Center Overlay Zoning Districts which are located throughout the town at the Village Centers.

It is with the allowed use in the Village Centers where staff believes an oversight occurred when preparing the Unified Development Ordinance. For a use to be allowed within an "Overlay District" is must also be allowed in underlying zoning district. The primary commercial zoning classification found within our village centers is the General Business District (See Attachment 1-Zoning Map). As seen in the table below, the use in not allowed within the GBD zoning district.

	CBD	NBD	GBD	RBD	O-VCD	O-DD	Use Standard
Vehicle Sales and Service							
Auto Supply and Service	-	-	P	P	-	-	
Car Wash	-	-	P	P	-	-	
Heavy Equipment Sales/Rental	-	-	-	P	-	-	
Light Equipment Sales/Rental-Indoor	-	-	P	P	-	-	
Light Equipment Sales/Rental-Outdoor	-	-	-	P	-	-	
Motor Vehicle Repair Shop not including body work, parking and commercial vehicle repair	-	-	-	P	S	-	
Motor Vehicle Repair Shop including body work, parking and commercial vehicle repair	-	-		P			
RV and Boat Storage	-	-	-	S	-	-	
Vehicle Storage and Towing	-	-	-	S	-	-	
Wholesale Distribution				P/S			Permitted by right for office/warehouse facilities built prior to adoption of UDO on December 30, 2008.

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For consistency, staff is proposing that this use be allowed by Special Use permit because there are a few parcels zoned General Business located outside the village centers in close proximity to residential neighborhoods. Requiring a Special Use Permit for this use would ensure it would be evaluated on a case by case basis.

Comprehensive Plan Consistency

Staff is of the opinion the amendment of Section 520.020 G, to allow Automotive Repair Shops excluding body work, parking, and commercial repair, would be consistent with the goals of the adopted Comprehensive Plan in the area of Land Use because:

- It provides a mix of different types of land uses and avoids potential land use conflicts between uses because this amendment proposes to allow the use by Special Use Permit which is a public process and decision by the Indian Trail Board of Adjustments; and
- It provides an opportunity for a more balanced tax base by promoting the development of businesses and retail centers.

Board Action

The Planning Board must make findings in support or in opposition prior to motioning for recommendation. The findings must be made that the proposed amendment is both consistent with the Comprehensive Plan and a reasonable request. Staff is of the opinion the following goal can be found consistent with the Goals of the Comprehensive Plan:

- ***Goal 1.3.2 Land Use –*** this amendment further expands the mix of different types of land uses while avoiding potential land use conflicts between uses it proposes to allow the use by Special Use Permit which requires a review and decision by the Indian Trail Board of Adjustments in a public forum; and
- It furthers the opportunity for a more balanced tax base by promoting the development of businesses and retail centers within the Town.

The request for the amendment of Section 520.020 G of Chapter 520 in the UDO to allow an Automotive Repair Shop (excluding body work, parking, and commercial repair) is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of Land Use and provides consistency with the Unified Development Ordinance.

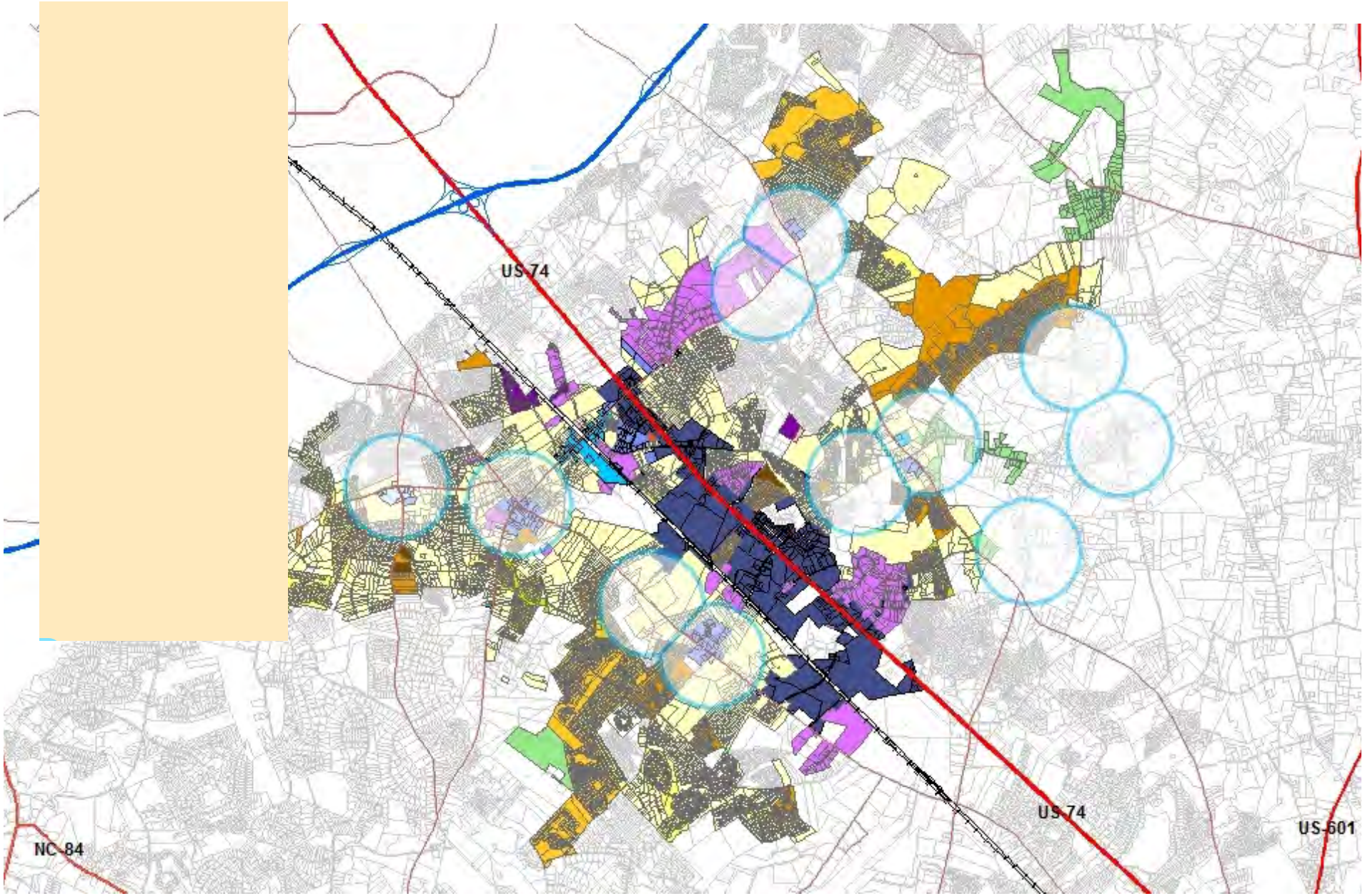
Recommendation

The Planning Staff believes that the findings can be made to support the text amendment.

Staff Contact
Shelley DeHart, AICP
704 821-5401
srd@planning.indiantrail.org

Attachments 1 – Zoning Map
Attachment 2- Draft Ordinance

PB ATTACHMENT ONE: ZONING MAP


US 74
US 74
US 601
NC 84

PB ATTACHMENT TWO: DRAFT ORDINANCE
SEE TOWN COUNCIL ATTACHEMENT – 2

TOWN COUNCIL ATTACHMENT 2
DRAFT ORDINANCE

STATE OF NORTH CAROLINA)
) ORDINANCE #
TOWN OF INDIAN TRAIL)

AN ORDINANCE AMENDING CHAPTER 520 BUSINESS AND COMMERCIAL ZONING DISTRICTS OF THE INDIAN TRAIL UNIFIED DEVELOPMENT ORDINANCE (UDO) RELATED TO ALLOWED COMMERCIAL USES IN INDIAN TRAIL, NORTH CAROLINA

WHEREAS, the town is the applicant for ZT 2013-001 requesting to amend Section 520.020 G of Chapter 520 for the purpose of correcting a discrepancy in the allowed use of an Automotive Repair Shop, not including body work, parking, and commercial repair, within the General Business Zoning Districts of the Town; and

WHEREAS, this Zoning Amendment (ZT 2013-001) was duly noticed in compliance with North Carolina General Statutes; and

WHEREAS, the amendment was heard by Planning Board on February 19, 2013 and in a public meeting; and

WHEREAS, the Planning Board after hearing the amendment and deliberations made the following findings and recommended approval to the Town Council:

This amendment is consistent with the following goals of the adopted Comprehensive Plan in the area of Goal ***1.3.2 Land Use –*** because it further expands the mix of different types of land uses while avoiding potential land use conflicts between uses it proposes to allow the use by Special Use Permit which requires a review and decision by the Indian Trail Board of Adjustments in a public forum. It furthers the opportunity for a more balanced tax base by promoting the development of businesses and retail centers within the Town; and

The request to amend Section 520.020 G of Chapter 520 in the UDO to allow an Automotive Repair Shop (excluding body work, parking, and commercial repair) is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of Land Use and provides consistency with the Unified Development Ordinance.

WHEREAS, the Town Council received the Planning Board transmittal for a recommendation of approval in the required public hearing held on March 12, 2013 and after receiving the transmittal, public comment, and deliberation, concur with the required findings and amendment recommendation as transmitted by the Planning Board.

NOW THEREFORE, BE IT ORDAINED ON MARCH 12, 2013 BY THE TOWN COUNCIL OF THE TOWN OF INDIAN TRAIL, NORTH CAROLINA HEREBY TAKES THE FOLLOWING ACTION:

Section 1 – Council makes the required findings as entered into record and found herein; and

Section 2 - Section 520.020G in Chapter 520 of the UDO is amended as follows:

	CBD	NBD	GBD	RBD	O-VCD	O-DD	Use Standard
Vehicle Sales and Service							
Auto Supply and Service	-	-	P	P	-	-	
Car Wash	-	-	P	P	-	-	
Heavy Equipment Sales/Rental	-	-	-	P	-	-	
Light Equipment Sales/Rental-Indoor	-	-	P	P	-	-	
Light Equipment Sales/Rental-Outdoor	-	-	-	P	-	-	
Motor Vehicle Repair Shop not including body work, parking and commercial vehicle repair	-	-	S	P	S	-	
Motor Vehicle Repair Shop including body work, parking and commercial vehicle repair	-	-	-	P	-	-	
RV and Boat Storage	-	-	-	S	-	-	
Vehicle Storage and Towing	-	-	-	S	-	-	
Wholesale Distribution				P/S			Permitted by right for office/warehouse facilities built prior to adoption of UDO on December 30, 2008.

Indian Trail Unified Development Ordinance
12/31/2008
5-17

Section 3- This ordinance shall be effective immediately upon adoption.

AND IT SO ORDANIED this 12th day of March 2013

Attest:

TOWN COUNCIL OF INDIAN TRAIL

_____

Peggy Piontek, Town Clerk

_____

Michael L. Alvarez, Mayor

APPROVED AS TO FORM:

_____

TOWN ATTORNEY

TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 12, 2013

SUBJECT: Bond Rating Engagement Letter Approval

The Town Council has approved some preliminary projects that are tied to the use of approved bond referendum funds. The next step in the planning, development, and implementation of these future projects is to sell bonds to pay for these projects.

In order to sell these public bonds, the Town will need to receive a bond rating from at least two rating agencies. The Town's bond advisors have recommended getting a bond rating from Moody's and Standard & Poor's. One of the steps in this process is the Town Council approving the attached engagement letter's authorizing the Town staff to proceed with these rating processes.

If these engagement letters are approved by the Town Council, the Town staff will continue to work with the Local Government Commission and our bond advisors to receive a rating from these rating agencies. This rating process will be completed in early April. After the rating process is completed, the Town will work with the Local Government Commission and our bond advisor's to sell the Town's public bonds. Once the Town has the $8 million of bond financing approved from the Local Government Commission, the Town Council will approve these bond transactions within the next couple months. The Town will be asking to sell $6 million in parks & recreation bonds, $1.5 million in street bonds, and $0.5 million in Old Monroe bonds.

MOODY'S
INVESTORS SERVICE

61649
Moody's Investors Service
7 WTC at 250 Greenwich Street
New York, NY 10007
Phone: 212-553-4055
Fax: 212-298-6761
PFGRatingApplications@moodys.com

Contents:

TERMS & CONDITIONS APPLICABLE TO PUBLIC FINANCE RATINGS

RATING APPLICATION AUTHORIZATION

FEE SCHEDULE

APPENDIX A – WEB POSTING / LINKING TERMS AND CONDITIONS

APPENDIX B – UNPUBLISHED RATINGS

Overview:
Moody's Code of Professional Conduct states that Moody's employees who approve or participate in determining or monitoring credit ratings, or who are involved in the development or approval of models or methodologies used in providing rating services, will not participate in discussions regarding fees or payments with any rated entity. Therefore, please do not return this Rating Application to any member of the analytic team involved in the rating process (including managers), or include the analytic team (including managers) in any fee-related correspondence. Moody's maintains a separate, dedicated group, not involved in the rating process, for handling Rating Applications and fee and payment discussions. If you have any questions regarding this Rating Application, please contact the Moody's Account Management Team at (212) 553-4055.

Instructions:
1. Please read the Rating Application carefully;
2. Complete page 7 of the Rating Application with the requisite information;
3. Authorize and execute page 7 of the Rating Application; and
4. **Return executed Rating Application to your contact within the Moody's Account Management Team.**

Moody's requires an executed Rating Application prior to the initiation of the rating process.

This Fee Schedule sets out Moody's fees for the period 1/1/2013 to 12/31/2013. Moody's reserves the right to revise this Fee Schedule from time to time. If Moody's does not revise this Fee Schedule, the current Fee Schedule will also apply in subsequent periods. Please request a current Fee Schedule at the time of your rating assignment.

TERMS & CONDITIONS APPLICABLE TO PUBLIC FINANCE RATINGS

The following terms and conditions shall be deemed incorporated into and shall form a part of the Rating Application, and all references to the "Rating Application" herein shall include such terms and conditions as well as the Fee Schedule set forth below.

A. General

1. **Credit Rating Definition**. A credit rating is Moody's opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories. Moody's credit ratings do not address any other risk, including but not limited to: liquidity risk, market value risk, or price volatility. Any rating must be construed solely as a statement of opinion and not a statement of fact, an offer, invitation, inducement or recommendation to purchase, sell or hold any securities or otherwise act in relation to the Issuer or any other entity or otherwise in connection with any associated transaction or any other matter.

B. Applicant Warranties and Covenants

1. **Agreement to Provide Information.** The undersigned agrees to furnish to Moody's and will procure that the Issuer furnishes Moody's with pertinent financial reports, final deal documents and other information and data required by Moody's, in its sole discretion, in order that Moody's may appraise the Issuer or the specific issue. The undersigned also agrees on an ongoing basis to provide or procure the provision of updated information, including periodic financial reports, and copies of compliance certificates, amendments or waivers, and any other pertinent information which may be necessary for the purposes of monitoring the rating.

2. **Warranties with Respect to Information Provided to Moody's**. The undersigned hereby confirms that it has all legal rights and/or has obtained the relevant consents necessary to disclose the information to Moody's, and that such information is not subject to any restrictions imposed by the relevant underlying issuer or obligor or any legal or regulatory restrictions that would prevent use by Moody's for the purposes envisaged by the Rating Application and its ratings process. The undersigned agrees and acknowledges that it is solely responsible and liable for the quality of the information provided, Moody's will rely on such information in its analysis and Moody's will not be obliged to verify, audit or validate independently any such information. The undersigned warrants that it has undertaken all reasonable due diligence in respect of such information and all information supplied is in all respects true, accurate, complete and not misleading. It is understood that Moody's may aggregate and/or transform any information provided by or on behalf of the Issuer so that it is not capable of association with any individual issuer, and publish, distribute or use such aggregated or transformed data in connection with its products and services. The terms of the Rating Application supersede any other terms and conditions relating to the information, including terms and conditions of any website or electronic data room in which any of the information is posted, which terms and conditions will not apply to Moody's.

3. **Payment of Fees.** The undersigned agrees to pay or will ensure that the Issuer will pay and, if the Issuer does not pay, will itself pay fees determined in accordance with the schedule outlined within the following pages of the Rating Application. Moody's reserves the right to revise the Rating Application.

4. **Use of Rating for Intended Purpose Only.** The undersigned agrees that any rating requested and assigned shall only be used for its intended purpose.

5. **Office of Foreign Assets Control Warranty.** The undersigned represents and warrants that, except to the extent prohibited or penalized under U.S. law:

   (a) neither the undersigned nor the Issuer, or any officer, director, employee, affiliate or agent thereof, nor any person that owns (50 or more percent) or controls, directly or indirectly, the undersigned or the Issuer is a person, which is included on a list of prohibited persons published by the government of a country with jurisdiction over Moody's, the Issuer, or the undersigned, including but not limited to the List of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.K. Consolidated Financial Sanctions List published by Her Majesty's Treasury and no such prohibited person currently has any interest in any asset that is relevant to the rating(s) requested through the Rating Application; and

   (b) neither the undersigned nor the Issuer nor any person that owns (50 or more percent) or controls, directly or indirectly, the undersigned or the Issuer is organized, headquartered, or ordinarily resident in a country that is subject to economic and/or trade sanctions imposed by the United States Government, including but not limited to Burma, Cuba, North Korea, Iran, Syria, or Sudan or a governmental instrumentality of such country and no portion of any asset that is relevant to the rating(s) requested through the Rating Application originated from, or relates to commerce involving, such persons or countries.

   The undersigned agrees to notify Moody's if these circumstances change and further agrees that in the event that Moody's determines that it is prohibited under applicable law from issuing any rating hereunder, Moody's may terminate its activity in connection with such rating and will not be obligated to produce to any person any work product or other information developed by Moody's in connection with such rating activity.

6. **Unpublished Ratings**. See Appendix B attached hereto for additional legal terms applicable to any unpublished rating issued by Moody's hereunder, i.e., any rating not disclosed by Moody's to the general public at the time of issuance to the applicant, including any indicative rating.

C. Moody's Reservation of Rights and Disclaimers

1. **Moody's Right to Issue, Revise or Withdraw Rating.** It is understood that Moody's rating or any corresponding outlook, if assigned, will be subject to revision, suspension or withdrawal, or may be placed on review, by Moody's at any time, without notice, in the sole discretion of Moody's. It is further understood that Moody's is an independent rating agency and is therefore free to determine, apply and amend from time to time its methodologies in its sole discretion in accordance with applicable law.

2. **Disclaimer of Advice.** Moody's is not providing and shall not provide any financial, legal, tax, advisory, consultative or business services to the Issuer, or advice on structuring transactions or drafting or negotiating transaction documentation. The Issuer and/or the undersigned should take their own legal, tax, financial and other advice when structuring, negotiating and documenting transactions. A rating opinion or discussions with Moody's analysts shall not be deemed as rendering advice on business operations.

3. **RACs.** Moody's is not party to any transaction documents and therefore is not bound by clauses in such transaction documents that require a party thereto to obtain an opinion from a rating agency that certain specified events or amendments to the structure or documentation of the transaction will not result in a change in, or withdrawal of, the existing rating maintained by that rating agency (such opinion, in whatever form, along with any information or feedback relating thereto, shall hereinafter be referred to as a "RAC"). Moody's is not obliged to give any such RAC and retains sole discretion whether to do so. The provisions of this Application shall apply to the provision by Moody's of any RAC, and references to "rating" herein shall be deemed to include any such RACs. In the event that Moody's provides the undersigned a RAC, which has not been publicly disclosed by Moody's, the undersigned shall keep the RAC strictly confidential, and not disclose it to any person without Moody's prior written consent.

4. **Limitation of Liability.** Moody's does not guarantee or make any representation or warranty as to the correctness of any information, rating, RAC or communication relating to the Issuer or the undersigned. Notwithstanding anything to the contrary contained herein, Moody's shall not be liable in contract, tort, statutory duty or otherwise to the Issuer or the undersigned or any other third party for any loss, injury or cost caused to the Issuer or the undersigned or any other third party, in whole or in part, including by any negligence (but excluding fraud, dishonesty and/or willful misconduct or any other type of liability that by law cannot be excluded) on the part of, or any contingency within or beyond the control of, Moody's, or any of its directors, officers, employees, agents or affiliates, including any losses arising from or in connection with the procuring, compilation, analysis, interpretation, communication, dissemination, or delivery of any information, RAC or rating relating to the undersigned or the Issuer, the withdrawal of any such rating and any associated disclosure, the inability to issue or monitor a rating due to legislative, judicial or administrative decisions, any change in Moody's methodologies, any unauthorized publication, unauthorized use or any misuse, or any reliance otherwise acknowledged as inappropriate.

D. Moody's Policies

1. **Use of Ratings.** Moody's does not consent to or authorize the use of its rating(s) in any registration statement, offering circular, or prospectus ("Offering Documents"), notwithstanding any past communications or dealings of the parties or anything herein to the contrary. The preceding sentence does not prohibit the disclosure of, or reference to, a Moody's rating in an Offering Document except in circumstances where such disclosure of, or reference to, a Moody's rating in an Offering Document would require a consent or authorization from Moody's to be given and/or filed under any applicable laws, regulations, directives or rules (including, if applicable, the U.S. securities laws or the rules of any securities market or securities exchange). For the avoidance of doubt, if as a result thereof Moody's consent would be required to be filed with the United States Securities and Exchange Commission, the following actions may not be taken by the undersigned or by any other offering participant without the prior written authorization of Moody's, which authorization may be withheld or withdrawn in the sole discretion of Moody's: quoting, summarizing, incorporating by reference, linking by hyperlink or otherwise disclosing or using in any Offering Document, or in any other way referencing, disclosing or disseminating in any other written communication (including a written communication as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) any of the following: (i) the fact that the undersigned has applied to Moody's for a rating, (ii) the fact that Moody's has reviewed information provided by the undersigned in connection with the assignment of a rating, (iii) the fact that Moody's has assigned a rating, and/or (iv) the rating, if any, assigned by Moody's.

2. **Web Posting.** To the extent Moody's publishes written research or press releases specifically regarding the Issuer, as a direct result of the Rating Application, and Issuer desires to link to or post same on its website, the undersigned agrees to the terms and conditions contained in Appendix A.

3. **Moody's Privacy Policy.** For information on how we process and protect personal data, please see our Privacy Policy available at moodys.com.

E. Miscellaneous

1. **Entire Agreement.** The Rating Application represents the whole and only agreement in relation to the subject matter of the Rating Application and supersedes any previous agreement between Moody's and the undersigned in relation to that subject matter. Accordingly, all other terms, conditions, representations, warranties and other statements which would otherwise be implied (by law or otherwise) shall not form part of the Rating Application. The parties hereto agree that in connection with any amendment, modification, supplement, restatement or waiver of any provision of the Rating Application, at any time, no consent or agreement to any such amendment, modification, supplement, restatement or waiver shall be deemed effective and binding upon the other party if such consent or agreement is provided by means of an electronic clickthrough or any other electronic form of acceptance, and the undersigned agrees that neither Moody's nor any affiliate, employee or agent of Moody's shall be bound by or subject to any terms or conditions of use (hereinafter "Website Terms") for access to a web site containing information with respect to the issuer or securities to which this Rating Application relates, including, without limitation, any website established by a third party engaged by or acting on behalf of the undersigned or the Issuer, even if Moody's or any affiliate, employee or agent of Moody's clicks-through or has clicked-through such Website Terms by electronic means at any time before or after the date hereof. The parties agree that no amendment, modification, supplement, restatement or waiver of the preceding sentence shall in any event be effective without the written consent of both parties, provided that such consent shall be effective only if evidenced by a writing signed by hand by an authorized representative of the Global Commercial Group of Moody's or a corporate officer or the holder of a power of attorney of Moody's and an authorized representative of the undersigned.

2. **Assignment.** In the Rating Application, Moody's refers to the Moody's entity specified above and all its relevant group companies. Moody's group companies are entitled to the benefit of the protective provisions in the Rating Application. Moody's may assign the Rating Application to any other Moody's group company.

3. **Third Party Contractors and Agents.** It is understood that Moody's may use third party contractors or agents bound by confidentiality obligations to assist in the ratings process or its related business and research activities.

4. **Governing Law and Jurisdiction.** The Rating Application and any contractual or non-contractual obligations arising from or connected to it shall be governed by and construed in accordance with the laws of the State of New York in the United States of America and subject to the exclusive jurisdiction of the courts of the State of New York in the United States of America.

5. **No Third Party Beneficiaries.** The Rating Application is intended to be solely for the benefit of the parties hereto and nothing expressed or referred to in the Rating Application shall be construed to give any person other than Moody's and the undersigned any legal or equitable right, remedy or claim under or with respect to the Rating Application or any provision of the Rating Application, except such rights as shall inure to a successor or permitted assignee pursuant to this Section E3 above.

6. **Severability.** If any provision of the Rating Application, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, then the remainder of the Rating Application and the application of such provision to other persons or circumstances shall be interpreted so as reasonably to effect the intent hereof, and such void or unenforceable provision of the Rating Application shall be replaced with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

7. **Confidentiality.** The undersigned agrees to keep the provisions of the Rating Application and any other non-public information with respect to the rating disclosed by Moody's to the undersigned confidential and not to disclose such provisions or information to any person except (i) affiliates, officers, directors, employees, representatives, agents and advisors, and (ii) as required by applicable law, rule or regulation, or at the request of any governmental agency or authority having jurisdiction. The undersigned will cause its affiliates, officers, directors, employees, representatives, agents and advisors to comply with the foregoing.

8. **Termination**. The Rating Application will renew annually on the anniversary of the date executed unless Moody's or the undersigned provides thirty (30) days prior written notice; provided , however, that if the undersigned is applying for an unpublished rating hereunder, then this Application shall not renew and in the event that the undersigned wishes to apply for a public rating in connection with the subject matter of the Rating Application, the undersigned must execute and deliver to Moody's a new rating application with respect to such rating. Any termination of The Rating Application shall not restrict Moody's from maintaining, revising or withdrawing any rating on the undersigned or any third party. The Rating Application can be terminated at any time by Moody's or upon at least 3 months written notice by the undersigned. In the event of termination by the undersigned 3 months or more prior to the end of the then current annual billing period or in the event of termination by Moody's, the undersigned will pay Moody's all fees due in respect of the then current annual billing period. In the event of termination by the undersigned less than 3 months prior to the end of the then current annual billing period, the undersigned will pay Moody's all fees due in respect of the then current annual billing period, plus a pro rata portion of the fees in respect of the next annual billing period representing the proportion of the notice period that falls within the next annual billing period.

RATING APPLICATION AUTHORIZATION **(Please Print/Type)**

Please do not return this Rating Application to any member of the analytic team involved in the rating process (including managers). Please return this Rating Application to your contact within the Moody's Account Management Team.

The undersigned both in its own capacity and on behalf of the Issuer (if the undersigned is not the Issuer) agrees to the terms of this Rating Application and hereby applies for Moody's rating(s):

_____
ISSUING AUTHORITY NAME (if applicable)

_____
BORROWING ENTITY'S NAME

PLEASE COMPLETE THIS SECTION (check only one):

☐ 1. Indicative Rating (Private Unmonitored Point- in-Time Rating)
☐ 2. Public Rating

PLEASE PRINT OR TYPE

APPLICANT:_____

BY:_____TITLE: _____

MAILING ADDRESS: _____

CITY: _____STATE: _____ZIP CODE: _____

TELEPHONE NUMBER: (____)_____ FAX NUMBER: (____)_____

EMAIL: _____

AUTHORIZED BY (signature): _____DATE:_____

PRINT NAME: _____ TITLE: _____

This Fee Schedule sets out Moody's fees for the period 1/1/2013 to 12/31/2013. Moody's reserves the right to revise this Fee Schedule from time to time. If Moody's does not revise this Fee Schedule, the current Fee Schedule will also apply in subsequent periods. Please request a current Fee Schedule at the time of your rating assignment.

Moody's Public Finance Group
2013 Rating Fee Schedule
Local Governments

Moody's Code of Professional Conduct states that Moody's employees who approve or participate in determining or monitoring credit ratings, or who are involved in the development or approval of models or methodologies used in providing rating services, will not participate in discussions regarding fees or payments with any rated entity. Therefore, please do not return this rating application or Fee Schedule to any member of the analytic team involved in the rating process (including managers), or include the analytic team (including managers) in any fee-related correspondence. Moody's maintains a separate, dedicated group not involved in the rating process for handling applications, fee schedules and fee and payment discussions. If you have any questions regarding this Application or Fee Schedule, please contact the Moody's Account Management Team.

Moody's rating fees are shown in the schedule below.

Issue Size	General Obligation Bonds	Revenue, Lease, Special Tax & State Revolving Fund Bonds	Short Term Notes
Less than $1 mil.**	$8,500	$11,000	$3,500
$1 mil to $4,999,999	$10,000	$11,000	$6,500
$5 mil. to $9,999,999	$12,500	$15,000	$7,500
$10 mil. to $19,999,999	$17,000	$18,500	$9,500
$20 mil. to $24,999,999	$17,000	$23,000	$10,500
$25 mil. to $34,999,999	$24,000	$23,000	$13,500
$35 mil. to $39,999,999	$24,000	$28,500	$13,500
$40 mil. to $49,999,999	$24,000	$28,500	$16,000
$50 mil. to $74,999,999	$28,000	$37,500	$19,000
$75 mil. to $89,999,999	$40,000	$42,500	$22,000
$90 mil. to $99,999,999	$40,000	$51,500	$22,000
$100 mil. to $149,999,999	$60,000	$70,000	$32,000
$150 mil. to $199,999,999	$80,000	$85,000	$42,000
$200 mil. to $299,999,999	$105,000	$110,000	$60,000
$300 mil. to $499,999,999	$105,000	$130,000	$70,000
$500 mil. to $999,999,999	$110,000	$145,000	$75,000
$1 bil. and over	Case by case	Case by case	Case by case

This Fee Schedule sets out Moody's fees for the period 1/1/2013 to 12/31/2013. Moody's reserves the right to revise this Fee Schedule from time to time. If Moody's does not revise this Fee Schedule, the current Fee Schedule will also apply in subsequent periods. Please request a current Fee Schedule at the time of your rating assignment.

Moody's Public Finance Group
2013 Rating Fee Schedule
Local Governments

Bond Anticipation Notes:

Issue Size	Standard Fee
Less than $5,000,000	$3,500
$5,000,000 - $14,999,999	$5,500
$15,000,000 - $24,999,999	$8,500
$25,000,000 - $49,999,999	$11,000
$50,000,000 - $74,999,999	$16,000
$75,000,000 - $99,999,999	$21,000
$100,000,000 - $249,999,999	$31,000
$250,000,000 - $499,999,999	$41,000
$500,000,000 - $749,999,999	$51,000
$750,000,000 - $999,999,999	$61,000
$1,000,000,000 and over	$76,000

Commercial Paper

The Initial and annual fee for program sizes less than $100m is $16,000 and $18,500 if greater than $100m. Annual fees will be discounted for multiple programs.

Variable Rate Issues

Initial and annual fees for Variable Rate issues are as follows:

Initially: Additional $7,000 added to the long term fees.

Annual Fees - based on principal amount (Excludes self-liquidity):

Less than $5m	$3,500
$5m - $9.9m	$5,500
$10m-$49.9m	$7,500
$50m -$99.9m	$8,000
$100m -$499.9m	$8,500
$500m and over	$9,000

Self Liquidity

Less than $100m	$20,000
$100m- $499.9m	$25,000
$500m-$999.9m	$30,000
$1b and over	$40,000

Annual Fees are non-refundable.

Amendments to existing variable rate transactions

$1,300	Applies to extension of credit or liquidity enhancement.
$1,650 and up	Applies to Rating Agency Comment or affirmation of rating.
$6,500	Applies to substitution of credit or liquidity enhancement with no provision changes. Where there are multiple deals with identical documents, the fee for the first deal is $6,500 and each additional deal is $3,250.

This Fee Schedule sets out Moody's fees for the period 1/1/2013 to 12/31/2013. Moody's reserves the right to revise this Fee Schedule from time to time. If Moody's does not revise this Fee Schedule, the current Fee Schedule will also apply in subsequent periods. Please request a current Fee Schedule at the time of your rating assignment.

Moody's Public Finance Group
2013 Rating Fee Schedule
Local Governments

Amendments to existing variable rate transactions (continued)

$8,000	Applies to substitution of credit or liquidity enhancement with provision changes (amending auto terminations, amending indentures, changing any other document other than the LOC/SBPA). Where there are multiple deals with identical documents, the fee for the first deal is $8,000 and each additional deal is $4,000.
80% of new issuance fee	Applies to restructuring of security and complex substitutions, i.e., when the replacement credit or liquidity enhancement is a different type of enhancement vehicle.

Bank Bonds
A $5,500 fee will be charged for Bank Bond Ratings assigned in conjunction with the rating of the initial bonds.

Termination of Rating Process
Applicable when substantial analytical research is provided, but the rating process is terminated. The fee is 75% of what the fee would have been if the rating process had not been terminated. This fee is payable at the time of the termination of the rating process. However, if the issue is reactivated and a rating is assigned within six months of the termination of the rating process, this fee will be credited against the applicable rating fee. Any excess over the actual charges for the definitive rating is non-refundable.

Postponed/Canceled Sales
The fee for an issue that has been assigned a rating and is subsequently canceled or postponed will be 75%of that which would have been applicable had the issue sold. The fee is payable at the time of cancellation or postponement. If the issue sells within six months, the balance of the original fee will be invoiced. Any excess over the actual charges for the definitive rating is non-refundable.

Indicative Rating Service
The fee for an issue that has been assigned a preliminary rating indicator will be 75% of the standard fee. If an application for a public underlying and/or insured rating is received within six months of the assignment of the indicative rating, the indicative rating fee will be credited against the charges outlined on the current fee schedule.
Moody's reserves the right to publish its ratings upon any public disclosure of the ratings. Any excess of the indicative rating fee over the actual charges for the subsequently assigned definitive rating is non-refundable.

Preferred Pricing
Preferred Pricing is applied only in circumstances where Moody's has rated an issue during the prior 9 months and there are no outstanding unpaid rating fees. Moody's normal BAN rating fees are discounted for preferred pricing clients. Contact the Moody's Account Management Team to verify eligibility.
Preferred Pricing clients issuing bonds in the amount of $500,000 or less would be charged $2,750.

Complex Financings
Moody's may charge an additional fee of up to $110,000 for certain types of complex financings. Please contact the Moody's Account Management Team to discuss whether such complex deal fees apply to a planned financing.

Rapid Turnaround
A fee of up to $10,000 may be charged at Moody's sole discretion if there is a request for expedient delivery of a rating.

Additional Fee for 3rd Party Service Providers/Out-of-pocket expenses
Moody's may: (i) request reimbursement of reasonable travel and related expenses; and (ii) in some instances, charge an additional fee for services/opinions provided by a third party in connection with the ratings process. In either of these circumstances, Moody's will seek confirmation from the applicant in advance. Any such fees will be payable upon receipt of an invoice from Moody's.

Pooled financings, letters of credit and structured issues are not included in any of the above rates.
Moody's reserves the right to change rating fees without prior notification.
All inquiries may be directed to the Moody's Account Management Team at (212) 553-4055.

This Fee Schedule sets out Moody's fees for the period 1/1/2013 to 12/31/2013. Moody's reserves the right to revise this Fee Schedule from time to time. If Moody's does not revise this Fee Schedule, the current Fee Schedule will also apply in subsequent periods. Please request a current Fee Schedule at the time of your rating assignment.

Appendix A

Web Posting / Linking Terms and Conditions

To the extent Moody's publishes written research or press releases specifically regarding the Issuer, as a direct result of this Application ("Issuer Research"), and Issuer desires to link to or post same on its website, the following terms will apply.

The undersigned is hereby granted a royalty-free, non-sublicensable (except as to the Issuer, if the undersigned is not the Issuer), revocable license to post Issuer Research on the Issuer's website (or to post a link to the page on Moody's website where such Issuer Research appears), subject in all cases to the following restrictions. Where the undersigned is not the Issuer, the undersigned agrees that it shall procure that the Issuer complies with all the conditions pertaining to posting or linking to Issuer Research as set forth herein. All Issuer Research and all trademarks and logos contained therein are the intellectual property of Moody's or its affiliates, and all rights not expressly granted herein are reserved.

In no event shall the Issuer Research include any pre-sale reports (prior to initial sale of the relevant security), non-public, or unmonitored ratings. Only the most recent Issuer Research may be posted, in the exact form and format provided by Moody's without any alterations or editing whatsoever (including all disclaimers, logos, and proprietary rights notices thereon). All outdated Issuer Research must be promptly deleted and updated Issuer Research posted promptly after it is published by Moody's. Any links to or posting of Issuer Research shall be indicated by Moody's corporate name only in plain text font, and may not display Moody's logo under any circumstances. Issuer Research or links to Issuer Research may only be displayed on the investor relations portion of the relevant website (or an analogous area where general corporate information is displayed) and not on any portion of the site (or in any hard copy form) for the purpose of marketing, promotion or advertising. Issuer Research may not be posted, linked to, displayed, or otherwise used in connection with a prospectus, "road show" deck, or any other document related to the offering of securities.

The undersigned, on behalf of itself and the Issuer, agrees and acknowledges that it is solely responsible for compliance with all laws, rules, and regulations including but not limited to applicable securities laws, in connection with the posting or linking to the Issuer Research. The undersigned (on behalf of itself and Issuer, if different entities) hereby agrees to indemnify and hold Moody's, its affiliates, and all of their respective employees, officers, directors, representatives, agents, successors, and assigns, harmless against any and all losses, claims, damages, costs or injury (including without limitation attorneys' fees), of whatever nature (whether foreseeable or not) and however caused, in whole or in part caused by, resulting from or relating to, posting or linking to the Issuer Research.

This license shall terminate as of the date that the undersigned and/or this Issuer are no longer active Moody's clients; or upon advance written notice from Moody's at any time. Upon termination, all posting and linking to Issuer Research permitted hereunder must cease immediately.

Appendix B

Additional Terms and Conditions Applicable to Unpublished Ratings

As used herein, the term "unpublished rating" shall mean any rating issued by Moody's hereunder that is not disclosed by Moody's to the general public at the time of issuance to the Applicant, including any indicative rating.

Notwithstanding anything to the contrary contained in this Application and Fee Schedule, the following terms and conditions shall apply to all unpublished ratings and shall survive termination of this Application .

Confidentiality

The applicant shall treat as confidential and may not disclose an unpublished rating or any other information received or obtained as a result of entering into or performing this Application which relates to the provisions of this Application, the negotiations relating to this Application or Moody's; provided, however, that the applicant may disclose such confidential information: (i) if and to the extent required by applicable law, (ii) to those of its financial and legal advisors, in their capacity as such and to whom Moody's owes no duty or responsibility, with a need to know, and (A) who enter into a non-disclosure agreement with Moody's in the form provided by Moody's (a "NDA") prior to such disclosure, or (B) with respect to whom Moody's consents to such disclosure and who agree to be bound by the confidentiality obligations and limitation of liability provisions of this Application, and (iii) to its directors, officers, employees with a need to know; provided that any breach of such confidentiality obligations by the recipients described in clauses (ii) and (iii) will be deemed the applicant's breach of the corresponding provision(s) of this Application.

Indemnity

The applicant agrees to indemnify and hold harmless Moody's and its affiliates and their respective directors, officers, employees and agents (each, an "indemnified party") from and against any losses, claims, damages, costs, or liabilities (including, without limitation, attorneys' fees) of whatever nature (whether foreseeable or not) and however caused which the indemnified party may suffer or incur relating to or arising directly or indirectly out of (i) this Application and the attached Fee Schedule, (ii) the delivery to the applicant of, or reliance by the applicant or by any third party on, the unpublished rating, (iii) any breach of this Application by the applicant, (iv) any disclosure of confidential information or the unpublished rating or other opinion, or (v) any actions taken or omitted to be taken by Moody's as contemplated by this Agreement. The terms of this indemnity shall not apply to the extent that any such claim arises by reason of any fraud, dishonesty or willful misconduct on the part of Moody's other than to the extent such claim derives from any unauthorized publication, unauthorized use or misuse of the unpublished rating or from any reliance otherwise acknowledged as inappropriate. This indemnity shall supersede and replace the indemnification provision in the main body of this Application with respect to unpublished ratings only.

17g-5

Notwithstanding anything to the contrary herein, if the unpublished rating relates to a structured finance instrument, the Applicant acknowledges and agrees that Moody's shall not issue or publish the unpublished rating if Moody's, in its sole discretion, determines that US Securities and Exchange Commission Rule 17g-5 under the Securities Exchange Act of 1934 would apply to such unpublished rating.

STANDARD & POOR'S
RATINGS SERVICES

Morna Lebron
Manager Fee Administration
55 Water Street, 38th Floor
New York, NY 10041-0003
tel 212 438-6808
morna_lebron@standardandpoors.com
issue no.: 1251347
org id: 545076

February 20, 2013

Indian Trail
100 Navajo Trail
PO Box 2430
Indian Trail, NC 28079
Attention: Ms. Marsha Sutton, Finance Director

Re: ***US$8,000,000 Indian Trail, North Carolina, General Obligation Bonds, dated: Date of delivery***

Dear Ms. Sutton:

Thank you for your request for a confidential Standard & Poor's credit rating for the above-referenced obligations. We agree to provide credit ratings for the obligations in accordance with this letter and the rating letter, and you agree to perform your obligations set out in sections 1 and 2 of this letter. Unless otherwise indicated, the term "issuer" in this letter means both the issuer and the obligor if the obligor is not the issuer.

Standard & Poor's relies on issuers and their agents and advisors for the accuracy and completeness of the information submitted in connection with credit ratings and the surveillance of credit ratings including, without limitation, information on material changes to information previously provided by issuers, their agents or advisors. Credit ratings, and the maintenance of credit ratings, may be affected by Standard & Poor's opinion of the information received from issuers, their agents or advisors.

We will make every effort to provide you with the high level of analytical performance and knowledgeable service for which we've become known worldwide. You will be contacted directly by your assigned analytic team.

1. Fees and Termination.

In consideration of our analytic review and issuance of the credit rating, you agree to pay us the following fees:

Rating Fee. You agree to pay us a credit rating fee of $12,500. Standard & Poor's reserves the right to adjust the credit rating fee if the proposed par amount changes. Payment of the credit rating fee is not conditioned on Standard & Poor's issuance of any particular credit rating.

Derivatives Products Analysis Fee. Standard & Poor's charges a separate fee for our review of derivative products. This separate fee is applicable for derivative products secured by any of the issuer's revenues. Derivative products include, but are not limited to, interest rate swaps, caps,

collars, floors, and swaptions. Derivative products analysis fees will be determined on a case-by-case basis based on the number and complexity of the derivative products.

Other Fees and Expenses. You will reimburse Standard & Poor's for reasonable travel and legal expenses if such expenses are not included in the above fees. Should the credit rating not be issued, you agree to compensate us based on our time, effort, and charges incurred through the date upon which it is determined that the credit rating will not be issued.

Termination of Engagement. This engagement may be terminated by either party at any time upon written notice to the other party.

2. Private and Confidential Credit Ratings.

If you request a confidential credit rating under this Agreement, you agree that the credit rating will be exclusively for your internal use, and not to disclose it to any third party other than your professional advisors who are bound by appropriate confidentiality obligations or as otherwise required by law or regulation or for regulatory purposes.

If you request a private credit rating under this Agreement, Standard & Poor's will make such credit rating and related report available by email or through a password-protected website or third-party private document exchange to a limited number of third parties you identify, and you agree not to disclose such credit rating to any third party other than (A) to your professional advisors who are bound by appropriate confidentiality obligations, (B) as required by law or regulation or for regulatory purposes, or (C) for the purpose of preparing required periodic reports relating to the assets owned by a special purpose vehicle that has purchased the rated obligation, provided that the preparer(s) of the reports must agree to keep the information confidential and the private credit rating shall not be referred to or listed in the reports under the heading "credit rating," "rating" or "S&P rating", and shall be identified only as a "Standard & Poor's implied rating" or similar term. If a third-party private document exchange is used, you agree to pay a one time administrative fee of $10,000 in addition to the fees outlined in this Agreement. You also agree to maintain the list of third-parties authorized to access the private credit rating current and to notify Standard & Poor's in writing of any changes to that list. Standard & Poor's may make access to the private credit rating subject to certain terms and conditions, and disclose on its public website the fact that the rated entity or obligations (as applicable) has been assigned a private credit rating.

3. Other.

Standard & Poor's has not consented to and will not consent to being named an "expert" or any similar designation under any applicable securities laws or other regulatory guidance, rules or recommendations, including without limitation, Section 7 of the U.S. Securities Act of 1933. Standard & Poor's has not performed and will not perform the role or tasks associated with an "underwriter" or "seller" under the United States federal securities laws or other regulatory guidance, rules or recommendations in connection with a credit rating engagement.

Standard & Poor's has established policies and procedures to maintain the confidentiality of certain non-public information received from issuers, their agents or advisors. For these purposes,

"Confidential Information" shall mean verbal or written information that the issuer, its agents or advisors have provided to Standard & Poor's and, in a specific and particularized manner, have marked or otherwise indicated in writing (either prior to or promptly following such disclosure) that such information is "Confidential."

Standard & Poor's does not and cannot guarantee the accuracy, completeness, or timeliness of the information relied on in connection with a credit rating or the results obtained from the use of such information. STANDARD & POOR'S GIVES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. Standard & Poor's, its affiliates or third party providers, or any of their officers, directors, shareholders, employees or agents shall not be liable to any person for any inaccuracies, errors, or omissions, in each case regardless of cause, actions, damages (consequential, special, indirect, incidental, punitive, compensatory, exemplary or otherwise), claims, liabilities, costs, expenses, legal fees or losses (including, without limitation, lost income or lost profits and opportunity costs) in any way arising out of or relating to a credit rating or the related analytic services even if advised of the possibility of such damages or other amounts.

Please feel free to call me if you have any questions or suggestions about our fee policies. In addition, please visit our web site at www.standardandpoors.com for our ratings definitions and criteria, research highlights, and related information. We appreciate your business and look forward to working with you.

Sincerely yours,

Morna Lebron

Standard & Poor's Ratings Services
a Standard & Poor's Financial Services LLC business.

By: Morna Lebron
Manager Fee Administration

bp

cc: Mr. Mitch Brigulio, Vice President
Davenport & Company LLC

TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 7, 2013

SUBJECT: Park Project Manager Approval

In November 2012, Town residents passed a park referendum to begin the construction on two municipal parks. In December 2012, the Town Council directed staff to begin these park projects in early 2013, and the first step is to hire a Park Project Manager to oversee the development of these projects. The Park Project Manager will oversee day-to-day management of the planning, design, engineering and construction of these parks working at the direction of the Town Council and Town staff.

In December 2012, the Town advertized a RFQ to solicit bids for qualified Park Project Management firms. The Town interviewed two respondents to the RFQ on Jan 9th. The two respondents were evaluated on the following criteria:

- Qualifications of the Consultant, Project Manager, and Project Team, including proximity to the Town
- Work history and references for similar past projects with the Town of Indian Trail, other municipalities, and state agencies
- Availability of the Consultant's staff to meet with and assist Town staff, and to attend evening meeting with local committees and Town Council.
- Availability to meet time frame established for completion of the project(s).
- Ability to meet any insurance requirements requested by the Town.
- Consultant's design philosophy and approach to design.

- Ability of the Consultant to possess a clear understanding of the project.
- Consultant's history of effective schedule and budget management for projects of similar scale and complexity.
- Ability to use processes that creatively engage project stakeholders.
- Previous experience with engaging and communicating with property owners adjacent to the property under development.

After the interviews, the staff thought both Site Solutions and Woolpert were equally qualified to be a Park Project Manager for Indian Trail. Staff will be recommending splitting these two park projects and have two Park Project Manager's.

At the March 12th Town Council meeting, the staff is recommending the Town Council approve Site Solutions as the Park Project Manager for the 51 acre 'Chestnut' Park site. Site Solutions has had good success in developing parks of similar size in Stallings with their municipal park, Kannapolis' Village Park; Mecklenburg County's Bradford Park; and Huntersville's Richard Barry Memorial Park.
Site Solutions will also be working with local firm, Eagle Engineering and has staff living in Union County.

Recommendation: Staff recommends the approval of Site Solutions as Park Project Manager for the 'Chestnut' Park area.

TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 12, 2013

SUBJECT: Carolina Courts Sub Agreement

In August 2012, the Council approved the Public-Private Partnership Agreement between the Town of Indian Trail and Carolina Courts. There were items that were not covered in the main agreement that were necessary to create a sub agreement or "declaration" for the Town of Indian Trail. Such items covered in this sub agreement fall under commons areas, easements, liability insurance and other general legal issues. This sub agreement is necessary for the final approval and closing of Carolina Courts and its lender.

Kelly Barnhardt
Director of Community & Economic Development

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

Town of Indian Trail, Union County,
North Carolina

Drawn by and mail to:
George W. Sistrunk III
Hamilton Stephens Steele & Martin, PLLC
201 South College Street, Suite 2020
Charlotte, NC 28226

STATE OF NORTH CAROLINA

COUNTY OF UNION

DECLARATION OF EASEMENTS COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS (the "**Declaration**") is made and entered into as of _____, 2013 (the "**Effective Date**"), by the **TOWN OF INDIAN TRAIL** ("**Declarant**"), whose address is Box 2430, Indian Trail, NC 28079.

WITNESSETH:

Declarant is the owner of certain real property located in Union County, North Carolina, which is more particularly described as being all of the property described in the deed to Declarant recorded in Book 5468, Page 1 of the Union County Public Registry (the "**Property**"). Declarant intends to develop the Property, except for the portion defined below as the "Partners Property, as a public park (the "**Park Property**"). After the recording of this Declaration, Declarant intends to convey to Partners in Hoops, LLC the portion of the Property described on **Exhibit A**, attached hereto and incorporated herein (the "**Partners Property**"), for development as an athletic facility.

Declarant, for the use and benefit of itself, its successors and assigns, does hereby declare, encumber, place and impose upon the Property the following conditions, covenants, reservations, easements, and restrictions (the "**Covenants**") to ensure the proper use, appropriate development, and improvement of such Property; to enhance the value, desirability and attractiveness of the Property; and to provide for the maintenance and continued improvement of certain common facilities within the Property. This Declaration is intended to complement and supplement local governmental laws and regulations and in the event of a conflict occurring between the provisions of this Declaration and such laws and regulations, the most strict requirements shall control.

NOW, THEREFORE, Declarant hereby declares that this Declaration and the Covenants established herein are covenants to run with the land and that all the Property, and any additional property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is herewith subject and subordinate to the terms, provisions and conditions hereof. The Covenants will inure to the benefit of and are binding upon each and every Owner (defined below) and his or her respective heirs, representatives, successors, purchasers, lessees, grantees, mortgagees, guests and invitees. By the recording or acceptance of the conveyance of any portion of the Property or any interest therein, the person or entity to which the interest is conveyed is deemed to accept and agree to be bound by the provisions of this Declaration.

ARTICLE 1

DEFINITIONS

1.1 Definitions. In addition to the defined terms in the recitals above, the following terms shall have the meanings given them below.

(a) "Access Areas" has the meaning set forth in Section 3.2.

(b) "Common Facilities" has the meaning set forth in Section 3.1.

(c) "Common Facilities Maintenance Charges" has the meaning set forth in Section 3.1.

(d) "Declarant" means the Town of Indian Trail.

(e) "Drainage Pond" means the drainage pond identified on **Exhibit B** and any appurtenant drainage facilities.

(f) "Owner" means Declarant or Partners, as applicable, and "Owners" means, collectively, Declarant and Partners.

(g) "Parking Facilities" means all parking areas constructed or to be constructed on the Property, including, without limitation, associated curbs, medians, and landscaping located within such parking areas.

(h) "Partners" means Partners in Hoops, LLC and any successor owner of the Partners Property or any portion thereof.

(i) "Partners Common Facilities Share" has the meaning set forth in Section 3.1.

(j) "Partners Facility" means the structure or structures to be constructed on the Partners Property.

(k) "Plat" means the plat titled "Final Record Plat for the Town of Indian Trail" recorded in Book _____, Page _____ of the Union County Public Registry.

(l) "Scenic Gateway and Tree Easement" means the easement described in Section 3.4 of this Declaration and which is located on the Partners Property within the area labeled "Scenic Gateway & Tree Easement" on the Plat.

(m) "Sidewalk Easement Area" means the area on the Partners Property shown as the "20' Sidewalk Easement" on the Plat.

(n) "Sidewalks" means all sidewalks constructed or to be constructed on the Park Property and any sidewalks constructed within the Sidewalk Easement Area.

(o) "Trash Enclosure" means the trash enclosure constructed or to be constructed on the Partners Property in the general location identified on **Exhibit B**.

(p) "Water Easement" means the easement described in Section 3.2(d) of this Declaration and which is located on the Partners Property in the area labeled "10' Water Easement" on the Plat.

ARTICLE 2

PROPERTY

2.1 Description.

The Property initially made subject to this Declaration is described as being all of the property described in the deed to Declarant recorded in Book 5468, Page 1 of the Union County Public Registry.

2.2 Additions to Property.

The Declarant shall have the right, without any consent of Partners, to bring within the plan and operation of this Declaration, or to consent thereto, the whole or any portion of any property contiguous or adjacent to the Property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this subsection shall be made by Declarant filing in the ROD a Supplemental Declaration with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of this Declaration thereto. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the land added hereto, and as are not materially inconsistent with, this Declaration; but such modifications shall have no effect on the Property described in Section 2.1 above.

ARTICLE 3

COMMON FACILITIES; PROPERTY RIGHTS AND EASEMENTS

3.1 Common Facilities and Charges.

The Common Facilities shall consist of the following:

a. The Access Areas;

b. The Parking Facilities;

c. The Sidewalks;

d. The Trash Enclosure.

e. The Drainage Pond.

Declarant, at its sole cost and expense (but subject to the reimbursement from Partners described below), shall be responsible for constructing, maintaining, repairing, and replacing the Common Facilities (unless otherwise subject to a specific indemnification obligation set forth in this Declaration). Partners shall pay One Hundred and 00/100 Dollars ($100.00) per month (the "**Partners Common Facilities Share**") to Declarant to cover Partners' share of all costs for maintaining, repairing, and replacing the Common Facilities (except for those costs that are subject to a specific indemnification obligation of Partners set forth in this Declaration). Partners Common Facilities Share shall be paid to Declarant on the first day of each month, beginning with the first month following the acquisition of the Partners Property by Partners.

3.2 Easements.

(a) Easements of Access, Ingress and Egress.

Subject to the provisions of this Declaration, the Owners and their respective successors, assigns, purchasers, lessees, grantees, mortgagees, guests, and invitees will have easements of vehicular and pedestrian access, ingress, and egress over and across all roadways, driveways, Parking Facilities, curb cuts, walkways and Sidewalks located within or to be located within the Property (the "**Access Areas**"), such easement to be appurtenant to and to pass and run with title; subject, nevertheless, to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Declaration.

(i) Construction Traffic.

The Owners shall use reasonable efforts to assure that construction traffic to and from their property shall not interfere with the use, occupancy and enjoyment of the remainder of the Property (or any part thereof). An Owner shall be responsible for any damage to the Property caused, directly or indirectly, by Owner's contractors and suppliers.

(b) Easements for Parking.

Subject to the provisions of this Declaration, the Owners and their respective successors, assigns, purchasers, lessees, grantees, mortgagees, guests, and invitees will have easements for vehicular parking within the Parking Facilities, such easement to be appurtenant to and to pass and run with title; subject, nevertheless, to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Declaration. The Owners and their respective successors, assigns, purchasers, lessees, grantees, mortgagees, guests, and invitees will allow the general public to park in the Parking Facilities located on the portion of the

Property owned by each Owner. In a separate agreement, the Declarant and Partners may agree to limit the parking in certain areas for special events.

(c) Changes in Boundaries; Additions to Access and Parking Areas.

The Declarant expressly reserves the right to change and realign the boundaries of the Access Areas and Parking Facilities on the Park Property. Partners may not change or realign the boundaries of the Access Areas and Parking Facilities on the Park Property without the prior written consent of Declarant.

(d) Easements for Utilities.

There is hereby reserved for the benefit of the Declarant and its respective successors, assigns, lessees, grantees, mortgagees, guests, and invitees, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (1) all of the Common Facilities in accordance with this Declaration; (2) the Scenic Gateway and Tree Easement and the Water Easement; (3) as required by applicable development standards or zoning ordinance; and (4) as set forth in a Supplemental Declaration. Such applicable easements shall be for the purposes of installing, replacing, repairing, maintaining, and using sanitary sewer, water (fire and domestic), gas, electrical, telephone, and communications lines and other similar facilities (hereinafter and collectively referred to as "**Utility Lines**"), except that the Water Easement shall be used solely for purposes of installing, replacing, repairing, maintaining, and using water (fire and domestic) lines and facilities. Such easements may be granted or accepted by the Declarant, its successors or assigns. All utility lines and facilities serving the Project and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Property so encumbered, (A) to install and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities; (B) to cut and remove any trees, bushes, or shrubbery; (C) to grade, excavate, or fill; or (D) to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such Utility Lines and systems.

(i) Owner's Easements to Tap into Utility Lines.

Each Owner and successors and assigns shall have the alienable, transferable, perpetual and non-exclusive right and easement to tap into and connect to any Utility Lines located within any adjoining Lot and with respect to which service will not be extended to the Owner's Lot by the utility provider, such easement being limited to the easement area therefor provided above under clauses (1) through (4) of this Section 3.2(d).

3.3 Trash Enclosure and Collection.

Partners will pay Declarant $50.00 per month for use of the Trash Enclosure (the "**Trash Enclosure Fee**"). The Trash Enclosure Fee shall be paid to Declarant on the first day of each month, beginning with the first month following the acquisition of the

Partners Property by Partners. Declarant shall construct the Trash Enclosure at its sole cost and expense. The Trash Enclosure shall include an area for solid waste and recycling containers, equipment for grease removal, and solid waste and recycling containers for Declarant's and Partner's trash. Each Owner is responsible for contracting and paying for its own waste removal service. Each Owner shall comply with all applicable laws, rules, and regulations relating to trash disposal and removal. Partners shall indemnify, defend, and hold Declarant harmless for all claims, causes of actions, damages, costs, and fees (including attorneys fees) incurred by Declarant as a result of Partners failure to properly dispose of waste or have waste removed from the Property.

3.4 Scenic Gateway and Tree Easement.

In addition to the easement for Utility Lines described in Section 3.2(d) of this Declaration, there is hereby reserved for the benefit of the Declarant and its respective successors, assigns, lessees, grantees, mortgagees, guests, and invitees, the alienable, transferable, and perpetual right and easement upon, over, under, and across the Scenic Gateway and Tree Easement for purposes of installing, replacing, repairing, and maintaining the following: trees, shrubbery, and other landscaping; entrance and other signs relating to the Property; fencing; and ornamental features. Partners shall not construct or place any structures or obstructions within the Scenic Gateway and Tree Easement.

3.5 Rights of Third Parties.

The easements hereby established are private easements, and nothing herein shall be construed to create easements in favor of the general public. However, easements created and reserved under this Declaration in favor of the Declarant and the Owners may be exercised, used, and enjoyed by each such easement holder's agents, employees, contractors, tenants, invitees, licensees, and business visitors; provided, however, that such rights shall be subject to the terms of this Declaration and to any rules and regulations adopted by the Declarant from time to time.

ARTICLE 4

INSURANCE AND INDEMNITY

4.1 Public Liability Insurance.

Partners shall maintain or cause to be maintained in full force and effect a comprehensive policy of general liability insurance with an insurer with a policyholder rating ("Best Rating") of at least A and financial size category of at least Class X as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, that is licensed to do business in the State of North Carolina, for any and all claims for damages to property and/or for any personal injury or loss of life in, upon, or about the Partners Property in a combined single limit amount of not less than Three Million Dollars ($3,000,000.00). Such insurance shall extend to the contractual obligations of Partners

arising out of the indemnification obligations set forth in this Declaration. When requested by Declarant, Partners shall furnish to Declarant evidence that the insurance described above is in full force and effect. All policies of insurance carried by Partners hereunder shall name Declarant as an additional insured and shall provide that the same may not be canceled (including, without limitation, a non-renewal) or amended without at least thirty (30) days prior written notice being given by the insurer to Declarant.

4.2 Fire and Casualty Insurance.

Effective upon the commencement of construction of improvements on the Partners Property, Partners shall carry, or cause to be carried, with a financially responsible insurance company or companies licensed to do business in the State of North Carolina, fire insurance (with an extended coverage endorsement) in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of the Partners Facility, insuring against causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire insurance with an extended coverage or "all risk" endorsement, and specifically against at least the following perils: loss or damage by fire, windstorm, tornado, hail, explosion, malicious mischief, vandalism, aircraft, vehicle, and smoke damage.

4.3 Insurance Relating to Construction Activities.

Prior to commencing any construction activities within the Partners Property, Partners shall maintain, or cause to be maintained, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(i) Workers' Compensation - statutory limits

(ii) Employer's Liability - $500,000

(iii) Comprehensive General Liability on an occurrence basis with personal injury coverage and broad form property damage (said policy shall be endorsed to remove the XCU exclusion relating to explosion, collapse, and underground property damage) as follows:

(A) Bodily Injury - $1,000,000 per person, $3,000,000 per occurrence

(B) Property Damage - $1,000,000 per occurrence, $3,000,000 aggregate

(iv) Comprehensive Automobile Liability, including Non-Ownership and Hired Car Coverage as well as owned vehicles with at least the following limits:

(A) Bodily Injury - $500,000 per person, $1,000,000 per occurrence

(B) Property Damage - $250,000 per occurrence

Declarant shall be named as an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds (it being understood that if such insurance is canceled or expires, then Partners shall immediately stop all work until either the required insurance is reinstated or replacement insurance is obtained).

4.4 Waiver of Subrogation.

All such insurance shall include a waiver of subrogation by the insurer against Declarant. Partners hereby waives any rights of recovery against Declarant, and its respective directors, officers, members, employees, agents, and tenants for any damage or consequential loss which is covered by or would be covered by the policies required to be carried by such Owner hereunder, to the extent of the proceeds payable under such policies.

4.5 Indemnity.

Partners shall indemnify, defend, and hold Declarant harmless for all claims, causes of actions, damages, costs, and fees (including attorneys fees) incurred by Declarant and arising out of Partners use of the Partners Property, except for those matters arising out of the gross negligence or willful misconduct of Declarant.

ARTICLE 5

GENERAL PROVISIONS

5.1 Duration; Modification, Amendment or Termination.

(a) Duration.

The terms and provisions of this Declaration shall be appurtenant to, and shall run with and bind title to, the Property and shall be binding upon and inure to the benefit of all Owners and mortgagees of the Property, and their respective successors, assigns, purchasers, lessees, grantees, mortgagees, guests, and all other parties hereafter having an interest in any portion of the Property and all parties claiming by, through or under them and shall be and remain in full force and effect to the fullest extent permitted by law for a period of thirty (30) years from the date of filing this Declaration in the ROD. Thereafter, as then in force, this Declaration shall be continued automatically for successive ten (10) year periods without further notice and without limitation, unless terminated as provided in Section 5.1(b) below. Every purchaser, grantee or assignee of any interest in the Property subject to this Declaration, by acceptance of a deed or other instrument of conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property. Notwithstanding anything to the contrary contained in this Declaration, any easements

granted or reserved hereunder are and shall be perpetual and non-exclusive in nature and shall run with the Property except to the extent, if any, otherwise provided in this Declaration.

(b) Modification, Amendment or Termination.

Declarant may modify or amend this Declaration, without the joinder of any other party, as long as such modification or amendment does not result in any material adverse effect on any Owner, in Declarant's reasonable opinion. This Declaration may be terminated by the written consent of all Owners. Any such modification, amendment or termination of this Declaration adopted in accordance with the provisions of this Section 5.1(b) shall be binding upon all Owners and mortgagees of the Property therein, and their respective successors, assigns, purchasers, lessees, grantees, mortgagees, guests and invitees. Notwithstanding any of the foregoing, no modification or amendment of this Declaration may revoke any consent, approval or waiver properly given or granted pursuant to the authority of this Declaration.

5.2 Enforcement Powers.

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any Owner shall be entitled to avail itself of all remedies available under applicable law or in equity for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law or in equity. This Declaration may be enforced by Declarant and its successors and assigns, by proceedings at law or in equity against the person, firm or other entity violating or attempting to violate any covenant or covenants, either to restrain the violation thereof or to recover damages together with reasonable attorneys' fees and court costs.

5.3 Partial Invalidity.

Any invalidation of any one or more of the restrictions set forth in this Declaration by judgment, court order, or statute or failure on the part of Declarant or its successors or assigns to enforce any of said restrictions shall in no way affect any of the other provisions hereof or be deemed a waiver of the right to enforce such restrictions any time after the violation thereof.

5.4 Binding Effect; Waiver.

Except as otherwise specifically provided herein, this Declaration shall bind and inure to the benefit of and be enforceable by Declarant and its successors and assigns (as Declarant), Owners and their respective heirs, successor, and assigns. The failure of any person entitled to enforce this Declaration or any provision hereof to enforce same shall not be deemed a waiver of the right of any such person to enforce this Declaration or any portion thereof thereafter.

5.5 Rights Assignable.

Any and all rights, powers, easements and reservations of Declarant herein contained may be assigned to any person(s), corporation(s), Declarant(s) or other legal entity(ies) which will assume the duties of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person(s), corporation(,), Declarant(s) or other legal entity(ies) evidencing his or its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant," as used herein, includes all such assignees and their heirs, successors and assigns. Any assignment or appointment made under this Section 5.5 shall be in recordable form and shall be recorded in the ROD.

5.6 Mortgagees' Protection, Subordination of Liens.

Violation of this Declaration shall not defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be junior and subordinate to any such mortgage unless a suit to enforce the same shall have been filed in a court of competent jurisdiction prior to the recordation of such mortgage; provided, however, any mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner of the Property effective upon the date of acquisition.

5.7 Chain of Title.

Each grantee, lessee or other person in interest or occupancy accepting a conveyance, leasehold interest or other demise of an interest in or to or in connection with any portion of the Property, whether or not the same incorporates or refers to this Declaration, covenants for himself or itself, his or its heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance or leasehold estate of all or any portion of his or its interest in any real property subject hereto.

5.8 Ambiguities.

If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

5.9 No Reversionary Interest.

This Declaration shall not be construed as conditions subsequent or creating a possibility of reverter, and no provision hereof shall be deemed to vest in Declarant or any other persons any reversionary interest with respect to any portion of the Property. Except as provided above, Declarant hereby expressly waives all reversionary rights.

5.10 Zoning Requirements.

This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any laws, ordinances or regulations of any governmental authority or by specific restrictions imposed by any deed or other instrument of conveyance. In the event of any conflicts, the most restrictive provision shall be taken to govern and control.

5.11 Exoneration of Declarant.

Each Owner or any other party with an interest in the Property expressly agrees that no duty or obligation is imposed upon Declarant to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall Declarant be subject to any inability of any kind or nature whatsoever with respect to any third party as a result of failing to enforce same. Furthermore, Declarant's approval of any construction, building or structure, preliminary plans, plans, specifications, site or landscaping plans or elevations or any other approvals or consents given by Declarant pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such structures, buildings, improvements, landscaping or other action taken pursuant hereto or in reliance thereon complies with any or all applicable laws, rules, requirements or regulations, the sole responsibility for such compliance being upon the Owner seeking approval; and Declarant is expressly released and relieved of any and all liability and responsibility in connection therewith.

5.12 Applicable Only to Property.

Nothing contained in this Declaration shall be held or construed to impose any restrictions, covenants or easements on any other land of Declarant except for the land contained within the description of the Property, unless hereafter specifically subjected by Declarant to these restrictions by a Supplemental Declaration as permitted under Section 2.2.

5.13 Resubdivision.

Partners may not subdivide the Partners Property without the prior written consent of Declarant, which consent may be granted or withheld in its sole discretion.

IN WITNESS WHEREOF, Declarant executes this Declaration as of the Effective Date.

Town of Indian Trail

By: _____

Name: Michael L. Alvarez

Title: Mayor

Date: _____

STATE OF NORTH CAROLINA

COUNTY OF UNION

I, Margaret S Piontek, a Notary Public of Union County, State of North Carolina, certify that Michael L. Alvarez, the Mayor of the Town of Indian Trail(the "Signatory"), personally came before me this day and executed the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

__X____ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(*check one of the following)*

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this ____ day of March, 2013.

_____

Notary Public

Print Name: Margaret S Piontek

*[**Note:** Notary Public must sign exactly as on notary seal]*

My Commission Expires: March 20, 2016

☜ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, Partners In Hoops, LLC executes this Declaration as of the Effective Date.

Partners In Hoops, LLC

By: _____

Name: Scott Chitwood

Title: Co Owner, Partners In Hoops, LLC

Date: March 7, 2013

STATE OF NORTH CAROLINA

COUNTY OF UNION_____

I, MARGARET S PIONTEK, a Notary Public of UNION County, State of North Carolina, certify that ____SCOTT CHITWOOD, the CO-OWNER of PARTNERS IN HOOPS, LLC, (the "Signatory"), personally came before me this day and executed the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

___X___ (I have personal knowledge of the identity of the Signatory); **or**

_____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(*check one of the following)*

___ a driver's license *or*

___ in the form of _____); **or**

_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this 7thday of MARCH, 2013.

_____

Notary Public

Print Name:_____

*[**Note:** Notary Public must sign exactly as on notary seal]*

My Commission Expires:_____

☜ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A

Partners Property

BEING all of Lot 1 as shown on the plat titled "Final Record Plat for the Town of Indian Trail" recorded in Book _____, Page _____ of the Union County Public Registry.

EXHIBIT B

TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 12, 2013

SUBJECT: Establish a Special Meeting

In order to finalize the Chestnut Park project, the Council will need to meet in a Special Meeting between the dates of March 18th and March 22nd. It is critical that the Council meet within this timeframe. The Council will be approving the closing documents in the Chestnut Park Project.

INDIAN TRAIL
north carolina

Town of Indian Trail

Memo

TO: Mayor and Town Council

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

DATE: 2/26/13

COUNCIL DATE: 3/12/13

SUBJECT: C-4957 B Unionville Indian Trail Road Sidewalk Improvements Contract

General Information:

Staff held a formal bid opening for C-4957 B Unionville Indian Trail Road Sidewalk Improvements on Wednesday, January 30, 2013.

The seven bids ranged from $1,025,942.23 to $1,174,560.70. Staff recommends Boggs Paving with a bid of $1,025,942.23 as the lowest responsive, responsible bidder.

Required Actions:

Council Award of Contract
Council Approval of Resolution

Attachments:

1. Bid Results
2. Resolution
3. C-4957 B Unionville Indian Trail Road Sidewalk Improvements Contract

PO Box 2430 . 130 Blythe Drive . Indian Trail . North Carolina . 28079 . (704) 821-1314 . Fax (704) 821-1381

Project Bid Opening Results

Project Title: C-4957 B Unionville Indian Trail Road Sidewalk Improvements
Project No: 505-2012-005
Date: January 30, 2013, 10:00 a.m.

Bidder's of Record	Bidder's Address	Bidder's City	Bidder's State	Total Amount of Bid	Bid Alternate	Pre-Bid Meeting	Bid Bond	Addm 1 1/11/13	Addm 2 1/23/13	Addm 3 1/25/13	Addm 4 1/29/13	DBE Goal 6.0%
Black Contracting, Inc.	POB 745, 1019 White Store Rd	Wadesboro	NC	1,503,634.00	19,800.00	X	X	X	X	X	X	0
Blythe Development	1415 E. Westinghouse Blvd	Charlotte	NC	1,143,340.00	25,795.00	X	X	X	X	X	X	6
Boggs Paving, Inc.	1613 W. Roosevelt Blvd	Monroe	NC	1,004,574.73	21,367.50	X	X	X	X	X	X	6.24
Bullseye Construction	581 N. Polk Street	Pineville	NC	1,034,850.30	21,175.00	X	X	X	X	X	X	4.26
Burney & Burney	PO Box 340	Greenville	NC	1,101,568.66	53,572.75	X	X	X	X	X	X	28
Red Clay Industries	9532 Hebron Commerce Dr.	Charlotte	NC			X						
Showalter Construction	620 W. 24th Street	Charlotte	NC	1,154,285.50	20,790.00	X	X	X	X	X	X	6
Triangle Grading & Paving	PO Box 2570	Burlington	NC	1,377,337.50	40,810.00	X	X	X	X	X	X	6
United Construction, Inc.	6000 Old Pineville Road	Charlotte	NC			X						
W. M. Warr & Son, Inc.	PO Box 3025	Indian Trail	NC			X						

Bids opened by: Adam J. McLeod

Bids recorded by: Vicky Watts

STATE OF NORTH CAROLINA

TOWN OF INDIAN TRAIL

RESOLUTION #

RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE ON BEHALF OF THE TOWN OF INDIAN TRAIL A CONTRACT AND ANY CHANGE ORDERS WITHIN THE BUDGETED AMOUNT WITH BOGGS PAVING, INC. FOR THE PROJECT KNOWN AS C-4957 B UNIONVILLE INDIAN TRAIL ROAD SIDEWALK IMPROVEMENTS, 505-2012-005.

WHEREAS, Congestion Mitigation and Air Quality (CMAQ) is a Federal program that funds transportation projects and programs in air quality nonattainment and maintenance areas to help achieve and maintain national standards for pollutants; and

WHEREAS, CMAQ reduces congestion and improves air quality by providing and promoting multimodal transportation options in high traffic corridors; and

WHEREAS, the Town applied for and was awarded a CMAQ grant through the Mecklenburg-Union Metropolitan Planning Organization (MUMPO); and

WHEREAS, Boggs Paving, Inc. has been duly awarded the contract work on a low bid responsible/responsive bidder basis following a successful formal sealed bidding process;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF INDIAN TRAIL THAT:

The Town Manager of the Town of Indian Trail is hereby authorized to execute on behalf of the Town of Indian Trail the attached contract with Boggs Paving, Inc. in the amount of $1,025,942.23 and any change orders within the budgeted amount for the C-4957 B Unionville Indian Trail Road Sidewalk Improvements, 505-2012-005 contingent upon the North Carolina Department of Transportation concurring in the award.

Adopted this 12th day of March, 2013.

TOWN COUNCIL OF INDIAN TRAIL NORTH CAROLINA

_____

Michael L. Alvarez, Mayor

Attest:

_____

Peggy Piontek, Town Clerk

INDIAN TRAIL
north carolina

PROJECT MANUAL FOR

C-4957 B Unionville Indian Trail Road Sidewalk Improvements

PROJECT NUMBER:

505-2012-005

TOWN OF INDIAN TRAIL, NORTH CAROLINA

NORTH CAROLINA PROFESSIONAL SEAL 024973 ENGINEER SCOTT J. KAUFHOLD

1/3/13

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

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I. ADVERTISEMENT FOR BIDS

C-4957 B Unionville Indian Trail Road
Sidewalk Improvements

Sealed bids will be received until 10:00 a.m. on Wednesday, January 30, 2013 in the Town of Indian Trail Engineering Department at 130 Blythe Drive, Indian Trail for C-4957 B Unionville Indian Trail Road Sidewalk Improvements, **505-2012-005.** The bids will be opened and read aloud at 10:30 a.m. in the Civic Building at 100 Navajo Trail, Indian Trail NC 28079.

This project involves the installation of approximately 9200lf of 5' wide concrete sidewalk, 2700lf of concrete curb & gutter, and associated storm drainage. Project limits are along Unionville Indian Trail Road from Younts Road to Sardis Church Road southward to Brittany Downs Estates Subdivision.

A Mandatory Pre-Bid Meeting will be held at 2:00 p.m. on Thursday, January 17, 2013 in the Civic Building at 100 Navajo Trail, Indian Trail, NC 28079. Attendance at this meeting is required in order to bid on this project. The meeting will begin promptly at 2:00 p.m. Late attendees will not be admitted and will not be allowed to bid on the project.

Contract Documents are available on January 7, 2013 from:

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

The Town of Indian Trail reserves the right to reject any and all proposals.

For more project information, contact Adam McLamb at 704-821-1314 or ajm@engineering.indiantrail.org.

II. INSTRUCTIONS TO BIDDERS

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

PROJECT NAME:

C-4957 B Unionville Indian Trail Road Sidewalk Improvements

PROJECT NUMBER:

505-2012-005 (TIP C-4957 B)

SCOPE OF WORK:

This project involves the installation of approximately 9200lf of 5' wide concrete sidewalk, 2700lf of concrete curb & gutter, and associated storm drainage. Project limits are along Unionville Indian Trail Road from Younts Road to Sardis Church Road southward to Brittany Downs Estates Subdivision.

CONTRACT DOCUMENTS:

The Contract Documents are this Project Manual (which contains the Advertisement, Instructions to Bidders, Federal Special Provisions, Bid Documents, Agreement, Supplementary General Conditions, Special Conditions and Specifications), the Plans & Drawings, and any addenda. Contract Documents are available at a charge of $50.00 (non-refundable) and can be obtained beginning January 7, 2013 at the following:

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

A current e-mail address **must** be provided at the time of contract purchase.

MANDATORY PRE-BID MEETING:

A Mandatory Pre-Bid Meeting will be held at 2:00 p.m. on Thursday, January 17, 2013 in the Civic Building at 100 Navajo Trail, Indian Trail, NC 28079. Attendance at this meeting is required in order to bid on this project. The meeting will begin promptly at 2:00 p.m. Late attendees will not be admitted and will not be allowed to bid on the project.

BID DEADLINE:

Bids must be received by the Town of Indian Trail Engineering Department at 130 Blythe Drive, Indian Trail, NC 28079, no later than 10:00 a.m. on Wednesday, January 30, 2013. The bids will be opened and publicly read aloud at 10:30 a.m. in the Town of Indian Trail Civic Building at 100 Navajo Trail, Indian Trail, NC 28079.

CONTENT OF BID:

Each Bid must contain the following fully-completed forms provided by the Town. **The Project Manual, in its entirety (the Project Manual shall not be taken apart or altered), shall be submitted for bid consideration:**

a) Acknowledgement of Addenda (page 12 of this Project Manual)
b) Itemized Bid Form (page 13 – 15 of this Project Manual)
c) Representative Projects Form (page 16 of this Project Manual)
d) DBE Subcontractor Listing Form (page 17 – 19 of this Project Manual)
e) Execution of Bid Form (page 20 of this Project Manual)
f) Bid Bond (page 21 of this Project Manual)

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

BID FOR:	_____ *Project Name & Number*
BIDDER'S NAME:	_____ *Contractor's Name*
DO NOT OPEN UNTIL:	_____ *Bid Opening Date & Time*

BID BOND:

Each Bid shall be accompanied by a bid bond or a certified check in the amount not less than 5% of the total amount of the Bid. When the bid security is in the form of a bid bond, that bid bond shall be executed by a corporate surety licensed in North Carolina to execute such bonds.

Please note that all Bid Bonds, Payment Bonds, and Performance Bonds required for this project, shall be those found on the NCDOT website. The Bid Bond forms designated as MISC 5, and the Payment and Performance Bonds, listed as MISC 6M, are located at:

http://www.ncdot.gov/doh/preconstruct/contracts/sp/2012sp/municipal.html

BIDS ARE FIRM OFFERS:

All Bids shall be firm offers to contract for 180 days from the Bid Deadline. Unless forfeited, Bid Bonds shall be returned to Bidders upon the earlier of Contract Award or 180 days from the Bid Deadline. All interest on cash bonds shall be retained by the Town.

BID PHASE CONTACT:

For questions regarding the Project or Instructions to Bidders, contact **Adam McLamb** at 704-821-1314 or ajm@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 filed in the Town's Engineering Department and sent by email to all persons who have requested Contract Documents. The Bidder shall be responsible for inquiring if Addenda have been issued.

NCDOT PREQUALIFICATION:

Contractors and subcontractors submitting bids shall be prequalified by NCDOT at the time of the bid opening.

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.

Please note that on all Federal-aid contracts, non-licensed contractors are permitted to submit bids; however, they must be licensed prior to performing any work. They are permitted 60 days, after bid opening, to become licensed by the North Carolina Licensing Board. If they fail to do so within 60 days, their bid will be considered non-responsive and will be rejected.

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 Selected Bidder's failure to do so will result in forfeiture of its bid bond and this contract. 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.

ESTIMATED CONSTRUCTION COST:

The estimated cost of the Project is $750,000 to $1,250,000.

DISADVANTAGED BUSINESS ENTERPRISE GOALS:

A DBE goal of 6% has been established for this contact. The established DBE goal is based on the sub-total of the estimated construction cost. The contingency amount is not considered.

III. BID DOCUMENTS

ACKNOWLEDGEMENT OF ADDENDA

PROJECT NAME: **C-4957 B Unionville Indian Trail Sidewalk Improvements**

PROJECT NUMBER: **505-2012-005**

ACKNOWLEDGMENT OF ADDENDA

The Bidder hereby acknowledges receipt of any addenda

NUMBER:_____DATE:_____INITIAL:_____

NUMBER:_____DATE:_____INITIAL:_____

NUMBER:_____DATE:_____INITIAL:_____

NUMBER:_____DATE:_____INITIAL:_____

Contractor Name: _____

ITEMIZED BID FORM

TOWN OF INDIAN TRAIL
C-4957 B - UNIONVILLE-INDIAN TRAIL ROAD SIDEWALK
BID TAB

Contractors Name _____

Line Item	Item Number	Item Type	Item Description	Quantity	Unit	Unit Price	Amount
1	0000100000-N	SP1	Mobilization (max 3% of the subtotal amount bid)	1	LS		
2	0063000000-N	SP2	Grading	1	LS		
3	0000400000-N	SP3	Construction Stakes, Lines, and Grades	1	LS		
4	0036000000-E	225	Undercut Excavation	600	CY		
5	0318000000-E	300	Foundation Conditioning Material, Minor Structures	125	TN		
6	0360000000-E	310	12" RCP, Class III	8	LF		
7	0366000000-E	310	15" RCP, Class III	991	LF		
8	0372000000-E	310	18" RCP, Class III	1371	LF		
9	0378000000-E	310	24" RCP, Class III	403	LF		
10	0448400000-E	310	24" RCP, Class IV	45	LF		
11	0453000000-E	310	15" Parallel Pipe End Section	9	EA		
12	0453000000-E	310	18" Parallel Pipe End Section	5	EA		
13	0453000000-E	310	24" Parallel Pipe End Section	1	EA		
14	0995000000-E	340	Pipe Removal	200	LF		
15	0996000000-N	350	Pipe Cleanout	20	EA		
16	1220000000-N	545	Incidental Stone Base	200	TN		
17	1523000000-E	610	Asphalt Concrete Surface Course, S 9.5 C, Up To 3" Thick	570	TN		
18	1503000000-E	610	Asphalt Concrete Intermediate Course, I 19.0 C, Up To 4" Thick	410	TN		
19	1491000000-E	610	Asphalt Concrete Base Course, B 25.0 C, Up To 5" Thick	625	TN		
20	1575000000-E	620	Asphalt Binder for Plant Mix (Grade PG 64-22, PG 76-22)	140	TN		
21	2209000000-E	838	Concrete Endwall (Double 36" Pipe - NCDOT STD. 838.01)	5	CY		
22	2209000000-E	838	Reinforced Concrete Endwall (Triple 48" Pipe - NCDOT STD. 838.22)	10	CY		
23	2253000000-E	840	Concrete Pipe Collar	25	CY		
24	2286000000-N	840	Masonry Drainage Structure, CB (NCDOT STD. 840.01)	7	EA		
25	2286000000-N	840	Masonry Drainage Structure, JB (NCDOT STD. 840.32)	3	EA		
26	2286000000-N	839	Masonry Drainage Structure, DI (NCDOT STD. 840.15)	24	EA		
27	2286000000-N	840	Masonry Drainage Structure, TBJB (NCDOT STD. 840.34)	2	EA		
28	2286000000-N	840	Masonry Drainage Structure, MH (NCDOT STD. 840.51)	2	EA		
29	2308000000-E	840	Masonry Drainage Structures, Additional Depth	12	LF		
30	2352000000-N	840	Frame, Grate, and Hood (NCDOT STD. 840.03)	7	EA		
31	2396000000-N	840	Frame and Cover (NCDOT STD. 840.54)	6	EA		
32	2364000000-N	841	Frame and Two Grates (NCDOT STD. 840.16)	24	EA		
33	2549000000-E	846	2' - 0" Valley Gutter	130	LF		
34	2549000000-E	846	2' - 6" Concrete Curb and Gutter	2740	LF		
35	2591000000-E	848	4" Concrete Sidewalk (5' wide)	4800	SY		
36	2591000000-E	848	4" Concrete Sidewalk (6' wide)	530	SY		
37	2605000000-N	848	6" Concrete Wheelchair Ramps with Truncated Dome Mats	15	EA		
38	2600000000-N	SP6	Retrofitting Wheel Chair Ramps with Detectable Warning (Raised Truncated Domes)	4	EA		
39	2612000000-E	848	6" Concrete Driveway	700	SY		
40	2800000000-N	858	Adjustment of Manholes	9	EA		
41	2800000000-N	858	Adjustment of Meter Boxes or Valve Boxes	6	EA		
42	2800000000-N	858	Adjustment of Sanitary Sewer Cleanout	3	EA		

Line Item	Item Number	Item Type	Item Description	Quantity	Unit	Unit Price	Amount
43	2800000000-N	858	Adjustment of Existing Drainage Structure	3	EA		
44	3575000000-E	SP5	Safety Handrail (ITLDS 3.04B)	138	LF		
45	3572000000-E	867	Fence Reset	500	LF		
46	3635000000-E	876	Rip Rap, Class II	150	TN		
47	3656000000-E	876	Geotextile for Drainage	100	SY		
48	4810000000-E	1205	Paint Pavement Marking Lines (4")	2700	LF		
49	46860000000-E	1205	Thermoplastic Pavement Marking Lines (4", 120 MILS)	2700	LF		
50	4850000000-E	1205	Pavement Marking Removal	100	LF		
51	5666000000-E	1515	Relocate Meter Boxes or Valve Boxes	6	EA		
52	6012000000-E	1610	Sediment Control Stone, Class No 57	100	TN		
53	6036000000-E	1631	Erosion Control Matting	1400	SY		
54	6042000000-E	1632	1/4" Hardware Cloth	1000	LF		
55	6071012000-E	SP4	Coir Fiber Wattles (See Detail Sheet 2B)	300	EA		
56	4589000000-n	SP7	Traffic Control	1	LS		
57	1902000000-N	SP8	Materials Testing Services	1	LS		
				Subtotal			
				Contingency	10%		
				Total			

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:_____

LISTING OF DBE SUBCONTRACTORS

LISTING OF DBE SUBCONTRACTORS

Sheet _____ of _____

Firm Name and Address	Item No.	Item Description	* Agreed upon Unit Price	** Dollar Volume of Item
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no DBE participation must so indicate this on the form by entering the word or number *zero*.

LISTING OF DBE SUBCONTRACTORS

Sheet _____ of _____

Firm Name and Address	Item No.	Item Description	* Agreed upon Unit Price	** Dollar Volume of Item
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				

* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

** Dollar Volume of DBE Subcontractor $ _____

Percentage of Total Contract Bid Price _____ %

** - Must have entry even if figure to be entered is zero.

** - *If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.*
If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.

This form must be completed in order for the Bid to be considered responsive and be publicly read.
Bidders with no DBE participation must so indicate this on the form by entering the word or number *zero*.

EXECUTION OF BID FORM

PROJECT NAME: **C-4957 B Unionville Indian Trail Road Sidewalk Improvements**

PROJECT NUMBER: **505-2012-005**

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

BID BOND

(Attach Bond and Power of Attorney to this sheet.)

IV-A. AGREEMENT

AGREEMENT FOR CONSTRUCTION

THIS AGREEMENT ("Agreement"), made and entered into on or about _____, 2012, 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: C-4957 B Unionville Indian Trail Road Sidewalk Improvements**

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, Representative Projects Form, DBE Subcontractor Listing Form, Execution of Bid Form and Bid Bond)
   d. This Agreement
   e. Federal Special Provisions
   f. Supplementary General Conditions
   g. Specifications
   h. Project Special Provisions
   i. Plans & Drawings
   j. 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. **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.

5. **CONTRACT TIME: The date of availability for this project is March 25, 2013.** The Contractor may begin work prior to this date upon approval of the Engineer. If such approval is given, and the Contractor begins work prior to the date of availability, the Town will assume no responsibility for any delays caused prior to the date of availability by any reason whatsoever, and such delays, if any, will not constitute a valid reason for extending the completion date.

No work will be permitted and no purchase order will be issued until all required bonds and prerequisite conditions and certifications have been satisfied.

The completion date for this project shall be August 30, 2013. 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.

6. **LIQUIDATED DAMAGES**: Contractor has obligated itself to complete the Work within the Contract Time. Contractor acknowledges that the he or she will be accessed 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.

7. **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.

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

9. **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.

10. **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 of the estimated Contract Price (as determined by the Town) and a contract performance bond in an amount equal to 100 percent 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.

Please note that all Payment Bonds and Performance Bonds required for this project, shall be those found on the NCDOT website. The Payment and Performance Bonds, listed as MISC 6M, are located at:

http://www.ncdot.gov/doh/preconstruct/contracts/sp/2012sp/municipal.html

SIGNATURE SHEET

CONTRACTOR FIRM NAME: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Address: _____

_____

_____

FEDERAL TAX ID NUMBER: _____

TOWN OF INDIAN TRAIL

By: _____ _____
Town Manager Date

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

By: _____ _____
Finance Officer Date

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. FEDERAL SPECIAL PROVISIONS

NCDOT STANDARD NOTES (Federal Aid)
(4-1-12)

A. *NCDOT Standard Specifications* – The *2012 North Carolina Department of Transportation Standard Specifications for Roads and Structures*, herein referred to as the 'Standard Specifications', and the *2012 Roadway Standard Drawings*, shall apply to all portions of this project except as may be modified by this document.

B. *Bidder Prequalification* - Bidders are required to be prequalified with NCDOT for their specific discipline. Contractors wishing to become prequalified may obtain information through the NCDOT website at: http://www.ncdot.gov/business/ocs.

C. *Disadvantaged Business Enterprise References* - Since this is a Federal-aid project with DBE participation, only those requirements and goals set forth by NCDOT Goal Setting Committee are applicable. References to any other requirements or to N.C. General Statute 143-128.2 shall not apply to this project. Refer to Special Provision SP1 G63.

D. *Award of Contract* - The contract will be awarded to the lowest responsible, responsive bidder. Alternate items will not be considered in determining the low bidder and will only be evaluated after the award of the contract is made.

E. *Contractor Licensing* – On all Federal-aid contracts, non-licensed contractors are permitted to submit bids, however they must be licensed prior to performing any work. Bidders are permitted 60 days, after bid opening, to become licensed by the North Carolina Licensing Board. If they fail to do so within 60 days, their bid will be considered non-responsive and will be rejected. If the successful bidder does not hold the proper license to perform any plumbing, heating, air conditioning, or electrical work in this contract, he will be required to sublet such work to a contractor properly licensed in accordance with *Article 2 of Chapter 87 of the General Statutes* (licensing of heating, plumbing, and air conditioning contractors) and *Article 4 of Chapter 87 of the General Statutes* (licensing of electrical contractors).

F. *Bonds* - Please note that all Bid Bonds, Payment Bonds, and Performance Bonds required for this project, shall be those found on the NCDOT website. The bonds are located at:

Bid Bonds (M-5):
http://www.ncdot.gov/doh/preconstruct/ps/Word/Other/LGA_Bid_Bond.doc

Payment Bonds (M-6):
http://www.ncdot.gov/doh/preconstruct/ps/Word/Other/LGA_Payment_Bonds.doc

Performance Bonds (M-7):
http://www.ncdot.gov/doh/preconstruct/ps/Word/Other/LGA_Performance_Bonds.doc

G. *Liability Insurance* – In addition to any insurance requirements as may be required by the LGA, the Contractor is obligated to comply with Article 107-15 of the *Standard Specifications* including the dollar limits set forth.

H. *Buy America* – This project shall be governed by the Buy America requirements, for the use of domestic steel and iron products, as outlined in the *Standard Specifications*.

I. *Proprietary Items* - When a proprietary (brand name) product, whether material, equipment or procedure, are specified in the plans or specifications, they are used only to denote the style, type, character, and quality desired of the product. They do not restrict the bidder from proposing other brands, makes, or manufacturers, which are determined to be of equal quality. The approval, or disapproval of those products, will be made by the Engineer prior to allowing those product(s) or material(s) to be incorporated into the work.

J. *Retainage by LGAs* – The LGA for this contract will not retain any amount or percentage from progress payments or final estimates due the contractor.

Retainage by Contractors – Contractors is NOT permitted to retain any amount or percentage from monies due their subcontractors or material suppliers on federally funded projects except as permitted by Subarticle 109-4(B) of the *Standard Specifications*.

K. *Traffic Control* –The requirements of the *Manual on Uniform Traffic Control Devices (MUTCD) – FHWA*, as amended by the *NCDOT Supplement to MUTCD*, shall apply. Traffic Control, both vehicular and pedestrian, shall be maintained throughout the project as required by these specifications as modified by the project plans or special provisions.

DISADVANTAGED BUSINESS ENTERPRISE (MUNICIPALITIES)

(10-16-07)(Rev. 1-17-12) 102-15(J) SP1 G63

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Additional DBE Subcontractors - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

Committed DBE Subcontractor - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of award, but not greater than the advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Goal Confirmation Letter - Written documentation from Owner to the bidder confirming the Contractor's approved, committed DBE participation along with a listing of the committed DBE firms.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

Municipality - The entity letting the contract.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

Standard Specifications - The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

Forms and Websites Referenced in this Provision

DBE Payment Tracking System - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project. https://apps.dot.state.nc.us/Vendor/PaymentTracking/

DBE-IS *Subcontractor Payment Information* - Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only. http://www.ncdot.org/doh/forms/files/DBE-IS.xls

RF-1 *DBE Replacement Request Form* - Form for replacing a committed DBE.
https://apps.dot.state.nc.us/_includes/download/external.html?pdf=http%3A//www.ncdot.gov/doh/forms/files/RF-1.pdf

SAF *Subcontract Approval Form* - Form required for approval to sublet the contract. http://www.ncdot.org/doh/operations/dp_chief_eng/constructionunit/saf.xls

JC-1 *Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.
https://apps.dot.state.nc.us/_includes/download/external.html?pdf=http%3A//www.ncdot.gov/doh/forms/files/JC-1.pdf

Letter of Intent - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed at the time of bid.
http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf

Listing of DBE Subcontractors Form - Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.
http://www.ncdot.gov/doh/preconstruct/ps/word/MISC2.doc

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.
http://www.ncdot.gov/business/ocs/goodfaith/excel/Ex_Subcontractor_Quote_Comparison.xls

DBE Goal

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises _____%

(A) *If the DBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.

(B) *If the DBE goal is zero*, the Contractor shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to Owner.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the NCDOT and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link. https://partner.ncdot.gov/VendorDirectory/default.html

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of DBE Subcontractors

At the time of bid, bidders shall submit all DBE participation that they anticipate to use during the life of the contract. Only those identified to meet the DBE goal will be considered committed, even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the overall race-neutral goal. Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

Blank forms will not be deemed to represent zero participation. Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. Owner will not consider these bids for award and the proposal will be rejected.

(A) *If the DBE goal is more than zero,*

(1) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE Subcontractors* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract.

(2) If bidders have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety.

(3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the DBE goal.

(B) *If the DBE goal is zero,* bidders, at the time the bid proposal is submitted, shall enter the word "None"; or the number "0"; or if there is participation, add the value on the *Listing of DBE Subcontractors* contained elsewhere in the contract documents.

DBE Prime Contractor

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE bidder and any other DBE subcontractors will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE bidder will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A or B listed under *Listing of DBE Subcontractor* just as a non-DBE bidder would.

Written Documentation – Letter of Intent

The bidder shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the bidder's commitment to use the DBE in the contract. This documentation shall be submitted on the NCDOT's form titled *Letter of Intent.*

The documentation shall be received in the office of the Engineer no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 12:00 noon on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Contractor shall submit evidence of good faith efforts, completed in its entirety, to the Engineer no later than 12:00 noon on the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 12:00 noon on the next official state business day.

Submission of Good Faith Effort

If the bidder fails to meet or exceed the DBE goal, the apparent lowest responsive bidder shall submit to Owner documentation of adequate good faith efforts made to reach the DBE goal.

One complete set and three (3) copies of this information shall be received in the office of the Engineer no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Engineer no later than 12:00 noon on the next official state business day.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

Owner will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

(A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

(C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(D) (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.

(F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.

(G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within 7 days from the bid opening NCDOT's Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the bidder's inability to get DBE quotes.

(I) Any other evidence that the bidder submits which shows that the bidder has made reasonable good faith efforts to meet the DBE goal.

In addition, Owner may take into account the following:

(1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the DBE goal.

(2) The bidders' past performance in meeting the DBE goals.

(3) The performance of other bidders in meeting the DBE goal. For example, when the apparent successful bidder fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the DBE goal, but meets or exceeds the average DBE participation obtained by other bidders, Owner may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

If Owner does not award the contract to the apparent lowest responsive bidder, Owner reserves the right to award the contract to the next lowest responsive bidder that can satisfy to Owner that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

Non-Good Faith Appeal

The Engineer will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the Engineer. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting DBE Participation Toward Meeting DBE Goal

(A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.

(B) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 *(Joint Check Notification Form)* and the use of joint checks shall be in accordance with the NCDOT's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does <u>not</u> count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to Owner. Owner's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(E) Suppliers

A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be

reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

(2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) DBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, Owner will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

(1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.

(5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE contract requirement.

(6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE,

so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.

(7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

DBE Replacement

When a Contractor has relied on a commitment to a DBE firm (or an approved substitute DBE firm) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an affiliate. A DBE may only be terminated after receiving the Engineer's written approval based upon a finding of good cause for the termination.

All requests for replacement of a committed DBE firm shall be submitted to the Engineer for approval on Form RF-1 *(DBE Replacement Request)*. If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of a committed DBE:

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of bid may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time of bid to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

(1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.

(2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:

(a) The names, addresses, and telephone numbers of DBEs who were contacted.
(b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.

(3) A list of reasons why DBE quotes were not accepted.

(4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

(1) When a committed DBE is decertified by the NCDOT after the SAF (*Subcontract Approval Form*) has been received by Owner, Owner will not require the Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.

(2) When a committed DBE is decertified prior to the Owner receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the

DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (see A herein for required documentation).

Changes in the Work

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports and Documentation

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a DBE subcontractor. Owner reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

Reporting Disadvantaged Business Enterprise Participation

The Contractor shall provide the Engineer with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

(A) Withholding of money due in the next partial pay estimate; or

(B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list. (Municipality may add to, change or delete this section.)

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from being approved for work on future projects until the required information is submitted.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Engineer can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments on the NCDOT's DBE-IS *(Subcontractor Payment Information)* with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2012 Standard Specifications* may be cause to disqualify the Contractor.

LETTER OF INTENT FORM

Letter of Intent to Perform as a Subcontractor
http://www.ncdot.gov/doh/preconstruct/ps/contracts/letterofintent.pdf

CERTIFICATION FOR FEDERAL-AID CONTRACTS

(3-21-90) SP1 G85

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE

(11-22-94) 108-5 SP1 G100

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities.

The hotline is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

LOCATING EXISTING UNDERGROUND UTILITIES

(3-20-12) 105 SP1 G115

Revise the *2012 Standard Specifications* as follows:

Page 1-43, Article 105-8, line 28, after the first sentence, add the following:

Identify excavation locations by means of pre-marking with white paint, flags, or stakes or provide a specific written description of the location in the locate request.

GIFTS FROM VENDORS AND CONTRACTORS

(12-15-09) 107-1 SP1 G152

By Executive Order 24, issued by Governor Perdue, and *N.C.G.S.§ 133-32,* it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

(A) Have a contract with a governmental agency; or
(B) Have performed under such a contract within the past year; or
(C) Anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and *N.C.G.S. § 133-32.*

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

EROSION AND SEDIMENT CONTROL/STORMWATER CERTIFICATION

(1-16-07) (Rev 9-18-12) 105-16, 225-2, 16 SP1 G180

General

Schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting sedimentation and turbidity of surface waters. Comply with the requirements herein regardless of whether or not a National Pollution discharge Elimination System (NPDES) permit for the work is required.

Establish a chain of responsibility for operations and subcontractors' operations to ensure that the *Erosion and Sediment Control/Stormwater Pollution Prevention Plan* is implemented and maintained over the life of the contract.

(A) *Certified Supervisor* - Provide a certified Erosion and Sediment Control/Stormwater Supervisor to manage the Contractor and subcontractor operations, insure compliance with Federal, State and Local ordinances and regulations, and manage the Quality Control Program.

(B) *Certified Foreman* - Provide a certified, trained foreman for each construction operation that increases the potential for soil erosion or the possible sedimentation and turbidity of surface waters.

(C) *Certified Installer* - Provide a certified installer to install or direct the installation for erosion or sediment/stormwater control practices.

(D) *Certified Designer* - Provide a certified designer for the design of the erosion and sediment control/stormwater component of reclamation plans and, if applicable, for the design of the project erosion and sediment control/stormwater plan.

Roles and Responsibilities

(A) *Certified Erosion and Sediment Control/Stormwater Supervisor* - The Certified Supervisor shall be Level II and responsible for ensuring the erosion and sediment control/stormwater plan is adequately implemented and maintained on the project and for conducting the quality control program. The Certified Supervisor shall be on the project within 24 hours notice from initial exposure of an erodible surface to the project's final acceptance. Perform the following duties:

(1) Manage Operations - Coordinate and schedule the work of subcontractors so that erosion and sediment control/stormwater measures are fully executed for each operation and in a timely manner over the duration of the contract.

(a) Oversee the work of subcontractors so that appropriate erosion and sediment control/stormwater preventive measures are conformed to at each stage of the work.
(b) Prepare the required National Pollutant Discharge Elimination System (NPDES) Inspection Record and submit to the Engineer.
(c) Attend all weekly or monthly construction meetings to discuss the findings of the NPDES inspection and other related issues.
(d) Implement the erosion and sediment control/stormwater site plans requested.
(e) Provide any needed erosion and sediment control/stormwater practices for the Contractor's temporary work not shown on the plans, such as, but not limited to work platforms, temporary construction, pumping operations, plant and storage yards, and cofferdams.
(f) Acquire applicable permits and comply with requirements for borrow pits, dewatering, and any temporary work conducted by the Contractor in jurisdictional areas.
(g) Conduct all erosion and sediment control/stormwater work in a timely and workmanlike manner.
(h) Fully perform and install erosion and sediment control/stormwater work prior to any suspension of the work.
(i) Coordinate with Department, Federal, State and Local Regulatory agencies on resolution of erosion and sediment control/stormwater issues due to the Contractor's operations.
(j) Ensure that proper cleanup occurs from vehicle tracking on paved surfaces or any location where sediment leaves the Right-of-Way.
(k) Have available a set of erosion and sediment control/stormwater plans that are initialed and include the installation date of Best Management Practices. These practices shall include temporary and permanent groundcover and be properly updated to reflect necessary plan and field changes for use and review by Department personnel as well as regulatory agencies.

(2) Requirements set forth under the NPDES Permit - The Department's NPDES Stormwater permit (NCS000250) outlines certain objectives and management measures pertaining to construction activities.

The permit references *NCG010000, General Permit to Discharge Stormwater* under the NPDES, and states that the Department shall incorporate the applicable requirements into its delegated Erosion and Sediment Control Program for construction activities disturbing one or more acres of land. The Department further incorporates these requirements on all contracted bridge and culvert work at jurisdictional waters, regardless of size. Some of the requirements are, but are not limited to:

(a) Control project site waste to prevent contamination of surface or ground waters of the state, i.e. from equipment operation/maintenance, construction materials, concrete washout, chemicals, litter, fuels, lubricants, coolants, hydraulic fluids, any other petroleum products, and sanitary waste.

(b) Inspect erosion and sediment control/stormwater devices and stormwater discharge outfalls at least once every 7 calendar days, twice weekly for construction related *Federal Clean Water Act, Section 303(d)* impaired streams with turbidity violations, and within 24 hours after a significant rainfall event of 0.5 inch that occurs within a 24 hour period.

(c) Maintain an onsite rain gauge or use the Department's Multi-Sensor Precipitation Estimate website to maintain a daily record of rainfall amounts and dates.

(d) Maintain erosion and sediment control/stormwater inspection records for review by Department and Regulatory personnel upon request.

(e) Implement approved reclamation plans on all borrow pits, waste sites and staging areas.

(f) Maintain a log of turbidity test results as outlined in the Department's Procedure for Monitoring Borrow Pit Discharge.

(g) Provide secondary containment for bulk storage of liquid materials.

(h) Provide training for employees concerning general erosion and sediment control/stormwater awareness, the Department's NPDES Stormwater Permit NCS000250 requirements, and the applicable requirements of the *General Permit, NCG010000.*

(i) Report violations of the NPDES permit to the Engineer immediately who will notify the Division of Water Quality Regional Office within 24 hours of becoming aware of the violation.

(3) Quality Control Program - Maintain a quality control program to control erosion, prevent sedimentation and follow provisions/conditions of permits. The quality control program shall:

(a) Follow permit requirements related to the Contractor and subcontractors' construction activities.

(b) Ensure that all operators and subcontractors on site have the proper erosion and sediment control/stormwater certification.

(c) Notify the Engineer when the required certified erosion and sediment control/stormwater personnel are not available on the job site when needed.

(d) Conduct the inspections required by the NPDES permit.

(e) Take corrective actions in the proper timeframe as required by the NPDES permit for problem areas identified during the NPDES inspections.

(f) Incorporate erosion control into the work in a timely manner and stabilize disturbed areas with mulch/seed or vegetative cover on a section-by-section basis.

(g) Use flocculants approved by state regulatory authorities where appropriate and where required for turbidity and sedimentation reduction.

(h) Ensure proper installation and maintenance of temporary erosion and sediment control devices.

(i) Remove temporary erosion or sediment control devices when they are no longer necessary as agreed upon by the Engineer.

(j) The Contractor's quality control and inspection procedures shall be subject to review by the Engineer. Maintain NPDES inspection records and make records available at all times for verification by the Engineer.

(B) *Certified Foreman* - At least one Certified Foreman shall be onsite for each type of work listed herein during the respective construction activities to control erosion, prevent sedimentation and follow permit provisions:

(1) Foreman in charge of grading activities

(2) Foreman in charge of bridge or culvert construction over jurisdictional areas

(3) Foreman in charge of utility activities

The Contractor may request to use the same person as the Level II Supervisor and Level II Foreman. This person shall be onsite whenever construction activities as described above are taking place. This request shall be approved by the Engineer prior to work beginning.

The Contractor may request to name a single Level II Foreman to oversee multiple construction activities on small bridge or culvert replacement projects. This request shall be approved by the Engineer prior to work beginning.

(C) *Certified Installers* - Provide at least one onsite, Level I Certified Installer for each of the following erosion and sediment control/stormwater crew:

(1) Seeding and Mulching
(2) Temporary Seeding
(3) Temporary Mulching
(4) Sodding
(5) Silt fence or other perimeter erosion/sediment control device installations
(6) Erosion control blanket installation
(7) Hydraulic tackifier installation
(8) Turbidity curtain installation
(9) Rock ditch check/sediment dam installation
(10) Ditch liner/matting installation
(11) Inlet protection
(12) Riprap placement
(13) Stormwater BMP installations (such as but not limited to level spreaders, retention/detention devices)
(14) Pipe installations within jurisdictional areas

If a Level I *Certified Installer* is not onsite, the Contractor may substitute a Level II Foreman for a Level I Installer, provided the Level II Foreman is not tasked to another crew requiring Level II Foreman oversight.

(D) *Certified Designer* - Include the certification number of the Level III-B Certified Designer on the erosion and sediment control/stormwater component of all reclamation plans and if applicable, the certification number of the Level III-A Certified Designer on the design of the project erosion and sediment control/stormwater plan.

Preconstruction Meeting

Furnish the names of the *Certified Erosion and Sediment Control/Stormwater Supervisor, Certified Foremen, Certified Installers* and *Certified Designer* and notify the Engineer of changes in certified personnel over the life of the contract within 2 days of change.

Ethical Responsibility

Any company performing work for the North Carolina Department of Transportation has the ethical responsibility to fully disclose any reprimand or dismissal of an employee resulting from improper testing or falsification of records.

Revocation or Suspension of Certification

Upon recommendation of the Chief Engineer to the certification entity, certification for *Supervisor, Certified Foremen, Certified Installers* and *Certified Designer* may be revoked or suspended with the issuance of an *Immediate Corrective Action (ICA), Notice of Violation (NOV),* or *Cease and Desist Order* for erosion and sediment control/stormwater related issues.

The Chief Engineer may recommend suspension or permanent revocation of certification due to the following:

(A) Failure to adequately perform the duties as defined within this certification provision.

(B) Issuance of an ICA, NOV, or Cease and Desist Order.
(C) Failure to fully perform environmental commitments as detailed within the permit conditions and specifications.
(D) Demonstration of erroneous documentation or reporting techniques.
(E) Cheating or copying another candidate's work on an examination.
(F) Intentional falsification of records.
(G) Directing a subordinate under direct or indirect supervision to perform any of the above actions.
(H) Dismissal from a company for any of the above reasons.
(I) Suspension or revocation of one's certification by another entity.

Suspension or revocation of a certification will be sent by certified mail to the certificant and the Corporate Head of the company that employs the certificant.

A certificant has the right to appeal any adverse action which results in suspension or permanent revocation of certification by responding, in writing, to the Chief Engineer within 10 calendar days after receiving notice of the proposed adverse action.

Chief Engineer
1537 Mail Service Center
Raleigh, NC 27699-1537

Failure to appeal within 10 calendar days will result in the proposed adverse action becoming effective on the date specified on the certified notice. Failure to appeal within the time specified will result in a waiver of all future appeal rights regarding the adverse action taken. The certificant will not be allowed to perform duties associated with the certification during the appeal process.

The Chief Engineer will hear the appeal and make a decision within 7 days of hearing the appeal. Decision of the Chief Engineer will be final and will be made in writing to the certificant.

If a certification is temporarily suspended, the certificant shall pass any applicable written examination and any proficiency examination, at the conclusion of the specified suspension period, prior to having the certification reinstated.

Measurement and Payment

Certified Erosion and Sediment Control/Stormwater Supervisor, Certified Foremen, Certified Installers and *Certified Designer* will be incidental to the project for which no direct compensation will be made.

PROCEDURE FOR MONITORING BORROW PIT DISCHARGE

(2-20-07) 105-16, 230, 801 SP1 G181

Water discharge from borrow pit sites shall not cause surface waters to exceed 50 NTUs (nephelometric turbidity unit) in streams not designated as trout waters and 10 NTUs in streams, lakes or reservoirs designated as trout waters. For lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTUs. If the turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased.

If during any operating day, the downstream water quality exceeds the standard, the Contractor shall do all of the following:

(A) Either cease discharge or modify the discharge volume or turbidity levels to bring the downstream turbidity levels into compliance, or

(B) Evaluate the upstream conditions to determine if the exceedance of the standard is due to natural background conditions. If the background turbidity measurements exceed the standard, operation of the pit and discharge can continue as long as the stream turbidity levels are not increased due to the discharge.

(C) Measure and record the turbidity test results (time, date and sampler) at all defined sampling locations 30 minutes after startup and at a minimum, one additional sampling of all sampling locations during that 24-hour period in which the borrow pit is discharging.

(D) Notify DWQ within 24 hours of any stream turbidity standard exceedances that are not brought into compliance.

During the Environmental Assessment required by Article 230-4 of the *2012 Standard Specifications*, the Contractor shall define the point at which the discharge enters into the State's surface waters and the appropriate sampling locations. Sampling locations shall include points upstream and downstream from the point at which the discharge enters these waters. Upstream sampling location shall be located so that it is not influenced by backwater conditions and represents natural background conditions. Downstream sampling location shall be located at the point where complete mixing of the discharge and receiving water has occurred.

The discharge shall be closely monitored when water from the dewatering activities is introduced into jurisdictional wetlands. Any time visible sedimentation (deposition of sediment) on the wetland surface is observed, the dewatering activity will be suspended until turbidity levels in the stilling basin can be reduced to a level where sediment deposition does not occur. Staining of wetland surfaces from suspended clay particles, occurring after evaporation or infiltration, does not constitute sedimentation. No activities shall occur in wetlands that adversely affect the functioning of a wetland. Visible sedimentation will be considered an indication of possible adverse impacts on wetland use.

The Engineer will perform independent turbidity tests on a random basis. These results will be maintained in a log within the project records. Records will include, at a minimum, turbidity test results, time, date and name of sampler. Should the Department's test results exceed those of the Contractor's test results, an immediate test shall be performed jointly with the results superseding the previous test results of both the Department and the Contractor.

The Contractor shall use the *NCDOT Turbidity Reduction Options for Borrow Pits Matrix,* available at http://www.ncdot.org/doh/preconstruct/ps/contracts/letting.html to plan, design, construct, and maintain BMPs to address water quality standards. Tier I Methods include stilling basins which are standard compensatory BMPs. Other Tier I methods are noncompensatory and shall be used when needed to meet the stream turbidity standards. Tier II Methods are also noncompensatory and are options that may be needed for protection of rare or unique resources or where special environmental conditions exist at the site which have led to additional requirements being placed in the DWQ's 401 Certifications and approval letters, Isolated Wetland Permits, Riparian Buffer Authorization or a DOT Reclamation Plan's Environmental Assessment for the specific site. Should the Contractor exhaust all Tier I Methods on a site exclusive of rare or unique resources or special environmental conditions, Tier II Methods may be required by regulators on a case by case basis per supplemental agreement.

The Contractor may use cation exchange capacity (CEC) values from proposed site borings to plan and develop the bid for the project. CEC values exceeding 15 milliequivalents per 100 grams of soil may indicate a high potential for turbidity and should be avoided when dewatering into surface water is proposed.

No additional compensation for monitoring borrow pit discharge will be paid.

EMPLOYMENT

(11-15-11) (Rev. 1-17-12) 108, 102 SP1 G184

Revise the *2012 Standard Specifications* as follows:

Page 1-20, Subarticle 102-15(O), delete and replace with the following:

(O) Failure to restrict a former Department employee as prohibited by Article 108-5.

Page 1-65, Article 108-5 Character of Workmen, Methods, and Equipment, line 32, delete all of line 32, the first sentence of the second paragraph and the first word of the second sentence of the second paragraph.

ASPHALT BINDER CONTENT OF ASPHALT PLANT MIXES

(11-21-00) (Rev. 7-17-12) 609 SP6 R15

The approximate asphalt binder content of the asphalt concrete plant mixtures used on this project will be as follows:

Asphalt Concrete Base Course	Type B 25.0__	4.4%
Asphalt Concrete Intermediate Course	Type I 19.0__	4.8%
Asphalt Concrete Surface Course	Type S 4.75A	6.8%
Asphalt Concrete Surface Course	Type SA-1	6.8%
Asphalt Concrete Surface Course	Type SF 9.5A	6.7%
Asphalt Concrete Surface Course	Type S 9.5__	6.0%
Asphalt Concrete Surface Course	Type S 12.5__	5.6%

The actual asphalt binder content will be established during construction by the Engineer within the limits established in the *2012 Standard Specifications.*

AVAILABILITY OF FUNDS – TERMINATION OF CONTRACTS

(5-20-08) Z-2

General Statute 143C-6-11. (h) Highway Appropriation is hereby incorporated verbatim in this contract as follows:

(h) Amounts Encumbered. – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in *General Statute 143C-6-11(c).* Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

Payment will be made on any contract terminated pursuant to the special provision in accordance with Subarticle 108-13(E) of the *2012 Standard Specifications.*

NCDOT GENERAL SEED SPECIFICATION FOR SEED QUALITY

(5-17-11) Z-3

Seed shall be sampled and tested by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory. When said samples are collected, the vendor shall supply an independent laboratory report for each lot to be tested. Results from seed so sampled shall be final. Seed not meeting the specifications shall be rejected by the Department of Transportation and shall not be delivered to North Carolina Department of Transportation warehouses. If seed has been delivered it shall be available for pickup and replacement at the supplier's expense.

Any re-labeling required by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory, that would cause the label to reflect as otherwise specified herein shall be rejected by the North Carolina Department of Transportation.

Seed shall be free from seeds of the noxious weeds Johnsongrass, Balloonvine, Jimsonweed, Witchweed, Itchgrass, Serrated Tussock, Showy Crotalaria, Smooth Crotalaria, Sicklepod, Sandbur, Wild Onion, and Wild Garlic. Seed shall not be labeled with the above weed species on the seed analysis label. Tolerances as applied by the Association of Official Seed Analysts will NOT be allowed for the above noxious weeds except for Wild Onion and Wild Garlic.

Tolerances established by the Association of Official Seed Analysts will generally be recognized. However, for the purpose of figuring pure live seed, the found pure seed and found germination percentages as reported by the North Carolina Department of Agriculture and Consumer Services, Seed Testing Laboratory will be used. Allowances, as established by the NCDOT, will be recognized for minimum pure live seed as listed on the following pages.

The specifications for restricted noxious weed seed refers to the number per pound as follows:

Restricted Noxious **Weed**	Limitations per Lb. Of Seed	Restricted Noxious **Weed**	Limitations per Lb. of Seed
Blessed Thistle	4 seeds	Cornflower (Ragged Robin)	27 seeds
Cocklebur	4 seeds	Texas Panicum	27 seeds
Spurred Anoda	4 seeds	Bracted Plantain	54 seeds
Velvetleaf	4 seeds	Buckhorn Plantain	54 seeds
Morning-glory	8 seeds	Broadleaf Dock	54 seeds
Corn Cockle	10 seeds	Curly Dock	54 seeds
Wild Radish	12 seeds	Dodder	54 seeds
Purple Nutsedge	27 seeds	Giant Foxtail	54 seeds
Yellow Nutsedge	27 seeds	Horsenettle	54 seeds
Canada Thistle	27 seeds	Quackgrass	54 seeds
Field Bindweed	27 seeds	Wild Mustard	54 seeds
Hedge Bindweed	27 seeds		

Seed of Pensacola Bahiagrass shall not contain more than 7% inert matter, Kentucky Bluegrass, Centipede and Fine or Hard Fescue shall not contain more than 5% inert matter whereas a maximum of 2% inert matter will be allowed on all other kinds of seed. In addition, all seed shall not contain more than 2% other crop seed nor more than 1% total weed seed. The germination rate as tested by the North Carolina Department of Agriculture shall not fall below 70%, which includes both dormant and hard seed. Seed shall be labeled with not more than 7%, 5% or 2% inert matter (according to above specifications), 2% other crop seed and 1% total weed seed.

Exceptions may be made for minimum pure live seed allowances when cases of seed variety shortages are verified. Pure live seed percentages will be applied in a verified shortage situation. Those purchase orders of deficient seed lots will be credited with the percentage that the seed is deficient.

FURTHER SPECIFICATIONS FOR EACH SEED GROUP ARE GIVEN BELOW:

Minimum 85% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 83% pure live seed will not be approved.

Sericea Lespedeza
Oats (seeds)

Minimum 80% pure live seed; maximum 1% total weed seed; maximum 2% total other crop; maximum 144 restricted noxious weed seed per pound. Seed less than 78% pure live seed will not be approved.

Tall Fescue (all approved varieties)	Bermudagrass
Kobe Lespedeza	Browntop Millet

Korean Lespedeza
Weeping Lovegrass
Carpetgrass
German Millet – Strain R
Clover – Red/White/Crimson

Minimum 78% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 76% pure live seed will not be approved.

Common or Sweet Sundangrass

Minimum 76% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 restricted noxious weed seed per pound. Seed less than 74% pure live seed will not be approved.

Rye (grain; all varieties)
Kentucky Bluegrass (all approved varieties)
Hard Fescue (all approved varieties)
Shrub (bicolor) Lespedeza

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 144 noxious weed seed per pound. Seed less than 70% pure live seed will not be approved.

Centipedegrass
Crownvetch
Pensacola Bahiagrass
Creeping Red Fescue
Japanese Millet
Reed Canary Grass
Zoysia

Minimum 70% pure live seed; maximum 1% total weed seed; maximum 2% total other crop seed; maximum 5% inert matter; maximum 144 restricted noxious weed seed per pound.

Barnyard Grass
Big Bluestem
Little Bluestem
Bristly Locust
Birdsfoot Trefoil
Indiangrass
Orchardgrass
Switchgrass
Yellow Blossom Sweet Clover

ERRATA

(1-17-12) (Rev. 9-18-12) Z-4

Revise the *2012 Standard Specifications* as follows:

Division 2

Page 2-7, line 31, Article 215-2 Construction Methods, replace "Article 107-26" with "Article 107-25".
Page 2-17, Article 226-3, Measurement and Payment, line 2, delete "pipe culverts,".
Page 2-20, Subarticle 230-4(B), Contractor Furnished Sources, change references as follows: Line 1, replace "(4) Buffer Zone" with "(c) Buffer Zone"; **Line 12,** replace "(5) Evaluation for Potential Wetlands and Endangered Species" with "(d) Evaluation for Potential Wetlands and Endangered Species"; and **Line 33,** replace "(6) Approval" with "(4) Approval".

Division 4

Page 4-77, line 27, Subarticle 452-3(C) Concrete Coping, replace "sheet pile" with "reinforcement".

Division 6

Page 6-7, line 31, Article 609-3 Field Verification of Mixture and Job Mix Formula Adjustments, replace "30" with "45".
Page 6-10, line 42, Subarticle 609-6(C)(2), replace "Subarticle 609-6(E)" with "Subarticle 609-6(D)".
Page 6-11, Table 609-1 Control Limits, replace "Max. Spec. Limit" for the Target Source of $P_{0.075}/P_{be}$ Ratio with "1.0".
Page 6-40, Article 650-2 Materials, replace "Subarticle 1012-1(F)" with "Subarticle 1012-1(E)"

Division 10

Page 10-74, Table 1056-1 Geotextile Requirements, replace "50%" for the UV Stability (Retained Strength) of Type 5 geotextiles with "70%".

Division 12

Page 12-7, Table 1205-3, add "FOR THERMOPLASTIC" to the end of the title.
Page 12-8, Subarticle 1205-5(B), line 13, replace "Table 1205-2" with "Table 1205-4".
Page 12-8, Table 1205-4 and 1205-5, replace "THERMOPLASTIC" in the title of these tables with "POLYUREA".
Page 12-9, Subarticle 1205-6(B), line 21, replace "Table 1205-4" with "Table 1205-6".
Page 12-11, Subarticle 1205-8(C), line 25, replace "Table 1205-5" with "Table 1205-7".

Division 15

Page 15-6, Subarticle 1510-3(B), after line 21, replace the allowable leakage formula with the following: $\boldsymbol{W = LD\sqrt{P} \div 148{,}000}$
Page 15-6, Subarticle 1510-3(B), line 32, delete "may be performed concurrently or" and replace with "shall be performed".
Page 15-17, Subarticle 1540-3(E), line 27, delete "Type 1".

Division 17

Page 17-26, line 42, Subarticle 1731-3(D) Termination and Splicing within Interconnect Center, delete this subarticle.

Revise the *2012 Roadway Standard Drawings* as follows:

1633.01 Sheet 1 of 1, English Standard Drawing for Matting Installation, replace "1633.01" with "1631.01".

PLANT AND PEST QUARANTINES

(Imported Fire Ant, Gypsy Moth, Witchweed, And Other Noxious Weeds)

(3-18-03) Z-04a

Within Quarantined Area

This project may be within a county regulated for plant and/or pests. If the project or any part of the Contractor's operations is located within a quarantined area, thoroughly clean all equipment prior to moving out of the quarantined area. Comply with federal/state regulations by obtaining a certificate or limited permit for any regulated article moving from the quarantined area.

Originating in a Quarantined County

Obtain a certificate or limited permit issued by the N.C. Department of Agriculture/United States Department of Agriculture. Have the certificate or limited permit accompany the article when it arrives at the project site.

Contact

Contact the N.C. Department of Agriculture/United States Department of Agriculture at 1-800-206-9333, 919-733-6932, or *http://www.ncagr.com/plantind/* to determine those specific project sites located in the quarantined area or for any regulated article used on this project originating in a quarantined county.

Regulated Articles Include

1. Soil, sand, gravel, compost, peat, humus, muck, and decomposed manure, separately or with other articles. This includes movement of articles listed above that may be associated with cut/waste, ditch pulling, and shoulder cutting.
2. Plants with roots including grass sod.
3. Plant crowns and roots.
4. Bulbs, corms, rhizomes, and tubers of ornamental plants.
5. Hay, straw, fodder, and plant litter of any kind.
6. Clearing and grubbing debris.
7. Used agricultural cultivating and harvesting equipment.
8. Used earth-moving equipment.
9. Any other products, articles, or means of conveyance, of any character, if determined by an inspector to present a hazard of spreading imported fire ant, gypsy moth, witchweed or other noxious weed

AWARD OF CONTRACT

(6-28-77) Z-6

"The North Carolina Department of Transportation, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the Regulations of the Department of Transportation (*49 C.F.R., Part 21*), issued pursuant to such act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, or national origin".

MINORITY AND FEMALE EMPLOYMENT REQUIREMENTS

Z-7

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (*EXECUTIVE NUMBER 11246*)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, see as shown on the attached sheet entitled "Employment Goals for Minority and Female participation".

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in *41 CFR Part 60-4* shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in *41 CFR 60-4.3(a)*, and its effort to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project or the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the executive Order and the regulations *in 41 CFR Part 60-4*. Compliance with the goals will be measured against the total work hours performed.

2. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the cover sheet of the proposal form and contract.

EMPLOYMENT GOALS FOR MINORITY

AND FEMALE PARTICIPATION

Economic Areas

Area 023 29.7%
Bertie County
Camden County
Chowan County
Gates County
Hertford County
Pasquotank County
Perquimans County

Area 024 31.7%
Beaufort County
Carteret County
Craven County
Dare County
Edgecombe County
Green County
Halifax County
Hyde County
Jones County
Lenoir County
Martin County
Nash County
Northampton County
Pamlico County
Pitt County
Tyrrell County
Washington County
Wayne County
Wilson County

Area 025 23.5%
Columbus County
Duplin County
Onslow County
Pender County

Area 026 33.5%
Bladen County
Hoke County
Richmond County
Robeson County
Sampson County
Scotland County

Area 027 24.7%
Chatham County
Franklin County
Granville County
Harnett County
Johnston County
Lee County
Person County
Vance County
Warren County

Area 028 15.5%
Alleghany County
Ashe County
Caswell County
Davie County
Montgomery County
Moore County
Rockingham County
Surry County
Watauga County
Wilkes County

Area 029 15.7%
Alexander County
Anson County
Burke County
Cabarrus County
Caldwell County
Catawba County
Cleveland County
Iredell County
Lincoln County
Polk County
Rowan County
Rutherford County
Stanly County

Area 0480 8.5%
Buncombe County
Madison County

Area 030 6.3%
Avery County
Cherokee County
Clay County
Graham County
Haywood County
Henderson County
Jackson County
McDowell County
Macon County
Mitchell County
Swain County
Transylvania County
Yancey County

SMSA Areas

Area 5720 26.6%
Currituck County

Area 9200 20.7%
Brunswick County
New Hanover County

Area 2560 24.2%
Cumberland County

Area 6640 22.8%
Durham County
Orange County
Wake County

Area 1300 16.2%
Alamance County

Area 3120 16.4%
Davidson County
Forsyth County
Guilford County
Randolph County
Stokes County
Yadkin County

Area 1520 18.3%
Gaston County
Mecklenburg County
Union County

Goals for Female

Participation in Each Trade

(Statewide) 6.9%

REQUIRED CONTRACT PROVISIONS FEDERAL - AID CONSTRUCTION CONTRACTS

FHWA - 1273 Electronic Version - May 1, 2012 Z-8

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

   The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

   Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

   Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).
2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
   a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
   b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
   a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
   b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
   c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
   d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
   e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
   a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
   b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
   c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
   a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
   b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
   c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
   d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.
6. **Training and Promotion:**
   a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
   b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
   c The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
   d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
   a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
   b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
   c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
   a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
   b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
   a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
   b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
   a. The records kept by the contractor shall document the following:
      (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
      (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
      (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
   b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. **Minimum wages**
   a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

   Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. **Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/ wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and trainees**

a. Apprentices (programs of the USDOL). Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL). Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
   a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
   (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
   (2) the prime contractor remains responsible for the quality of the work of the leased employees;
   (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
   (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
   b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the

contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**
   a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
   c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
   d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
   e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
   f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
   g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into

this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

*****

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

*****

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

WAGE RATES (Davis Bacon)

MINIMUM WAGES

GENERAL DECISION NC120090 01/06/2012 NC90Z-90

Date: January 6, 2012

General Decision Number: NC120090 01/06/2012 NC90

Superseded General Decision Numbers: NC20100127

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

Anson
Cabarrus
Gaston
Mecklenburg
Union

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges designed for commercial navigation, bridges involving marine construction, and other major bridges).

Modification Number	Publication Date
0	01/06/2012

SUNC2011-071 09/16/2011

	Rates	Fringes
CARPENTER (Form Work Only)	14.70	
CEMENT MASON/CONCRETE FINISHER		

	Rates	Fringes
Anson, Cabarrus, and Gaston Counties	12.87	
Mecklenburg County	12.62	
Union County	12.75	
INSTALLER (Guardrail) (includes Guardrail/Post Driver Work)	11.16	
IRONWORKER (Reinforcing)	14.88	
LABORER		
Asphalt, Asphalt Distributor, Raker, and Spreader	11.78	
Common or General		
Anson and Cabarrus Counties	11.14	
Gaston County	10.63	
Mecklenburg County	11.55	
Union County	10.32	
Concrete Saw	14.26	
Landscape	10.35	
Luteman	12.88	
Mason Tender (Cement/Concrete)	11.25	
Pipelayer	12.93	
Traffic Control (Cone Setter)	12.53	
Traffic Control (Flagger)	9.99	
	Rates	Fringes
POWER EQUIPMENT OPERATORS		
Backhoe/Excavator/Trackhoe		
Anson, Cabarrus, and Gaston Counties	14.21	
Mecklenburg County	13.79	
Union County	14.53	
Broom/Sweeper	13.97	
Bulldozer		
Anson, Cabarrus, and Gaston Counties	15.46	
Mecklenburg County	15.90	
Union County	14.96	
Crane	19.11	
Curb Machine	14.43	
Distributor	14.99	
Drill	16.68	
Grader/Blade		
Anson, Cabarrus, Gaston, and Union Counties	17.99	
Mecklenburg County	18.65	
Loader		
Anson, Cabarrus, Gaston, and Union Counties	14.46	
Mecklenburg County	14.43	
Mechanic	17.13	
Milling Machine	15.80	
Oiler	14.36	
Paver	16.65	
Roller		
Anson, Cabarrus, Gaston, and Union Counties	13.22	
Mecklenburg County	13.29	
Scraper	15.85	
Screed	15.23	
Tractor	14.47	
TRUCK DRIVER		
4 Axle Truck	11.90	

	Rates	Fringes
Distributor	16.75	
Dump Truck		
Anson, Cabarrus, and Gaston Counties	13.46	
Mecklenburg County	13.79	
Union County	13.49	
Flatbed Truck	15.02	
Lowboy Truck		
Anson, Cabarrus, Gaston, and Mecklenburg Counties	15.26	
Union County	15.23	
Off the Road Truck	15.00	
Single Axle Truck	12.13	
Tack Truck	16.52	
Water Truck	13.16	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

LIABILITY INSURANCE

(11-18-08) SP1 G80

Page 1-68, Article 107-16 is amended to include the following as the first, second, third and fourth paragraphs:

The Contractor shall be liable for any losses resulting from a breach of the terms of this contract. The Contractor shall be liable for any losses due to the negligence or willful misconduct of its agents, assigns and employees including any sub-contractors which causes damage to others for which the Department is found liable under the Torts Claims Act, or in the General Courts of Justice, provided the Department provides prompt notice to the Contractor and that the Contractor has an opportunity to defend against such claims. The Contractor shall not be responsible for punitive damages.

The Contractor shall at its sole cost and expense obtain and furnish to the Department an original standard ACORD form certificate of insurance evidencing commercial general liability with a limit for bodily injury and property damage in the amount of $5,000,000.00 per occurrence and general aggregate, covering the Contractor from claims or damages for bodily injury, personal injury, or for property damages which may arise from operating under the contract by the employees and agents of the Contractor. The required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy. The State of North Carolina shall be named as an additional insured on this commercial general liability policy. The policy may contain the following language as relates to the State as an additional insured: "This insurance with respect to the additional insured applies only to the extent that the additional insured is held liable for you or your agent's acts or omissions arising out of and in the course of operations performed for the additional insured."

The Contractor shall maintain all legally required insurance coverage, including without limitation, worker's compensation and vehicle liability, in the amounts required by law. Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies.

Upon execution of the contract, provide evidence of the above insurance requirements to the Engineer.

ON-THE-JOB TRAINING

(10-16-07) (Rev. 7-21-09) Z-10

Description

The North Carolina Department of Transportation will administer a custom version of the Federal On-the-Job Training (OJT) Program, commonly referred to as the Alternate OJT Program. All contractors (existing and newcomers) will be automatically placed in the Alternate Program. Standard OJT requirements typically associated with individual projects will no longer be applied at the project level. Instead, these requirements will be applicable on an annual basis for each contractor administered by the OJT Program Manager.

On the Job Training shall meet the requirements of 23 CFR 230.107 (b), 23 USC – Section 140, this provision and the On-the-Job Training Program Manual.

The Alternate OJT Program will allow a contractor to train employees on Federal, State and privately funded projects located in North Carolina. However, priority shall be given to training employees on NCDOT Federal-Aid funded projects.

Minorities and Women

Developing, training and upgrading of minorities and women toward journeyman level status is a primary objective of this special training provision. Accordingly, the Contractor shall make every effort to enroll minority and women as trainees to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

Assigning Training Goals

The Department, through the OJT Program Manager, will assign training goals for a calendar year based on the contractors' past three years' activity and the contractors' anticipated upcoming year's activity with the Department. At the beginning of each year, all contractors eligible will be contacted by the Department to determine the number of trainees that will be assigned for the upcoming calendar year. At that time the Contractor shall enter into an agreement with the Department to provide a self-imposed on-the-job training program for the calendar year. This agreement will include a specific number of annual training goals agreed to by both parties. The number of training assignments may range from 1 to 15 per contractor per calendar year. The Contractor shall sign an agreement to fulfill their annual goal for the year. A sample agreement is available at www.ncdot.org/business/ocs/ojt/.

Training Classifications

The Contractor shall provide on-the-job training aimed at developing full journeyman level workers in the construction craft/operator positions. Preference shall be given to providing training in the following skilled work classifications:

Equipment Operators	Office Engineers
Truck Drivers	Estimators
Carpenters	Iron / Reinforcing Steel Workers
Concrete Finishers	Mechanics
Pipe Layers	Welders

The Department has established common training classifications and their respective training requirements that may be used by the contractors. However, the classifications established are not all-inclusive. Where the training is oriented toward construction applications, training will be allowed in lower-level management positions such as office engineers and estimators. Contractors shall submit new classifications for specific job functions that their employees are performing. The Department will review and recommend for acceptance to FHWA the new classifications proposed by contractors, if applicable. New classifications shall meet the following requirements:

Proposed training classifications are reasonable and realistic based on the job skill classification needs, and

The number of training hours specified in the training classification is consistent with common practices and provides enough time for the trainee to obtain journeyman level status.

The Contractor may allow trainees to be trained by a subcontractor provided that the Contractor retains primary responsibility for meeting the training and this provision is made applicable to the subcontract. However, only the Contractor will receive credit towards the annual goal for the trainee.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman level status or in which they have been employed as a journeyman.

Records and Reports

The Contractor shall maintain enrollment, monthly and completion reports documenting company compliance under these contract documents. These documents and any other information as requested shall be submitted to the OJT Program Manager.

Upon completion and graduation of the program, the Contractor shall provide each trainee with a certification Certificate showing the type and length of training satisfactorily completed.

Trainee Interviews

All trainees enrolled in the program will receive an initial and Trainee/Post graduate interview conducted by the OJT program staff.

Trainee Wages

Contractors shall compensate trainees on a graduating pay scale based upon a percentage of the prevailing minimum journeyman wages (Davis-Bacon Act). Minimum pay shall be as follows:

60 percent	of the journeyman wage for the first half of the training period
75 percent	of the journeyman wage for the third quarter of the training period
90 percent	of the journeyman wage for the last quarter of the training period

In no instance shall a trainee be paid less than the local minimum wage. The Contractor shall adhere to the minimum hourly wage rate that will satisfy both the NC Department of Labor (NCDOL) and the Department.

Achieving or Failing to Meet Training Goals

The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and who receives training for at least 50 percent of the specific program requirement. Trainees will be allowed to be transferred between projects if required by the Contractor's scheduled workload to meet training goals.

If a contractor fails to attain their training assignments for the calendar year, they may be taken off the NCDOT's Bidders List.

Measurement and Payment

No compensation will be made for providing required training in accordance with these contract documents.

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.

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 also 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.

2.18 NC GENERAL NPDES PERMIT

In addition to complying with the Erosion and Sediment Control Plan, the Contractor shall adhere to the requirements of the North Carolina General NPDES Permit No. NCG01000 (Stormwater Discharge Permit for Construction Activities). A copy of the approved permit is included in *VIII Permits and Approvals* of this contract.

The Contractor shall provide the operation and maintenance necessary to maintain optimal performance of the stormwater controls.

An erosion control maintenance logbook must be kept for all sites. This logbook shall utilize the stormwater inspection sheet provided in *VIII Permits and Approvals* (page 126) and will document weekly inspections and inspections occurring after qualifying rain events. Visible sedimentation found off site must be recorded with a brief explanation as to the measures taken to prevent further releases and any measures taken to clean up the offsite sedimentation. The logbook shall remain on site at all times and must be made available to the Town upon request. Copies of the entries in the logbook shall be submitted to the Town with each month's invoice.

There is no direct payment for meeting the requirements of the NCG010000 permit, as such work is considered to be incidental to the contract. Monthly contract payments will not be released to the Contractor until a copy of the logbook entries for the month has been submitted and approved by the Engineer.

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 progress schedule for the Owner's approval at the pre-construction meeting. The Contractor's progress 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 <u>and</u> 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 3.8 (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 be 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.

Retainage will not be held for this Contract.

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 advice 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. ***Please note the Contractor is obligated to comply with Article 107-15 of the Standard Specifications including the dollar limits set forth.***

F. 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.

Please note that all Payment Bonds and Performance Bonds required for this project, shall be those found on the NCDOT website. The Payment and Performance Bonds, listed as MISC 6M, are located at:

http://www.ncdot.gov/doh/preconstruct/contracts/sp/2012sp/municipal.html

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:
(Contractor)

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 Trial 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

STATE/COUNTY SALES/USE TAX STATEMENT

PROJECT: _____

CONTRACTOR/SUBCONTRACTOR: _____

PERIOD COVERED: _____

Invoice No.	Invoice Date	Vendor's Name	Amount Before Taxes	5.50% NC Tax	____% County Tax	Total Invoice Amount	County Paid

I certify that the above-listed vendors were paid sales tax upon purchases of building material during the period covered by the construction estimate, and the property upon which such taxes were paid were, or will be, used in the performance of this Contract. The list above does not include any taxes paid on purchases of tangible personal property that does not annex to, affix to, or in some manner become a part of the project, building, structure or repairs.

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. SPECIFICATIONS

6.1 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.

6.2 CONCRETE

A. Compressive Strength

All concrete used in the construction of this project shall be 2500 PSI, Class B 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.

6.3 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.

The Contractor shall include the cost of installing and maintaining erosion and sedimentation control devices in the price bid for **Grading** unless otherwise specified.

6.4 FULL DEPTH STREET REPAIRS

Unless otherwise shown in the plans or stated by the Engineer in the field, all full depth street repairs will consist of digging out a five-inch depth specified area and replacing it with intermediate base course (I 19.0 B) or an approved equal. If the repaired area is not sealed off with an appropriate layer of asphalt surface mix 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.

6.5 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 and 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.

6.6 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".

There will be no separate measurement or payment for seeding and mulching. The costs associated with seeding and mulching the Project shall be included in the unit price for **Grading**.

END OF SPECIFICATIONS

VII. PROJECT SPECIAL PROVISIONS

7.1 SP1 - MOBILIZATION

Description: Work covered by this special provision consists of preparatory work and operations which must be preformed 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 subtotal amount bid for the various items in this Contract.

Payment will be made under:

MOBILIZATION.....LS

7.2 SP2 – GRADING

Description: The work covered by this special provision consists of all elements of work covered by Section 226, "Comprehensive Grading"; Section 240, "Ditch Excavation"; and the work listed in this contract as items A through N.

A. General grading along perimeter of pipe installation shall be in close conformity to the contour elevations established on the approved plans, or as directed by the Engineer.

B. Miscellaneous Concrete of Asphalt Removal and Disposal, the Contactor shall remove and dispose of Miscellaneous Concrete of Asphalt (existing concrete of asphalt driveways, streets, pads, slabs, wheelchair ramps, walks etc.) that must be removed and disposed of to build this project.

C. Milling of asphalt pavement as shown on the approved plans.

D. Removal and replacing of landscape timbers, planter boxes, and rock walls: the Contractor shall remove, protect, and replace rock walls, landscape timbers, and planter boxes, etc. that are within the construction work limits and/or shown on the plans. Any items to be removed will be offered to the property owner. If the property owner does not want the item(s), the Contractor shall satisfactorily dispose of the item(s).

E. Relocation and/or repair of landscape irrigation systems. These facilities are not located. The Contractor shall utilize a NC licensed Irrigation Contractor to perform any relocation or repair work necessitated by the project.

F. Removal and resetting of mail boxes, signs and site amenities: the Contractor shall remove, protect, and reset mail boxes, signs and site amenities that are within the construction work limits. The Contractor shall keep mailboxes in services at all times.

G. Removal and proper disposal of all existing fence that is to be removed as shown on the plans and as directed by the Engineer. When an existing fence section is removed the Contractor shall replace the last post with an end post. Fence materials to be removed shall be offered to the property owner. If the property owner does not want the item(s), the Contractor shall satisfactorily dispose of the item(s).

H. Tree Protection Safety Fence / Additional Tree Protection: any tree protection safety fence shown on the plans or additional tree protection safety fence anticipated by the Contractor (other than that shown on the plans) will be in accordance with the Charlotte "Landscape Construction Standards" Tree Preservation and Protection Section 01000.

I. The maintenance of all erosion control devices installed during the duration of the project. The Contractor shall be responsible for providing, installing, maintaining, and removing any required erosion control that is specified on the approved plans or as directed by the Engineer.

J. Repairing any insufficiencies that are present in all existing catch basins during construction (no steps, open joints, etc.). All catch basins shall be free of any debris that may have collected due to construction.

K. Removal and proper disposal existing drain pipes, trees, tree roots, shrubbery, structures, or any other foreign materials not associated with the overall appeal of the site.

L. Proper relocation and maintenance of street signs impacted by this project. The Contractor shall keep signs in service at all times.

M. Seeding and Mulching: the Contractor shall be responsible for all Seeding and Mulching required to complete this project in accordance with the plans and specifications. Seeded areas must exhibit a full stand of grass at the end of the warranty period.

N. Protection, maintenance, repair, and or replacement of all property corners: the Contractor will be responsible for protecting the integrity of all property corner monuments. Any property corners damaged during the construction of the project will be properly mitigated to the satisfaction of the Town.

Methods and Materials: Construction Methods will be per section 226 "Comprehensive Grading" and Section 240, "Ditch Excavation" of the latest addition of the NCDOT Standards Specifications.

Payment: Payment will be paid at the lump sum price for "Grading". Partial payments will be equal to the percentage of such item that is complete as estimated by the Engineer. This payment will be full compensation for all elements of work required to complete the Project as specified.

Payment will be made under:

GRADING.....LS

7.3 SP3 – CONSTRUCTION STAKES, LINES, AND GRADES

Description: The work covered by this special provision consists of providing construction stakes, lines and grades necessary to construct the proposed project. Work shall also include reestablishment of all property irons that are disturbed by the construction.

Methods and Materials: The Contractor will set construction stakes establishing lines, slopes and continuous profile-grade in road work, and centerline and benchmark for culvert work, protective and accessory structures, and appurtenances which require the use of a surveyor's level and transit. The Contractor will locate and mark right-of-way limits and construction easements within the work area. In addition, the Contractor will be responsible for all commutations and information relating to stakes, lines and grades. Contractor shall also reestablish all property irons disturbed by the construction. All construction staking and establishment of property irons at their correct locations shall be performed under the responsible charge of a North Carolina Registered Land Surveyor.

Measurement: There will be no separate measurement for this item.

Payment: Payment will be paid at the lump sum price for "Construction stakes, lines, and grades". Partial payments will be equal to the percentage of such item that is complete as estimated by the Engineer. This payment will be full compensation for all elements of work required to complete the Project as specified. The Contractor will be responsible for the preservation of all stakes of marks; no additional payment will be made for replacing any stakes or marks.

Payment will be made under:

CONSTRUCTION STAKES, LINES, AND GRADES.....LS

7.4 SP4 – COIR FIBER WATTLE

Description: Work covered by this special provision consists of furnishing, installing, maintaining, and removal of temporary coir fiber wattles at locations shown on the plans and as directed by the Engineer.

Construction Methods: The wattles shall be constructed in accordance with the approved plans and shall be maintained in its originally installed condition throughout the project duration. Payment will not be made for any wattle which is not properly maintained.

Measurement: The quantity of wattles to be paid for will be the actual number of installed and accepted.

Payment: The quantity of wattles, measured as provided above, will be paid for at the contract unit price bid per each for "Coir Fiber Wattle". Such payment will be full compensation for all work covered by this special provision, including but not limited to furnishing, installing, maintaining, and removal of materials, posts, and all incidentals.

Payment will be made under:

COIR FIBER WATTLE.....EA

7.5 SP5 – SAFETY HANDRAIL (ITLDS 3.04B)

Description: The work covered by this special provision includes constructing a ADA compliant safety handrail in accordance with the requirements of the detail (ITLDS 3.04B) and location shown on the approved plans.

Measurement: The quantity of handrail to be paid for will be the actual number of linear feet of ADA compliant steel handrail measured along the top of the handrail, which has been completed and accepted.

Payment: The quantity of handrail measured as provided above, will be paid for at the contract unit price per linear foot for "Safety Handrail". Such payment will be full compensation for all work covered in this special provision, including all excavation, and furnishing , delivering, and installing post concrete, handrail, paint, and all incidental materials necessary to construct the handrail. The Contractor is responsible for the design, fabrication, and installation of an ADA compliant safety rail. Shop drawings will not be approved by the Town.

Payment will be made under:

SAFTEY HANDRAIL ..... LF

7.6 SP6 – RETROFITTING WHEELCHAIR RAMPS WITH DETECTABLE WARNINGS (RAISED TRUNCATED DOMES)

Description: This work shall consist of retrofitting existing concrete wheelchair ramps with detectable warnings in accordance with the details, Standard Specifications and these provisions.

Materials: Detectable warnings may be either truncated dome concrete paving blocks or stamped concrete. Use Class B concrete in accordance with the Standard Specifications.

Truncated Domes shall have a base diameter of no less than 0.9 inches (23 mm) to no more than 1.4 inches (36 mm), a top diameter of no less than 50 % to no more than 65% of the base diameter, and a height of 0.2 inches (5 mm). Truncated domes shall have center-to-center spacing of no less than 1.6 inches (41 mm) to no more than 2.4 inches (61 mm), and a base to base spacing of 0.65 inches (16 mm) minimum, measured between the most adjacent domes on square grid.

Construction Methods: Place detectable warnings in accordance with Section 825-4 of the Standard Specifications. Sawcut to the full depth of the concrete and adjust the existing subgrade to the proper grade prior to placing concrete to be stamped or installing paving blocks. Truncated domes shall be installed 24 inches (600 mm) in length of along the bottom of the curb ramps in accordance with the details and plans.

Obtain 70 percent contrast visibility with adjoining surfaces, either light-on-dark, or dark-on-light sequence covering the entire ramp. The detectable warnings shall have the same or nearly the same contrast as the existing ramp.

Method of Measurement: The quantity of detectable warning domes to be paid for will be the actual number of retrofitted wheelchair ramps, which have been completed and accepted.

Payment: When detectable warning domes are installed on existing concrete wheelchair ramps, they will be paid for at the contract unit price per each for "Retrofit existing wheelchair ramps". Such price and payment will be full compensation for excavation and backfilling; sawing, repairing and/or replacing the existing sidewalk or curbs within the pay limits for retrofit shown on the detail; pavement repairs; furnishing and placing detectable warnings, construction joints and removal and disposal of existing sidewalk and curb and gutter when required and for all materials labor, equipment, tools and incidentals necessary to complete the work.

Payment will be made under:

RETROFITTING WHEELCHAIR RAMPS WITH DETECTABLE WARNINGS (RAISED TRUNCATED DOMES).....EA

7.7 SP7 - 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

7.8 SP8 – 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. Perform moisture and proctor testing.
B. Perform field density testing of backfill material compaction.
C. Provide proof-rolling observations and corrective recommendations/measures.
D. All concrete compressive strength testing and sampling (see Subarticle 6.2 CONCRETE).

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

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.

Payment will be made under:

MATERIALS TESTING SERVICES ..... LS

END OF PROJECT SPECIAL PROVISIONS

VIII. PERMITS AND APPROVALS

NORTH CAROLINA NPDES PERMIT – NCG 010000

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY

GENERAL PERMIT – NCG 010000

TO DISCHARGE STORMWATER UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
for

CONSTRUCTION ACTIVITIES

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by North Carolina Environmental Management Commission and the Federal Water Pollution Control Act as amended:

> All owners or operators of stormwater point source discharges associated with construction activities including clearing, grading or excavation activities resulting in the disturbance of land greater than or equal to one acre, or that are part of a common plan of development of that size, are hereby authorized to discharge stormwater to the surface waters of North Carolina or to a separate storm sewer system conveying stormwater to the surface waters in accordance with the terms and conditions set forth herein. Failure to receive coverage under this permit or violations of any of the conditions listed may result in assessment of state or federal civil or criminal penalties for each day of violation.

The General Permit shall become effective on August 3, 2011.
The General Permit shall expire at midnight on July 31, 2016.

Signed this day July 29th, 2011

Coleen H. Sullins, Director
Division of Water Quality
By the Authority of the Environmental Management Commission

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SECTION I
COVERAGE UNDER THE GENERAL PERMIT

Until this State of North Carolina General Permit expires or is modified or revoked, the permittee is authorized to discharge stormwater in accordance with the terms and conditions of this permit and in accordance with an approved Erosion and Sedimentation Control Plan by the North Carolina Division of Land Resources, Land Quality Section, or a delegated local program under the provisions and requirements of North Carolina General Statutes in Article 4 of Chapter 113A to the surface waters of North Carolina or to a separate storm sewer system. The permit, along with state statutes (N.C.G.S. 143-215.1) and rules (NCAC 2H .0100) relating to stormwater permitting are designed to work together to assure compliance with the NPDES requirements of the Clean Water Act. Furthermore, North Carolina rules in Title 15A NCAC 2H .0126 adopt by reference the federal stormwater permitting requirements.

Any other point source discharge to surface waters of the state is prohibited unless covered by another permit, authorization or approval. The discharges allowed by this General Permit shall not cause or contribute to violations of North Carolina Water Quality Standards for surface waters and wetlands (15A NCAC 2B .0200). Discharges allowed by this permit must meet all applicable water quality certification or permit requirements as outlined in 15A NCAC 2H .0500 and 2H .1300. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

This General Permit is applicable to point source discharges from construction activities disturbing one or more acres of land. The application to the Division of Land Resources or a delegated local program for approval of a local Erosion and Sedimentation Control Plan (E&SC Plan) shall be considered to take the place of a Notice of Intent for coverage under this General Permit for those projects requiring this Permit coverage. Coverage under this General Permit shall become effective upon issuance of an approval for the E&SC Plan by the Division of Land Resources or delegated local program that includes the following:

a. Designation on the plans where the specific ground stabilization requirements apply as per Section II.B.2 of this permit.
b. Designs of basins with surface withdrawal as per Section II.B.4 of this permit.

Prior to the commencement of construction and land disturbing activities, approval of the E&SC Plan shall be obtained.

This General Permit revision reflects changes made in the federal regulations effective February 1, 2010. The federal regulations were a result of litigation that mandated that construction activities over a certain size must contain additional specifications that would result in reduced wastes and sediment loading reaching the nation's waters. The Division of Water Quality and the Division of Land Resources established a Construction General Permit Technical Advisory Group (CTAG) to provide them guidance in developing the permit. The CTAG was comprised of 14 members who represented a broad range of environmental, regulatory, government and development interests. A Draft Construction General Permit was prepared and made available for review on May 13, 2011. A public meeting was held on June7th. This permit reflects the input received during the twelve- month development process.

Any owner or operator not wishing to be covered or limited by this General Permit may apply for an individual NPDES permit in accordance with NPDES procedures in 15A NCAC 2H .0100, stating the reasons supporting the request. Any application for an individual permit should be made at least 180 days prior to the time the permit is needed unless waived, by the Director.

This General Permit does not cover activities or discharges covered by an individual NPDES permit until the individual permit has expired or has been rescinded. Any person conducting an activity covered by an

individual permit but which could be covered by this General Permit may request that the individual permit be rescinded and coverage under this General Permit be provided.

The Division of Water Quality partners with the Division of Land Resources to implement a complete program for construction site coverage that includes state sedimentation control and NPDES stormwater control. The Division of Land Resources implements their control programs through an Erosion and Sedimentation Control Plan (E&SC Plan) issued for each construction site in the state disturbing one or more acres of land. An E&SC Plan is required for each site by the Division of Land Resources or a delegated local government program. The NPDES Construction Stormwater permit (NCG010000) is attached to Erosion and Sedimentation Control Plan approvals. The permittee is responsible for abiding by the conditions of both of these documents.

The Sedimentation Pollution Control Act of 1973 places a duty upon the Sedimentation Control Commission to "develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities." The Sedimentation Control Commission and the Division of Land Resources have adopted the North Carolina Erosion and Sediment Control Planning and Design Manual as the document to provide that guidance for use at all constructions sites in the state. The individual Erosion and Sedimentation Control Plans are developed based on this guidance and become a condition of the Division of Water Quality's Construction Stormwater General Permit. As provided in this permit, "deviation from the approved E&SC Plan, or approved amendment to that plan, shall constitute a violation of the terms and conditions of this general permit."

SECTION II
STORMWATER POLLUTION PREVENTION REQUIREMENTS

The State construction-related stormwater pollution prevention program provides for: (a) identification of the potential sources of stormwater pollution at the individual construction site; (b) description of the stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (c) identification of the procedures the operator will implement to comply with the terms and conditions of this general permit and the Erosion and Sedimentation Control Plan (E&SC Plan). In North Carolina, the approved **Erosion and Sedimentation Control Plan** for the site, and the **NCG01 Construction General Permit** are considered the **Stormwater Pollution Prevention Plan (SWPPP)** for that site. These two documents, and any specifically-added water quality conditions for that site, contain the provisions necessary to meet the federal regulatory requirements of the NPDES program including provisions implementing the Effluent Limitations Guidelines effective at the time of this permit.

SECTION II.A. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE EROSION AND SEDIMENTATION CONTROL PLAN

The Erosion and Sedimentation Control program is mandated and funded according to state statutes. The majority of the technology-based requirements needed to satisfy the federal stormwater pollution prevention specifications are addressed in the approved E&SC Plan. Each applicant for an E&SC Plan approval is required to comply with a "checklist" of over 50 site-specific conditions*. The categories of these conditions include:

1) location information,
2) site features,
3) control measures,
4) drainage features,
5) stormwater calculations,
6) stabilization,
7) ownership information and
8) construction sequencing.

*The individual requirements to be addressed in each E&SC Plan application can be found at http://portal.ncdenr.org/web/lr/erosion . See "Plan check list for designers."

SECTION II.B. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE NC CONSTRUCTION GENERAL PERMIT

In addition to the stormwater pollution prevention controls found in the E&SC Plan, this Construction General Permit contains additional conditions that must be met in order to comply with the NPDES program requirements. They are as follows:

1) Construction Site Pollutants

Permittee must manage activities on the site such that water quality standards are not violated from site activities or allowed discharges. In addition to stream pollution from sediment discharge, other activities on construction and development sites can result in pollutants reaching the state's waters. EPA has prepared guidance documents that provide best management practices that address many activities. See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=4

The following activities, and others on a site-specific basis, require oversight throughout the construction and development process to assure that all water quality standards are protected:

a) Equipment Operation and Maintenance - Equipment utilized during the construction activity on a site must be operated and maintained in such a manner as to prevent the potential or actual pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be discharged onto the ground or into surface waters. Spent fluids shall be cleaned up and disposed of in a manner so as not to enter the waters, surface or ground, of the state and in accordance with applicable state and federal regulations.
b) Material Handling - Herbicide, pesticide, and fertilizer usage during the construction activity shall be consistent with the Federal Insecticide, Fungicide, and Rodenticide Act and shall be in accordance with label restrictions.
c) Building Material Waste Handling
   i) All wastes composed of building materials shall be disposed of in accordance with North Carolina General Statutes, Chapter 130A, Article 9 - Solid Waste Management, and rules governing the disposal of solid waste (North Carolina Administrative Code Section 15A NCAC 13B).
   ii) Locate areas dedicated for management of land clearing and demolition debris, construction and domestic waste, and hazardous or toxic waste. This location shall be at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.
   iii) Dumping of paint and other liquid building material wastes in storm drains is prohibited.
   iv) Litter and Sanitary Waste - The permittee shall control the management and disposal of litter and sanitary waste from the site.
d) Location of Stock Piles - Locate earthen-material stock pile areas at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.
e) Handling of Concrete
   i) Concrete materials onsite, including excess concrete, must be controlled and managed to avoid contact with surface waters, wetlands or buffers. No concrete or cement slurry shall be discharged from the site. (Note that discharges from onsite concrete plants require coverage under a separate NPDES permit – NCG140000.)
   ii) Any hardened concrete residue will be disposed of, or recycled on site, in accordance with local and state solid waste regulations.

2) Ground Stabilization

a) Soil stabilization shall be achieved on any area of a site where land-disturbing activities have temporarily or permanently ceased according to the following schedule:
   i) All perimeter dikes, swales, ditches, perimeter slopes and all slopes steeper than 3 horizontal to 1 vertical (3:1) shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 7 calendar days from the last land-disturbing activity.
   ii) All other disturbed areas shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 14 calendar days from the last land-disturbing activity.

b) Conditions - In meeting the stabilization requirements above, the following conditions or exemptions shall apply:
   i) Extensions of time may be approved by the permitting authority based on weather or other site-specific conditions that make compliance impracticable.
   ii) All slopes 50' in length or greater shall apply the ground cover within 7 days except when the slope is flatter than 4:1. Slopes less than 50' shall apply ground cover within 14 days except when slopes are steeper than 3:1, the 7 day-requirement applies.
   iii) Any sloped area flatter than 4:1 shall be exempt from the 7-day ground cover requirement.
   iv) Slopes 10' or less in length shall be exempt from the 7-day ground cover requirement except when the slope is steeper than 2:1.
   v) Although stabilization is usually specified as ground cover, other methods, such as chemical stabilization, may be allowed on a case-by-case basis.
   vi) For portions of projects within the Sediment Control Commission-defined "High Quality Water Zone" (15A NCAC 04A.0105), stabilization with ground cover shall be achieved as soon as practicable but in any event on all areas of the site within 7 calendar days from the last land-disturbing act.
   vii) Portions of a site that are lower in elevation than adjacent discharge locations and are not expected to discharge during construction may be exempt from the temporary ground cover requirements if identified on the approved E&SC Plan or added by the permitting authority.

3) Self Inspection and Reporting Requirements

Minimum self inspection and reporting requirements are as follows unless otherwise approved in writing by the Division of Water Quality.

a) A rain gauge shall be maintained in good working order on the site unless another rain-monitoring device has been approved by the Division of Water Quality.

b) A written record of the daily rainfall amounts shall be retained and all records shall be made available to Division of Water Quality or authorized agent upon request. If no daily rain gauge observations are made during weekend or holiday periods, and no individual-day rainfall information is available, the cumulative rain measurement for those un-attended days will determine if a site inspection is needed. (Note: if no rainfall occurred, the permittee must record "zero").

c) Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:
   i) All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days, and
   ii) All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

d) Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

e) Inspections are only required to be made during normal business hours. When adverse weather conditions would cause the safety of the inspection personnel to be in jeopardy, the inspection can be delayed until it is deemed safe to perform these duties. (Times when inspections were delayed because of safety issues should be noted in the Inspection Record.) If the inspection cannot be done on that day, it must be completed on the following business day.

f) Twenty-four Hour Reporting for visible sediment deposition
   i) The permittee shall report to the Division of Water Quality central office or the appropriate regional office any visible sediment being deposited in any stream or wetland or any noncompliance which may endanger health or the environment. (See Section VIII of this permit for contact information.) Any information shall be provided orally or electronically within 24 hours from the time the permittee became aware of the circumstances.
   ii) A written submission shall be provided to the appropriate regional office of the Division of Water Quality within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the sediment deposition and actions taken to address the cause of the deposition. The Division of Water Quality staff may waive the requirement for a written report on a case-by-case basis.

g) Records of inspections made during the previous 30 days shall remain on the site and available for agency inspectors at all times during normal working hours, unless the Division of Water Quality provides a site-specific exemption based on unique site conditions that make this requirement not practical. Older records must be maintained for a period of three years after project completion and made available upon request. The records must provide the details of each inspection including observations, and actions taken in accordance with this permit. The permittee shall record the required rainfall and monitoring observations on the Inspection Record form provided by the Division or a similar inspection form that is inclusive of all of the elements contained in the Division's form. Use of electronically-available records, in lieu of the required paper copies for inspection will be allowed if shown to provide equal access and utility as the hard-copy records.

h) Inspection records must include, at a minimum, the following:
   i) Control Measure Inspections: Inspection records must include at a minimum: 1) identification of the measures inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) indication of whether the measures were operating properly, 5) description of maintenance needs for the measure, 6) corrective actions taken (7) date of actions taken, as well as the date and amounts of rainfall received.
   ii) Stormwater Discharge Inspections: Inspection records must include at a minimum: 1) identification of the discharge outfall inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) evidence of indicators of stormwater pollution such as oil sheen, floating or suspended solids or discoloration, 5) indication of visible sediment leaving the site, 6) actions taken to correct/prevent sedimentation and 7) date of actions taken.
   iii) Visible Sedimentation Found Outside the Site Limits: Inspection records must include: 1) an explanation as to the actions taken to control future releases, 2) actions taken to clean up or stabilize the sediment that has left the site limits and 3) the date of actions taken.
   iv) Visible Sedimentation Found in Streams or Wetlands: All inspections should include evaluation of streams or wetlands onsite or offsite (where accessible) to determine if visible sedimentation has occurred.

i) Visible Stream Turbidity - If the discharge from a site results in an increase in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions. Sites discharging to streams named on the state's 303(d) list as impaired for sediment-related causes may be required to perform additional monitoring, inspections or

application of more-stringent management practices if it is determined that the additional requirements are needed to assure compliance with the federal or state impaired-waters conditions. If a discharge covered by this permit enters a stream segment that is listed on the Impaired Stream List for sediment-related causes, and a Total Maximum Daily Load (TMDL) has been prepared for those pollutants, the permittee must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and meets the requirements of the approved TMDL. The Division of Water Quality 303(d) list can be found at: http://h2o.enr.state.nc.us/tmdl/General_303d.htm/

4.) Sediment Basins

Sediment basins and traps shall meet the following requirements:

a) Outlet structures shall be utilized that withdraw water from the surface.
b) For basins or traps that have a drainage area of less than 1.0 acre, draw-down designs specified in the Division of Land Resources or delegated local program requirements are acceptable.
c) Chemical treatment
   i) All treatment chemicals must be stored in leak-proof containers that are kept under storm-resistant cover or surrounded by secondary containment structures designed to protect adjacent surface waters.
   ii) All treatment chemicals must be used in accordance with dosing specifications and application rates provided by the manufacturer, supplier and as specified by the Division of Water Quality.
   iii) The Permittee must only use chemicals that have been approved by the NC Division of Water Quality and posted on their "North Carolina Division of Water Quality Approved PAMS/Flocculants List" found on their web site at: http://portal.ncdenr.org/web/wq/ws/su .
   iv) The Permittee must route stormwater treated with polymers, flocculants, or other treatment chemicals through sediment trapping, filtering, and/or settling devices(s) to ensure adequate removal of sediment flocculent prior to discharge to surface waters.
d) Discharge requirement - Discharges must meet the statutory requirements of the Sediment Pollution Control Act and utilize the provisions of Section 6.74 of the Erosion and Sediment Control Planning and Design Manual to assure that buffers and vegetated areas will be used to reduce the potential for visible siltation outside of the 25% buffer zone nearest the land-disturbing activity.

5.) Discharges to Special or Threatened Waters

a) Disturbed areas within one mile of and draining to waters where federally-listed threatened or endangered aquatic species are present shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. These projects shall also use control measures that are designed, installed and maintained in accordance with criteria set forth in 15A NCAC 04B .0124 – Design Standards in Sensitive Watersheds. The Division of Water Quality may require additional/alternative protection measures or require coverage under an individual Construction NPDES Stormwater permit. Other management practices may be acceptable if these designs are shown by the applicant, to the satisfaction of the Director, to provide equivalent protection.
b) Construction activities in High Quality Waters Zones require quicker ground stabilization provisions as specified in Section II.B.2.b. of the permit.

SECTION III
FRAMEWORK OF PERMIT COVERAGE

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge stormwater associated with construction activity including clearing, grading and excavation activities resulting in the disturbance of land and related support activities. Such discharges shall be controlled, limited and monitored as specified in this permit.

1) Continuation of Previously Permitted Projects - Projects and their corresponding activities permitted under the previous version of the NC general permit for construction activities will continue to be valid with the previous permit conditions and will be considered covered under this general permit.

2) Projects submitted prior to the effective date of the permit – Complete project applications that were received prior to the effective date of this permit, but not approved by the permitting authority until after approval of this NPDES permit, can rely on design and management practices effective at the time of application submittal.

3) Implementation of the Erosion and Sedimentation Control Plan (E&SC Plan):
   a) The Permittee must implement and follow the E&SC Plan, which has been approved by the Division of Land Resources or local delegated program.. The approved E&SC Plan is considered a condition of this general permit.
   b) Deviation from the approved E&SC Plan, or approved amendment, shall constitute a violation of the terms and conditions of this general permit except that deviation from the approved plan will be allowed:
      i) to correct an emergency situation where sediments are being discharged off the site, or,
      ii) when minor modifications have been made that result in an alteration or relocation of an erosion or sedimentation control measure and does not affect the ability of the measure to perform as intended.
   c) Allowed deviations must be noted on the approved E&SC Plan and maintained at the job site.
   d) Prior to the commencement of any land disturbance onsite, and during the construction activities, a copy of the approved E&SC Plan and this NPDES construction permit shall be maintained on the site. These documents must be kept current and up to date.

4) BMPs and Control Measures - Consistent with the provisions contained in this permit and the E&SC Plan, the permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

5) Additional Action - If there is evidence indicating that the stormwater discharges from the site are impacting or have the potential to impact surface waters or wetlands, the Division of Water Quality may take appropriate actions including any or all of the following:
   a) take compliance and enforcement action;
   b) require the permittee to include and implement appropriate control and restoration measures;
   c) require the permittee to develop and implement additional site-specific stormwater pollution prevention measures;
   d) require the permittee to obtain an individual permit.

6) When an Individual Permit may be Required - The Director may require any owner/operator authorized to discharge under a certificate of coverage issued pursuant to this general permit to apply for and obtain an individual permit or a general permit with additional conditions. Any interested person may petition the Director to require an individual permit pursuant to 15A NCAC 2H .0127. Cases where an individual permit may be required include, but are not limited to, the following:
   a) The receiving stream is of a unique quality and the standard conditions may not provide adequate protection;
   b) The discharger is a significant contributor of pollutants;
   c) Conditions at the permitted site change, altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;

d) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
e) The discharge violates the terms or conditions of this general permit;
f) Effluent limitations are promulgated for the point sources covered by this general permit;
g) A Water Quality Management Plan containing requirements applicable to such point sources is approved after the issuance of this general permit.

7) When an Individual Permit may be Requested - Any permittee operating under this general permit may request to be excluded from the coverage of this general permit by applying for an individual permit. When an individual permit is issued to an owner/operator the applicability of this general permit is automatically terminated on the effective date of the individual permit.

SECTION IV
OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1) Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this general permit.
2) Need to Halt or Reduce not a Defense - It shall not be a defense for a permittee in an enforcement action that it was necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this general permit.
3) Bypassing of Stormwater Control Facilities
   a) Bypass Not Exceeding Limitations.
   The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation or as part of a planned action specified in the approved Erosion and Sedimentation Control Permit. These bypasses are not subject to the provisions of Paragraphs b. and c. of this section.
   b) Notice
      i) Anticipated bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.
      ii) Unanticipated bypass - The permittee shall submit notice to the Division contact (See Section VIII.) within 24 hours of the occurrence of an unanticipated bypass.
   c) Prohibition of Bypass
   Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
      i) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
      ii) There were no feasible alternatives to the bypass, such as the use of auxiliary control facilities, retention of stormwater or maintenance during normal periods of equipment downtime or dry weather. This condition is not satisfied if adequate backup controls should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
      iii) The permittee submitted notices as required under Paragraph b. of this section.
   d) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Paragraph c. of this section.
4) Upsets
   a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment or control facilities,

inadequate treatment or control facilities, lack of preventive maintenance, or careless or improper operation.

b) Effect of an Upset - An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c) Conditions Necessary for a Demonstration of Upset - A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   i) An upset occurred and that the permittee can identify the cause(s) of the upset;
   ii) The permitted facility was at the time being properly operated;
   iii) The permittee submitted notice of the upset as required in this general permit, and,
   iv) The permittee complied with any remedial measures required in this general permit.

d) Burden of Proof - In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5) Inspection and Entry - The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:
   a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this general permit;
   b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
   c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
   d) Sample or monitor at reasonable times, for the purposes of assuring general permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

SECTION V
PERMIT ADMINISTRATION AND COMPLIANCE ISSUES

1) Time of compliance – Erosion and sedimentation control measures shall be maintained, and self-monitoring shall continue, after the completion of construction and development until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the Erosion and Sedimentation Control Plan has been approved, the new owner or person in control shall conduct and document self-monitoring until the establishment of permanent ground cover sufficient to restrain erosion.

   Upon establishment of permanent ground cover sufficient to restrain erosion, the permittee shall request an inspection by the permitting authority to verify the adequacy of the ground cover. Coverage under the permit shall end when a Sedimentation Inspection Report is issued documenting the final stabilization of the site with adequate permanent ground cover. The signed Sedimentation Inspection Report shall serve as a notice of termination.

2) Operation efficiency - During construction and until the completion of construction or development and the establishment of permanent stabilization, the permittee shall provide the operation and maintenance necessary to operate the storm water control measures and all erosion and sedimentation control measures at optimum efficiency.

3) Corrective action - If inspections required by this permit identify a need for maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment

or other pollutants these actions must be performed as soon as possible and before the next storm event to maintain the effectiveness of the control measures.

4) Duty to Comply - The permittee must comply with all conditions of this general permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; certificate of coverage termination, revocation and reissuance, or modification; or denial of a certificate of coverage upon renewal application.
   a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
   b) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $27,000 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.
   c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars ($25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: NC General Statute 143-215.6A].
   d) Any person may be assessed an administrative penalty by the Administrator of the U.S. Environmental Protection Agency for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500. Penalties for Class II violations are not to exceed $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500.

5) Duty to Mitigate - The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

6) Civil and Criminal Liability - Except as provided in Section IV.3. of this permit regarding bypassing of stormwater control facilities, nothing in this general permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
7) Oil and Hazardous Substance Liability - Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
8) Property Rights - The issuance of this general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.
9) Severability - The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this general permit, shall not be affected thereby.
10) Duty to Provide Information - The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the certificate of coverage issued pursuant to this general permit or to determine compliance with this general permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this general permit.
11) Signatory Requirements
    a) All applications, reports, or information submitted to the Director shall be signed and certified as follows:
        i) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (b) the manager of one or more manufacturing production or operating facilities provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
        ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
        iii) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.
    b) All reports required by the general permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
        i) The authorization is made in writing by a person described above;
        ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the

company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

iii) The written authorization is submitted to the Director.

c) Any person signing a document under paragraphs a. or b. of this section shall make the following certification:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

12) Penalties for Tampering -The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this general permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

13) General Permit Modification, Revocation and Reissuance, or Termination - The issuance of this general permit does not prohibit the Director from reopening and modifying the general permit, revoking and reissuing the general permit, or terminating the general permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. seq.

14) Availability of Reports - Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, discharge data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.

15) Penalties for Falsification of Reports - The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this general permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

16) Anticipated Noncompliance - The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.

17) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Director, it shall promptly submit such facts or information.

18) Limitations Reopener - This general permit shall be modified or alternatively, revoked and reissued, to comply with any applicable effluent guideline or water quality standard issued or approved under Sections 302(b) (2) (c), and (d), 304(b) (2) and 307(a) of the Clean Water Act, if the effluent guideline or water quality standard so issued or approved:

a) contains different conditions or is otherwise more stringent than any effluent limitation in the general permit; or

b) controls any pollutant not limited in the general permit.

c) The general permit as modified or reissued under this paragraph shall also contain any other requirements in the Act then applicable.

SECTION VI
DISCHARGE MONITORING AND TURBIDITY LIMITATIONS

This General Permit does not include requirements for numeric limits for discharges from construction sites. However, the next reissuance of this North Carolina Construction General Permit (NCG 01) is scheduled for five years from the date of approval of this permit and will contain effluent limitations as required in *Subpart B-Construction and Development Effluent Guidelines* of Part 450 of the Code of Federal Regulations.

SECTION VII
DEFINITIONS

1) Act or "the Act" or CWA - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et. seq.
2) Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operation procedures, and management practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
3) Bypass - The intentional diversion of stormwater from any portion of a stormwater control facility.
4) Control Measures - Refers to any BMP or other structural or non-structural practices and procedures used to prevent or reduce the discharge of pollutants including practices to control erosion and sedimentation.
5) Director - The Director of the Division of Water Quality.
6) Division - The Division of Water Quality, Department of Environment, and Natural Resources.
7) EMC - The North Carolina Environmental Management Commission.
8) Erosion and Sedimentation Control Plan - A plan developed in compliance with the North Carolina Sedimentation Pollution Control Act of 1973 to prevent the erosion and deposition of sediment and other materials into the waters of the State from construction or other land-disturbing activities that disturb one or more acres of land. Each plan must be approved by the NC Sedimentation Control Commission or a program delegated by the Commission to a local government.
9) Ground cover - Any vegetative growth or other material which, when applied to the soil surface, renders the soil surface stable against accelerated erosion.
10) Normal Business Hours - These are generally considered to be between the hours of 6 a.m. and 6 p.m., or when workers are normally present on the construction site. Weekends and federal holidays are not considered normal business hours unless construction activities are taking place on the site during those times.
11) Permitting Authority - The permitting authority is the agency that issues the permit. The Division of Water Quality is the delegated NPDES permitting authority and issues this permit. However, some erosion and sedimentation control activities are performed by Division of Land Resources or the locally-delegated programs. Other activities may be shared by the two divisions and the local programs. The Land Quality Section of the Division of Land Resources and the Surface Water Protection Section of the Division of Water Quality maintain a Memorandum of Understanding that specifies specific roles of the two divisions and the local programs and will be used to assign specific control and oversight activities between the agencies.
12) Permanently Cease - When all or part of the land disturbing activity is complete and no additional alteration or disturbance of the land surface is planned prior to final stabilization.
13) Permanent Stabilization - When all soil disturbing activity is completed and exposed soils have been stabilized with a vegetative cover with a density of at least 80% or covered with a structural stabilization method. Permanent perennial vegetation may include the use of sod, shrubs and ground cover plants mixed with mulching, aggregate or other landscaping techniques. Structural methods include concrete, asphalt, retaining wall or other stabilization techniques.

14) Permittee -The person, firm or organizational entity that signed as the financially responsible party on the Erosion and Sedimentation Control Plan.
15) Point Source Discharge - Any discernible, confined and discrete conveyance, including but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, discrete fissure, or container from which pollutants are or may be discharged to waters of the state.
16) Soil Stabilization - The use of vegetative, physical or chemical coverage techniques that will restrain accelerated erosion on disturbed soils for temporary or permanent control needs.
17) Stormwater Pollution Prevention Plan (SWPPP) – The elements of the State's stormwater pollution prevention program that provide the technology-based requirements designed to protect the state's waters from the adverse impacts of sediments. In North Carolina, the combination of the NCG01 Construction General and the Erosion and Sedimentation Control Plan are considered the SWPPP. It should be noted that on sites that involve multiple or complex sources of pollution, the Division may require additional control measures as needed to assure that water quality is protected and these additional measures will also be considered part of the SWPPP.
18) Temporarily Cease - When all or part of the site that is and will remain un-worked for a period of days but where site land disturbing activity is not complete and additional land disturbing activity is planned.
19) Temporary Stabilization – When the establishment of ground cover over all disturbed areas (such as mulching, rolled erosion control products, vegetation, or other material) renders the surface stable against accelerated erosion. Stabilization shall be achieved with the establishment of a uniform and evenly-distributed (i.e., without large bare areas) ground cover with a cover density of at least 80%.
20) Severe property damage – Substantial physical damage to property, damage to the control measures that cause them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

SECTION VIII
NC DIVISION OF WATER QUALITY CONTACTS

Asheville Regional Office
2090 U.S. Highway 70
Swannanoa, NC 28778
828/296-4500
FAX 828/299-7043

Fayetteville Regional Office
Systel Building,
225 Green St., Suite 714
Fayetteville, NC 28301-5094
910/433-3300
FAX 910/486-0707

Mooresville Regional Office
610 East Center Ave.
Mooresville, NC 28115
704/663-1699
FAX 704/663-6040

Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, NC 27107
336/771-5000
FAX 336/771-4630

Washington Regional Office
943 Washington Square Mall
Washington, NC 27889
252/946-6481
FAX 252/975-3716

Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, NC 28405
910/796-7215
FAX 910/350-2004

Raleigh Regional Office
3800 Barrett Drive
Raleigh, NC 27609
919/791-4200
FAX 919/571-4718

Raleigh Regional Office
Mail to:
1628 Mail Service Center
Raleigh, NC 27699-1628

NCDENR INSPECTION RECORD FORM

INSPECTION RECORD

FOR ACTIVITIES UNDER STORMWATER GENENERAL PERMIT NCG010000 * (12/29/09))

PROJECT: _____ **MONITORING FOR THE WEEK BEGINNING:** _____

RAINFALL: A rain gauge shall be maintained onsite and a record of the daily rainfall amounts shall be kept.

Day or Date:							
Rainfall Amount (inches):							
Initials:							

ASSESSMENT OF CONTROL MEASURES: All control measures must be inspected at least once per seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period.

Measure Identification (i.e., silt fence, sediment pond, sediment trap, ground cover)	Date of inspection	Initials of inspector	Operating Properly (Y/N)	Corrective Actions Taken	Date Corrective Action Taken

STORMWATER DISCHARGE OUTFALLS: All stormwater discharge outfalls must be inspected at least once per seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period.

Stormwater Discharge Outfall Identification	Date of Inspection	Initials of Inspector	Is Erosion Seen Near Outfall? (Y/N)	Describe evidence of other pollutants discharging from the site such as oil sheen, discoloration, cement wastes, sanitary waste, fertilizers, or fuel or material storage leakage.

VISIBLE SEDIMENTATION AND/OR STREAM TURBIDITY: Record corrective actions taken in "ASSESSMENT OF CONTROL MEASURES" above.

- Is there any visible sediment deposited in a stream, wetland or buffer? Yes _____ No ____ Date(s) _____ DWQ contacted? ____
- Is there any visible sediment deposited on adjacent property(ies)? Yes _____ No ____ Date (s) _____
- Is there any visible decrease in stream clarity (increased turbidity-cloudy) because of a discharge? Yes ___ No ___ Date(s) _____

Has all land disturbing activity been completed? (Y/N) _____ Has the final permanent ground cover been completed & established? (Y/N) _____

By this signature, I certify, in accordance with Part II Sec. B(10) of the NCG010000 permit, that this report is accurate and complete to the best of my knowledge

Signature of Permittee or Designee: _____ Date: _____

* For a digital copy of this form and other information about the Construction General Permit, see: http://portal.ncdenr.org/web/wq/ws/su/construction

NCDENR 401 WATER QUALITY CERTIFICATION APPROVAL

NCDENR

North Carolina Department of Environment and Natural Resources
Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
Secretary

May 21, 2010
DWQ# 10-0331
Union County

Mr. Scott Kaufhold
Town of Indian Trail
100 Navajo Trail
Indian Trail, NC 28079

Subject: Sidewalk Project

APPROVAL of 401 Water Quality Certification with Additional Conditions

Dear Mr. Kaufhold:

You have our approval, in accordance with the general certification and those conditions listed below, to impact 69 linear feet (lf) of unnamed stream to South Fork Crooked Creek in order to complete the project in Union County, as described in your application received by the Division of Water Quality (DWQ) on May 7, 2010. After reviewing your application, we have determined that this project is covered by Water Quality General Certification Number 3820, which can be viewed on our web site at http://portal.ncdenr.org/web/wq/ws. The General Certification allows you to use Nationwide Permit Number 14 once it is issued to you by the U.S. Army Corps of Engineers. Please note that you should get any other federal, state or local permits before proceeding with your project, including those required by (but not limited to) Sediment and Erosion Control, Non-Discharge, and Water Supply Watershed regulations.

The above noted Certification will expire when the associated 404 permit expires unless otherwise specified in the General Certification. This approval is only valid for the purpose and design that you described in your application. If you change your project, you must notify us in writing, and you may be required to send us a new application for a new certification. If the property is sold, the new owner must be given a copy of the Certification and approval letter; and is thereby responsible for complying with all conditions.

In addition to the requirements of the certification, you must also comply with the following conditions:

1. The Mooresville Regional Office shall be **notified in writing** once construction at the approved impact areas has commenced.

2. Use of native vegetation and other soft stream bank stabilization techniques must be used where practicable instead of riprap or other bank hardening methods. Benches should be constructed to maintain base flow of stream through a single culvert.

3. **Storm water** discharge structures at this site shall be constructed to discharge into the riparian zone (not directly into the stream) and in a manner such that the potential receiving streams (of the discharge) will not be impacted due to sediment accumulations, scouring or erosion of the stream banks.

4. Sediment and erosion control measures shall not be placed in wetlands or waters without prior approval from DWQ. If approved, they shall be removed and the natural grade restored within two months of the date of the close out/stabilization of the given drainage area.

5. Upon completion of the project, the applicant shall complete and return the enclosed "Certificate of Completion" form to the 401/Wetlands Unit of the NC Division of Water Quality.

6. Continuing Compliance. The applicant (Indian Trail) shall conduct all activities in a manner so as not to contravene any state water quality standard (including any requirements for compliance with section 303(d) of the Clean Water Act) and any other appropriate requirements of state and federal law. If DWQ determines that such standards or laws are not being met (including the failure to sustain a designated or achieved use) or that state or federal law is being violated, or that further conditions are necessary to assure compliance, DWQ may reevaluate and modify this certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15 A NCAC 2H.0507(d). Before codifying the certification, DWQ shall notify the applicant and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503, and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to the applicant in writing, shall be provided to the United States Army Corps of Engineers for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This certification and its conditions are final and binding unless you ask for a hearing.

This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please telephone Mr. Alan Johnson in the Mooresville Regional Office at 704-663-1699 or Ms. Cyndi Karoly in the Central Office in Raleigh 919-733-9721.

Sincerely,

for Coleen H. Sullins

Attachments

cc: Army Corps of Engineers, Asheville
Ian McMillan, Wetlands Unit
MRO, Land Quality

NCDENR EROSION CONTROL LETTER OF APPROVAL

NCDENR
North Carolina Department of Environment and Natural Resources
Division of Land Resources
Land Quality Section

James D. Simons, PG, PE
Director and State Geologist

Beverly Eaves Perdue, Governor
Dee Freeman, Secretary

March 11, 2011

LETTER OF APPROVAL WITH MODIFICATIONS

Town of Indian Trail
Attention: Joseph A. Fivas
Post Office Box 2430
Indian Tail, North Carolina 28079

RE: Project Name: Unionville-Indian Trail Sidewalk Project
Acres Approved: 3.33
Project ID: UNION-2011-027
County: Union, SR 1367 & SR 1516, Indian Trail
River Basin: Yadkin-PeeDee
Submitted By: Town of Indian Trail
Date Received by LQS: February 16, 2011
Plan Type: New

Dear Mr. Fivas:

This office has reviewed the subject erosion and sedimentation control plan. We find the plan to be acceptable with modifications and hereby issue this letter of Approval With Modifications. The Modifications Required for Approval are listed on the attached page. This plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, as is required by Title 15A NCAC 4B .0129.

Please be advised that Title 15A NCAC 4B .0118(a) requires that a copy of the approved erosion control plan be on file at the job site. Also, you should consider this letter to give the Notice required by G.S. 113A-61.1(a) of our right of periodic inspection to insure compliance with the approved plan.

North Carolina's Sedimentation Pollution Control Program is performance-oriented, requiring protection of existing natural resources and adjoining properties. If, following the commencement of this project, it is determined that the erosion and sedimentation control plan is inadequate to meet the requirements of the Sedimentation Pollution Control Act of 1973 (North

MODIFICATIONS REQUIRED FOR APPROVAL

Project Name: Unionville-Indian Trail Sidewalk Project
Project ID: UNION-2011-027
County: Union

1. Effective October 1, 2010, persons responsible for land disturbing activities must inspect a project after each phase of the project to make sure that the approved erosion and sedimentation control plan is being followed. Self-inspection reports are required. A sample self-inspection report, as well as details of the self-inspection program, can be found on the Land Quality web site:

   http://www.dlr.enr.state.nc.us/pages/sedimentation_new.html

   If you have questions about the self-inspection program, please contact us at (704) 663-1699.

2. The construction sequence should be modified to include an inspection and approval by a representative of the Land Quality Section prior to removal of erosion control measures.

3. Any off-site borrow or fill required for this project must come from a site with an approved erosion control plan.

4. Due to the nature of this project, it is recommended that you stabilize completed areas of the project at least weekly. In any case, compliance with the following must be maintained:

   G.S. 113A-57(2) requires that the angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

   G.S. 113A-57(3) states that provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever period is shorter.

5. Please provide notification to Mr. James Moore at (704) 663-1699 at least ten (10) days prior to commencement of construction.

6. Additional erosion control measures may be required during the course of this project.

Carolina General Statute 113A-51 through 66), this office may require revisions to the plan and implementation of the revisions to insure compliance with the Act.

Acceptance and approval of this plan is conditioned upon your compliance with Federal and State water quality laws, regulations, and rules. In addition, local city or county ordinances or rules may also apply to this land-disturbing activity. This approval does not supersede any other permit or approval.

Please be aware that your project will be covered by the enclosed NPDES General Stormwater Permit NCGO1000 (Construction Activities). You should first become familiar with all of the requirements for compliance with the enclosed general permit.

Please note that this approval is based in part on the accuracy of the information provided in the Financial Responsibility Form, which you have provided. You are requested to file an amended form if there is any change in the information included on the form. In addition, it would be helpful if you notify this office of the proposed starting date for this project. Please notify us if you plan to have a preconstruction conference.

Your cooperation is appreciated.

Sincerely,

Tamera Eplin

Tamera Eplin, P.E.
Assistant Regional Engineer
Land Quality Section

TE / ls

Enclosures: Certificate of Approval
Modifications Required for Approval
NPDES Permit

cc: RS& H Architects – Engineers-Planners, Inc.
Inspection Department
Surface Water Protection

VIIII. APPENDIX

APPENDIX A: MAP OF LOCATION

UNIONVILLE-INDIAN TRAIL ROAD SIDEWALK LOCATION MAP

APPENDIX B: CONSTRUCTION PLANS

(Separate sheets)

INDIAN TRAIL
north carolina

Town of Indian Trail

Memo

TO: Mayor and Town Council

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

DATE: 3/6/13

COUNCIL DATE: 3/12/13

SUBJECT: Construction, Engineering, and Inspection Services (CEI) for Unionville Indian Trail Road Sidewalk Project

General Information:

Federally funded CMAQ projects require oversight through CEI services. Alley, Williams, Carmen & King, Inc. was recently chosen through the qualifications based selection process. The proposed fee for these services is $161,672.80. This fee is within an acceptable range for a project of this scope.

Staff recommends Alley, Williams, Carmen & King, Inc.

Required Actions:

Council Approval

Attachments:

Alley, Williams, Carmen & King, Inc. Proposal

STATE OF NORTH CAROLINA
COUNTY OF UNION

THIS AGREEMENT, made and entered into this ____ day of _____, 2013, by and between the Town of Indian Trail, a North Carolina Municipal Corporation (hereinafter called "the Town") and Alley, Williams, Carmen & King, Inc., a North Carolina Corporation located in Burlington, North Carolina (hereinafter called "the Engineer").

WITNESSETH:

WHEREAS, the Town has need for the construction of a sidewalk along Unionville Indian Trail Road Younts Road to Sardis Church Road southward to Brittany Downs Estates Subdivision (TIP C-4957 B) hereinafter referred to as the Project, and

WHEREAS, the Town desires to retain the Engineer to provide contract administration and CEI services related to the construction of the Project,

NOW THEREFORE, the Town and the Engineer agree as follows:

1. **SCOPE OF SERVICES**: The Engineer agrees to provide and perform for and on behalf of the Town all of those services stipulated in the Scope of Services attached to this agreement as Exhibit "A", of which are hereby incorporated as a part of this contract. The Town agrees to perform in a timely manner all the necessary and usual obligations of a Town that are required to support implementation of the Engineer's activities.

2. **COMPENSATION FOR SERVICES:** In the provision of the aforementioned services, which are described in Exhibit "A", the Engineer shall be paid hourly not to exceed without prior approval up to the estimated fee of **$161,672.80** as follows.

Please see below the summary of fees:

Unionville Indian Trail Road Sidewalk (TIP C-4957B)

A. Construction Administration	$ 40,704.00
B. CEI	$ 119,548.80
Concrete Lab Testing	$ 1,420.00
Total Agreement Costs and Fees	**$ 161,672.80**

*Note: The CEI portion of this proposal is calculated using 165 hours/month for each project inspector per NCDOT format for CEI fee calculations. The duration of this project is 150 days (5 months). The CEI fee is based on one full time and one part time (1/2 time) inspector. The CEI fee will be based on the actual number of hours required for this project and the project will be staffed as needed to performed the level of inspection required by NCDOT. The Construction Administration is based on our understanding of the tasks associated with the project. The CA fee will be based on the actual number of hours required for this project. The Concrete Lab Testing is estimated based on our understanding of the project. This estimated fee does not include services related to audits which may occur after the completion of construction. Any services required of the engineer after project completion will be billed on an hourly basis.

This fee shall be paid to the Engineer in accordance with Section 3 below. Any additional services approved and authorized by the Town in advance shall be compensated as authorized in accordance with the terms agreed to by both parties in an executed Contract Amendment.

3. **METHOD OF PAYMENT:** The Engineer shall prepare and submit to the Town an invoice statement for services not more than monthly. The Town shall compensate the Engineer for services satisfactorily performed within thirty (30) days of the date of said invoice statement.

4. **TERMINATION OF CONTRACT FOR CAUSE:** If the Engineer shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the Engineer violate any of the covenants, agreements, or stipulations of this contract, the Town shall have the right to terminate this contract immediately by giving written notice to the Engineer of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In a like manner, if the Town shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the Town violate any of the covenants, agreements, or stipulations of this contract, the Engineer shall have the right to terminate this contract immediately by giving written notice to the Town of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Engineer under this contract shall, at the option of the Town , become the property of the Town and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed pursuant to this contract. However, the Town shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of the Town for refund, reimbursement or offset in connection with any obligations arising from the Engineer to the Town.

5. **INSURANCE:** Throughout the term of this agreement, the Engineer shall provide and maintain the following insurance coverages:

(a) Workman's Compensation Insurance and other insurance required by law.
(b) Comprehensive General Liability and Property Damage Insurance in an amount of no less than $1,000,000 combined single limits, naming the Town as an additional insured.
(c) Errors and Omissions coverage in an amount of no less than $1,000,000.

6. **CHANGES:** The Town may, from time to time, request changes in the Scope of Services of the Engineer to be performed hereunder. Such changes, including any increase or decrease in the amount of the Engineer 's compensation which may be mutually agreed upon between the Town and the Engineer, shall be incorporated in written amendments to this contract after appropriate authorization as called for in Section 2 of this contract.

7. **EQUAL EMPLOYMENT OPPORTUNITY:** The Engineer shall not discriminate against any employee or applicant for employment on account of race, color, religion, sex, national origin or because of handicapping condition or of any Veteran. The Engineer shall take affirmative action to ensure equal employment opportunity with respect to all of its employment practices.

8. **ENTIRE AGREEMENT:** This is the entire agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

9. **REPORTS AND INFORMATION:** The Engineer, at such times and in such

manner as the Town may require, shall furnish the Town such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the cost and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

10. TOWN RESPONSIBILITIES:

- All permit fees will be paid by the Town.
- The Town agrees to compensate the Engineer for his Construction Administration services listed above for item A on an hourly basis in accordance with the attached summary of costs.
- The Town agrees to compensate the Engineer for his CEI services listed above for item B on an hourly basis in accordance with the attached summary of costs.
- The Town shall compensate the Engineer for services satisfactorily performed within thirty (30) days of the date of said invoice statement.

11. INDEMNITY: Engineer agrees that it shall indemnify, defend and save harmless Town and Town's officers, public officials, agents and employees for any claims, damages, judgments or expenses (including reasonable attorney's fees) arising out of or related to Engineer's performance or non-performance of this Agreement, except to the extent such claims damages, judgments or expenses are caused by the negligent or willful and wanton acts, errors or omissions of Town, its officers, public officials, agents, employees, or contractors. In any case in which Engineer provides a defense to Town or its officers, public officials, agents or employees, Engineer will utilize attorneys reasonably acceptable to Town. This indemnity shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

TOWN OF INDIAN TRAIL

BY: _____
Joseph Fivas, Town Manager

ATTEST:

_____

(SEAL)

ALLEY, WILLIAMS, CARMEN, & KING, INC.

BY: _____
Jeffery D. Moody, P.E., Vice-President

ATTEST: _____
David W. Lipe, P.E., Associate/Project Engineer

ALLEY, WILLIAMS, CARMEN & KING, INC. CORPORATE SEAL BURLINGTON, N.C.

EXHIBIT "A"

1. Basic Services - The Engineer shall provide the following basic services for the Project:

   A. Construction Administration:
   - Meet with Town Staff to review the project, conduct a project walk-through.
   - Conduct a pre-construction conference to review specific project requirements with the selected contractor.
   - Evaluate and approve subcontracts using NCDOT forms.
   - Evaluate and monitor DBE utilization using NCDOT forms.
   - Evaluate material submittals; we will coordinate this review with NCDOT to ensure approved materials are incorporated into the work.
   - Conduct monthly construction meetings.
   - Review partial pay applications on a monthly basis to verify quantities, record of DBE payment, sales tax receipts for the Town's reimbursement, record of payment to employees per Davis-Bacon Labor regulations, and monitoring of Sediment Control measures.
   - Review final change order at project completion, verify quantities and recommend final payment.
   - Assist the Town as needed when submitting for reimbursement to NCDOT.
   - The Project Engineer will visit the project on a periodic basis to ensure compliance with NCDOT and contract specifications.

   B. Construction Engineering and Inspection (CEI):
   - Provide daily construction inspection while the contractor is working to include daily project diaries and "no work" diaries during periods of no work on the project.
   - Perform field acceptance testing of all concrete
   - Make concrete cylinders for testing of compressive strength; transport the concrete cylinders to PSI, Inc.'s lab in Charlotte for testing.
   - Conduct Employee wage interviews

   The above fee does not include the following items:
   1. Fees due to the Town or any other agency associated with the application/permit process.
   2. Permit fees.
   3. Record Drawings/Certifications
   4. Printing Costs, Plans and Specifications
   5. Quality Assurance Testing of Asphalt Pavements (NCDOT has typically done this for federal-aid projects)
   6. Services required after the completion of the project (FHWA/NCDOT Audits, etc.).

EXHIBIT "B"

HOURLY CHARGE RATE SCHEDULE - - JANUARY 1, 2013

This information is confidential and is intended for use by the recipient only.

1.	Engineers:				
	a.	EI – Engineering Intern	$ 70.00	--	$ 90.00/Hr.
	b.	Registered Professional Engineer	80.00	--	120.00/Hr.
	c.	Associate/Registered Professional Engineer	115.00	--	140.00/Hr.
	d.	Principal/Registered Professional Engineer	165.00	--	175.00/Hr.
2.	Architects:				
	a.	Architects in Training	$ 70.00	--	$ 90.00/Hr.
	b.	Registered Architect	80.00	--	120.00/Hr.
	c.	Associate/Registered Architect	135.00	--	140.00/Hr.
	d.	Principal/Registered Architect	165.00	--	175.00/Hr.
3.	Surveyors:				
	a.	Surveyor in Training	$ 60.00	--	$ 80.00/Hr.
	b.	Registered Land Surveyor	80.00	--	90.00/Hr.
	c.	Associate/Registered Land Surveyor	85.00	--	105.00/Hr.
4.	Technical Staff:				
	a.	Project Manager	$ 75.00	--	$115.00/Hr.
	b.	CADD Designer/Technician	55.00	--	85.00/Hr.
5.	Survey Parties:				
	a.	2-Man Party	$135.00	--	$155.00/Hr.
6.	Construction Observer		$ 75.00	--	$ 90.00/Hr.
7.	Clerical		$ 50.00	--	$ 60.00/Hr.
8.	Other:				

a. Employees' overtime (when authorized in advance): 1.50 times Hourly Charge Rate.
b. Professional Consultants: 1.10 times the amount billed to AWCK, Inc.
c. Printing and Mailing: 1.10 times the amount billed to AWCK, Inc.
d. Mileage: Travel to job site No Charge, but time is included from our office to job site and return.
e. Overnight or extended travel: 1.10 times the amount billed to AWCK, Inc.
f. The above rates are subject to adjustment in accordance with normal salary and rate review practices as of January 1 of each year.
g. Where ranges of hourly charge rates are listed, the rate charged will be the actual charge rate associated with the individual performing the services.
h. Payment will be made monthly based on invoices submitted by Alley, Williams, Carmen & King, Inc.

TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 12, 2013

SUBJECT: Project Manager update on "Sardis Park"

In January, Woolpert indicated they would give an update at the March 12th meeting.

Woolpert will give a broad overview, and then give some specific recommendation for the Council's consideration and will give the Council the opportunity to ask questions.

Kelly Barnhardt
Director of Community & Economic Development

TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 12, 2013

SUBJECT: Oakwood Lane Improvements

One of the recommendations the Project Manager of 'Sardis' Park was to look at and assess the condition of Oakwood Lane and make modifications based on the condition of the road.

The recommendation is to conduct a geotechnical survey of Oakwood Lane and then if necessary design the road to meet Town regulations and design standards.

Kelly Barnhardt
Director of Community & Economic Development

LAWRENCE
ASSOCIATES

106 W. Jefferson St.
Monroe, NC 28112
p: 704-289-1013
866-557-8051
f: 704-283-9035

February 27, 2013

Scott J. Kaufhold, P.E.
Director of Engineer and Public Works
Indian Trail, NC
30 Blythe Drive, Indian Trail, NC
(704) 821-1314

Reference: Oakwood Lane Improvements
Lawrence Associates Job No. 2940

Dear Mr. Kaufhold,

Lawrence Associates, PA is pleased to submit a proposal for professional engineering and surveying services associated with Oakwood Lane improvements. Shown below are the services to be provided by Lawrence Associates

Scope of Services

Surveying Services

- Location, topographic, and utility survey of Oakwood Lane. (Approximately 2,800' and 100' wide cross section)
- Location, topographic, and utility survey of Sardis Church Road for 200' east and west from the intersection of Oakwood Lane. (400' total)
- Contract with Sub-Consultant On-Target to mark existing utilities.
- Map R/W of Oakwood Lane.

Not to exceed $9,000

Engineering Services

- Generate a preliminary grading plan and alignment for staff review.
- Work with Town staff to assist in establishing a proposed roadway cross section.
- Attend preliminary design meeting with Town staff.
- Permit grading and erosion control plans with NCDENR.
- Design and permit one BMP with Town for water quality and quantity requirements.

Not to exceed $16,000

Allowances for additional services (Use of Allowances must have prior written approval by the Town)

Design of additional BMP's and/or offsite improvements.

Not to Exceed **$4,000**

Fee Schedule

Lawrence Associates proposes to provide the above engineering and surveying services for the following fee:

Not to Exceed **$29,000**

Elements and Assumptions

1. Wetland and/or stream location and mapping are not included in this proposal. All services can be provided for a negotiated fee or at an hourly rate.
2. Soil borings will be provided by the Town.
3. Intersection improvements are not included in this contract.
4. This proposal does not include any acquisition of R/W or easements.

Additional Services

Any item not contained in the Scope of Services and/or listed, as an exclusion will be deemed as an Additional Service. Lawrence Associates will provide Additional Services beyond the scope of this proposal where authorized in writing by the client on an hourly basis. Additional Services can also be provided on a negotiated fee basis.

Conditions

If acceptable, please execute and return one original copy of this proposal. Please contact Lawrence Associates if you have any questions about the scope of services. We look forward to working with you on this project.

Respectfully submitted,

Clint D. Lawrence, PE, PLS
Principal

The scope of services, terms and conditions of this Letter Agreement are accepted:

_____

Print (Type) Individual, Firm, or Corporate Name

_____

Signature of Authorized Representative Date

_____

Print (Type) Name of Authorized Representative and Title

Town of Indian Trail

Memo

TO: Mayor and Town Council

FROM: Joe Fivas

DATE: **March 12, 2013**

SUBJECT: Web inquiry and payment portal for tax accounts

The Town is currently working with our financial software provider to enable residents the ability to obtain up to date tax information and make payments online. This web inquiry and payment portal will allow residents, mortgage companies and attorneys 24 hour access to information. This will be an asset to both residents and businesses.

TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 12, 2013

SUBJECT: Economic Alliance of South Charlotte Communities

Last fall, Indian Trail's elected officials met with the Town's of Matthews, Mint Hill, and Stallings to discuss regional economic development. The Town's created a workgroup to bring back a recommendation for all the council's to consider. The workgroup is recommending the formation of the Economic Alliance of South Charlotte Communities. The Town's liaison in this workgroup will give an update on this concept.

jaf